New Mexico Public Education Department
Special Education Bureau

POLICIES AND PROCEDURES FOR THE PROVISION OF SPECIAL EDUCATION SERVICES FOR STUDENTS WITH DISABILITIES AND GIFTED STUDENTS

Chapter 6. - LEAST RESTRICTIVE ENVIRONMENT (LRE)

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Chapter 6. - LEAST RESTRICTIVE ENVIRONMENT (LRE)
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Chapter 6. LEAST RESTRICTIVE ENVIRONMENT (LRE)

I. Least Restrictive Environment - Requirements

§300.114 LRE requirements.

(a) General.

(1) Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the NMPED has in effect policies and procedures to ensure that public agencies in New Mexico meet the LRE requirements of this section and §§300.115 through 300.120.

(2) The public agency ensures that --

(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) Additional requirement - State funding mechanism.

(1) General.

(i) The New Mexico funding mechanism does not result in placements that violate the requirements of paragraph (a) of this section; and

(ii) New Mexico does not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that would result in the failure to provide FAPE to a child with a disability according to the unique needs of the child~~,~~ as described in the child's IEP.

(2) Assurance. If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.

§300.117 Nonacademic settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §300.107, the public agency ensures that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

In addition to information contained in this section, please refer to the NMPED website at:
http://www.ped.state.nm.us/seo/lre/index.htm

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES

C. Least restrictive environment

(1) Except as provided in 34 CFR §300.324(d) and Subsection K of 6.31.2.11 NMAC for children with disabilities who are convicted as adults under state law and incarcerated in adult prisons, all educational placements and services for children with disabilities must be provided in the least restrictive environment that is appropriate to each child's needs in compliance with 34 CFR §§300.114-300.120.

(2) In determining the least restrictive environment for each child's needs, public agencies and their IEP teams shall ensure that the following requirements are met.

(a) The requirements of 34 CFR §300.114(a)(2) for each public agency to ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled, and that special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) The required continuum of alternative placements as specified in 34 CFR §300.115.

(c) The requirement of 34 CFR §300.116(c) that each child with a disability be educated in the school that he or she would attend if nondisabled unless the child's IEP requires some other arrangement.
(d) The requirement of 34 CFR §300.116(e) that a child with a disability not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.
(e) The requirements of 34 CFR §300.320(a)(4) that the IEP for each child with a disability include a statement of the special education and related services and supplementary aids and services, based on peer reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities with nondisabled children.
(f) The requirement of 34 CFR §300.324(a)(3) that the regular education teacher of a child with a disability, as a member of the IEP Team, must assist in determining the supplementary aids and services, program modifications or supports for school personnel that will be provided for the child in compliance with §300.320(a)(4).
(g) The requirement of 34 CFR §300.320(a)(5) that the IEP include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and the activities described in §§300.320(a)(4) and 300.117.
(h) The requirements of 34 CFR §300.503 that the public agency give the parents written notice a reasonable time before the agency proposes or refuses to initiate or change the educational placement of the child or the provision of FAPE to the child and that the notice include a description of any other options considered and the reasons why those options were rejected. *("Reasonable time" is defined in Chapter 2. – Procedural Safeguards.)*
(i) The requirement of 34 CFR §300.120 that the department carry out activities to ensure that § 300.114 is implemented by each agency and that, if there is evidence that the public agency makes placements that are inconsistent with §300.114, the department must review the public agency's justification for its actions and assist in planning and implementing any necessary corrective action.

A. Continuum of Alternative Placements

§300.115 Continuum of alternative placements.

(a) The public agency ensures that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must--

(1) Include the alternative placements listed in the definition of special education under §300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

Authority: 34 CFR §300.39 Special education.

(a) General.

(1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including--

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section--

(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards; *(Speech-language is a related service in New Mexico.)*

(ii) Travel training; and

(iii) Vocational education.

The continuum of alternative placements is a scale of service and setting options in which an IEP can be implemented. It ranges from less restrictive (all regular education with monitoring services) to more restrictive (homebound), as well as placements between those two points, as shown below. State and federal regulations require that the LEA make the continuum of alternative placements available, as needed, in order to meet the needs of the individual student with a disability.

Example of a Continuum of Service and Setting Options

Least Restrictive

- Regular education with weekly monitoring from a special education provider
- Regular education with daily consultation from a special education provider
- Regular education with special education services and supports included in that setting which are aligned with the general curriculum (utilizing such strategies as flexible groupings, universally-designed curriculum, overlapping curriculum, cooperative learning, peer tutoring, parallel or alternative instruction, team teaching)
- Regular education with special education services provided for part of the day in a resource room or a special education classroom
- Self-contained special education classroom
- Special day school (outside the school environment)
- Residential treatment facility
- Hospital
- Detention facility
- Homebound

Most Restrictive

"LRE" is not the same thing as "inclusion." The U.S. Department of Education's Office of Special Educations Programs (OSEP) has stated that inclusion is not the same thing as the IDEA's mandate for educating students in the LRE. All placement decisions (i.e., the point on the continuum of alternative placements that describes the level of services and supports a student needs) must be determined on a case-by-case basis according to the individual needs of the student. LRE determinations require an individualized inquiry into the unique educational needs of each eligible student in determining the possible range of aids and supports that are needed to facilitate the student's placement in the regular educational environment before a more restrictive placement is considered.

The terms "full inclusion" or "inclusion" are not included in the IDEA, but are understood in the field of special education to mean a philosophy that supports the creation of a system in which all children with disabilities attend their home school with their age and grade peers, while also recognizing that for some students a regular education setting may not be the best education option. Inclusive education programs are typically thought of as "including" students rather than merely "mainstreaming" them—a term used in the years before the regulations emphasized the creation of a system that strives to produce better outcomes for all students.

LRE Questions for the IEP Team – Students with more Severe Challenges:

The following are points for discussion and documentation as an IEP Team determines the appropriateness of the Least Restrictive Environment for a student with more severe disabilities.

1. *Can education in the general classroom, with the use of supplementary aids and services, be achieved satisfactorily for the student?*
   a. *Has the public agency taken steps to accommodate the student with disabilities in the general classroom?*
      (1) *Did the district provide supplementary aids and services?*
      (2) *Did the district provide accommodations?*
   b. *Are the services that were provided sufficient?*
      (1) *The district does not have to provide every conceivable supplementary aid or service.*
      (2) *IDEA (Individuals with Disabilities Education Act) does not require general education teachers to devote all or most of their time to one student with a disability.*

(3) IDEA does not require that general education teachers modify the general education program beyond recognition.

(4) General education teachers are not required to modify the general education curriculum to the extent that the student with disabilities is not required to learn any of the skills normally taught in general education.

c. Will the student receive an educational benefit from general education?

(1) Can the student grasp the New Mexico Standards for Excellence benchmarks of the general education curriculum?

(2) Consider and document the nature and severity of the student's disability in relation to receiving educational benefits from general education.

d. Examine the student's overall educational experience in the mainstream environment, balancing the benefits of general and special education for each individual student.

e. What effect does the presence of a student with disabilities have on the general classroom environment and, thus, on the education the other students are receiving?

(1) Discuss and document any disruptions in the classroom.

(2) Does the student require so much of the teacher's attention that the teacher will have to ignore the other students' needs in order to attend to the student with disabilities?

2. If education in a general classroom cannot be achieved satisfactorily, determine whether the student has been mainstreamed to the maximum extent appropriate for that student.

a. Determine if all academic and non-academic classes in general education with nondisabled peers have been considered or tried.

b. Determine if mainstreaming for lunch, recess, or other times has been considered.

B. PLACEMENTS:

§300.116 Placements.

In determining the educational placement of a child with a disability, including a preschool child with a disability, the public agency ensures that--

(a) The placement decision--

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118;

(b) The child's placement--

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home, unless the parent agrees otherwise;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. *(Regular classrooms are public schools in K-12th).*

§300.110 Program options.

The NMPED must ensure that the local educational agency makes available to its children with disabilities the variety of educational programs and services that it provides to nondisabled children in the areas served by the LEA, including art, music, industrial arts, consumer and homemaking education, and vocational education.

Placement in the Least Restrictive Environment (LRE) Understanding and Making the Placement Decision

What is Placement? It is not the physical location of the special education services. Rather, it is the set of services and the type of environment, or the point on the continuum of services and setting options, in which those services are delivered.

Who Makes the Placement Decision? The student's IEP Team makes the decision. This requires an individualized inquiry into the student's unique educational and related services needs.

When is the Placement Decision Made? It is the last of a series of decisions made at the IEP meeting. It is made after goals, objectives/benchmarks, and instructional modifications are developed. The placement decision is based on those IEP elements.

Summary of the LRE Mandate in IDEA with Respect to Making Placement Decisions.

- To the maximum extent possible, students with disabilities must be educated in the regular classroom.
- Special classes, separate schooling, or other removal from the regular classroom occurs only when the nature or the severity of the educational disability is such that education in the regular class cannot be satisfactorily achieved with appropriate aids and supports.
- Unless the student's IEP requires some other kind of arrangement, the student attends the same school he or she would attend if not eligible for special education services.
- Students with exceptionalities must be afforded the opportunity to participate in nonacademic and extracurricular services and activities along with their peers in regular education.
- Less restrictive placements must always be considered. However, where there is a reasonable likelihood that a student with a disability can be educated in the regular classroom with the use of supplementary aids and supports, then that placement should be tried.

The Decision.

When making the placement decision as an individualized inquiry, the IEP Team should follow these steps.

- First, determine through the IEP process the student's educational needs. Determine what constitutes an appropriate program for the student, not where it will be provided or what pre-existing "program" fits best.
- Next, review the continuum of placement options in sequence from least restrictive to most restrictive. Look at how each option currently exists, as well as how it might also be modified.

As the first option, start the decision-making process by examining regular classroom placement. Have a serious and thoughtful discussion about the three factors below.

1. Consider whether the student can be educated satisfactorily in the regular classroom with one or more of the following:
    - supplementary aids and supports
    - program and/or curriculum modifications
    - provision of an itinerant special education provider
    - assistance from a paraeducator
    - special education training for the regular education teacher
    - the use of assistive technology
    - the development and implementation of FBAs and BIPs designed to identify and meet the daily behavioral challenges presented by the student in the regular education classroom
2. Compare the benefits provided in the regular education classroom and those provided in a special education classroom or segregated setting.
    - Compare social and communication skills, as well as academic benefits.
    - Compare the relative benefits to the student.
    - Keep in mind that regular education classroom placement is not dependent on the student's ability to learn the same things in the same way.
3. Consider the potentially beneficial or harmful effects that a regular class placement may have on the student with an exceptionality or the other students in the class.
    a. Positive benefits might include social interaction with nonexceptional peers, peer modeling, high expectations, and acceptance of others.
    b. Harmful effects might include unduly disruptive behavior that impairs the student's learning or that of others even with the implementation of a BIP.
    c. Consider each of the above three factors equally.
    d. Keep in mind the placement decision cannot be *solely* based on
        - Category of the disability
        - Severity of the disability
        - Language and communication needs

- Needed modifications in the curriculum
- Configuration of the public agency's delivery system
- Availability of space or educational and related services
- Administrative convenience

e. Keep in mind that where there is a reasonable likelihood that a student with disabilities can educated in the regular classroom with supplementary aids and supports, then that placement should be tried for as much as the school day as possible.

f. If the team agrees that the student should receive part or all of the special education services outside of the regular classroom, then the IEP must also provide opportunities for participation in regular education programs in academic, nonacademic, or extracurricular activities, as appropriate.

g. If the team agrees that the student's IEP cannot be satisfactorily implemented in the regular education classroom with the provision of supplementary services and supports, then the team can consider a more restrictive placement keeping in mind that the regular education classroom is not the LRE for that student at that time. That is, having the understanding that the ultimate plan and goal is to work towards a more fully inclusive placement when possible.

h. Finally, clearly articulate on the IEP document the placement decision and the justification for it based on the considerations in this booklet.

II. DETERMINING SERVICE LEVELS AND SETTINGS

For more information on the STARS (Student/Teacher Accountability Reporting System), please see the NMPED website with the STARS logo at: http://www.ped.state.nm.us*; and the SEB Directors Guidance website at:* http://www.ped.state.nm.us/SEB/community/dl10/STARS%20PowerPoint.pdf**.**

SERVICE LEVEL

The service level and setting determine the funding of special education services.

Service Level – (amount of time the student is receiving special education service regardless of location of service)
Level 1 – Less than 10% of the day
Level 2 – 11% - 50% of the day
Level 3 – More than 50% of the day but not a full day
Level 4 – Up to full day / 3Y, 4Y, 5Y

For students who attend school full-time:

1) Total the minutes of special education service scheduled on the student's IEP. Special education service should include the following:
   - Service to a student from a licensed special education teacher or related service provider
   - Service to a student from a one-on-one aide or job coach
   - Service to a student from a general education teacher who is implementing curriculum modifications developed jointly with the special education teacher
   - Service to a general education teacher from a special education teacher who is consulting on a weekly basis with the general education teacher about classroom modifications for a student

2) Refer to the following state-mandated school day minimums:

Grade:	Hours per day:
Kn =	2.5
1-6 =	5.5
7-12=	6

3) Divide #1 by #2
   - 1% - 10% = Level 1 / Minimum / A
   - 11% - 49% = Level 2 / Moderate / B
   - 50% or more = Level 3 / Extensive / C
   - approaching a full day = Level 4 / Maximum / D

- for students on block scheduling, divide the total hours of special education service in the whole year by the total hours in the whole year (i.e., for high school, use 6 hrs/day X 5 days/week X 36 weeks/year = 1080 hours) and use the percents above for each count date to determine funding

For students in grade 3Y/4Y/5Y, the service level is automatically Level 4/Maximum/D.
For students who have reduced-day programs, including those in homebound or hospital settings, use the same method for calculating service level as for full-time students. Please note that the student's special education service time is divided by the time in a state-mandated school day, not by that student's reduced-hour day.

Note: To count service from a general education teacher as part of a student's special education service, that general education teacher must be involved in collaboration with the special education teacher at least twice a week, preferably including common planning time. If the general education teacher is only implementing directions from the special education teacher regarding simple modifications (i.e., sit in an area free from distractions, do half as many problems, allow extended time for tests, read with a partner, etc.), that service is NOT included in a calculation of special education service. Irrespective of the calculation of service level, IEP teams are required to plan and provide the supports and services necessary to ensure that a free appropriate public education is available to every student with a disability.

DETERMINING SETTING (amount of time the student is not in the regular class).

For more information see the STARS Templates and User Manual found on the NMPED website at: http://www.ped.state.nm.us/SEB/community/index.html.

Gifted Students: For students who are gifted, no settings are required because this data is not collected for the federal government, which does not recognize giftedness as a disability.

For students AGES 3-5 choose from the following categories:

- **EC01 Early Childhood Setting** with typically developing peers [includes Head Start].
- **EC02 Part-Time Early Childhood / Part-Time Early Childhood Special Education Setting** – Multiple settings such that:
  (1) special education and related services are provided at home or in educational programs designed primarily for children without disabilities, and
  (2) special education and related services are provided in programs designed primarily for children with disabilities.
- **EC03 Early Childhood Special Education Setting** – Setting primarily designed for children with disabilities housed in regular school buildings or other community-based settings.
- **EC04 Homebound/Hospital -** Student receives all service in homebound setting or short-term hospital setting
- **EC06 Separate School -** Educational programs in public or private day schools designed specifically for children with disabilities.
- **EC07 Residential Facility -** A publicly or privately operated residential schools or residential medical facilities on an inpatient basis.
- **EC10 Private School – Parentally-Placed (**be sure to use **school code 997)**
- **EC11 Home –** home-based parental instruction (be sure to use **school code 998)**
- **EC14 Alternative Schools (includes Family School)**
  Alternative is a public school within a school district that has its own principal, school building, and budget and is established to serve the needs of a particular group of students, e.g. those considered to be at-risk of dropping out. A **Family School** provides more than half-time instruction in the public schools with the remaining time in home-based parental instruction.

For students AGES 6-21 and over, choose from the following categories:

- **SA01 In Regular Class** more than 80% of the day
- **SA02 In Regular Class** between 40%-79% of the day
- **SA03 In Regular Class** less than 40% of the day
- **SA04 Homebound/Hospital -** Student receives all service in homebound setting or short-term hospital setting
- **SA05 Public Separate School**
- **SA06 Private Separate School**

- **SA07 Public Residential Facility**
- **SA08 Private Residential Facility**
- **SA09 Juvenile Detention/Corrections** Student receives services in a juvenile detention or corrections facility
- **SA10 Private School – Parentally Placed** (be sure to use **school code 997**) - Student is parentally-placed in a private school but is receiving some special education service with LADE teachers
- **SA11 Home Schoo**l (be sure to use **school code 998**) - Student is parentally-placed in a home school but is receiving some special education service with public agency teachers
- **SA12 Removed to IAES (Onsite) -** by School Personnel (not Hearing Officer)
- **SA13 Removed to IAES (Off-Site) -** by School Personnel (not Hearing Officer)
- **SA14 Alternative School** (Includes Family School)
- **SA15 Removed to IAES** – by Hearing Officer

Authority: NMAC 6.29.1.9 Procedural Requirements

G. Class loads. Class loads shall be in compliance with the most current class load requirements in Section 22-10A-20 NMSA 1978 and Section 22-5-15 NMSA 1978.

(5) Students receiving special education services integrated into a regular classroom for any part of the day shall be counted in the calculation of class load averages. Students receiving special education services not integrated into the regular classroom shall not be counted in the calculation of class load averages. Only classroom teachers charged with responsibility for the regular classroom instructional program shall be counted in determining average class loads. In elementary schools offering only one grade level, average class loads may be calculated by averaging appropriate grade levels between schools in the school district.

III. PRIVATE SCHOOLS: ENROLLED BY THE PARENTS

§300.129 State responsibility regarding children in private schools.
The NMPED has in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in §§300.130 through 300.148.

§300.130 Definition of parentally-placed private school children with disabilities.
Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private schools, including religious, schools or facilities that meet the definition of elementary schools in §300.13, or secondary schools in §300.36, other than children with disabilities covered under §§300.145 through 300.147. (Authority: 20 U.S.C. §1412(a)(10)(A))

§300.13 Elementary school. Elementary school means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law

§300.36 Secondary school. Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

§300.131 Child find for parentally-placed private school children with disabilities.

(a) General. The public agency must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private schools, including religious, elementary schools and secondary schools located in the school district served by the public agency, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.

(b) Child find design. The child find process must be designed to ensure--
(1) The equitable participation of parentally-placed private school children; and
(2) An accurate count of those children.

(c) Activities. In carrying out the requirements of this section, the public agency, or, if applicable, the NMPED, must undertake activities similar to the activities undertaken for the agency's public school children.

(d) Cost. The cost of carrying out the child find requirements in this section, including individual

evaluations, may not be considered in determining if the public agency has met its obligation under §300.133. *(For private school expenditures see Chapter 6 – LRE).*

(e) Completion period. The child find process must be completed in a time period comparable to that for other students attending LADE, consistent with §300.301. *(See Chapter 3- Initial Evaluations).*

(f) Out-of-state children. Each LEA in which private schools, including religious, elementary schools and secondary schools, are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a state other than the state in which the private schools they attend are located.

§300.132 Provision of services for parentally-placed private school children with disabilities--basic requirement.

(a) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private schools, including religious, elementary schools and secondary schools, located in the school district served by the public agency, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with §300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§300.190 through 300.198.

(b) Services plan parentally-placed private school children with disabilities. In accordance with paragraph (a) of this section and §§300.137 through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the public agency in which the private school is located to receive special education and related services under this part.

(c) Record keeping. The public agency must maintain in its records, and provide to the NMPED, the following information related to parentally-placed private school children covered under §§300.130 through 300.144:

(1) The number of children evaluated;

(2) The number of children determined to be children with disabilities; and

(3) The number of children served.

§300.133 Expenditures.

(a) Formula. To meet the requirement of §300.132(a), the LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

(1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total sub-grant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private schools, including religious, elementary and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

(2) (i) For children aged three through five, an amount that is the same proportion of the LEA's total sub-grant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in private schools, including religious, elementary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.

(ii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in §300.13.

(3) If the LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

(b) Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under §300.134, must conduct a thorough

and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. *(See regulation Appendix B for a calculation of proportionate share).*

(c) Annual count of the number of parentally-placed private school children with disabilities .

(1) The *cm must--

(i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with §300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and

(ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

(2) The child count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

(d) Supplement, not supplant. State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part.

§300.134 Consultation.

To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

(a) Child find. The child find process, including--

(1) How parentally-placed private school children suspected of having a disability can participate equitably; and

(2) How parents, teachers, and private school officials will be informed of the process.

(b) Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under §300.133(b); including a determination of how the proportionate share of those funds was calculated.

(c) Consultation process. The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

(d) Provision of special education and related services. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of--

(1) The types of services, including direct services and alternate service delivery mechanisms; and

(2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and

(3) How and when those decisions will be made;

(e) Written explanation by LEA regarding services. However, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract) the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

§300.135 Written affirmation.

(a) When timely and meaningful consultation, as required by §300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.

(b) If the representatives do not provide the affirmations within a reasonable period of time, the LEA must forward the documentation of the consultation process to the NMPED.

The Special Education Director of LADE has written affirmations of consultations that have occurred. There are no private schools located within LADE educational boundaries.

IDEA 2004 maintains the requirement that LADE spend a proportionate amount of IDEA funds for services delivered to parentally-placed students in private schools. However, the federal law has expanded and clarified the requirement that the proportionate amount—and other key issues—be determined via **timely and meaningful consultation** with representatives from the private school.

LADE's obligation regarding proportionate spending and consultation extends to parentally-placed private school students who attend private schools located in the [district]. The OSEP memo attached to a memo found at: http://www.ped.state.nm.us/seo/guide/Private.School.Memo.111405.pdf clearly describes what the consultation process is required to address. The memo also explains that, for 2005-06, LADE may use the best available data to calculate the proportionate amount of IDEA funds that must be expended on behalf of parentally-placed private school students, rather than conducting new child counts. The NMPED provides a non-regulatory guidance sample "Consultation Form," the use of which will help ensure that all required components of the consultation process are addressed.

Although state rules extend the child find requirement to home-schooled students, the state statutory definition of a *private school* (at § 22-1-2(K) NMSA 1978) specifically excludes a home school. Therefore, the proportionate spending and "meaningful and timely consultation" requirements that apply to parentally-placed private school students do not apply to home-schooled students. In addition, parents who home school their children do not have the right to file a state-level complaint against LADE alleging a violation of these consultation requirements (as discussed further below).

IDEA 2004 also requires that, following the consultation process, LADE must obtain written affirmation of this process, which is to be signed by private school representatives. The NMPED refers you to the sample "Written Affirmation" form in its non-regulatory guidance as an example of the type of form that may be used for this purpose. If the private school representatives do not sign the written affirmation within a "reasonable" period of time, LADE must forward documentation of the consultation process to the NMPED.

§300.136 Compliance.

(a) General. A private school official has the right to submit a complaint to the NMPED that LADE--
- **(1) Did not engage in consultation that was meaningful and timely; or**
- **(2) Did not give due consideration to the views of the private school official.**

(b) Procedure.
- **(1) If the private school official wishes to submit a complaint, the official must provide to the NMPED the basis of the noncompliance by LADE with the applicable private school provisions in this part; and**
- **(2) LADE must forward the appropriate documentation to the NMPED.**
- **(3) (i) If the private school official is dissatisfied with the decision of the NMPED, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph (b)(1) of this section; and**
- **(ii) The NMPED must forward the appropriate documentation to the Secretary.**

§300.137 Equitable services determined.

(a) No individual right to special education and related services. No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(b) Decisions.
- **(1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under §§300.130 through 300.144 must be made in accordance with paragraph (c) of this section and §300.134(c).**
- **(2) LADE must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.**

(c) Services plan for each child served under §§300.130 through 300.144. If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from LADE, LADE must--
- **(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with §300.138(b); and**

(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, LADE shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

§300.138 Equitable services provided.

(a) General.

(1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirement of §300.18.

(2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

(b) Services provided in accordance with a services plan.

(1) Each parentally-placed private school child with a disability who has been designated to receive services under §300.132 must have a services plan that describes the specific special education and related services that LADE will provide to the child in light of the services that LADE has determined, through the process described in §§300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.

(2) The services plan must, to the extent appropriate--

(i) Meet the requirements of §300.320, or for a child ages three through five, meet the requirements of §300.323(b) with respect to the services provided; and

(ii) Be developed, reviewed, and revised consistent with §§300.321 through 300.324.

(c) Provision of equitable services.

(1) The provision of services pursuant to this section and §§300.139 through 300.143 must be provided:

(i) By employees of a public agency; or

(ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.

(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

(d) 300.139 Location of services and transportation.

(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

(b) Transportation.

(1) General.

(i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation--

(A) From the child's school or the child's home to a site other than the private school; and

(B) From the service site to the private school, or to the child's home, depending on the timing of the services.

(ii) Districts are not required to provide transportation from the child's home to the private school.

(2) Cost of transportation. The cost of the transportation described in paragraph (b)(1)(i) of this chapter may be included in calculating whether the district has met the requirement of §300.133.

§300.140 Due process complaints and State complaints. *(See Chapter 2.- Procedural Safeguards)*

(a) Due process not applicable, except for child find.

(1) Except as provided in paragraph (b) of this section, the procedures in §§300.504 through 300.519 do not apply to complaints that LADE has failed to meet the requirements of §§300.132 through 300.139, including the provision of services indicated on the child's services plan.

(b) Child Find complaints—to be filed with the LEA in which the private school is located.

(1) The procedures in §§300.504 through 300.519 apply to complaints that an LEA has failed to meet the child find requirements in §§300.131 including the requirements in §§300.300 through 300.311.

(2) Any due process complaint regarding the child find requirements (as described in paragraph (b)(1) of the section) must be filed with the LEA in which the private school is located and a copy must be forwarded to the NMPED.

§300.141 Requirement that funds not benefit a private school.

(a) The LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting--

(1) The needs of a private school; or

(2) The general needs of the students enrolled in the private school.

§300.142 Use of personnel.

(a) Use of public school personnel. The LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities--

(1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and

(2) If those services are not normally provided by the private school.

(b) Use of private school personnel. The LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.130 through 300.144 if--

(1) The employee performs the services outside of his or her regular hours of duty; and

(2) The employee performs the services under public supervision and control.

§300.143 Separate classes prohibited.

The LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if—

(a) The classes are at the same site; and

(b) The classes include students enrolled in public schools and students enrolled in private schools.

§300.144 Property, equipment, and supplies.

(a) The public agency must control and administer the funds used to provide special education and related services under §§300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.

(c) The public agency must ensure that the equipment and supplies placed in a private school--

(1) Are used only for Part B purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency must remove equipment and supplies from a private school if--

(1) The equipment and supplies are no longer needed for Part B purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

L. Children in private schools or facilities.

(1) Children enrolled by parents in private schools or facilities.

(a) Parentally placed private school children with disabilities means children with disabilities enrolled by their parents in private schools, including religious schools or facilities, such as residential treatment centers, day treatment centers, hospitals, mental health institutions, other than children with disabilities who are covered under 34 CFR §§300.145 through 300.147.

(b) A school district in which a private school or facility is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.

(c) Each district must locate, identify and evaluate all children with disabilities who are enrolled by their parents in private schools, including religious elementary schools and secondary schools located in the education jurisdiction of the district, in accordance with 34 CFR §§300.131 and 300.111.

(d) The public agency must develop a "service plan" that describes the special education and related services the district will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 34 CFR §300.132 and that is developed and implemented in accordance with 34 CFR §§300.137 through 300.139. The provision applies only to private schools and not to private facilities where an IEP must be in place.

(e) Pursuant to 34 CFR §300.133, LADE is obligated to spend a proportionate amount of its federal IDEA Part B funds to assist private school children with disabilities placed in a private school or private facility by a parent who assumes responsibility for such placement. In doing so, LADE must use the formula for calculating proportionate amount and annual count of parentally placed private school children with disabilities in accordance with 34 CFR §300.133. The public agency shall not use IDEA funds to benefit private schools as provided in 34 CFR §300.141. The state is not required to distribute state funds for such school-age persons. Furthermore, the Constitution and laws of New Mexico prohibit public agencies from spending state funds to assist private schools or facilities or their students.

(f) No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Pursuant to 34 CFR §300.137, LADE must make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities.

(g) Pursuant to 34 CFR §§300.134 and 300.135, districts must ensure timely and meaningful consultation with private school representatives and representatives of parents of parentally-placed private school children with disabilities. If LADE fails to engage in meaningful and timely consultation or did not give due consideration to a request from private school officials, private school officials have the right to submit a complaint to the department. The private school official and LADE must follow the procedures outlined in 34 CFR §300.136.

(h) Pursuant to 34 CFR §§300.140, the due process provisions of Subsection I of 6.31.2.13 NMAC are not applicable except for child find complaints which must be filed in compliance with 34 CFR §300.140(b). Any complaint that the department or any district has failed to meet the requirements in 34 CFR §§300.132 through 300.135 and §§300.137 through 300.144 must be filed in accordance with the provisions described in Subsection H of 6.31.2.13 NMAC.

(2) Children placed in or referred to private schools or facilities by New Mexico public agencies. The *cm shall ensure that a child with a disability who is placed in or referred to a private school or facility by the public agency as a means of providing special education and related services is provided services in compliance with the requirements of 34 CFR §§300.146 and 300.147. Such a child has all the rights of a child with a disability who is served by a public agency.

(3) Children placed in or referred to private schools or facilities by New Mexico public non-educational agencies. For a qualified student or school-age person in need of special education placed in a private school or facility by a New Mexico public noneducational agency with custody or control of the qualified student or school-age person or by a New Mexico court of competent jurisdiction, the school district in which the facility is located shall be responsible for the planning and delivery of special education and related services, unless the qualified student's or school-age person's resident school district has an agreement with the facility to provide such services. The district must make reasonable efforts to involve the qualified student or school-age person's resident school district in the IEP process.

(4) Children placed in or referred to private schools or facilities by public noneducational agencies other than New Mexico public agencies. A school district in which a private school or facility is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.

(5) Children placed in private schools or facilities by parents when FAPE is at issue. The responsibility of a local educational agency to pay for the cost of education for a child with a disability who is placed in a private school or facility, such as residential treatment centers, day treatment centers, hospitals or mental health institutions, by parents who allege that LADE failed to offer FAPE is governed by the requirements of 34 CFR §300.148. Disagreements between a parent and the public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of Subsection I of 6.31.2.13 NMAC.

(6) If not otherwise governed by this rule, the department will determine which school district is responsible for the cost of educating a qualified student in need of special education who has been placed in a private school or facility outside the qualified student's resident school district in accordance with the following procedures.

(a) The receiving school district must notify the SEB of the department in writing no later than thirty (30) days after the receiving school district receives notice of the placement. The notice, as described on the department's website, must include: name of student, date of birth of student, date of placement, information regarding the qualified student's resident school district, documentation of placement, including student's IEP, cost of placement, and any other information deemed relevant by the SEB. The receiving school district must provide a copy of the notice to the district identified as the student's resident district.

(b) The district identified as the student's resident district may provide any additional information it deems relevant. Such additional information must be provided no later than 15 days after the resident district receives its copy of the notice described in Subparagraph (a) of this paragraph.

(c) No later than 60 days after its receipt of the notice described in Subparagraph (a) of this paragraph, the SEB will issue its determination as to which school district is responsible for the cost of educating the student, together with the amount of any reasonable reimbursement owed to the receiving school district. The SEB may extend the 60-day timeline for good cause.

(7) The department will assign a unique student identifier for school-age persons who have service plans, including those who are not residents of the state but who are attending private residential treatment facilities in the state.

(8) Children schooled at home. LADE shall locate, evaluate and determine the eligibility of children with disabilities who are schooled at home pursuant to §§ 22-2-2(H) NMSA 1978. [6.31.2.11 NMAC -Rp, 6.31.2.11 NMAC, A, 12/31/09]

IV. PRIVATE SCHOOLS: ENROLLED BY PARENT - WHEN FAPE IS AT ISSUE

§300.148 Placement of children by parents if FAPE is at issue.

(a) General. This part does not require the LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the public agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with §§300.131 through 300.144.

(b) Disagreements about FAPE. Disagreements between the parents and the public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§300.504 through 300.520. *(See Section 2 – Procedural Safeguards).*

(c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of the public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the public agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the public agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the New Mexico standards that apply to education provided by the SEA and LEAs.

(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied--

(1) If--

(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public

agency of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in §300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement--

(1) Must not be reduced or denied for failure to provide the notice if--

(i) The school prevented the parent from providing the notice;

(ii) The parents had not received notice, pursuant to §300.504, of the notice requirement in paragraph (d)(1) of this section; or

(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and

(2) May not, in the discretion of the court or a hearing officer, be reduced or denied for failure to provide this notice if--

(i) The parents are illiterate or cannot write in English; or

(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES

L. Children in private schools or facilities.

(5) Children placed in private schools or facilities by parents when FAPE is at issue. The responsibility of a local educational agency to pay for the cost of education for a child with a disability who is placed in a private school or facility, such as residential treatment centers, day treatment centers, hospitals or mental health institutions, by parents who allege that LADE failed to offer FAPE is governed by the requirements of 34 CFR §300.148. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of Subsection I of 6.31.2.13 NMAC. *(See above pages).*

LI. PRIVATE SCHOOLS: REFERRED OR PLACED BY THE PUBLIC AGENCY

§300.145 Applicability of §§300.145 through 300.147.

Sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

§300.146 Responsibility of State educational agency.

The NMPED ensures that a child with a disability who is placed in or referred to a private school or facility by a public agency--

(a) Is provided special education and related services--

(1) In conformance with an IEP that meets the requirements of §§300.320 through 300.325 *(IEP Chapter 5 of this document)***; and**

(2) At no cost to the parents;

(b) Is provided an education that meets the standards that apply to education provided by the NMPED and districts, including the requirements of this part, except for §300.18 and §300.156(c) *(Personnel qualifications Chapter 8 of this document)***; and**

(c) Has all rights of a child with a disability who is served by the public agency.

§300.147 Implementation by State educational agency. In implementing §300.146, the NMPED must--

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which the public agency has referred or placed a child with a disability; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

VI. CONTRACTING FOR EDUCATIONAL PLACEMENT

A. Private Schools

Authority: NMSA 1978 22-13-8. Special education: private.

L. Children in private schools or facilities.

(1) Children enrolled by parents in private schools or facilities.

(a) Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private schools, including religious schools or facilities, such as residential treatment centers, day treatment centers, hospitals, mental health institutions, other than children with disabilities who are covered under 34 CFR §§300.145 through 300.147.

(b) A school district in which a private school or facility is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.

(c) Each district must locate, identify and evaluate all children with disabilities who are enrolled by their parents in private schools, including religious elementary schools and secondary schools located in the education jurisdiction of the district, in accordance with 34 CFR §§300.131 and 300.111.

(d) Each public agency must develop a "service plan" that describes the special education and related services the district will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 34 CFR §300.132 and that is developed and implemented in accordance with 34 CFR §§300.137 through 300.139. The provision applies only to private schools and not to private facilities where an IEP must be in place.

(e) Pursuant to 34 CFR §300.133, each district is obligated to spend a proportionate amount of its federal IDEA Part B funds to assist private school children with disabilities placed in a private school or private facility by a parent who assumes responsibility for such placement. In doing so, each district must use the formula for calculating proportionate amount and annual count of parentally placed private school children with disabilities in accordance with 34 CFR §300.133. The public agency shall not use IDEA funds to benefit private schools as provided in 34 CFR §300.141. The state is not required to distribute state funds for such school-age persons. Furthermore, the Constitution and laws of New Mexico prohibit public agencies from spending state funds to assist private schools or facilities or their students.

(f) No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Pursuant to 34 CFR §300.137, the district must make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities.

(g) Pursuant to 34 CFR §§300.134 and 300.135, districts must ensure timely and meaningful consultation with private school representatives and representatives of parents of parentally-placed private school children with disabilities. If the district fails to engage in meaningful and timely consultation or did not give due consideration to a request from private school officials, private school officials have the right to submit a complaint to the department. The private school official and the district must follow the procedures outlined in 34 CFR §300.136.6.31.2 NMAC.

(3) Placement of students in private residential treatment centers, or other out of home treatment or habilitation programs, by the IEP team or by a due process decision. In no event shall a child with an IEP be allowed to remain in an out of home treatment or habilitation program for more than 10 days without receiving special education and related services. The school district in which the qualified student or school-age person lives, whether in-state or out-of-state, is responsible for the educational, nonmedical care and room and board costs of that placement.
(a) Agreements between the resident school district of the qualified student or school-age person and a private residential treatment center must be on the form posted on the department's website or on a form otherwise approved by the department and must be reviewed and approved by the secretary of public education.
(b) Agreements must provide for:
(i) student evaluations and eligibility;
(ii) an educational program for each qualified student or school-age person that meets state standards for such programs, except that teachers employed by private schools are not required to be highly qualified;
(iii) the provision of special education and related services in conformance with an IEP that meets the requirements of federal and state law and applicable regulations and rules;
(iv) adequate classroom or other physical space that allows the school district to provide an appropriate education;
(v) a detailed description of the costs for the placement; and
(vi) an acknowledgement of the authority of the local school board and the department to conduct on-site evaluations of programs and student progress to ensure that state standards are met.

B. New Mexico School for the Blind and Visually Impaired (NMSBVI)

The New Mexico School for the Blind and Visually Impaired is a specialized school which provides residential, academic, support, early childhood programs, summer camps and outreach services to the blind and visually impaired students of New Mexico. NMSBVI is an entirely special education school. Today, the main campus is still located on the original site in Alamogordo with an Early Childhood Program and Outreach Program housed in Albuquerque, New Mexico. *For more information, see website:* http://www.nmsbvi.k12.nm.us/

C. New Mexico School for the Deaf (NMSD)

With a long history of serving children and youth who are deaf or hard of hearing, the New Mexico School for the Deaf offers the following programs to the state:

- Preschools and kindergartens - comprehensive and stimulating learning environments for young children
- Academics - grades 1 through 12, which encompass traditional and elective subjects with a special emphasis on language and literacy development
- Student Life - a wide range of residential, educational and recreational after-school activities, such as athletics, clubs and life skills development
- Step*Hi - statewide, family centered, early intervention services for babies, toddlers and young children
- Outreach - statewide information and educational support to public schools serving children and youth who are Deaf or Hard of Hearing
- Summer Program - a place where NMSD and non-NMSD students who are deaf or hard of hearing and in grades 3 - 12 come together in fun, adventurous, academic and non-academic ways.
  For more information, see website: http://www.nmsd.k12.nm.us/

D. State-Supported Educational Programs

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

J. Children in state-supported educational programs.
  (1) Children placed or referred by other public agencies.
    (a) Applicability. The rules in this Paragraph (1) of Subsection J apply to children with disabilities who are being considered for placement in a state-supported educational program or facility by another public agency as a means of providing special education and related services.
    (b) Responsibility. The public agency shall ensure that a child with a disability who is being considered for placement in a state-supported educational program by another public agency has all the rights of a

child with a disability who is served by any other public agency, including being provided special education and related services:

(i) in conformance with an IEP;

(ii) at no cost to the child's parents; and

(iii) at a school or facility that is accredited by the department or licensed by the New Mexico department of health.

(c) Service delivery. With informed parent consent pursuant to 34 CFR §300.300 and Subsection F of 6.31.2.13 NMAC, and pursuant to the procedures in 34 CFR §300.304 and Subsection D of 6.31.2.10 NMAC, the state-supported program may conduct such additional evaluations and gather such additional information as it considers necessary to assist the IEP Team in making the placement decision. The referring public agency and the receiving state-supported educational program shall be jointly responsible for developing IEPs and ensuring that the child receives a free appropriate public education.

(d) Joint IEPs and interagency agreements. Responsibility for services for children placed in or referred to state-supported educational programs shall be defined by a jointly agreed upon IEP or other written agreement between the referring public agency and the state-supported program.

(e) Annual review. At least annually, the referring public agency, the state-supported educational program and the parent shall jointly review the child's IEP and revise it as the joint IEP Team deems appropriate.

(2) Children enrolled in state-supported educational programs by parents or other public authorities. A state-supported educational program that accepts a child with a disability at the request of a parent or upon the request or order of a noneducational public authority, and without appropriate participation by the public agency that has primary responsibility for serving the child, assumes all responsibility for ensuring the provision of FAPE. The child's LEA or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a joint IEP or other written agreement between the state-supported program, the other agency and, if appropriate, the parent.

E. Residential Placements / RTC

§300.104 Residential placement.

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

Authority: 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

B. (3) Placement of students in private residential treatment centers, or other out of home treatment or habilitation programs, by the IEP Team or by a due process decision. In no event shall a child with an IEP be allowed to remain in an out of home treatment or habilitation program for more than 10 days without receiving special education and related services. The school district in which the qualified student or school-age person lives, whether in-state or out-of-state, is responsible for the educational nonmedical care and room and board costs of that placement.

(a) Agreements between the resident school district of the qualified student or school-age person and a private residential treatment center must be on the form posted on the department's website or on a form otherwise approved by the department and must be reviewed and approved by the secretary of public education.

(b) Agreements must provide for:

(i) student evaluations and eligibility;

(ii) an educational program for each qualified student or school-age person that meets state standards for such programs, except that teachers employed by private schools are not required to be highly qualified;

(iii) the provision of special education and related services in conformance with an IEP that meets the requirements of federal and state law and applicable regulations and rules;

(iv) adequate classroom or other physical space that allows the school district to provide an appropriate education;

(v) a detailed description of the costs for the placement; and

(vi) an acknowledgement of the authority of the local school board and the department to conduct on-site evaluations of programs and student progress to ensure that state standards are met.

(4) Placement of students in public residential treatment centers, or other out of home treatment or habilitation programs, by the IEP team or by a due process decision. The sending school shall be responsible for the provision of special education and related services. In no event shall a child with an IEP be allowed to remain in an out of home treatment or habilitation program for more than 10 days without receiving special education and related services.

VII. GIFTED PROGRAMS

Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN

F. Applicability of rules to gifted children.

(1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the district, except:

(a) the requirements of 6.31.2.8 NMAC through 6.31.2.10 NMAC

(b) Subsections J, K and L of 6.31.2.11 NMAC regarding child find, evaluations and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities and children with disabilities who are schooled at home;

(c) the requirements of 34 CFR §§300.530-300.536, Subsection I of 6.31.2.13 NMAC and 6.11.2.11 NMAC regarding disciplinary changes of placement for children with disabilities; and

(d) the requirements of 34 CFR §§300.43, 300.320(b) and 6.31.2.11(G)(2) regarding transition planning. Students identified as gifted must meet the requirements at Subsection B of 22-13-1.1 NMSA 1978, which is the next step for students without disabilities.

(2) Assuming appropriate evaluations, a child may properly be determined to be both gifted and a child with a disability and be entitled to a free appropriate public education for both reasons. The rules in this section 6.31.2.12 NMAC apply only to gifted children.

(3) Nothing in these rules shall preclude a school district or a charter school within a district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the NMPED shall only provide funds under Section 22-8-21 NMSA 1978 for department-approved gifted programs for those students who meet the established criteria.

*The *cm **does offer** additional gifted programs for children who fail to meet the eligibility criteria, as described in sections 3.-Evaluation and 4.-Gifted Students. The NMPED does not provide funds under Section 22-8-21 NMSA 1978 for gifted programs whose students do not meet the established criteria.*

OR

*The *cm **does not offer** additional gifted programs for children who fail to meet the eligibility criteria, as described in sections 3.-Evaluation and 4.-Gifted Students. The NMPED only provides funds under Section 22-8-21 NMSA 1978 for department-approved gifted programs for those students who meet the established criteria.*

A. Recommendations from National Association of Gifted Children (NAGC) Regarding Program Design

Description: The development of appropriate gifted education programming requires comprehensive services based on sound philosophical, theoretical, and empirical support.

Guiding Principles from NAGC and Minimum Standards

1. Rather than any single gifted program, a continuum of programming services must exist for gifted learners.
   1.0M Gifted programming services must be accessible to all gifted learners.
2. Gifted education must be adequately funded.

2.0M Gifted education funding should be equitable compared to the funding of other local programming.

3. Gifted education programming must evolve from a comprehensive and sound base.
   - 3.0M Gifted education programming must be submitted for outside review on a regular basis.
   - 3.1M Gifted programming must be guided by a clearly articulated philosophy statement and accompanying goals and objectives.
   - 3.2M A continuum of services must be provided across grades pre-K-12.
4. Gifted education programming services must be an integral part of the general education school day.
   - 4.0M Gifted education programming should be articulated with the general education program.
   - 4.1M Appropriate educational opportunities must be provided in the regular classroom, resource classroom, separate, or optional voluntary environments.
5. Flexible groupings of students must be developed in order to facilitate differentiated instruction and curriculum.
   - 5.0M The use of flexible grouping of gifted learners must be an integral part of gifted education programming.
6. Policies specific to adapting and adding to the nature and operations of the general education program are necessary for gifted education.
   - 6.0M Existing and future school policies must include provisions for the needs of gifted learners.

B. Recommendations from:

- Council for Exceptional Children (CEC) Regarding Design Standards For Gifted Programs
- National Association Of Gifted Children (NAGC) Regarding Program Evaluation
- National Association Of Gifted Children (NAGC) Regarding Program Administration Or Management

For more information see the Technical Assistance and Training Document for Gifted Education at the NMPED website: http://www.ped.state.nm.us/seo/gifted/gifted.pdf

C. Special Education Service Delivery Models Least Restrictive Environment

The concept of least restrictive environment comes from Federal Legislation under IDEA '97. This requirement mandates that children with disabilities, to the maximum extent appropriate, "be educated with children who are nondisabled" and that they be removed from the regular educational environment "only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."

In New Mexico, services for gifted students fall under the umbrella of Special Education. Because of this framework, the IEP process for disabilities is also required for gifted exceptionalities. When IEP teams address the LRE section for students who are gifted, a shift in perspective is necessary. There is a significant body of research that supports the view that gifted students should be provided the opportunity to interact with their intellectual peers and that lack of opportunity may well be a more restrictive placement. The opportunity to excel and be challenged should be addressed in the IEP.

SELF-CONTAINED

Self-contained classes enable gifted students to be challenged in every area throughout the day, to be stimulated by their intellectual peers, to have guidance from specially selected teachers, and to have an orderly, sequential, well-integrated curriculum. This model is most appropriate for addressing the needs of special populations of gifted students e.g., highly gifted and students with factors.

PULLOUT PROGRAMS-RESOURCE ROOM

Pullout programs combine the advantages of regular class integration and special class grouping by bringing gifted students together part-time on a regular basis. Pullout programs may provide specialized service for up to 49% of the day. Scheduling larger blocks of time permits uninterrupted, in-depth work on special projects. Pullout programs require careful coordination and communication between the special education and general classroom teachers. **Note:** Students receiving specialized instruction should not be penalized by undue teacher expectations. Make-up work should not be required; however, opportunities to obtain missed concepts should be provided. This concern might be appropriately addressed under "modifications to general education" in the IEP within the general education setting.

GIFTED EDUCATION SEMINARS

Special Education services can be implemented via a seminar class at middle and high school levels. This is most often scheduled as an elective class. This model provides an opportunity for similar age and intellectual peer grouping to address specific topics of interest.

RESOURCE CENTERS

A school or district can establish resource centers available to all students but reserved for gifted students at specific times. This model is especially beneficial to school/school districts that have low numbers of identified gifted students. This setting enables students to meet from a broader geographical area and interest and work with specialists who can guide them on in-depth projects. **Note:** Students receiving specialized instruction should not be penalized by undue teacher expectations. Make-up work should not be required, however, opportunities to obtain missed concepts should be provided. This concern might be appropriately addressed under "modifications to general education" in the IEP within the general education setting.

D. General Education and Other Service Delivery Models Ability Grouping

Ability grouping refers to placing students of like ability together in homogeneous arrangements, such as special classes. This allows for more appropriate, rapid and advanced instruction, matching the rapidly developing skills and capabilities of gifted students. Strong research evidence supports the effectiveness of ability grouping for gifted students in special class settings as a proven instructional strategy.

- Cluster Grouping In Regular Classroom
- Cluster Scheduling For Core Courses
- Honors, Advanced Placement And Enriched Classes
- Seminars
- Special Classes Outside The School Day
- Summer Institutes

E. Enrichment

The enrichment model is another way to meet the differentiated educational needs of gifted students. Enrichment is effective when teachers provide instruction for gifted students in terms of well articulated activities that require higher cognitive processing, in-depth investigations of content, wider ranges of content, and alternate modes of communication. The following methods for enriching the curriculum may be used successfully at both elementary and secondary levels.

- Independent Study
- Alternate Learning Activities/Units
- Advanced Thinking Process
- Guest Speakers
- Mentors/Internships
- Alternate Resources
- Exchange Programs

F. Acceleration

Acceleration involves changing the rate of presentation of the general curriculum to enable gifted students to complete the program in less time than usual. Acceleration can occur in any curriculum content area including music, drama, art, mathematics, language arts, science and social studies. When students are accelerated into a higher level course, they should receive the appropriate credit (e.g. middle school students taking high school courses receive high school credit: high school students taking college courses receive credit both at high school level and college level.) When implementing acceleration as a method for meeting gifted students' needs, careful articulation among programs is critical. If a student is permitted to complete course work in a shorter amount of time than usual, some provision must be made for continued academic challenge within the specific curriculum. Without some means for well planned continuation/articulation, efforts at acceleration are wasted.

- Early Entrance To School
- Grade Skipping
- Multi-Age Level Classes
- Telescoping/Compacting

- College Course Work
- Early Admission To College
- Advanced Placement Program (Ap)
- Accelerated Classes Outside The School Day

G. Recommendations from National Association of Gifted Children (NAGC) Regarding Social and Emotional Development

Guiding Principles (social/emotional development) from NAGC:

1. Gifted Learners must be provided differentiated guidance efforts to meet their unique socio-emotional development.
2. Gifted Learners must be provided career guidance services especially designed for their unique needs.
3. Gifted at-risk students must be provided guidance and counseling to help them reach their potential.
4. Gifted Learners must be provided affective curriculum in addition to differentiated guidance and counseling services.
5. Underachieving gifted Learners must be served rather than omitted from differentiated services.

Minimum Standards relating to the Guiding Principles

1.0M Gifted Learners, because of their unique socio-emotional development, must be provided guidance and counseling services by a counselor who is familiar with the characteristics and socio-emotional needs of gifted learners.

2.0M Gifted learners must be provided career guidance consistent with their unique strengths.

3.0M Gifted learners who are placed at-risk must have special attention, counseling, and support to help them realize their full potential.

4.0M Gifted learners must be provided affective curriculum as part of differentiated curriculum and instructional services.

5.0M Gifted students who are underachieving must not be exited from gifted programs because of related problems.

VIII. OTHER INSTRUCTIONAL PROGRAMS/SERVICE DELIVERY

§300.110 Program options.

The NMPED must ensure that the public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

A. Adapted Physical Education

§300.108 Physical education.

The NMPED must ensure that public agencies in the state comply with the following:

(a) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide PE to children without disabilities in the same grades.

(b) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless--

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.

Physical Education services, specially designed where necessary, will be provided as an integral part of the educational program of each student with disabilities. The IEP Team should consider three options when making decisions about the physical education needs of students with disabilities. These decisions must be based on a special physical education evaluation.

1. *The special PE evaluation will provide the IEP Team with the following information:*
   a. *identification of student's problems,*
   b. *identification of areas of competencies,*
   c. *documentation of the student's need for a special physical education program.*
2. *Regular Physical Education with No Modifications or Accommodations*
   NOTE: A special physical education evaluation is not necessary when the student with disabilities can participate in regular physical education with no modifications.
3. *Regular Education With Modifications or Accommodations*
   Regular PE should be considered when modifications would make it possible for the student with disabilities to be successful in a regular physical education program. The specific modifications must be described in the student's IEP. It would be the responsibility of the special education teacher to assist the regular physical education teacher with modifications for the student and to monitor the progress of the student.
4. *Special Physical Education*
   a. *A special physical education program with IEP objectives should be provided when the physical education evaluation determines that the student cannot be successful in a regular physical education class with modifications. When the IEP Team has made the recommendation and the arrangements are specified in the student's IEP, physical education for the students with disabilities may be provided by the following personnel:*
      1. *special education instructional or related service personnel who have the necessary skills and knowledge;*
      2. *physical education teacher;*
      3. *occupational therapist;*
      4. *physical therapist;*
      5. *occupational therapy assistant or physical therapy assistant working under supervision in accordance with the standards of their profession.*
   b. *When these services are provided by special education personnel, the public agency must document that they have the necessary skills and knowledge. Documentation may include, but not be limited to, in-service records, evidence of attendance at seminars or workshops, and/or transcripts of college courses.*
   c. *If specially designed physical education is prescribed in a student's IEP, the public agency will provide the services directly or make arrangements for those services to be provided through other public or private programs.*
   d. *If a public agency enrolls a student with a disability into a facility, the public agency ensures that the student receives appropriate physical education services.*

B. Behavior Improvement Classes

The public agency will provide specialized instructional strategies and incorporate positive behavioral strategies and/or a behavioral level system for those students whose IEP Team determines a more restrictive placement is appropriate due to behavioral needs.

C. Early Childhood Intervention (ECI) – birth to 3 years *(see also Chapter 1.- Child Find)*

The public agency will work closely with the FIT program to provide services in the Least Restrictive Environment for these children. All federal and state requirements will be followed as outlined in previous sections.

D. Homebound Instructional Program

The public agency provides homebound instruction for students who are unable to attend school because of health/ medical reasons. These special education students must also have a Full and Individual Evaluation and are due all procedural safeguards.

1. *It is the responsibility of the IEP Team to determine:*
   a. *the appropriate instructional areas for special education students receiving homebound instruction;*
   b. *modifications of the student's schedule.*
   The general classroom teacher on the student's home campus determines academic course work for the homebound program.
2. *The IEP Team must receive the following documentation:*
   a. *student will be unable to attend the regular school program for a **minimum** of **four** weeks;*
   b. *a written medical report from the physician stating the length of time homebound service may be needed based on the medical condition. Duration of service can only be extended as indicated by the physician.*
3. *It is important for the IEP Team to stress to the parents that an adult must be present in the home when a homebound teacher is providing instruction.*
4. *Dismissal procedures for homebound students are outlined in the IEP Team meeting that initiates homebound instruction. A homebound student will return to school:*
   a. *when the medical release from the physician indicates it is appropriate or*
   b. *when the medical report from the physician expires.*

Please see the STAR (Student / Teacher Accountability Reporting System) manual for location code and other detailed information on Homebound Services for Students with Chronic Illness/Acute Health Problems.

E. Home Schooled Students

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

L. Children in private schools

(8) Children schooled at home. The public agency shall locate, evaluate and determine the eligibility of children with disabilities who are schooled at home pursuant to §§ 22-2-2(H) NMSA 1978. [6.31.2.11 NMAC - Rp, 6.31.2.11 NMAC, A, 12/31/09]

Authority: NMSA 1978 § 22-2-2(H) Department, general duties.

The NMPED shall:

H. enforce requirements for home schools. Upon finding that a home school is not in compliance with law, the NMPED may order that a student attend a public school or a private school;
If the public agency becomes aware of a home school that is not in compliance with New Mexico requirements, the public agency administration will inform the NMPED.

F. Hospital Classes

This setting provides special education instruction in a classroom within a hospital facility, or in a residential care and treatment facility. Please see the STAR (Student/Teacher Accountability Reporting System) manual for location code and other detailed information. For more information, see II. Service Levels and Settings in Chapter 6. – LRE.

G. Preschool Program for Children with Disabilities (PPCD)

The Preschool Program for Children with Disabilities, ages three through five, is offered on selected elementary school campuses. Instruction is based on an individual education plan that is determined after evaluation has been completed. There may be several instructional personnel working together for the benefit of the student. These staff members may include, but are not limited to, a special education teacher, special education paraprofessional, educational diagnostician, speech pathologist, nurse, occupational and/or physical therapist. A student's placement in a PPCD classroom for implementation of an IEP is based on evaluation, eligibility and the student's IEP goals and objectives.

H. Speech Therapy

The speech/language pathologist utilizes a service delivery system that has a range of services from least to most restrictive. An important component of this model is the option of providing service in the regular classroom through collaboration with the general education teacher. (Speech/language pathologist should be encouraged to implement this option when appropriate for students.)

*The type and amount of therapy stated in the IEP establishes the requirement that these services will be provided. Therefore, it is essential that therapy **not** be canceled. Careful planning is required to allow for IEP meetings and testing time. Missed therapy sessions must be made up on another day, unless the missed session is due to student absence.*

1. *Relative to IEP Team meetings, the speech pathologist:*
   a. *should send home DRAFT IEP goals at least one week prior to the IEP meeting. A cover letter with name, conference time and phone number should accompany the draft IEP goals.*
   b. *must attend IEP meetings for students with "speech impairment only";*
      (1. *copy and distribute the modification checklist to all teachers of students who are SI only.*
      (2. *collaborate with special education teachers on the best means for distribution of students who are SI as a secondary disability.*
   c. *may attend IEP meetings for students who have a speech impairment in addition to another disability.*
2. *Other responsibilities:*
   a. *Full-time pathologists traditionally schedule a set time per week to use for testing, IEP Team meetings and paperwork.*
   b. *NMPED's goal is for full-time therapists to serve approximately 60 to 65 students per week. There may be circumstances in which this caseload is not possible.*
   c. *Lesson plans should be used as a guide for the implementation of the IEP.*

I. Vocational Class/Program

The Vocational Class is a special education program that is offered on the high school campus. This program is designed for students with disabilities who desire vocational training, and it may be used in conjunction with the student's individual transition plan only after the public agency's regular career and technology classes have been considered and determined to be inappropriate for the student. The goals of the vocational program include on-the-job training and regularly scheduled direct involvement by special education personnel in the implementation of the student's IEP.

Employment opportunities and training are based on a vocational evaluation, student needs and abilities, teacher recommendations and student/parental preference.

Admission to the Vocational Program is approved by the IEP Team.