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 8 – GENERAL ADMINISTRATION

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Chapter 8 – GENERAL ADMINISTRATION

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Chapter 8. – GENERAL ADMINISTRATION

I. SCOPE AND APPLICABILITY

Authority: 34 CFR §300.212 Public information.
The LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the LEA under Part B of the Act.

Authority: NMAC §6.31.2.2 SCOPE: The requirements of these rules are binding on each New Mexico public agency that has direct or delegated authority to provide special education and related services, regardless of whether that agency is receiving funds under the Individuals with Disabilities Education Improvement Act of 2004 and regardless of whether it provides special education and related services directly, by contract or through other arrangements such as referrals by the public agency to private schools or facilities. The *cm is responsible for ensuring that all rights and protections under these rules are afforded to children referred to or placed in private schools or facilities including residential treatment centers, day treatment centers, hospitals, or mental health institutions by the public agency. [6.31.2.2 NMAC - Rp, 6.31.2.2 NMAC, 6/29/07]

Authority: 34 CFR §300.1 Purposes.
The purposes of this part are--
(a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
(b) To ensure that the rights of children with disabilities and their parents are protected;
(c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and
(d) To assess and ensure the effectiveness of efforts to educate children with disabilities.

Authority: NMAC §6.31.2.6 OBJECTIVE: The following rule is promulgated to assist New Mexico public agencies in appropriately identifying and providing educational services for children with disabilities and gifted children. The purposes of this rule is (a) to ensure that all children with disabilities and gifted children have available a free appropriate public education which includes special education and related services to meet their unique needs; (b) to ensure that the rights of children with disabilities and gifted children and their parents are protected; (c) to assist public agencies to provide for the education of all children with disabilities and gifted children; and (d) to evaluate and ensure the effectiveness of efforts to educate those children. [6.31.2.6 NMAC - Rp, 6.31.2.6 NMAC, 6/29/07]

II. FAPE – FREE APPROPRIATE PUBLIC EDUCATION

Authority: 34 CFR §300.17 Free appropriate public education. Free appropriate public education or FAPE means special education and related services that--
(a) Are provided at public expense, under public supervision and direction, and without charge;
(b) Meet the standards of the NMPED, including the requirements of this part;
(c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
(d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§300.320 through 300.324.

Authority: 34 CFR §300.101 Free appropriate public education (FAPE).
(a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in §300.530(d).
(b) FAPE for children beginning at age 3.
(1) The NMPED ensures that--

(i) The obligation to make FAPE available to each eligible child residing in New Mexico begins no later than the child's third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with §300.323(b).

(2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.

(c) Children advancing from grade to grade.

(1) The NMPED ensures that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

Authority: NMAC §6.31.2.8 RIGHT TO A FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

A. All children with disabilities aged 3 through 21 or who will turn 3 at any time during the school year and who reside in New Mexico, including children with disabilities who have been suspended or expelled from school, have the right to a free appropriate public education that is made available by one or more public agencies in compliance with all applicable requirements of 34 CFR §§300.101 and 300.120 and these or other department rules and standards. Children with disabilities who are enrolled in private schools have the rights provided by 34 CFR §§300.129-300.148 and Subsection L of 6.31.2.11 NMAC.

B. Only children who meet the criteria in these rules may be included in calculating special education program units for state funding and counted as eligible children for federal flow-through funds under Part B of the IDEA. [6.31.2.8 NMAC].

Authority: 34 CFR §300.102 Limitation -- exception to FAPE for certain ages.

(a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

(1) Children aged 3, 4, 5, 18, 19, 20, or 21 in New Mexico to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.

(2) (i) Children aged 18 through 21 to the extent that New Mexico law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility--

(A) Were not actually identified as being a child with a disability under §300.8; and

(B) Did not have an IEP under Part B of the Act.

(ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who--

(A) Had been identified as a child with a disability under §300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or

(B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under §300.8.

(3) (i) Children with disabilities who have graduated from high school with a regular high school diploma.

(ii) The exception in paragraph (a)(3)(i) of this section does not apply to students who have graduated but have not been awarded a regular high school diploma.

(iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503.

(iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) for this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).

(4) Children with disabilities who are eligible under subpart H of this part, but who receive early intervention services under Part C of the Act.

(b) Documents relating to exceptions. The NMPED assures that the information it has provided to the Secretary regarding the exceptions in paragraph (a) of this section, as required by §300.700 (for purposes of making grants to States under this part), is current and accurate.

Authority: 34 CFR §300.103 FAPE – Methods and payments.

(a) The NMPED may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, the NMPED could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for service provided to a child with a disability.

(c) Consistent with 300.323(c), the NMPED must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

Authority: 34 CFR §300.109 Full educational opportunity goal (FEOG).

The NMPED has in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal.

Authority: 34 CFR §300.110 Program options.

The NMPED ensures that the LEA 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.

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

A. Compliance with applicable laws and regulations. Each New Mexico public agency, within the scope of its authority, shall develop and implement appropriate policies, procedures, programs and services to ensure that all children with disabilities who reside within the agency's educational jurisdiction, including children who are enrolled in private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, or are schooled at home, are identified and evaluated and have access to a free appropriate public education (FAPE) in compliance with all applicable requirements of state and federal laws and regulations. This obligation applies to all New Mexico public agencies that are responsible under laws, rules, regulations or written agreements for providing educational services for children with disabilities, regardless of whether that agency receives funds under the IDEA and regardless of whether it provides special education and related services directly, by contract, by referrals to private schools or facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions or through other arrangements.

III. SPECIAL EDUCATION DEFINED

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;

(ii) Travel training; and

(iii) Vocational education.

(b) Individual special education terms defined. The terms in this definition are defined as follows:

(1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) Physical education means--

(i) The development of--

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

(ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to--

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

(6) Vocational and technical education means organized educational activities that--

(i) Offer a sequence of courses that--

(A) Provides individuals with the rigorous and challenging academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a Master's or doctoral degree) in current or emerging employment sectors;

(B) May include the provision of skills or courses necessary to enroll in a sequence of courses that meet the requirements of this subparagraph; and

(C) Provides, at the postsecondary level, for a one-year certificate, an associate degree, or industry-recognized credential; and

(ii) Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, or an individual.

Authority: 34 CFR §300.34 Related Services *(Located in Chapter 5).*

Authority: 34 CFR §300.42 Supplementary aids and services. Supplementary aids and services means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.112 through 300.116.

Authority: NMAC 6.31.2.7 Definitions:

B. The following terms shall have the following meanings for purposes of these rules.

(19) "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.

(a) As authorized by 34 CFR §§300.8(a)(2)(ii) and 300.39(a)(2)(i), "special education" in New Mexico may include speech-language pathology services.

(b) Speech-language pathology services must meet the following standards to be considered special education:

(i) the service is provided to a child who has received appropriate tier I universal screening under Subsection D of 6.29.1.9 NMAC, as it may be amended from time to time, before being properly evaluated under 34 CFR Secs. 300.301-300.306 and Subsection D of 6.31.2.10 NMAC;

(ii) the IEP team that makes the eligibility determination finds that the child has a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance; and

(iii) the speech language pathology service consists of specially designed instruction that is provided to enable the child to have access to the general curriculum and meet the educational standards of the public agency that apply to all children; and

(iv) the service is provided at no cost to the parents under a properly developed IEP that meets the requirements of Subsection B of 6.31.2.11 NMAC.

(c) If all of the above standards are met, the service will be considered as special education rather than a related service.

(d) Student/staff caseloads shall meet the requirements of Paragraphs (1) and (2) of Subsection H of 6.29.1.9 NMAC.

Authority: 34 CFR §300.35 Scientifically-based research. Scientifically-based research has the meaning given the term in section 9101(37) of the ESEA.

ESEA section 9107 (37)

(37) SCIENTIFICALLY-BASED RESEARCH- The term scientifically-based research —

(A) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(B) includes research that —

(i) employs systematic, empirical methods that draw on observation or experiment;

(ii) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

(iii) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

(iv) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

(v) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

(vi) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

Authority: 34 CFR §300.10 Core academic subjects. Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

Authority: 34 CFR §300.24 Individualized family service plan (IFSP).
Individualized family service plan, or IFSP, has the meaning given the term in section 636 of the Act.

Authority: 34 CFR §300.11 Day; business day; school day.

(a) Day means calendar day unless otherwise indicated as business day or school day.

(b) Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day, as in §300.148(c)(1)(ii)).

(c) (1) School day means any day, including a partial day, that children are in attendance at school for instructional purposes.

(2) School day has the same meaning for all children in school, including children with and without disabilities.

Authority: 34 CFR §300.14 Equipment. Equipment means--

(a) Machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

(b) All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

Authority: 34 CFR §300.22 Individualized education program (IEP). Individualized education program, or IEP, means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with §§300.320 through 300.324.

Authority: 34 CFR §300.23 Individualized education program team. Individualized education program team, or IEP Team, means a group of individuals described in §300.321 that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

Authority: 34 CFR §300.28 Local education agency (LEA). (a) Local education agency, or LEA, means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivisions of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools. (b) Education service agencies and other public institutions or agencies.

Authority: 34 CFR §300.31 Parent training and information center. Parent training and information center means a center assisted under section 671 or 672 of the Act.

Authority: 34 CFR §300.33 Public agency. Public agency includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.

Authority: 34 CFR §300.38 Secretary. Secretary means the Secretary of Education.

Authority: 34 CFR §300.40 State. State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

Authority: 34 CFR §300.41 State educational agency. State educational agency or SEA means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor of by State law.

Authority: 34 CFR §300.44 Universal design. Universal design has the meaning given the term in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002.

Authority: 34 CFR §300.4 Act. Act means the Individuals with Disabilities Education Act, as amended.

Authority: NMAC §6.31.2.7 DEFINITIONS:

A. Terms defined by federal laws and regulations. All terms defined in the following federal laws and regulations and any other federally defined terms that are incorporated there by reference are incorporated here for purposes of these rules.
   (1) The Individuals with Disabilities Education Improvement Act of 2004 (IDEA), 20 USC §§1401 and following.
   (2) The IDEA regulations at 34 CFR Part 300 (governing Part B programs for school-aged children with disabilities), 34 CFR Part 301 (governing programs for preschool children with disabilities).
   (3) Pursuant to the paperwork reduction provisions of IDEA 20 USC §1408, all definitions, with the exception of those found in Subsection B of 6.31.2.7 below, contained in the IDEA Parts 300 and 301 at 34 CFR §§ 300.1 through 300.45, will be adopted by reference.

B. The following terms shall have the following meanings for purposes of these rules.
   (1) "CFR" means the code of federal regulations, including future amendments.

(2) "Child with a disability" means a child who meets all requirements of 34 CFR §300.8 and who:
  (a) is aged 3 through 21 or will turn 3 at any time during the school year;
  (b) has been evaluated in accordance with 34 CFR §§300.304-300.311 and any additional requirements of these or other public education department rules and standards and as having one or more of the disabilities specified in 34 CFR §300.8 including intellectual disability, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, orthopedic impairment, autism, traumatic brain injury, and other health impairment, a specific learning disability, deaf blindness, or being developmentally delayed as defined in paragraph (4) below; and who has not received a high school diploma; and
  (c) at the discretion of each local educational agency and subject to the additional requirements of Paragraph 2 of Subsection F of 6.31.2.10 NMAC, the term "child with a disability" may include a child aged 3 through 9 who is evaluated as being developmentally delayed and who, because of that condition, needs special education and related services.

(3) "Department" means the public education department.

(4) "Developmentally delayed" means a child aged 3 through 9 or who will turn 3 at any time during the school year: with documented delays in development which are at least two standard deviations below the mean on a standardized test instrument or 30 per cent below chronological age; and who in the professional judgment of the IEP team and one or more qualified evaluators needs special education and related services in at least one of the following five areas: communication development, cognitive development, physical development, social or emotional development or adaptive development. Use of the developmentally delayed option by individual local educational agencies is subject to the further requirements of Paragraph 2 of Subsection F of 6.31.2.10 NMAC. Local education agencies must use appropriate diagnostic instruments and procedures to ensure that the child qualifies as a child with a delay in accordance with the definition in this paragraph.

(5) "Dual discrepancy" means the child does not achieve adequately for the child's age or to meet grade-level standards established in Standards for Excellence (Chapter 29 of Title 6 of the NMAC); and
  (a) does not make sufficient progress to meet age or grade-level standards; or
  (b) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards or intellectual development.

(6) "Dyslexia" means a condition of neurological origin that is characterized by difficulty with accurate or fluent word recognition and by poor spelling and decoding abilities, which characteristics typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction and may result in problems in reading comprehension and reduced reading experience that may impede the growth of vocabulary and background knowledge.

(7) The "educational jurisdiction" of a public agency includes the geographic area, age range and all facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions, juvenile justice facilities, state supported schools, or programs within which the agency is obligated under state laws, rules or regulations or by enforceable agreements, including a joint powers agreement (JPA) or memorandum of understanding (MOU) to provide educational services for children with disabilities. In situations such as transitions, transfers and special placements, the educational jurisdiction of two or more agencies may overlap and result in a shared obligation to ensure that a particular child receives all the services to which the child is entitled.

(8) A "free appropriate public education" (FAPE) means special education and related services which meet all requirements of 34 CFR §300.17 and which, pursuant to §300.17(b), meet all applicable department rules and standards, including but not limited to these rules (6.31.2 NMAC), the Standards for Excellence (6.29.1 NMAC) and department rules governing school personnel preparation, licensure and performance (6.60 NMAC through 6.64 NMAC), student rights and responsibilities (6.11.2 NMAC) and student transportation (6.41.3 and 6.41.4 NMAC).

(9) The "general education curriculum" pursuant to 34 CFR §300.320, means the same curriculum that LADE offers nondisabled children. For New Mexico public agencies whose non-special education programs are subject to department rules, the general curriculum includes the content standards, benchmarks and all other applicable requirements of the Standards for Excellence (Chapter 29 of Title 6 of the NMAC) and any other department rules defining curricular requirements.

(10) "LEA" means a local educational agency as defined in 34 CFR §300.28.

(11) “Individualized education program” or IEP means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR §§300.320 through 300.324;
(12) The “IDEA” means the federal Individuals with Disabilities Education Improvement Act of 2004, 20 USC §§1401 and following, including future amendments.
(13) “NMAC” means the New Mexico administrative code, including future amendments.
(14) “NMSA 1978” means the 1978 Compilation of New Mexico Statutes Annotated, including future amendments.
(15) “Parent” includes, in addition to the persons specified in 34 CFR §300.30, a child with a disability who has reached age 18 and for whom there is no court-appointed general guardian, limited guardian or other court-appointed person who has legal custody or has otherwise been authorized by a court to make educational decisions on the child’s behalf, as provided in Subsection K of 6.31.2.13 NMAC. Pursuant to 34 CFR §300.519 and department policy, a foster parent of a child with a disability may act as a parent under Part B of the IDEA if: (i) the foster parent or the state children, youth and families department (CYFD) provides appropriate documentation to establish that CYFD has legal custody and has designated the person in question as the child’s foster parent; and (ii) the foster parent is willing to make the educational decisions required of parents under the IDEA; and has no interest that would conflict with the interests of the child. A foster parent who does not qualify under the above requirements but who meets all requirements for a surrogate parent under 34 CFR §300.519 may be appointed as a surrogate if the public agency responsible for making the appointment deems such action appropriate. (See Subsection J of 6.31.2.13 NMAC.)
(16) “Puente para los Niños” fund in New Mexico means a risk pool fund to support high cost students with disabilities identified by LEAs pursuant to 34 CFR §300.704(c)(3)(i).
(17) “SAT” means the student assistance team, which is a school-based group of people whose purpose is to provide additional educational support to students who are experiencing difficulties that are preventing them from benefiting from general education.
(18) “SEB” means the special education bureau of the public education department.
(19) “Special education” means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.
  (a) As authorized by 34 CFR §§300.8(a)(2)(ii) and 300.39(a)(2)(i), “special education” in New Mexico may include speech-language pathology services.
  (b) Speech-language pathology services must meet the following standards to be considered special education:
    (i) the service is provided to a child who has received appropriate tier I universal screening under Subsection D of 6.29.1.9 NMAC as it may be amended from time to time, before being properly evaluated under 34 CFR §§300.301-300.306 and Subsection D of 6.31.2.10 NMAC;
    (ii) the IEP Team that makes the eligibility determination finds that the child has a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance; and
    (iii) the speech language pathology service consists of specially-designed instruction that is provided to enable the child to have access to the general curriculum and meet the educational standards of the public agency that apply to all children; and
    (iv) the service is provided at no cost to the parents under a properly developed IEP that meets the requirements of Subsection B of 6.31.2.11 NMAC.
  (c) If all of the above standards are met, the service will be considered as special education rather than a related service.
  (d) Student/staff caseloads shall meet the requirements of Paragraphs (1) and (2) of Subsection H of 6.29.1.9 NMAC.
(20) A “state-supported educational program” means a publicly funded program that:
  (a) provides special education and related services to children with disabilities who come within the program’s educational jurisdiction;
  (b) is operated by, or under contractual arrangements for, a state school, state educational institution or other state institution, state hospital or state agency; and
  (c) is primarily funded through direct legislative appropriations or other direct state support to a public agency other than a local school district.
(21) “USC” means the United States Code, including future amendments.

C. Definitions related to dispute resolution. The following terms are listed in the order that reflects a continuum of dispute resolution options and shall have the following meanings for the purposes of these rules.
   (1) "Facilitated IEP (FIEP) meeting" means an IEP meeting that utilizes an independent, state approved, state-funded, trained facilitator as an IEP facilitator to assist the IEP team to communicate openly and effectively, in order to resolve conflicts related to a student's IEP.
   (2) "Mediation" means a meeting or series of meetings that utilizes an independent, state-approved, state-funded, trained mediator to assist parties to reconcile disputed matters related to a student's IEP or other educational, non-IEP-related issues.

Definition of Homeless Children: The term 'homeless children' has the meaning given it by the *McKinney-Vento Homeless Assistance Act* (42 USC §11434a(2)), which includes an individual who lacks a fixed, regular, and adequate nighttime residence (within the meaning of 42 U.S.C.§11302(a)(1)); or includes:

- children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
- children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of 42 USC §11302(a)(2)(C));
- children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- migratory children (as such term is defined in 20 U.S.C. §6399) who qualify as homeless for the purposes of this part because the children are living in circumstances described above.

IV. PERSONNEL

Authority: 34 CFR §300.156 Personnel qualifications.

(a) General. The NMPED established and maintains qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--

(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

(2) Ensure that related services personnel who deliver services in their discipline or profession--

(i) Meet the requirements of paragraph (b)(1) of this section; and

(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

(c) Qualifications for special education teachers. The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.

(d) Policy. In implementing this section, New Mexico must adopt a policy that includes a requirement that LEAs in New Mexico take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

(e) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular NMPED or LEA employee to be highly qualified; or to prevent a parent from filing a complaint about staff qualifications with the NMPED as provided for under this part.

Authority: 34 CFR §300.18 Highly qualified special education teacher.

(a) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 CFR §200.56, except that the requirements for highly qualified also--

(1) Include the requirements described in paragraph (b) of this section; and

(2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.

(b) Requirements for special education teachers in general.

(1) When used with respect to any public elementary school or secondary school special education teacher teaching in New Mexico, highly qualified that--

(i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law;

(ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) The teacher holds at least a bachelor's degree.

(2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to certification program under which--

(i) The teacher--

(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, prior to and while teaching;

(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(D) Demonstrates satisfactory progress toward full certification as prescribed by New Mexico; and

(ii) New Mexico ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.

(3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements of paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section.

(c) Requirements for special education teachers teaching to alternate achievement standards. Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR §200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either--

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR §200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(2) Meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State.

(d) Requirements for highly qualified special education teachers teaching multiple subjects. When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either--

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR §200.56(b) or (c);

(2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary,

middle, or secondary school teacher who is not new to the profession under 34 CFR §200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or

(3) In the case of a new special education teacher who teaches multiple subjects, and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR §200.56(c), which may include a single, high objective State standard of evaluation (HOUSSE) covering multiple subjects.

(e) Separate HOUSSE standards for special education teachers. Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers—

(1) A State may develop a separate HOUSSE for special education teachers; and

(2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects.

(f) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular NMPED or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§300.151 through 300.153 about staff qualifications with the NMPED as provided for under this part.

(g) Applicability of definition to ESEA; and clarification of new special education teacher.

(1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

(2) For purposes of 300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

(h) Private school teachers not covered. The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by the public agency to provide equitable services to parentally-placed private school children with disabilities under §300.138.

Also reference NCLB Section 1119. Qualifications at http://ed.gov/policy/elsec/leg/esea02/pg2.html

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

B. Public agency funding and staffing

(8) Staff training and qualifications

(a) The public agency is responsible for ensuring that personnel serving children with disabilities are qualified under state licensure requirements and are adequately prepared for their assigned responsibilities, pursuant to 34 CFR §300.156. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable **department licensure rules** or **written department policy** may be used to assist in the provision of special education and related services to children with disabilities under Part B of the IDEA.

Authority: NMAC §6.62.2 Licensure administrators.

Section 6.62.2.8 REQUIREMENTS: Persons seeking standard licensure in educational administration pursuant to the provisions of this rule shall meet the following requirements:

A. hold a level 2 teaching license and have met all of the requirements for a level 3-A teaching license in Subsection B of 6.60.6.9 NMAC, or hold a level 2 teaching license and for at least four years have held a level 3 school counselor license while working as a teacher or school counselor; and

B. hold a bachelor's degree and a post-baccalaureate degree from a regionally accredited college or university or hold current certification by the national board for professional teaching standards; and

C. have completed a PED-approved administration apprenticeship program:

(1) at a college or university through an educational administration program consisting of a minimum of 180 clock hours for one calendar year to include time at the beginning and end of the school year; a passing grade on the apprenticeship will verify completion of this requirement; or

(2) under the supervision of a local school superintendent, private school official, charter school licensed administrator, or state agency educational administrator consisting of a minimum of 180 clock hours for one calendar year to include time at the beginning and end of the school year; the superintendent, school official or administrator will verify that the apprenticeship has met the PED's adopted competencies for educational administration; such verification will be considered completion of this requirement; and

D. a minimum of eighteen (18) semester hours of graduate credit in an educational administration program approved by the PED which addresses PED's approved functional areas and related competencies in educational administration; colleges and universities may offer these hours through their educational administration, educational leadership, public administration, business administration, or other appropriate departments; and

E. a candidate who applies for licensure in educational administration on or after the September, 2007 administration of the PED's specialty area licensure examinations shall take and pass the licensure test in administration as stated in §6.60.5 NMAC prior to the issuance of the license.

[6-15-98; 6.62.2.8 NMAC - Rn, 6 NMAC 4.2.3.18.8 & A, 8-15-03; A, 6-15-06; A, 10-31-07; A, 01-29-10]

Assistants – *See* Paraprofessionals.

Audiologist – *See* Speech/language/audiology.

Authority: NMAC §6.61.10.8 REQUIREMENTS: Teachers of Students with Blindness and VI.

A. Persons seeking licensure to teach students with blindness and visual impairment pursuant to the provisions of this rule shall meet the requirements of Subsection A of 6.61.10.8 NMAC.
   (1) bachelor's degree from a regionally accredited college or university and including, for those students first entering a college or university beginning in the fall of 1986, the following:
      (a) twelve (12) semester hours in English;
      (b) twelve (12) semester hours in history including American history and western civilization;
      (c) six (6) semester hours in mathematics;
      (d) six (6) semester hours in government, economics or sociology;
      (e) twelve (12) semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;
      (f) six (6) semester hours in fine arts; and
   (2) credits from a regionally accredited college or university which include twenty four to thirty-six (24-36) semester hours of professional education in a program of studies that prepares candidates to teach blind and visually impaired students, including completion of the public education department's (PED's approved functional areas and related competencies in professional education; and
   (3) a mandatory student teaching or practicum component; and
   (4) twenty-four to thirty-six (24-36) semester hours in one teaching field such as mathematics, science(s), language arts, reading, or from among history, geography, economics, civics and government (or other social studies content related areas). Individuals must also complete the PED's approved functional areas and related competencies in the teaching field; and
   (5) in addition to the requirements specified in Subsection A, Paragraphs (1), (3), (4) and (6) of 6.61.10.8 NMAC, six (6) hours of reading for those who have first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and
   (6) passage of all required portions of the New Mexico teacher assessments (NMTA) or any successor teacher examination adopted by the PED.

B. [Reserved] [6.61.10.8 NMAC - N, 08-15-03; A, 06-15-06; A, 01-29-10]

Authority: NMAC §6.63.3.7 Diagnostician - DEFINITIONS:

A. "Instructional support providers" formerly referred to as related service or ancillary providers, shall mean anyone who provides services for a public school or state institution as an educational assistant, school counselor, school social worker, school nurse, speech-language pathologist, psychologist, physical therapist, physical therapy assistant, occupational therapist, occupational therapy assistant, recreational therapist, interpreter for the deaf, diagnostician and other service providers who are employed to support the instructional program of a school district or charter school.

Authority: NMAC §6.63.4.7 Diagnostician:

A. "Level one licensure" means a provisional license in educational diagnosis granted for five years. The license is nonrenewable unless the license holder verifies to the public education department (PED) that he/she has not

worked using the license during its effective dates and provides evidence of current employment as an educational diagnostician.

B. "Level two licensure" means a renewable nine year license in educational diagnosis awarded after successful completion of at least three full school years at level one educational diagnostician licensure and including documentation of professional development requirements and verification by the superintendent or the governing authority of a private school or state institution that the individual is meeting level one competencies and is capable of demonstrating the competencies at level two.

C. "Level three licensure" means a renewable nine year license in educational diagnosis awarded after successful completion of at least three full school years at level two educational diagnostician licensure and including documentation of completion of supervised experience requirements and verification by the superintendent or the governing authority of a private school or state institution that the individual is meeting level two competencies and is capable of demonstrating the competencies at level three.

D. "Supervision for an entry-level educational diagnostician" means a level one educational diagnostician will be required to have a minimum of one-hour per week individual supervision with a level three licensed educational diagnostician.

E. Satisfactory experience means the individual has:
   (1) satisfactorily carried out the duties and responsibilities of the position as verified by the superintendent or the governing authority of a private school or state institution, and
   (2) satisfactorily met the quality of the practice of educational diagnosis and professional responsibilities as reported by the supervising educational diagnostician.

F. "New Mexico diagnostician examination" means a comprehensive examination that evaluates the knowledge and competencies which must be passed no later than the end of the first year of level one licensure.

G. "Full school year" means a minimum of 160 days in a school year or 480 days over multiple school years or equivalent number of days in school districts on alternative schedules of full-time or part-time educational diagnostician work, including summer work in a variety of educational settings.

Authority: NMAC §6.61.8.7 Early Childhood Teacher B – grade 3 - DEFINITIONS:

J. "A highly qualified beginning early childhood teacher", under this rule, means a teacher who is fully qualified for teaching children from birth through grade 3, who is new to the profession, who has pursued a standard route to licensure, and who:
   (1) meets the requirements for early childhood B-3 licensure in Subsections A or B of 6.61.8.8 NMAC, and
   (2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason, and
   (3) has passed all applicable teacher testing requirements for licensure in 6.60.5.8 NMAC.

Authority: NMAC §6.61.8.8 REQUIREMENTS: All persons who perform instructional services in early childhood education (i.e., birth - grade 3) in public schools or in state-supported schools, must hold a valid standard license in early childhood development issued by the PED. A candidate who applies for licensure in early childhood education on or after July 1, 2014 must meet the requirements for either birth - pre-K as stated in 6.61.11 NMAC, or pre-K-grade 3 as stated in 6.61.12 NMAC.

Authority: NMAC §6.61.8.9 IMPLEMENTATION: All persons holding a current license in early childhood, birth - grade 3 prior to July 1, 2014 may advance or renew that license by meeting requirements stated in 6.60.6 NMAC. All persons whose license in early childhood, birth - grade 3 expired on or after June 30, 2014 must apply as an initial applicant and meet requirements stated in 6.61.11 NMAC, or 6.61.12 NMAC.
[11-14-98; 6.61.8.9 NMAC - Rn, 6 NMAC 4.2.3.17.9, 03-31-01; A, 06-15-06; A, 01-29-10]

Authority: NMSA 1978 §38-9-2. Definitions. Deaf Interpreter.
As used in the Deaf Interpreter Act [§§38-9-1 to 38-9-10 NMSA 1978]:

A. "appointing authority" means the presiding judge or magistrate of any court and the hearing officer or other person authorized to administer oaths in any administrative proceeding before a board, commission, agency, institution, department or licensing authority of the state or any of its political subdivisions wherein an interpreter is required pursuant to the provisions of the Deaf Interpreter Act;

B. "deaf person" means any person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit him from understanding voice communications;

C. "principal party in interest" means a person in any judicial or administrative proceeding in which he is a named party or who will or may be bound by the decision or action or foreclosed from pursuing his rights by the decision or action which may be taken in the proceeding; and
D. "interpreter" means a person who may through sign language, manual spelling or orally, through lip reading, as required, translate and communicate between a principal party in interest and other parties.

Authority: NMSA 1978 §38-9-3. Interpreter required.
If a deaf person who is a principal party in interest has provided notice and proof of disability, if required, pursuant to Section 6 [38-9-6 NMSA 1978] of the Deaf Interpreter Act, the appointing authority shall appoint an interpreter, after consultation with the deaf person, to interpret or to translate the proceedings to him and to interpret or translate his testimony. Interpreters may be selected from current lists of interpreters provided by the vocational rehabilitation division for:
A. interpreters certified by the national registry of interpreters for the deaf; or
B. other interpreters qualified through joint action and agreement of the vocational rehabilitation division, the New Mexico registry of interpreters for the deaf, incorporated, and the New Mexico association of the deaf; or by nomination of a person by the deaf person or the appointing authority who is acceptable to both.

Interpreter / Translator for Non-English Speaking - New Mexico Qualifications:
- High degree of oral and written proficiency in both L1 and l2. (The written requirement may not be appropriate for Native American populations).
- Ability to convey meaning from one language to the other without losing the essence of the message or request.
- Sensitivity to the speaker's style.
- Ability to adjust to linguistic variations within different communities (e.g., northern New Mexico vs. borderlands of New Mexico).
- Knowledge about the cultures of the people who speak the language.
- Familiarity with the specific terminology used in the assessment, evaluation, and IEP/IFSP setting).
- Understand their function and role within the evaluation team.

Authority: NMAC §16.27.9.8 Licensure as a Mental Health Counselor - LMHC SUPERVISION
A. Supervision must be provided by a licensed professional clinical mental health counselor (LPCC), licensed marriage and family therapist (LMFT), licensed professional art therapist (LPAT), licensed psychologist, licensed psychiatrist, or licensed independent social worker (LISW).
B. It is the responsibility of the individual seeking supervision to assure the supervision is acceptable for the level of licensure that will be requested at the completion of the required supervision. The relationship between the supervisor and the applicant must promote the development of skill and responsibility in the delivery of counseling or therapy services.
C. Client contact and supervision hours prior to being licensed will not be acceptable for licensure.

Authority: NMAC §16.27.9.9 LICENSED MENTAL HEALTH COUNSELOR - LMHC (Mental Health Specialty or Art Therapy Specialty):
A. LMHC is intended as a transition between the required degree and the completion of supervised training required for licensure as a professional mental health counselor, a professional clinical mental health counselor, or a professional art therapist. All work must be under appropriate clinical supervision. Applicants must assure that their education and experience are appropriate for the level of licensure they will seek upon completion of supervised training. There is no time limit as a licensed mental health counselor, but all work at this level must be done under clinical supervision.
B. Qualifications for entry level licensure. An applicant for licensure as an entry-level mental health counselor (LMHC) must possess the following qualifications:
   (1) be at least 21 years of age; and
   (2) applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics;
   (3) holds a masters or doctoral degree in a counseling or counseling related field with no less than 48 graduate hours and 9 practicum hours;
   (4) have arranged for appropriate clinical supervision, including a postgraduate experience plan, which includes one hour of face-to-face supervision for every ten hours of client contact.

Authority: NMAC §16.27.9.8 Licensure as a Professional Mental Health Counselor - LPC APPROPRIATE SUPERVISION:

A. Supervision must be provided by a licensed professional clinical mental health counselor (LPCC), licensed marriage and family therapist (LMFT), licensed professional art therapist (LPAT), licensed psychologist, licensed psychiatrist, or licensed independent social worker (LISW). The licensed mental health counselor (LMHC) or the licensed professional mental health counselor (LPC) must practice under supervision at all times. Once the licensed mental health counselor or the licensed professional mental health counselor acquired the official LPCC, LMFT or LPAT license then the licensee may practice independently without supervision.
B. It is the responsibility of the individual seeking supervision to assure the supervision is acceptable for the level of licensure that will be requested at the completion of the required supervision. The relationship between the supervisor and the applicant must promote the development of skill and responsibility in the delivery of counseling or therapy services.
C. Client contact and supervision hours prior to being licensed will not be acceptable for licensure.

Authority: NMAC §16.27.9.9 LICENSED MENTAL HEALTH COUNSELOR (MENTAL HEALTH SPECIALTY OR ART THERAPY SPECIALTY):

A. LMHC is intended as a transition between the required degree and the completion of supervised training required for licensure as a professional mental health counselor, a professional clinical mental health counselor, or a professional art therapist. All work must be under appropriate clinical supervision. Applicants must assure that their education and experience are appropriate for the level of licensure they will seek upon completion of supervised training. There is no time limit as a licensed mental health counselor, but all work at this level must be done under clinical supervision.
B. Qualifications for entry level licensure. An applicant for licensure as an entry-level mental health counselor (LMHC) must possess the following qualifications:
   (1) be at least 21 years of age; and
   (2) applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics
   (3) holds a masters or doctoral degree in a counseling or counseling related field with no less than 48 graduate hours and 9 practicum hours;
   (4) have arranged for appropriate clinical supervision, including a postgraduate experience plan, which includes one hour of face-to-face supervision for every ten hours of client contact.
   [16.27.9.9 NMAC - Rp 16 NMAC 27.8.8, 6-15-01; A, 7-1-04; A, 2-10-06]

Authority: NMAC §16.27.9.11 EXAMINATION: Applicants must demonstrate professional competency by passing the national counselors exam (NCE) or (NCC) and art therapy specialty must demonstrate professional competency by passing the art therapy credentialing board (ATCB) exam.

Authority: NMAC §16.15.2.13 OT Licensing - ANNUAL RENEWAL:

A. Annual renewal fees in the form of a check or money order must be remitted when due or license will expire automatically.
B. Licenses may be renewed upon receipt of a renewal application submitted on the form provided by the board, or via on-line renewal application through the board's on-line professional licensing system, the applicable annual renewal fee, and proof of continuing education requirements pursuant to regulations of the board.
C. The annual renewal date is October 1st of each year. All licenses issued by the board will expire on September 30th of each year.

Authority: NMAC §6.63.9.7 Paraprofessionals DEFINITIONS**:**

A. "Paraprofessionals" means education assistants who assist a teacher in instruction and hold Level 3 education assistant licensure.
B. [Reserved]

Authority: NMAC **§**6.63.9.8 LEVEL I AND LEVEL II REQUIREMENTS: All persons who perform services as educational assistants ("EAs") in public schools or in those special state-supported schools within state agencies must hold valid, educational assistants licensure issued by the public education department ("PED"). EAs shall be assigned, and serve as assistants, to school staff duly licensed by the PED. While there may be brief periods when EAs are alone with and in control of a classroom of students, their primary use shall be to work alongside or under the direct

supervision of duly licensed staff.

A. Persons seeking licensure in Level I educational assistance pursuant to the provisions of this rule shall meet the following requirements:
   (1) high school diploma or equivalency; and
   (2) eighteen years of age; and
   (3) certification by the public school superintendent, state-supported school superintendent, charter school administrator or private school official that the educational assistant has satisfactorily completed an orientation session pertinent to his or her assignment.
B. Persons seeking licensure in Level II educational assistance pursuant to the provisions of this rule shall meet the following requirements:
   (1) high school diploma or equivalency; and
   (2) eighteen years of age; and
   (3) certification by the public school superintendent, state-supported school superintendent, charter school administrator or private school official that the educational assistant has satisfactorily completed an orientation session pertinent to his or her assignment; and
   (4) certification by the public school superintendent, state-supported school superintendent, charter school administrator or private school official that the educational assistant has satisfactorily demonstrated the PED's educational assistant competencies.

Authority: NMAC 6.63.9.10 Level III/Paraprofessional Requirements
Authority: NMAC 6.63.9.11 Local District Testing To Obtain Level III Licensure
Authority: NMAC 6.63.9.13 Implementation
Authority: NMAC 6.63.9.14 Continuing Licensure

Authority: NMAC §16.20.1.10 Physical Therapist – PT - USE OF TITLES:

A. Only a person holding a license as a physical therapist may use the title “physical therapist,” ”licensed physical therapist”, or the letters “P.T.”
B. Only a person holding a license as a physical therapist assistant may use the title “physical therapist assistant”, “licensed physical therapist assistant”, or the letters “P.T.A.”
C. Only a student in a college program accredited or actively pursuing accreditation by the American physical therapy association may use the title “student physical therapist”, or the letters “S.P.T.”
D. Only a student in a college program accredited or actively pursuing accreditation by the American physical therapy association may use the title “student physical therapist assistant”, or the letters “S.P.T.A.”

Authority: §16.20.3.8 NMAC Physical Therapists

A. The board may issue a license to an applicant, other than one applying for licensure by endorsement, who fulfills the following requirements:
   (1) completes the application;
   (2) includes a passport-size photograph taken within the preceding twelve months and affixes it to the application;
   (3) pays the non-refundable application fee in full as provided in Part 5;
   (4) passes the jurisprudence exam (as specified in §16.20.2.10) and pays the non-refundable exam fee as provided in Part 5;
   (5) official college or university transcripts from a program approved by the commission on accreditation in physical therapy education (CAPTE) verifying one of the following:
      (a) post-baccalaureate degree in physical therapy;
      (b) associate degree in physical therapy assistant.
   (6) if official transcripts are not available because of school closure or destruction of the records, e.g., the applicant must provide satisfactory evidence of meeting the required physical therapy educational program by submitting documentation that will be considered on a case-by-case basis by the board and pursuant to the following:
      (a) for applicants who graduated after January 1, 2002, documentation of graduation with a post-baccalaureate degree in physical therapy from an educational program accredited by CAPTE;

(b) for applicants who graduated prior to January 1, 2002, documentation of graduation with a baccalaureate degree in physical therapy or a certificate in physical therapy from an educational program accredited by CAPTE;

(c) for physical therapist assistant applicants, documentation of graduation from an accredited physical therapist assistant program accredited by CAPTE and approved by the board;

(7) passes the national physical therapy licensure examination (NPTE) (as specified in §16.20.2.8 NMAC); if the applicant has previously taken the NPTE, the testing entity shall send the test scores directly to the board; test scores sent by individuals, organizations or other state boards will not be accepted.

B. For applicants who have not practiced since graduating from a physical therapy education program, or who have not practiced as a physical therapist or physical therapist assistant for a period of more than three (3) consecutive years, full licensure requires fulfilling the following requirements:

(1) satisfactory completion of all application requirements for licensure as provided in Subsection A of 16.20.3.8 NMAC;

(2) provides proof of having taken fifteen (15) continuing education contact hours for each year the applicant was not practicing as a physical therapist or physical therapist assistant (coursework to be pre-approved by the board);

(3) provides evidence of additional competency to practice as required by the board.

C. Felony or misdemeanor convictions involving moral turpitude directly related to employment in the profession have to be satisfactorily resolved. The board may require proof that the person has been sufficiently rehabilitated to warrant the public trust if the prior conviction does not relate to employment in the profession. Proof of sufficient rehabilitation may include, but is not limited to: certified proof of completion of probation or parole supervision, payment of fees, community service or any other court ordered sanction.

D. A licensee requesting a name change must submit proof of name change, the original license and a replacement license fee.

E. Foreign educated applicants must meet all requirements for licensure as provided in Subsection A of §16.20.3.8 NMAC as well as those requirements listed in §16.20.9 NMAC.

Authority: NMAC §16.20.7.7 PT supervision DEFINITIONS:

A. "On-site supervision" means a physical therapist shall be continuously on-site and present in the same building where the assistive personnel are performing services.

B. "Maintaining continued involvement" means the supervising physical therapist or physical therapist assistant shall personally contact the patient each treatment day to assess and monitor the response to treatment. The licensed personnel shall sign all permanent records.

Authority: NMAC 16.20.7.8 Supervision of Licensed Personnel
Authority: NMAC 16.20.7.9 Supervision of Unlicensed Assistive Personnel
Authority: NMAC 16.22.4.8 Psychologists: Education requirements.

Authority: NMAC 6.63.5.7 DEFINITIONS – School Psychologist:

A. "School psychologist" means a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students, including assessment and psychological pre-referral/intervention procedures in a school-related setting.

Authority: NMAC 6.63.5.8 Requirements For Persons Seeking Level 1, Entry Level School Psychologist Licensure
Authority: NMAC 6.63.5.9 Requirements For Persons Seeking Level 2, Independent School Psychologist Licensure
Authority: NMAC 6.63.5.10 Requirements For Persons Seeking Level 3, Independent School Psychologist Licensure
Authority: NMAC 6.63.5.11 Implementation
Authority: NMAC 6.63.5.12 Competencies For Entry Level School Psychologists Requiring Supervision by a Level 3 Supervising School Psychologist
Authority: NMAC 6.63.5.13 Competencies For Level II Independent School Psychologists
Authority: NMAC 6.63.5.14 Competencies For Level IIIa Clinical Supervising School Psychologists

Authority: NMAC §6.63.11.7 Rehabilitation counseling - DEFINITIONS:

A. "Rehabilitation counseling" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability who receives services under the federal Individuals with Disabilities Education Act (IDEA). The term also includes vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the federal Rehabilitation Act of 1973, as amended.
B. "Related fields" means a degree in such areas as sociology, psychology, school counseling, guidance and counseling, education, special education, social work, and mental health.
C. "Transition services" means a coordinated set of activities for a student with a disability, as defined in the Individuals with Disabilities Education Act, that:
   (1) is designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
   (2) is based on the individual student's needs, taking into account the student's preferences and interests; and
   (3) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

Authority: NMAC §6.63.11.8 Rehabilitation Counseling REQUIREMENTS:

Persons seeking licensure in rehabilitation counseling pursuant to the provisions of this rule shall meet the requirements of Subsections A, B, C, D or E of 6.63.11.8 NMAC.

Authority: NMAC §6.63.6.8 School Counselor REQUIREMENTS:

Applicants may meet this requirement by meeting requirements of Subsections A or B or C of

A. national certified school counselor credential issued by the national board for certified counselors;
B. licensed professional mental health counselor (LPC) or licensed professional clinical mental health counselor (LPCC) credential issued by the New Mexico counseling and therapy practice board and a minimum of six semester hours of graduate credit in school counseling coursework;
C. master's degree from a regionally accredited college or university; the master's degree requirement shall be satisfied by meeting the requirements of Paragraphs (1) or (2) of Subsection C of 6.63.6.8 NMAC:
   (1) master's degree in school counseling from a regionally accredited college or university and meeting the applicable program requirements as follows:
      (a) A master's degree awarded by a New Mexico college or university must incorporate the New Mexico public education department ("PED") approved competencies in the area of school counseling.
      (b) A master's degree awarded by a college or university outside of New Mexico must be for a school counseling program approved by the PED.
   (2) master's degree in a discipline other than school counseling and 36-42 graduate hours in school counseling, (which may be completed as a part of the master's degree program or in addition to the master's) meeting the applicable program requirements as follows:
      (a) The 36-42 graduate hours awarded by a New Mexico college or university must incorporate the PED approved competencies in the area of school counseling and include a 300 hour practicum or internship in a school setting.
      (b) The 36-42 graduate hours awarded by a college or university outside of New Mexico must be for a school counseling program approved by the PED and include a practicum in a school setting.

Authority: NMAC §16.63.1.7 Social Worker - DEFINITIONS:

A. Appropriate supervision:
B. Licensed clinical social worker: an independent social worker with a clinical specialty is equivalent to a licensed clinical social worker (LCSW).
C. Qualified applicants:
   (1) Means those programs having received accreditation by CSWE and those programs having candidacy status, conditional status, or under review status with CSWE.
   (2) For those applicants who graduated from a institution of higher education before CSWE began to accredit programs (prior to 1974), the New Mexico board of social work examiners will require:

(a) a letter from the university's registrar's office stating that the applicant's course of study culminated in a degree which was the equivalent of an emphasis or major in social work;
(b) demonstrated social work experience;
(c) documentation of social work licensure in a previous state; and
(d) concurrence among the majority of professional members of the board that the transcripts reflect sufficient coursework in social work.

D. CSWE (council on social work education) accreditation: means those programs having received accreditation by CSWE and those programs having candidacy status or under review status with CSWE.

Authority: NMAC §6.61.6.7 Licensure Special Education Teacher Pre-K–12. DEFINITIONS:

A. "Core academic subjects" means English, language arts, reading, mathematics, science, the arts, including music and visual arts, social studies, which includes civics, government, economics, history, and geography, and modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes and pueblos.
B. "A highly qualified beginning pre k-12 special education teacher" under this rule means a teacher who is new to the profession, has pursued a standard route to licensure and is fully qualified to teach special education students by either providing access for those students to a regular education classroom where instruction in the core academic subjects is delivered by a highly qualified regular education teacher, or being fully qualified to teach each core academic subject the special education teacher teaches, or being fully qualified to teach either language arts, mathematics or science and becoming fully qualified to teach any other core academic subjects which the teacher teaches within two years after the date of initial employment, and who:
(1) meets the requirements for pre-k-12 special education licensure in Subsections A or B in 6.61.6.8 NMAC;
(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason; and
(3) has passed all applicable teacher testing requirements for licensure in §§6.60.5.8 NMAC.
C. "Pre-kindergarten" means a voluntary developmental readiness program for children who have attained their fourth birthday prior to September 1.

Authority: NMAC §6.61.6.8 REQUIREMENTS:

A. Persons seeking licensure in special education pursuant to the provisions of this rule shall meet all the requirements enumerated in Subsections A or B of this section.

Authority: NMAC §6.61.6.9 IMPLEMENTATION:

All persons holding a valid endorsement in special education areas (excluding educational diagnosticians, speech pathologists, and related services personnel who do not currently hold special education licensure) on June 30, 1987, shall be entitled to licensure in special education. Such licensure may be further continued pursuant to regulation(s) as established by the department.

Authority: NMAC §16.26.1.2 Hearing – Speech and Audiology Practitioners - SCOPE:

All individuals wishing to practice as a speech-language pathologist, audiologist, hearing aid dispenser, paraprofessional apprentice, individuals working towards their clinical fellowship or university students who will be offering services in the speech-language pathology and/or audiology field and individuals under a training permit as hearing aid dispenser trainees.

Authority: NMAC §16.26.1.7 DEFINITIONS:

E. "Audiologist" means a person holding at least a master's degree in audiology issued prior to January 1, 2007, or a doctoral degree in audiology who engages in the practice of audiology who may or may not dispense hearing aids and who meets the qualifications set forth in the act.
G. "Direct supervision" means on-site, in-view observation and guidance by a licensed professional in the applicant's field present (other than a paraprofessional or clinical fellow) during a therapy session with clients while an assigned activity is performed by support personnel.
H. "Indirect supervision" means those activities other than direct supervision conducted by a licensed professional (other than a paraprofessional or clinical fellow) that may include demonstration, record review, consultations, meetings and evaluation of audio or video-taped sessions.
J. "License" means a document identifying a legal privilege and authorization to practice within one of the categories established by the act. A license under this act is not transferable.

K. "Licensing year" means the period from January 31 of any year through January 30 of the next year; initial, renewed and reinstated licenses may be issued at any time set, herein, but shall expire on January 30 of the following year, except as otherwise provided in these rules.
P. "Temporary paraprofessional license" means a license issued to a person working towards full licensure as a speech-language pathologist and who provides adjunct speech-language pathology services under the supervision of a speech-language pathologist who is licensed under this act.
Q. "Temporary trainee permit" means a permit issued by the board to a person authorized to fit and dispense hearing aids only under the supervision of a sponsor as defined by these regulations. Temporary trainee permits will be issued for a one-year period and are non-renewable.

Authority: NMSA 1978 61-14B-12.1. Requirements for licensure; audiologist. (Repealed effective July 1, 2016.)
A license to practice as an audiologist shall be issued to any person who completes A. and B.:

Authority: NMSA 1978 61-14B-12. Requirements for licensure; speech-language pathologist. (To be repealed effective July 1, 2016.)
A license to practice as a speech-language pathologist shall be issued to a person who files a completed application, accompanied by the required fees and documentation; certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978; and submits satisfactory evidence that the applicant:
A. holds at least a master's degree in speech pathology, speech-language pathology or communication disorders or equivalent degree regardless of degree name and meets the academic requirements for certification by a nationally recognized speech-language association; and
B. currently holds a certificate of clinical competence (CCC) from a nationally recognized speech-language association in the area for which the applicant is seeking licensure; or
C. has completed the current academic, practicum and employment experience requirements for a certificate of clinical competence from a nationally recognized speech-language association in the area for which the applicant is applying for license and has passed a recognized standard national examination in speech-language pathology.

Authority: NMSA 1978 61-14B-15.1. Requirements for licensure; apprentice in speech and language. (To be repealed effective July 1, 2016.)
A license to practice as an apprentice in speech and language shall be issued by the board to a person who files a completed application accompanied by the required fees and documentation and provides satisfactory evidence that the applicant: A. – F.

Authority: NMAC §6.69.2.7 Unsatisfactory work performance. DEFINITIONS:
A. "Administrative authority" means the superintendent, principal or a person acting under the authority of such superintendent or principal.
B. "Insubordination" means actual or implied willful refusal to follow written policies, regulations, rules, or procedures established by the public education department (PED), the local school board, or administrative authorities, or the lawful written or oral orders, requests or instructions of administrative authorities.
C. "Uncorrected unsatisfactory work performance" means unsatisfactory work performance which the licensed school personnel has failed to correct pursuant to the provisions in this regulation; provided, however, that if unsatisfactory work performance is uncorrectable through the evaluation and supervision process**,** as determined by the local school board policy, the provisions in this regulation shall not apply.
D. "Unsatisfactory work performance" means the failure by licensed school personnel to satisfactorily perform those tasks which are evaluated by the employee's supervisors, pursuant to the school district's approved plans) for evaluation and supervision of its licensed employees. Furthermore, for the purpose of this regulation unsatisfactory work performance does not include insubordination or conduct deemed to be outside the normal scope of duties of licensed school personnel.

Authority: NMAC **§**6.69.2.8 UNCORRECTED UNSATISFACTORY WORK PERFORMANCE:
A. Uncorrected unsatisfactory work performance is good cause for discharging licensed school personnel or for requesting the secretary of education to suspend a level three teaching license as provided in Subsection F of 6.69.4.10 NMAC so long as procedures established in Subsection B of Section 6.69.2.8 NMAC, herein, are followed.

B. The following procedures shall be followed by local school boards or governing authorities of state agencies in supervising and correcting unsatisfactory work performance of licensed school personnel before serving them with notice of intent to discharge pursuant to Section 22-10A-27 NMSA 1978 or before requesting the secretary of education to suspend a level three teaching license under Subsection F of 6.69.4.10 NMAC.
   (1) Two or more conferences shall have been held with licensed school personnel charged with unsatisfactory work performance by a local school board or governing authorities of state agencies before notice of intent to discharge is served upon him or her. Such conferences shall be held with the individual's immediate supervisor and such other persons as the local board or governing authorities of state agencies may designate. For purposes of this regulation, the conference at which the supervisor first identifies unsatisfactory work performance shall be counted as one of the required conferences. Sufficient time shall have elapsed between the conferences to allow the licensed school personnel to correct the unsatisfactory work performance and to have been observed for an adequate time in the discharge of his or her duties.
   (2) A written record of all conferences shall be made, specifying the areas of uncorrected unsatisfactory work performance, all action suggested by the school or agency administration which might improve such performance, and all improvements made. Each written record shall be signed by all parties to the conference. In the event of a refusal to sign, a notation shall be made of the refusal. A copy of each record shall be given to the person charged with unsatisfactory work performance. The local board or governing authority of a state agency shall retain a copy of the record to be introduced at any hearing for the person charged with unsatisfactory work performance.
   (3) In addition to the requirements in Subsection B of 6.69.2.8 NMAC, before requesting the secretary of education to suspend a level three teaching license as provided in Subsection F of 6.69.4.10 NMAC a local school district or governing authorities of state agencies shall provide the teacher with professional development and peer intervention, including mentoring, for a period the school principal deems necessary.

New Mexico – Three-Tiered Licensure

The Professional Development Dossier (PDD) is the cornerstone of advancement for teachers in the Three-Tiered Licensure System. Teachers must complete the PDD in order to advance from Level I to Level II and to advance from Level II to Level III. http://www.ped.state.nm.us/Licensure/index.html

Professional Development Dossier (PDD) Background and Overview Assessment of Teacher Competency
Advancement to higher levels of teacher licensure in the State of New Mexico is based on the regulations in Title 6, Chapter 69, of the NM Administrative Code. These regulations outline the competencies for each level and set the parameters for the assessment system. Every teacher will submit a Professional Development Dossier (PDD) at the end of three years of successful teaching at Level I in order to advance to Level II. Teachers who seek Level III licensure may submit an additional PDD after their third year of successful teaching at Level II. The Public Education Department has established guidelines to assist teachers in demonstrating essential competencies for advancement to Level II and Level III, as specified in the regulations.

Level II Licensure
A teacher must apply for Level II licensure upon completion of at least three years of successful teaching at Level I, including successful completion of a formal mentoring program in his or her district. Teachers who have obtained a NM teacher license under interstate reciprocity must have at least two years experience teaching in New Mexico before advancing to Level II. A teacher seeking Level II Licensure must submit a PDD compiled according to the Guidelines.

Level III Licensure
A teacher is eligible to apply for Level III licensure upon completion of at least three years of successful teaching at Level II AND achievement of either an approved post-baccalaureate (master's) degree or advanced certification from the National Board for Professional Teaching Standards. Teachers who have obtained a NM teacher license under interstate reciprocity must have at least two years experience in New Mexico before advancing to Level III.

Application
A teacher applies for both Level II and Level III licensure by completing a Professional Development Dossier (PDD) and submitting it to the designated contractor of the New Mexico Public Education Department. Submission deadlines and instructions for submitting your completed PDD will be available at www.teachnm.org.

The PDD
The Professional Development Dossier (PDD) is a focused, compact collection of documentation compiled by the teacher seeking licensure advancement with support from her/his school district. The PDD documentation is a collection of classroom data (lesson descriptions, handouts, student work, video and audio recordings, photos) with explanations of that data written by the teacher, accompanied by verification and recommendation by the district superintendent. No one part of the PDD serves to fully represent a teacher's work, but the entire PDD is intended to provide evidence to determine when a teacher is qualified to advance to a higher level of licensure.
The PDD is organized into five strands. These five strands are aligned with the New Mexico Teacher Competencies and are designed to help teachers document their teaching for reviewers from outside their school and district.

Related Service Personnel – Roles *(See Chapter 3. - Evaluation).*

Private School Personnel
Authority: 34 CFR §300.142 Use of personnel. *(See also Sect. 5 Instructional Arrangements for Private Schools)*

(a) Use of public school personnel. The public agency 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 public agency 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.**

V. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

Authority: 34 CFR §300.207 Personnel development.
The public agency must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of §300.156 (related to personnel qualifications) and section 2122 of the ESEA.

Authority: 34 CFR §300.226 Early intervening services. *(For more information see* - X. Funding*).*

(a) General. The public agency may not use more than 15 percent of the amount the public agency receives under Part B of the Act for any fiscal year, less any amount reduced by the public agency pursuant to §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who have not been identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

(b) Activities. In implementing coordinated, early intervening services under this section, the public agency may carry out activities that include--
- **(1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and**
- **(2) Providing educational and behavioral evaluations, services, and supports, including scientifically-based literacy instruction.**

Authority: NMAC 6.65.2.6 Professional Development-Objective:
The rule establishes criteria for all professional development programs delivered by the public education department, statewide professional development providers, charter schools, public school districts, and for all professional development providers that apply for professional development funds, or who are awarded funding by

the public education department ("PED") or by the legislature. The criteria in this rule also establishes standards for an evaluation component that will be used by the PED in accessing charter school, and school district professional development plans. The rule creates standards for developing professional development activities for schools that improve teachers' knowledge of the subjects they teach and the ability to teach those subjects to all of their students; are an integral part of the public school and school district plans for improving student achievement; provide teachers, school administrators and instructional support providers with the strategies, support, knowledge and skills to help all students meet the New Mexico academic content standards; are high quality, sustained, intensive and focused on the classroom; are developed and evaluated regularly with extensive participation of school employees and parents.

Authority: NMAC 6.65.2.7 DEFINITIONS:

A. "Alignment" means the degree to which program components match purposes and evaluation criteria.
B. "Collaboration" means the act of working positively and productively with others to meet a common goal or purpose.
C. "Data" means information from a variety of sources gathered for a purpose. For example, data related to student learning might include student work examples, scripted or videotaped observations, student achievement scores, and/or teacher-generated assessments. Data related to teacher performance might include observations; instructional artifacts; and /or student, peer or parent evaluations. The terms data and evidence are often used interchangeably.
D. "Developmental levels" means descriptors of development for students and teachers.
   (1) Developmental levels for students are descriptors of how they develop (cognitively, socially and in other ways) during their formative years in pre-k-12 education.
   (2) Developmental levels for teachers are descriptors of how they develop across the continuum of their careers. In New Mexico, the career continuum for teachers include three levels of development: the level 1 "provisional teacher" (the initial five years of a teaching career where the teacher demonstrates initial mastery of effective teaching); the level 2 "professional teacher" (at least three years of classroom teaching experience during which a teacher demonstrates expert practice); and the level 3 "master teacher" (at least six years of experience where the teacher demonstrates exemplary practice).
E. "Differentiated" means the intentional application of multiple modes of instruction or assessment in order to meet the needs of all members of a group. The New Mexico teacher competencies are differentiated across levels of years of experience and teacher development: level 1 (provisional teacher); level 2 (professional teacher); and level 3 (master teacher).
F. "Diversity" means variety among individuals. Diversity includes, for example, variations in socio-economic status, race, developmental level, ethnicity, gender, language, learning styles, culture, abilities, age, interests, and/or personality.
G. "Job-embedded" means activities that are included as part of the responsibilities of the teacher's work day.
H. "Leadership" means the work of members of all levels of educational systems who engage in, collaborate in, and/or guide continuous instructional improvement for the benefit of the entire system.
I. "Professional development " means a systemic process by which educators increase knowledge, skills, and abilities to meet professional and organizational goals that build capacity within the individual, organization, and education system for the purpose of ensuring success for all students.
J. "Professional development plan" means a plan specifically designed to identify goals, activities and measurable objectives that will support continuous learning related to professional knowledge, skills and abilities.
   (1) The district professional development plan is a component of the comprehensive educational plan for student success that supports academic learning for all students.
   (2) The individual teacher's professional development plan (PDP) is part of the performance evaluation system requirements. The teacher's PDP is a collaborative enterprise involving the teacher and principal in establishing a yearly plan for professional learning goals, activities, and measurable objectives based on the nine New Mexico teacher competencies.
K. "Professional development program" means an organized set of professional development experiences for an education system that will support instructional learning in an identified area of improvement.
L. "Research based" means results from proven, rigorous educational research methodologies.
M. "Staff development" means organized professional learning activities. The terms "professional development and staff development" are used interchangeably by the national staff development council as well as in this rule.

N. "Student success" means attainment of knowledge, skills and attributes that will prepare and nurture individuals to become productive, engaged citizens in a democratic society.
O. "Sustained" means an effort or activity maintained in a coherent, planed manner over time.
P. "Systematic" means something that is characterized by order and planning.
Q. "Systemic" means related to an entire system: in this case, an educational organization that is made up of individual but interdependent components united by a common purpose, action plan, and accountability.
R. "Training" means a subset of professional development. Training includes specialized, often prescribed instruction and practice that help an individual become proficient in a skill or set of skills.
S. "Standards for staff development" means criteria and expectations that provide direction for designing a professional development experience that ensures educators acquire the necessary knowledge and skills.
T. "Framework for professional development " means a document that establishes the context, processes and content relative to professional development by way of a statewide definition and belief statements of professional development, guidelines for the effective designing, implementation, and evaluating of professional development initiatives at the district and school building-level, establishing the criteria for school districts to apply for professional development funds, and to provide information regarding professional development providers and other resources.

Authority: NMAC §6.65.2.8 REQUIREMENTS FOR PROGRAM DESIGN AND IMPLEMENTATION:
School district and charter school professional development programs shall meet the highest standards for professional development. New Mexico has adopted the national staff development council standards for staff development as requirements for designing, implementing, and evaluating professional development programs. All statewide, PED, charter school and public school district professional development programs and activities shall address and align with the following standards and shall articulate:

A. context standards which:
   (1) improve the learning of all students by organizing adults into learning communities whose goals are aligned with those of the school district;
   (2) require skillful school and district leaders who guide continuous instructional improvement;
   (3) require resources to support adult learning and collaboration;
B. process standards which:
   (1) improve the learning of all students by using disaggregated student data to determine adult learning priorities, monitor progress, and help sustain continuous improvement;
   (2) use multiple sources of information to guide improvement and demonstrate its impact;
   (3) prepare educators to apply research to decision making;
   (4) use learning strategies appropriate to the intended goal;
   (5) apply knowledge about human learning and change;
   (6) provide educators with the knowledge and skills to collaborate;
C. content standards which:
   (1) improve the learning of all students by preparing educators to understand and appreciate all students;
   (2) create safe orderly and supportive environments, and hold high expectations for their academic achievement;
   (3) deepen educators' content knowledge;
   (4) provide them with research-based instructional strategies to assist students in meeting, rigorous academic standards and prepare them to use various types of classroom assessments appropriately;
   (5) provide educators with knowledge and skills to involve families and other stakeholders appropriately.

Authority: NMAC §6.65.2.9 REQUIREMENTS FOR PROGRAM EVALUATION:

A. All statewide, PED, charter school and public school district professional development programs shall be evaluated at least every three years to determine the effectiveness of the program based on evidence of improved educator practice and student learning.
B. Levels of program evaluation shall include evidence of:
   (1) participant response;
   (2) participant learning;
   (3) organizational change and support;
   (4) participant use of knowledge and skills; and
   (5) student learning.

Authority: NMAC §6.65.2.10 REQUIREMENTS FOR PROFESSIONAL DEVELOPMENT FUNDING:
Schools, school districts or independent programs or agencies that apply for or are awarded state or federal funding to support professional development programs or activities must demonstrate alignment between the proposed programs and the New Mexico professional development framework. Funding proposals shall explicitly address all of the following questions:

A. context:
   (1) how are the resources (time, leadership, personnel, and budget considerations) structured to support the plan?
   (2) how are roles of leaders and participants defined and goals determined?
   (3) how are data related to student learning to be used to determine goals and assess outcomes?
   (4) how is collaboration among administrators and teachers embedded in the professional development process?

B. content:
   (1) what should participants know and be able to do?
   (2) is the content clearly connected to workplace requirements and clearly articulated goals?
   (3) are appropriate adult learning strategies used that will support program effectiveness?
   (4) is there a range of learning opportunities that address areas of need, diversity, skill development and refinement?
   (5) how are data related to student learning to be used to determine goals and assessment outcomes?
   (6) how is collaboration among administrators and teachers embedded in the professional development process?

New Mexico's State Improvement Grant (SIG), Circle of Commitment, addresses four main focus areas:

- Build NMPED Capacity for system alignment thus improving student access, participation and progress in general education and the provision of FAPE;
- Strengthen the statewide system of personnel development and address under-representation of targeted groups in the professional education workforce;
- Improve student outcomes; and
- Improve family and student participation and leadership in systemic reform.
  Focus areas were determined with input from a variety of stakeholder groups and individuals. This grant is congruent with the goals of the New Mexico IDEA Advisory Panel, the New Mexico Special Education State Improvement Plan, our Integrated Accountability System, as well as supporting the broader goals of the New Mexico State Department of Education.

Through this grant we will support and encourage partnerships among the New Mexico State Department of Education, the five universities which provide teacher education programs (University of New Mexico, New Mexico State University, Eastern New Mexico University, Highlands New Mexico University, and Western New Mexico University), nine regional cooperatives, local school districts and parent groups.

The public agency will carefully review the New Mexico State Performance Plan in order to remain focused on indicators for data-based decisions regarding staff development. Consideration is also given to the NMPED key indicators from focused monitoring. The focused monitoring process utilizes data from the STARS to rank school districts on the focused monitoring indicators and to make district selections for monitoring. There are five key indicator identified by a statewide group of stakeholders that covers the most important compliance issues as well as measurable aspects of educational benefit.

The key indicators are:

Indicator 1: Graduation of students with disabilities.

Indicator 3: Participation and performance of students with disabilities on statewide assessments of educational development.

Indicator 5: Least restrictive environment, emphasizing inclusion of students with disabilities in regular classes to the maximum extent appropriate with access to the general education curriculum.

Indicators 9 & 10: Identification and evaluation of students with disabilities, emphasizing possible over-identification of students as learning disabled.

VI. CURRICULUM FOR STUDENTS WITH DISABILITIES

*The *cm has the responsibility for providing educational and related services to eligible students in the least restrictive environment. Students with disabilities shall have the opportunity to participate in the general education classroom with instruction aligned with the New Mexico Standards of Excellence* (§6.29.1 NMAC) *to the maximum extent appropriate. The IEP Team for the student with disabilities will make appropriate decisions for each individual student.*

VII. STARS– Student Teacher Accountability and Reporting System

Authority: 34 CFR §300.640 Annual report of children served—report requirement.

(a) The NMPED must annually report to the Secretary on the information required by section 618 of the Act at the times specified by the Secretary.

(b) The NMPED must submit the report on forms provided by the Secretary.

Authority: 34 CFR §300.641 Annual report of children served—information required in the report. *For all specific requirements, the public agency will remain diligent in following requirements specified by the STARS system provided by the New Mexico PED and will participate in required trainings.*

The Student Teacher Accountability Reporting System (STARS) is an upgrade to the Accountability Data System (ADS) which provides greater functionality to schools, districts, and NMPED. STARS is designed to:

- Meet the current PED and federal reporting requirements;
- Allow appropriate personnel secure access to student information;
- Improve education decision making through the use of high quality data and decision support tool;
- Provide longitudinal tracking of particular individual and subgroup education progress over time; and
- Report timely and accurate education data through standardized and ad hoc reporting capabilities.

Communications about STARS will be available on the STARS website: A self-service tool designed to provide information regarding the STARS project. www.ped.state.nm.us/stars

Authority: NMAC §6.29.1.9 (H) PROCEDURAL REQUIREMENTS

H. Student/staff caseloads in gifted and special education.

(1) The student/staff caseload shall not exceed 35:1 for a special education teacher and 60:1 for a speech-language pathologist for special education services or speech-only services, in which properly licensed special education teachers or speech-language pathologists travel from class to class or school to school, providing services to students with disabilities whose individualized education programs (IEPs) require a minimal amount of special education. (A minimal amount of special education services shall not exceed 10 per cent of the school day/week.)

(2) The student/staff caseload shall not exceed 24:1 for a special education teacher and 35:1 for a speech-language pathologist for special education services or speech-only services which properly-licensed special education teachers or speech-language pathologists provide to students with disabilities whose IEPs require a moderate amount of special education. (A moderate amount of special education services shall be less than 50 per cent of the school day.)

(3) The student/staff caseload shall not exceed 15:1 for special education services in which properly licensed special education teachers provide services to students with disabilities whose IEPs require an extensive amount of special education for a portion of the school day as appropriate to implement the plan. (An extensive amount of special education services shall be provided 50 per cent or more of the school day.)

(4) The student/staff caseload shall not exceed 8:1 for special education services in which a properly licensed professional provides services to students with disabilities whose IEPs require a maximum amount of special education. (A maximum amount of special education services shall be provided in an amount approaching a full school day.)

(5) The student/adult caseload shall not exceed 4:1 for center-based special education services in which one of the adults in the program is a properly licensed professional providing three- and four-year old children with the amount of special education needed to implement each child's IEP.

This includes a child who will turn three at any time during the school year, and who is determined to be eligible for Part B services. The child may be enrolled in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.

(6) The student/adult caseload shall not exceed 2:1 for center-based special education services in which three- and four-year old children have profound educational needs. This includes children who will turn three at any time during the school year, and who are determined to be eligible. The child may be enrolled in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.

(7) Adequate student/staff caseloads shall be provided to appropriately address needs identified in the IEPs. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to students with disabilities under Part B of IDEA.

(8) If the student/staff caseload ratio exceeds the standards provided above, a request for waiver shall be submitted to the department for review and approval by the secretary.

CASE LOADS

FULL TIME EQUIVALENTS (FTE): Teachers - How to Figure Caseload Maximums

For teachers with position codes:
94 regular education teacher of gifted
95 related service caseload teacher
96 preschool teacher
97 special education teacher

A Level Student - minimum

- each "A or minimum" level student 1/35 or .029 FTE (receives sp ed service 10% or less of the day = level 1 on STAR)
- each "A or minimum" related service student 1/60 or .017 FTE (must be under staff at code 95)

B Level Student - moderate

- each "B or moderate" level student 1/24 or .042 FTE (receives sp ed service less than half of the day = level 2 on STARS)
- each "B or moderate" related service student 1/35 or .029 FTE (must be under staff at code 95)

C Level Student – extensive - half day or more

- each "C or extensive" level student 1/15 or .067 FTE (receives sp ed service half a day or more = level 3 on STARS)

D Level Student – maximum – all day or approaching full day

- each "D or maximum" level student 1/8 or .125 FTE (receives sp ed service all day or approaching a full day = level 4 on STARS)

The FTE generated by the students cannot exceed the FTE for their caseload teacher unless a waiver is granted. These caseload waivers are granted by the LADE Superintendent of Public Instruction on a case-by-case basis.

FULL TIME EQUIVALENTS (FTE): Related Service - How To Figure Caseload Maximums

1) FTE is rounded to two decimal places.
2) Figure out the total time you are hiring this person, using one of these methods.
   - **By hours per week**: If you are paying this person for preparation time and travel time per week, in addition to direct service time, include this in your total. Divide this total by the LEA workweek for teachers. This is the total FTE for this person.

- **By total days:** Figure out the total number of days you are hiring this person for a year. Divide by the total number of days in a typical teacher contract. This is the total FTE for this person.
- **By total hours**: Figure out the total numbers of hours you are hiring this person for a year. Divide by the total number of hours in a typical teacher contract. This is the total FTE for this person.

3) If this person is seeing any students as a caseload teacher (that is, if this person is the child's only special education teacher) this person will have a **caseload FTE**.

FTE for A-level service = # of students / 60 (position code 95)

FTE for B-level service = # of students / 35 (position code 95)

FTE for 3Y/4Y/5Y itinerant* service = # of hours spent with these students / LEA work week (position code 96)

*FTE for 3Y/4Y/5Y service for a teacher at a center-based program on the public school campus is not audited. Instead, we audit the adult-to-student ratio as required by state regulations.

Add them together. This is the **caseload FTE** for this person.

4) Finally, figure related service FTE.

- If the remainder of this person's service is only students who are five or older prior to September 1, then do the following:
  Total FTE minus caseload FTE = **related service FTE**

- If the remainder of this person's service includes some 3Y/4Y/5Y students, then do the following:
  time for 3Y/4Y/5Y related service / LEA work week = 3Y/4Y/5Y related service FTE (unfunded)

  Total FTE minus caseload FTE minus 3Y/4Y/5Y rel serv FTE = **related service FTE**

Authority: NMSA 1978 22.2.8.1 Length of school day; minimum.

A. Except as otherwise provided in this section, regular students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:
   (1) kindergarten, for half-day programs, two and one-half hours per day or four hundred fifty hours per year or, for full-day programs, five and one-half hours per day or nine hundred ninety hours per year;
   (2) grades one through six, five and one-half hours per day or nine hundred ninety hours per year; and
   (3) grades seven through twelve, six hours per day or one thousand eighty hours per year.

B. Thirty-three hours of the full-day kindergarten program may be used for home visits by the teacher or for parent-teacher conferences. Twenty-two hours of grades one through five programs may be used for home visits by the teacher or for parent-teacher conferences.

C. Nothing in this section precludes a local school board from setting length of school days in excess of the minimum requirements established by Subsection A of this section.

D. The state superintendent [secretary] may waive the minimum length of school days in those districts where such minimums would create undue hardships as defined by the state board [department].

VIII. SPECIAL EDUCATION ACCOUNTABILITY SYSTEM (SEAS)

The Federal Regulations are required and listed at the beginning of this section; the State requirements follow. For continuous updated information, see the NMPED website:
http://www.ped.state.nm.us/seo/district_data/SEAS%207.12%2007.pdf

Authority: 34 CFR §300.120 Monitoring activities.

(a) The NMPED must carry out activities to ensure that §300.114 *(LRE Chapter 6)* **is implemented by the LEA.**

(b) If there is evidence that the LEA makes placements that are inconsistent with §300.114, the NMPED must-
   (1) Review the LEA's justification for its actions; and
   (2) Assist in planning and implementing any necessary corrective action.

Authority: 34 CFR §300.211 Information for NMPED.
The LEA must provide the NMPED with information necessary to enable the NMPED to carry out its duties under Part B of the Act, including, with respect to §§300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.

Authority: 34 CFR §300.213 Records regarding migratory children with disabilities.
The LEA must cooperate in the Secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.

Authority: 34 CFR §300.157 Performance goals and indicators.
The NMPED must--

(a) Have in effect established goals for the performance of children with disabilities in New Mexico that--
- **(1) Promote the purposes of this part, as stated in §300.1;**
- **(2) Are the same as the State's objectives for progress by children in its definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the ESEA, 20 USC 6311;**
- **(3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and**
- **(4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the NMPED.**
  - **(i) Beginning in the 2012-2013 school year, IEP academic goals in English language arts and mathematics for students in grades K through three must align with the English Language Arts Common Core Standards (6.29.13 NMAC) and the Mathematics Common Core Standards (6.29.14 NMAC); and**
  - **(ii) Beginning in the 2013-2014 school year, IEP academic goals in English language arts and mathematics for students in grades four through 12 must aligh with the English Language Arts Common Core Standards (6.29.13 NMAC) and the Mathematics Common Core Standards (6.29.14 NMAC).**

(b) Have in effect established performance indicators the NMPED will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 USC 6311; and

(c) Annually report to the Secretary and the public on the progress of the State, and of children with disabilities in New Mexico, toward meeting the goals established under paragraph (a) of this section, which may include elements of the reports required under section 1111(h) of the ESEA.

Authority: 34 CFR §300.170 Suspension and expulsion rates. *(See also Chapter 7 - Discipline)*

(a) General. The NMPED must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--
- **(1) Among LEAs in New Mexico; or**
- **(2) Compared to the rates for nondisabled children within those agencies.**

(b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the NMPED must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

Authority: 34 CFR §300.229 Disciplinary information.

(a) The State may require that LEA include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children.

(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child.

(c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

Authority: 34 CFR §300.173 Over identification and disproportionality.
The NMPED has in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate over-identification or disproportionate representation of children, by race and ethnicity, as children with disabilities, including children with a particular impairment as described in §300.8. *(See Chapter 3 -Iimpairments).*

§300.646 Disproportionality.

(a) General. Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in New Mexico and the LEAs of New Mexico with respect to--

(1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act;

(2) The placement in particular educational settings of these children; and

(3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(b) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the NMPED or the Secretary of the Interior must--

(1) Provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the Act.

(2) Require the LEA, if identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly over identified under paragraph (a) of this section; and

(3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) of this section.

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

E. Significant disproportionality.

(1) Pursuant to CFR 34 §300.646, the public agency must provide for the collection and examination of data to determine if significant disproportionality, based on race and ethnicity, is occurring with respect to:

(a) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment as defined by 34 CFR §300.8;

(b) the placement in particular educational settings of these children; and

(c) the incidence, duration and type of disciplinary actions, including suspensions and expulsions.

(2) The public agency must reserve the 15 percent early intervening funds if they are identified as having data that is significantly disproportionate in any one of the following categories:

(a) suspension of students with disabilities;

(b) over-identification of students with disabilities;

(c) over-identification of students with a particular impairment as defined by 34 CFR §300.8; and

(d) placement of students with disabilities in a particular setting.

(3) Review and revision of policies, practices and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with Paragraph (1) of this subsection, the *cm must:

(a) provide for the review and, if appropriate, revision of the policies, procedures and practices used in the identification or placement to ensure that the policies, procedures and practices comply with the requirements of the IDEA; and
(b) require any LEA identified under Paragraph (1) of this subsection to reserve the maximum amount of funds under 34 CFR §300.226 to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly over identified under Paragraph (1) of this subsection; and
(c) require the LEA to publicly report on the revision of policies, practices and procedures described under Subparagraph (b) of this paragraph.

If disproportionality is identified consistently and not corrected, the PED may impose corrective actions on the LEA. Corrective actions range in severity from frequent monitoring visits up to the withholding of funds. If funds are withheld, the NMPED may use the funds to provide services to students and staff members through alternative arrangements.

*In addition to the requirements listed in **§300.646** above, the LEA may convene a committee of professionals and interested local community members to develop an action plan to address the issue of disproportionality. The committee will be charged with the following:*

a. collection and analysis of local data by campus to identify possible patterns in types of SAT interventions tried, length of time interventions were tried before referrals, grade level of students, staff over-identification, special education evaluations, students new to the district, etc.
b. based on an analysis of the data, identify target area(s) for response through a detailed action plan with dates due, personnel responsible, evaluation timelines, etc.
c. in the action plan, list specific activities to address the targeted area(s): examples may include, but are not limited to:
- *technical assistance from the regional education cooperatives;*
- *advice from experts to address the areas in need of assistance, including specific plans to address each subject area within a specified period of time;*
- *assistance in identifying and implementing professional development, instructional strategies, and methods of instruction based on scientifically-based research;*
- *designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support;*
- *devise additional approaches to providing technical assistance, such as collaborating with institutions of higher education, national centers of technical assistance, and private providers of scientifically-based technical assistance; and*

d. set timelines for the action plan to reconvene and analyze progress and the implementation of the strategies chosen.

The NMPED may impose the following sanctions if persistent disproportionality continues.
(1) on-site review for failure to meet appropriate services, program or compliance requirements;
(2) required fiscal audit of specific program(s) and/or of the LEA, paid for by the LEA;
(3) required submission of corrective action(s), including compensatory services, paid for by the LEA;
(4) required technical assistance from the regional education cooperatives, paid for by the LEA~~;~~, which may include:
(5) public release of program or compliance review findings;
(6) special investigation and/or follow-up verification visits;
(7) required public hearing conducted by the local school board of trustees;
(8) assignment by the NMPED of a special purpose monitor, conservator, or management team, paid for by the LEA;
(9) hearing before the commissioner of education or designee;
(10) reduction in payment or withholding of funds; and/or
(11) lowering of the special education compliance status and/or the accreditation rating of the LEA.

Special Education Accountability System (SEAS)
Website: http://www.ped.state.nm.us/seo/district_data/SEAS%207.12%2007.pdf

In December 2005, New Mexico PED was required to submit a State Performance Plan (SPP) to the United States Department of Education Office of Special Education Programs (OSEP). The SPP included a combination of 20 Results and Compliance Indicators established by OSEP that spans six fiscal years (2005 – 2006 through 2010 - 2011). Since the IDEA is due to be reauthorized in the near future, the SPP has been extended for two additional years (2011-2012 and 2012-2013). The SPP evaluates New Mexico's efforts to implement the requirements and purposes of Part B of the IDEA and describes how the State will improve its implementation.

As part of the SPP, each state was required to set targets for each of the Indicators that did not have a target mandated by OSEP. Each year, every state must report its progress to OSEP and the public on the progress of students with disabilities in the state. Specifically, New Mexico must report, in their Annual Performance Report (APR), their progress in meeting the measurable and rigorous targets established in the SPP. Based on the information in the State's APR and any other information available, OSEP applies the following Determinations to State's:

(i) Meets Requirements of Part B of the Act,
(ii) Needs Assistance in Implementing Part B of the Act,
(iii) Needs Intervention in Implementing Part B of the Act; or
(iv) Needs Substantial Intervention in Implementing Part B of the Act.

Included in the State's General Supervision, Monitoring, and Enforcement requirements under 34 CFR **§§**300.149 and 300.600, the State must review every district each year on the SPP performance. According to the IDEA, states are required to make "Determinations" annually on the performance of the LEAs. States must use the same four categories as OSEP, listed above, in making Determinations of the status of local programs.

The General Supervision and Accountability System is an evolving process. As a result of the reauthorization of IDEA, increased accountability at the state and local level, and changes in OSEP's Monitoring Priorities, New Mexico has **moved from a Focused Monitoring System** to an **Accountability System**. New Mexico's Special Education Accountability System (SEAS) monitors and reviews all Lea's compliance and performance data annually, is similar to the No Child Left Behind (NCLB) accountability system, and mirrors the LEA's Educational Plan for Student Success (EPSS) improvement plan process, and involves stakeholders (IDEA Panel) in the process.

The primary focus of the State's monitoring activities under 34 CFR §300.600(b) must be on:

- **Results**
  - Improving educational results and functional outcomes for all students with disabilities; and
- **Compliance**
  - Ensuring that public agencies meet the program requirements under Part B of the act, with particular emphasis on those requirements that are most closely related to improving the educational results for students with disabilities.

New Mexico's SEAS focuses on student performance outcomes and the compliance requirements of the IDEA.

This Accountability System Manual is the tool designed to provide the structure for the State, LEAs, RECs, and State Supported Educational Programs in the area of General Supervision. The SEAS is the system that provides the assurances to OSEP that the state is carrying out its responsibilities, using quantifiable indicators in each of the priority areas listed below, and using such qualitative indicators as are needed to adequately measure performance and compliance in those areas.

1. Provisions of Free and Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE).
2. State exercise of General Supervision including:
   a. child find
   b. effective monitoring
   c. use of resolution meetings
   d. mediation; and
   e. a system of transition services.

3. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent that the representation is the result of inappropriate identification.

IX. COLLABORATION WITH AGENCIES REGARDING MOUs

The NMPED has worked collaboratively with several agencies to develop memoranda of understandings (MOU) or agreement memoranda (AM) to assist in the coordination of the state agencies in providing services to students with disabilities. The LEA will abide by the requirements of each memorandum, including:
Statewide Transition Coordinating Council: http://www.ped.state.nm.us/seo/transition/stcc.fact.sheet.pdf
Family Infant Toddler Program of the New Mexico Department of Health and the New Mexico State Department of Education: http://www.ped.state.nm.us/seo/preschool/ta.parts.i.ii.suppl.pdf

The New Mexico School for the Deaf (NMSD) and the New Mexico Public Education Department (PED) formed the New Mexico Task Force on the Education of the Deaf and Hard of Hearing:
http://www.ped.state.nm.us/seo/library/deaf.ed.english.pdf

X. FUNDING

A. Federal Funds

Authority: 34 CFR §300.226 Early intervening services.
(a) General. The LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who have not been identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.
(b) Activities. In implementing coordinated, early intervening services under this section, the LEA may carry out activities that include--
(1) Professional development (which may be provided by entities other than the LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
(2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.
(c) Construction. Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.
(d) Reporting. If the LEA develops and maintains coordinated, early intervening services under this section must annually report to the NMPED on--
(1) The number of children served under this section who received early intervening services; and
(2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period.
(e) Coordination with ESEA. Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:
D. Early intervening services set aside funds. Fifteen percent (15%) set aside.
(1) Pursuant to 34 CFR §§300.208(a)(2) and 300.226, LEAs may use up to fifteen percent of the amount the LEA receives under Part B of IDEA to implement early intervening services for children with or without

disabilities in kindergarten through grade 12 with particular emphasis on children in kindergarten through grade three.

(2) Prior to the implementation or use of these set aside funds, the LEA must have on record with the department an approved plan for use of these funds as described by 34 CFR §300.226(b) and how such activities will be coordinated with regional education cooperatives as described in 34 CFR §300.226(e), if applicable.

(3) The LEA plan for use of set aside funds shall be submitted as an addendum to its annual application for Part B funding. If the LEA determines to implement a set aside plan after the initial application, a request for implementation of a set aside plan must be submitted for approval 60 days before the implementation of the plan.

(4) Each LEA that develops and maintains coordinated, early intervening services (CEIS) must report annually to the department as provided in 34 CFR §300.226(d).

The LEA may use up to 15% of the entitlement received under IDEA to develop CEIS. Federal funds always retain their identity. The LEA will account for the receipt and expenditure of federal funds, and ensure that federal funds are used for allowable costs in accordance with federal fiscal requirements. The LEA will use a local option code that uniquely identifies the cost objective used to account for the expenditure of federal, state, and local funds on coordinated, early intervening services. The use of local and state funds for coordinated, early intervening services that were previously expended on special education services may result in an apparent decline in Maintenance of Effort (MOE). The LEA will maintain documentation (identification criteria, needs assessment, improvement plan, budget, etc.) that adequately describes the program implemented.

Authority: 34 CFR §300.162 Supplementation of State, local, and other Federal funds.

(a) Expenditures. Funds paid to a State under this part must be expended in accordance with all the provisions of this part.

(b) Prohibition against commingling.

(1) Funds paid to a State under this part must not be commingled with State funds.

(2) The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a State under this part. Separate bank accounts are not required. (See 34 CFR §76.702 (Fiscal control and fund accounting procedures)).

(c) State-level nonsupplanting.

(1) Except as provided in §300.202, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the NMPED or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds.

(2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under §300.164.

Authority: 34 CFR §300.163 Maintenance of State financial support.

(a) General. A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(b) Reduction of funds for failure to maintain support. The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.

(c) Waivers for exceptional or uncontrollable circumstances. The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that--

(1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(2) The State meets the standard in §300.164 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.

(d) Subsequent years. If, for any fiscal year, a state fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

Authority: 34 CFR §300.164 Waiver of requirement regarding supplementing and not supplanting with Part B funds.

(a) Except as provided under §§300.202 through 300.205, funds paid to a state under Part B of the Act must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of NMPED or the LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and, in no case, to supplant those Federal, State, and local funds. A state may use funds it retains under §300.704(a) and (b) without regard to the prohibition on supplanting other funds.

(b) If a State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive, for a period of one year or less, the requirement under §300.162 (regarding state-level non-supplanting), if the Secretary concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver under this section, it must submit a written request to the Secretary containing—

(1) An assurance that FAPE is currently available to all eligible children with disabilities throughout the State and will remain available throughout the period that the waiver is in effect, regardless of the public agency responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance, as it applies to all eligible children with disabilities in the State;

(2) All of the evidence ~~that~~ the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail--

(i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and

(ii) The procedures ~~that~~ the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include--

(A) The State's procedures under §300.111 for ensuring that all eligible children are identified, located and evaluated;

(B) The State's procedures for monitoring public agencies to ensure that they comply with all requirements of this Part;

(C) The State's complaint procedures under §§300.151 through 300.153; and

(D) The State's hearing procedures under §§300.511 through 300.516 and §§300.530 through 300.536;

(3) A summary of all State and Federal monitoring reports and State complaint decisions (see §§300.151 through 300.153) and due process hearing decisions (see §§300.511 through 300.516 and §§300.530 through 300.536), issued within three years prior to the date of the State's request for a waiver under this section, which includes any findings that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and

(4) Evidence that the State, in determining that FAPE is currently available to all eligible children with disabilities in the State, has consulted with the State advisory panel under §300.167.

(d) If the Secretary determines that the request and supporting evidence submitted by the State make a prima facie showing that FAPE is, and will remain, available to all eligible children with disabilities in the State, the Secretary, after notice to the public throughout the State, conducts a public hearing at which all interested persons and organizations may present evidence regarding the following issues:

(1) Whether FAPE is currently available to all eligible children with disabilities in the State.

(2) Whether the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.

(e) Following the hearing, the Secretary, based on all submitted evidence, will approve a waiver, in whole or in part, for a period of one year, if the Secretary finds that the State has provided clear and convincing evidence that FAPE is currently available to all eligible children with disabilities in the State, and the

State can ensure that FAPE remains available to all eligible children with disabilities, ~~in the State~~ if the Secretary grants the requested waiver.

(f) A State may receive a waiver of the requirement of section 612(a)(18)(A) of the Act and §300.164, if it satisfies the requirements of paragraphs (b) through (e) of this section.

(g) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that all eligible children with disabilities throughout the State have, and will continue to have, FAPE available to them during the one-year period of the waiver.

Subpart C – *cm Eligibility

Authority: 34 CFR §300.202 Use of amounts.

(a) General. Amounts provided to the LEA under Part B of the Act--

- **(1) Must be expended in accordance with the applicable provisions of this Part;**
- **(2) Must be used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with paragraph (b) of this section; and**
- **(3) Must be used to supplement State, local, and other Federal funds and not to supplant those funds.**

(b) Excess cost requirement.

- **(1) General.**
  - **(i) The excess cost requirement prevents the LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to paragraph (b)(1)(ii) of this section.**
  - **(ii) The excess cost requirement does not prevent the LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages. However, the LEA must comply with the nonsupplanting and other requirements of this part in providing the education and services for these children.**
- **(2) (i) The LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.**
  - **(ii) The amount described in paragraph (b)(2)(i) of this section is determined in accordance with the definition of excess costs in §300.16. That amount may not include capital outlay or debt service.**
- **(3) If two or more LEAs jointly establish eligibility in accordance with §300.223, the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in §300.16 in those agencies for elementary or secondary school students, as the case may be.**

Authority: 34 CFR §300.16 Excess costs. Excess costs means those costs that are in excess of the average annual per-student expenditure in the LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting--

(a) Amounts received--

- **(1) Under Part B of the Act;**
- **(2) Under Part A of title I of the ESEA; and**
- **(3) Under Parts A and B of title III of the ESEA; and**

(b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (see Appendix A to Part 300 for an example of how excess cost must be calculated)

Authority: 34 CFR §300.221 Notification of LEA and State agency in case of ineligibility.

If the NMPED determines that the LEA or State agency is not eligible under Part B of the Act, then the NMPED must—

(a) Notify the LEA or State agency of that determination; and

(b) Provide the LEA or State agency with reasonable notice and an opportunity for a hearing

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

G. Notification of LEA in case of ineligibility. Pursuant to 34 CFR §300.221, if the department determines that the LEA is not eligible under Part B of the act, the department shall notify the LEA of that determination and provide the LEA with reasonable notice and an opportunity for a hearing under 34 CFR §76.401(d).

Authority: 34 CFR §300.222 LEA and State agency compliance.

(a) General. If the NMPED, after reasonable notice and an opportunity for a hearing, finds that the LEA or State agency that has been determined to be eligible under this subpart is failing to comply with any requirement described in §§300.201 through 300.213, the NMPED must reduce or must not provide any further payments to the LEA or State agency until the NMPED is satisfied that the LEA or State agency is complying with that requirement.

(b) Notice requirement. Any State agency or LEA in receipt of a notice described in paragraph (a) of this section must, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.

(c) Consideration. In carrying out its responsibilities under this section, the NMPED must consider any decision resulting from a hearing held under §§300.511 through 300.533 that is adverse to the LEA or State agency involved in the decision.

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

H. Withholding of funds for noncompliance. Pursuant to 34 CFR §300.222, if the department, after reasonable notice and an opportunity for a hearing under 34 CFR §76.401(d), finds that a public agency that has previously been determined to be eligible is failing to comply with any requirement described in 34 CFR §§300.201-300.213 and 34 CFR §300.608, the department must reduce or may not provide any further Part B payments to the public agency until the department is satisfied that the public agency is in compliance with that requirement.

I. Reallocation of funds. If a new LEA is created, the base payment portion of the IDEA subgrant of the LEA that would have served children with disabilities now being served by the new LEA will be adjusted pursuant to 34 CFR §300.705(b)(2). IDEA funds to new charter schools that are LEAs will be allocated pursuant to 34 CFR §§76.785-76.799 and 34 CFR §300.705(b). Pursuant to 34 CFR §300.705(c), if the department determines that a public agency is adequately using state and local funds to provide FAPE to all children with disabilities residing in the area served, the department may reallocate any portion of the funds that is not needed by that public agency to assist other LEAs that are not providing adequate special education and related services to all children with disabilities residing in their service areas. The department may also retain those funds for use at the state level, as provided by 34 CFR §300.705(c).

Authority: 34 CFR §300.223 Joint establishment of eligibility.

(a) General. The NMPED may require the LEA to establish its eligibility jointly with another LEA if the NMPED determines that the LEA will be ineligible under this subpart because the LEA will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

(b) Charter school exception. The NMPED may not require a charter school that is an LEA to jointly establish its eligibility under paragraph (a) of this section unless the charter school is explicitly permitted to do so under the State's charter school statute.

(c) Amount of payments. If the NMPED requires the joint establishment of eligibility under paragraph (a) of this section, the total amount of funds made available to the affected LEAs must be equal to the sum of the payments that each LEA would have received under §300.705 if the agencies were eligible for those payments.

Authority: 34 CFR §300.203 Maintenance of effort.

(a) General. Except as provided in §§300.204 and 300.205, funds provided to LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

(b) Standard.

(1) Except as provided in paragraph (b)(2) of this section, the NMPED must determine that the LEA complies with paragraph (a) of this section for purposes of establishing the LEA's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the

same total or per-capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:
(i) Local funds only.
(ii) The combination of State and local funds.

(2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.

(3) The NMPED may not consider any expenditures made from funds provided by the Federal Government for which the NMPED is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the NMPED in determining an LEA's compliance with the requirement in paragraph (a) of this section.

Authority: 34 CFR §300.204 Exception to maintenance of effort.

Notwithstanding the restriction in §300.203(a), the LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year, if the reduction is attributable to any of the following:

(a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

(b) A decrease in the enrollment of children with disabilities.

(c) The termination of the obligation of the agency, consistent with this Part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the NMPED, because the child--
(1) Has left the jurisdiction of the agency;
(2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
(3) No longer needs a program of special education.

(d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

(e) The assumption of cost by the high cost fund operated by the NMPED under §300.704(c).

Authority: 34 CFR §300.205 Adjustment to local fiscal efforts in certain fiscal years.

(a) Amounts in excess. Notwithstanding §300.202(a)(2) and (b) and §300.203(a), and except as provided in paragraph (d) of this section and §300.230(e)(2), for any fiscal year for which the allocation received by the LEA under section §300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by §300.203(a) by not more than 50 percent of the amount of that excess.

(b) Use of amounts to carry out activities under ESEA. If the LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

(c) State prohibition. Notwithstanding paragraph (a) of this section, if the NMPED determines that the LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the NMPED has taken action against the LEA under section 616 of the Act and subpart F of these regulations, the NMPED must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.

(d) Special rule. The amount of funds expended by LEA for early intervening services under §300.226 shall count toward the maximum amount of expenditures that the LEA may reduce under paragraph (a) of this section.

Authority: 34 CFR §300.206 School wide programs under title I of the ESEA.

(a) General. Notwithstanding the provisions of §§300.202 and 300.203 or any other provision of Part B of the Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a school wide program under section 1114 of the ESEA, except that the amount used in any school wide program may not exceed--

(1) (i) The amount received by the LEA under Part B of the Act for that fiscal year; divided by
(ii) The number of children with disabilities in the jurisdiction of the LEA; and multiplied by
(2) The number of children with disabilities participating in the school wide program.

(b) Funding conditions. The funds described in paragraph (a) of this section are subject to the following conditions:
(1) The funds must be considered as Federal Part B funds for purposes of the calculations required by §300.202(a)(2) and (a)(3).
(2) The funds may be used without regard to the requirements of §300.202(a)(1).

(c) Meeting other Part B requirements. Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act must be met by the LEA using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in school wide program schools--
(1) Receive services in accordance with a properly developed IEP; and
(2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

Authority: 34 CFR §300.208 Permissive use of funds.

(a) Uses. Notwithstanding §§300.202, 300.203(a), and §300.162(b), funds provided to the LEA under Part B of the Act may be used for the following activities:
(1) Services and aids that also benefit nondisabled children. For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefits from these services.
(2) Early intervening services. To develop and implement coordinated, early intervening educational services in accordance with §300.226.
(3) High cost education and related services. To establish and implement cost or risk-sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services.

(b) Administrative case management. The LEA may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel who provide the services described in the IEPs.
(See Risk Pool Funds Procedures Below)

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

B. *cm funding and staffing
(1) The *cm provides special education or related services to children with disabilities and shall allocate sufficient funds, staff, facilities and equipment to ensure that the requirements of the IDEA and all department rules and standards that apply to programs for children with disabilities are met.
(2) The public agency with primary responsibility for ensuring that FAPE is available to a child with a disability on the date set by the department for a child count or other report shall include that child in its report for that date. Public agencies with shared or successive responsibilities for serving a particular child during a single fiscal year are required to negotiate equitable arrangements through joint powers agreements or memorandums of understanding or interstate agreements for sharing the funding and other resources available for that child. Such agreements shall include provisions with regard to resolving disputes between the parties to the agreement.
(6) Risk pool fund. (Puente para los Niños fund.)
(a) Local educational agency high cost fund.
(i) In compliance with 34 CFR §300.704(c) the department shall maintain a risk pool fund to support high cost children with disabilities identified by LEAs.
(ii) Funds distributed under this program will be on a reimbursable basis.
(b) Application of funds. LEAs desiring to be reimbursed for the cost of children with disabilities with high needs shall file an application in accordance with the department's Puente para los Niños fund as described on the department's website. *http://www.ped.state.nm.us/SEB/fiscal/index.html*
(See Risk Pool Funds Procedures Below)

C. IDEA applications and assurances. Each New Mexico public agency that desires to receive IDEA flow-through funds shall file an annual application with the department in the form prescribed by the department. Each application shall:
(1) provide all information requested by the department;

(2) demonstrate to the department's satisfaction that the agency is in compliance with all applicable requirements of 34 CFR §§300.200-300.230 and these or other department rules and standards;
(3) include an agreement that the agency upon request will provide any further information the department requires to determine the agency's initial or continued compliance with all applicable requirements;
(4) include assurances satisfactory to the department that the public agency does and will continue to operate its programs in compliance with all applicable federal and state programmatic, fiscal and procedural requirements including the development of joint powers agreements, memoranda of understanding or other interagency agreements to address shared or successive responsibilities to meet the educational needs of a particular child during a single fiscal year; and
(5) pursuant to Subsection C of Section 22-8-11, NMSA 1978, the department shall not approve or certify an operating budget of any school district or state-chartered charter school that fails to demonstrate that it solicited parental involvement in the process.

Risk Pool Fund - High cost education and related services

Authority: 34 CFR §300.208 and NMAC 6.31.2.9 (B) (6).
Disbursements from the Puente para los Niños risk pool fund will be made to meet the requirements of students with high needs as defined below and pursuant to the criteria that follows the definition. Disbursements from the funds may only be used for the costs associated with currently providing direct special education and related services identified in the student with high need's properly constituted Individualized Education Program (IEP). Funds are to be used to assist a student with a disability to benefit from special education and related services. Funds cannot be used for services the LEA and/or Regional Education Cooperatives (REC) would like to provide, but is not currently providing, or expenses such as legal fees, court costs, or other litigation costs. Educational and related services must be provided by individuals who are properly licensed by the NMPED and/or the New Mexico Department of Regulation and Licensing. *See paragraph (B)(6) of 6.31.2.9 NMAC listed above.*

A. Assurances

LEAs or RECs accessing the Puente para los Niños fund must assure the following:

- The student must have been evaluated in accordance with Subsections D and E of 6.31.2.10 NMAC.
- The student qualified for special education and/or related services in accordance with Subsections D, E, and F of 6.31.2.10 NMAC.
- The student has a properly constituted and up-to-date IEP in accordance with §6.31.2.11 NMAC.
- The student's placement was decided by the student's IEP team. §6.31.2.11 NMAC
- The student's placement is in the Least Restrictive Environment (LRE) in accordance with Subsection C of 6.21.2.11 NMAC.
- The LEA or REC agrees to pay at least 25% of the cost per school year to educate a student with high needs, with the exception of small LEAs, as defined in Section (B).

B. Puente para los Niños Fund Application

LEAs or RECs applying for Puente para los Niños funds will need to complete the New Mexico Public Education Department's (NMPED) application form. LEAs or RECs must provide an original and four copies of the following information:

- Number of students meeting the high need definition in Section (A) above as well as the total special education student enrollment. Include the LEA's or REC's last two enrollment counts submitted to the NMPED for the current school year.
- A narrative describing how the cost of the student with high needs impacted the LEA's or REC's budget. The account must include how the student with high needs impacted the services of the other students entitled to special education and/or related services enrolled in the LEA.
- A description of the course of action taken to date by the LEA and/or REC regarding the student with high needs. Be sure to include the number and type of Full Time Equivalent staff (FTEs) affected for each such student.
- The most recent detailed expenditure report showing budgeted and actual year-to date expenditures for each student with high needs.
- Copies of all contracts and invoices that pertain to the student with high needs.

- The student's current redacted IEP. The student's name, parent(s)/guardian(s) name, and contact information such as address and phone number should be removed. Be sure the student's unique identifier number is included on the IEP.

The application along with the supporting documentation listed in Section (B) must be received by the NMPED Special Education Bureau (SEB) at least two weeks prior to the quarterly Puente para los Niños Committee meeting. See Section II for Puente para los Niños Committee information. Completed applications will be reviewed by the Puente para los Niños Committee. Incomplete applications will be returned to the LEA or REC. LEAs or RECs will be notified of the acceptance or rejection within 45 days of the Puente para los Niños Committee meeting. Funds will be distributed according to Section (E) below.

The Puente para los Niños Committee may grant awards for less than the amount of need requested. All Puente para los Niños applications are subject to audit by either the NMPED staff and/or federal auditors. The auditors may review and verify the data submitted in the Puente para los Niños applications including assurances made by the LEAs or RECs. The auditors will consider whether the IEPs are properly constituted and implemented and why LEAs or RECs are exhibiting unusual growth rates or high costs. The results of the auditors' review may be considered by the Puente para los Niños Committee in determining, adjusting, or recovering Puente para los Niños funds.

C. Annual State Education Agency (NMPED) Distribution Schedule

After the LEA or REC receives approval to access Puente para los Niños funds, funds will be reimbursed to the LEA or REC two times per month in accordance with the NMPED reimbursement schedule. Funds will be allocated on a first-come-first served basis. Once funds for the current fiscal year have been exhausted, no further funds will be available until the next fiscal year, unless funds previously allocated to an LEA revert back to the NMPED. Re-application to the Puente para los Niños fund will be required annually for each student with high needs. Funding approval will be determined annually for the state fiscal year of July 1 through June 30. Puente para los Niños financial awards in prior years do not guarantee future eligibility.

D. Reporting Requirements

For auditing purposes, biannual or semester reports (June 30 and December 30) are required by each LEA and/or REC awarded Puente para los Niños funds. Reports must include the following information:

- Student's most current IEP, health plan, and transition plan for students fourteen years old or older.
- Student's proof of continued enrollment in the LEA or REC.
- Expenditure reports and receipts.
- LEA's or REC's proof of providing at least 25% of the cost to educate the student, unless the small LEA exception has been granted.

Notification in writing must be made to the NMPED SEB Data Fiscal Manager within fifteen days when a student with high needs disenrolls from the LEA and/or REC. Final submission of invoices for reimbursement for the student with high need's services must be received at the NMPED no later than 30 days from when the student dis-enrolled from the LEA or REC.

E. Additional Restrictions

Funds cannot be used to pay costs that otherwise would be reimbursed as medical assistance under Medicaid. Funds from the Puente para los Niños fund shall not be used to pay for legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure a FAPE for such a child. The student with high needs' private health insurance cannot be utilized without written consent from the student's parent(s) or guardian(s), as provided in 34 CFR §300.142(f).

(f) Children with disabilities who are covered by private insurance.

(1) With regard to services required to provide FAPE to an eligible child under this part, the LEA may access a parent's private insurance proceeds only if the parent provides informed consent consistent with §300.500(b)(1).

(2) Each time the LEA proposes to access the parent's private insurance proceeds, it must –

(i) Obtain parent consent in accordance with paragraph (f)(1) of this section; and

(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

Puente para los Niños Committee

The Puente para los Niños Committee approves or disapproves all Puente para los Niños applications at the committee meetings or returns the incomplete applications to the LEA or REC for possible resubmission if additional or corrected information is needed. LEA and/or REC applicants may attend the Puente para los Niños Committee meetings. The Puente para los Niños Committee may request that a representative of the LEA or REC be available in person or via teleconferencing to answer questions when the LEA's or REC's application is being considered. Due to the discussion of personally identifiable information of individual students and the confidential nature of the Puente para los Niños Committee meetings, the meetings will not be open to the public.

Puente para los Niños Committee Membership

Membership of the State Puente para los Niños Committee shall consist of:

- SEB Data and Fiscal Manager
- SEB Business Operations Specialist
- NMPED Nurse Consultant
- LEA Superintendent
- LEA Special Education Director
- The State Director of Special Education or his/her designee

The State Director of Special Education or his/her designee shall serve as an ex officio nonvoting committee member and act as the state Puente para los Niños Committee manager.

1. The committee members will be appointed by the State Special Education Director.
2. Members of the committee from LEAs or RECs will be appointed based on their knowledge of special education program service delivery and funding, geographical representation, size of LEA, and other demographic considerations.
3. Alternate members shall be appointed. In the event a member is unable to attend a committee meeting, an alternate member shall attend.
4. Membership appointments shall be made for a period of three years.

Puente para los Niños Committee Procedures

1. The committee will review applications as deemed necessary by the State Director of Special Education.
2. All applications received by the committee will be reviewed for completeness by the committee manager or designee. Applications must include all necessary forms, narratives, and attachments as described in Section (D). If applications are not complete, they will not be considered by the committee.
3. The committee manager or designee will forward to the committee members copies of the applications in a timely manner.
4. The committee manager or designee will be responsible for presenting each application for consideration to the committee.
5. Committee members shall review and discuss the application content for completeness, accuracy, and understanding of the reason(s) for the applicant's need for Puente para los Niños funds.
6. The committee may request that a submitting school district provide clarifying information.
7. Committee members will individually indicate their agreement, disagreement or abstention with the actions of the committee.
8. A majority vote by the committee members will be sufficient to determine the committee action.
9. The committee manager or designee will ensure that notes are taken which summarize the questions and discussion related to each application. A decision summary for each application shall include the amount of the initial request, funding adjustments recommended by the committee, the amount of any award to be made, and the reasons for the action taken by the committee.
10. Committee members shall sign the decision summary.
11. The committee manager or designee, on behalf of the committee, will notify the applicant LEA and/or REC in writing of the determination of the committee. The LEA and/or REC will be provided a copy of the decision summary.
12. All applications received by the committee will be retained by the State Director of Special Education for use in the evaluation of Puente para los Niños funding.

Puente para los Niños Committee Actions

1. The committee must determine that:
   a. there are no unresolved audit examination issues related to applicant that are material in nature;
   b. there are no unresolved child count verification issues related to the applicant that are material in nature; and
   c. all corrections to state enrollment reporting required for resolution of (a) and (b) of this subsection, have been completed.
2. An application reviewed during an application cycle may be:
   a. Approved,
   b. Disapproved, or
   c. Returned to the submitting LEA and/or REC for possible resubmission at a later date during the school year, because information contained in the application is insufficient to establish a need for Puente para los Niños funds.
3. The amount of the approval may be equal to, or less than, ~~that~~ the amount requested.
4. The approval of the application may be contingent on additional requirements imposed by the committee, such as the development of an improvement plan to resolve a specific issue or concern.
5. The application approvals are subject to adjustment and recovery.

Puente para los Niños Committee Application Deadlines and meeting dates are posted on the NMPED website. Hard copy, walk-in, or electronic email applications must be received at the NMPED's Special Education Bureau by 5:00 p.m. on the application deadline day listed on the website. Fax submissions will not be accepted.

B. New Mexico School for the Deaf

Funding of the School for the Deaf

The New Mexico School for the Deaf (NMSD) and the New Mexico State Department of Education (SDE) formed the New Mexico Task Force on the Education of the Deaf and Hard of Hearing:
http://www.ped.state.nm.us/seo/library/deaf.ed.english.pdf

C. New Mexico School for the Blind and Visually Impaired

Authority: 34 CFR §300.210 Purchase of instructional materials.

(a) General. An LEA that chose, by December 3, 2006, to coordinate with the National Instructional Materials Access Center when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions, as an SEA under §300.172.

(b) Rights of LEA.

(1) Nothing in this section shall be construed to require the LEA to coordinate with the National Instructional Materials Access Center (NIMAC).

(2) If the LEA chooses not to coordinate with the National Instructional Materials Access Center, the LEA must provide an assurance to the NMPED that the LEA will provide instructional materials in a timely manner to blind persons or other persons with print disabilities.

(3) Nothing in this section relieves an LEA of its responsibility to ensure that children with disabilities, who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities under 300.172(e)(1)(i), or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

Authority: 34 CFR §300.172 Access to instructional materials.

(a) General. The NMPED must—

(1) Adopt the National Instructional Materials Accessibility Standard (NIMAS), published as Appendix C to Part 300 after publication of the NIMAS in the Federal Register on July 19, 2006 (71 FR 41084), in order to provide instructional materials to blind persons or other persons with print disabilities in a timely manner; and

(2) Establish a State definition of "timely manner" for purposes of paragraphs (b)(2) and (b)(3) of this section if the State is *not* coordinating with the National Instructional Materials Access Center

(NIMAC), or (b)(3) and (c)(2) of this section if the State *is* coordinating with the NIMAC. *The NMPED is coordinating with the NIMAC.*

(b) Rights and responsibilities of the NMPED.

(1) Nothing in this section shall be construed to require any SEA to coordinate with the National Instructional Materials Access Center (NIMAC).

(2) If an SEA chooses not to coordinate with the NIMAC, the agency must provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(3) Nothing in this section relieves an SEA of its responsibility to ensure that children with disabilities, who need instructional materials in accessible formats, but are not included under the definition of blind or other persons with print disabilities in 300.172(e)(1)(i), or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

(4) In order to meet its responsibility under paragraphs (b)(2), (b)(3), and (c) of this section to ensure that children with disabilities who need instructional materials in accessible formats are provided those materials in a timely manner, the NMPED must ensure that public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities at the same time as other children are provided their instructional materials.

(c) Preparation and delivery of files. If the NMPED chooses to coordinate with the NIMAC, as of December 3, 2006, the NMPED must,

(1) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to--

(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(2) Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(d) Assistive technology. In carrying out this section, the NMPED, to the maximum extent possible, must work collaboratively with the State agency responsible for assistive technology programs.

(e) Definitions.

(1) In this section and §300.210--

(i) Blind persons or other persons with print disabilities means children served under this Part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled "An Act to Provide Books for Adult Blind," approved March 3, 1931, 2 USC 135a;

(ii) National Instructional Materials Access Center or NIMAC means the center established pursuant to section 674(e) of the Act;

(iii) National Instructional Materials Accessibility Standard or NIMAS has the meaning given the term in section 674(e)(3)(B) of the Act; and

(iv) Specialized formats has the meaning given the term in section 674(e)(3)(D) of the Act.

(2) The definitions in paragraph (e)(1) of this section apply to each State and LEA, whether or not the State or LEA chooses to coordinate with the NIMAC.

New Mexico School for the Blind and Visually Impaired (formerly NMSVH) has for many years operated an Instructional Resource Center (IRC) on the school's main campus to help provide educational materials for students with visual impairments statewide. In addition, it also now houses the New Mexico Repository, consisting of textbooks in Braille and large print contributed by schools from throughout New Mexico.

Access to appropriate educational materials is essential in meeting the needs of students with visual impairments, and many of these materials can be loaned to schools for eligible students at no cost to the school or student. For ordering information please go to the website: http://www.nmsbvi.k12.nm.us/content/irc.htm

Authority: NMAC §6.75.4.8 GENERAL REQUIREMENTS

A. The department adopts the NIMAS for the purpose of providing print instructional materials in alternate accessible or specialized formats to blind persons or other persons with print disabilities in a timely manner.
B. In consultation with representatives from educational institutions and publishers, the department shall ensure to the qualified student the provision of instructional materials that:
   (1) are deemed essential or required for student success;
   (2) meet requirements for nontextual mathematics or science instructional materials that use mathematical or scientific pictures, illustrations, graphs, charts, symbols or notations;
   (3) maintain structural integrity and meet requirements for textual descriptions of pictures, illustrations, graphs and charts; and
   (4) are available in an alternate accessible or specialized format.

C. The department, through its instructional materials adoption process, shall require publishers to prepare and, on or before delivery of the printed instructional materials, provide to the NIMAC electronic files containing the content of the printed instructional materials using the NIMAS for all instructional material adopted by the department after July 19, 2006. [6.75.4.8 NMAC - N, 12-14-06]

Authority: NMAC §6.75.4.9 REQUIREMENTS: RESPONSIBILITIES OF EDUCATIONAL INSTITUTIONS
A. An educational institution is not required to coordinate with the NIMAC. If the educational institution chooses to coordinate with the NIMAC, the educational institution shall acquire instructional materials in the same manner and subject to the same conditions as provided in §6.75.4.8 NMAC.
B. If an educational institution becomes a coordinating agency with NIMAC, it shall place its orders for instruction materials in alternate accessible or specialized formats through the persons responsible for coordinating services to students with disabilities with the central repository authorized by the department. The central repository shall serve as the authorized user and agent of the educational institution with NIMAC and it will have access to the NIMAC database and it may download NIMAS files in accordance with established agreements so that printed instructional materials can be efficiently converted to alternate accessible or specialized formats. The central repository will perform the conversion of the NIMAS files into the alternate accessible or specialized format and deliver it in a timely manner to the educational institution that ordered it.
C. If the educational institution chooses not to coordinate with the NIMAC, the educational institution shall provide a written assurance to the department in its annual local IDEA application that the educational institution shall provide instructional materials in an alternate accessible or specialized format to blind students or other students with print disabilities in a timely manner.
D. Educational institutions, through the persons responsible for coordinating services to students with disabilities, must certify in writing to the central repository authorized by the department that:
   (1) the materials are deemed essential or required for student success;
   (2) an electronic copy of the materials will be used solely for the student's educational purposes.
E. No educational institution, its employees or its students shall authorize any use of instructional materials that would be inconsistent with the provisions of 17 U.S.C. Section 121 as amended by Title III, Section 306 of the IDEA. [6.75.4.9 NMAC - N, 12-14-06]

D. Noneducational Funds

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:
B. Public agency funding and staffing
(5) Educational agencies may seek payment or reimbursement from noneducational agencies or public or private insurers for the services and/or devices necessary to ensure FAPE to children with disabilities. Claims for payment or reimbursement shall be subject to the procedures and limitations established in 34 CFR §§300.154(b) and 300.154(d) through (g), §22-13-8 NMSA 1978 and any laws, regulations, executive orders, contractual arrangements or other requirements governing the obligations of non-educational payors. (Note: 34 CFR §300.154(d)(2)(iv) and (v) were amended 3/18/13.)

E. Private School Funding

For additional requirements on Private School Funding and Proportionate Share, see Chapter 6 LRE.

F. Public Insurance

Authority: 34 CFR §300.154. Methods of ensuring services.

(d) Children with disabilities who are covered by public benefits or insurance.

(1) The LEA may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this Part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child under this Part, the LEA--

(i) May not require parents to sign up for, or enroll in, public benefits or insurance programs so that their child may receive FAPE under Part B of the Act;

(ii) May not require parents to incur an out-of-pocket expense, such as the payment of a deductible or co-pay incurred in filing a claim for services provided under this Part but, pursuant to paragraph (g)(2) of this section, may pay the cost that the parent otherwise would be required to pay;

(iii) May not use a child's benefits under a public benefits or insurance program if that use would--

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of benefits or insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures;

(3) Prior to obtaining parental consent and accessing the parent's or child's public benefits, the LEA must provide written notice to the child's parents consistent with 34 CFR Sec. 300. 503(c). The written notice must be provided annually thereafter and must contain the following:

(i) The notice must meet the parental consent provisions of 34 CFR §99.30 and 34 CFR §300.622 and must specify:

(A) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child);

(B) the purpose of the disclosure (e.g., billing for services under Part 300);

(C) the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program or Medicaid); and

(D) that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under 34 CFR Part 300.

(ii) The written notice must further include:

(A) a statement of the "no cost" provisions in 34 CRF Sec. 154 (d)(2)(i-iii);

(B) a statement that the parents have the right under 34 CFR Parts 99 and 300 to withdraw their consent to disclosure of their child's personally identifiable information to the New Mexico Medicaid program at any time; and

(C) a statement that the withdrawal of consent or refusal to provide consent under 34 CFR Parts 99 and 300 does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.

(4) Prior to accessing a child's or parent's public benefits or insurance for the first time and *after* providing notice to the child's parents as required in paragraph (3) of this section, the LEA must obtain written parental consent, as defined by 34 CFR Sec. 300.9, and consistent with the requirements of 34 CFR Sec. 300.154(d)(2)(iv).

(i) The written consent must meet the requirements of 34 CFR 99.30 and 34 CFR Sec. 300.622 and specify (A) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to the child, (B) the purpose

of the disclosure, e.g. (billing for services under 34 CFR Part 300, and (C) the agency to which disclosure may be made (e.g. New Mexico Medicaid program); and

(ii) The written consent must specify that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under 34 CFR Part 300.

(5) The LEA is not required to obtain a new parental consent if the following conditions are present:

(i) There is no change in any of the following: the type of services to be provided to the child; the amount of services to be provided to the child; or the cost of the services to be charged to the public benefits or insurance program; and

(ii) The public agency has on file a parental consent meeting the requirements of 34 CFR Sec. 300.9, 34 CFR Sec 99.30 and 34 CFR Sec. 300.622.

(e) Children with disabilities who are covered by private insurance.

(1) With regard to services required to provide FAPE to an eligible child under this Part, the LEA may access a parent's private insurance proceeds only if the parent provides consent consistent with §300.9.

(2) Each time the LEA proposes to access the parent's private insurance proceeds, the LEA must--

(i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and

(ii) Inform the parents that their refusal to permit the LEA to access their private insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.

(f) Use of Part B funds.

(1) If the LEA is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the LEA may use its Part B funds to pay for the service.

(2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the LEA may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parent's benefits or insurance (e.g., the deductible or co-pay amounts).

(g) Proceeds from public benefits or insurance or private insurance.

(1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.

(2) If the LEA spends reimbursements from Federal funds (e.g., Medicaid) for services under this Part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§300.163 and 300.203.

(h) Construction. Nothing in this Part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program. (Note: 34 CFR §300.154(d)(2)(iv) and (v) were amended 3/18/13.)

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

B. Public agency funding and staffing

(7) Pursuant to 34 CFR §300.154(d), the LEA may use the Medicaid or other public benefits or insurance in which a child participates to provide or pay for services required under the IDEA Part B regulations, as permitted under the public insurance program, except as provided in (a) below.

(a) With regard to services required to provide FAPE to an eligible child, the LEA:

(i) may not require parents to sign up for, or enroll in, public insurance programs so that their child may receive FAPE under Part B of the IDEA;

(ii) may not require parents to incur an out-of-pocket expense, such as the payment of a deductible or co-pay incurred in filing a claim for services, as provided in IDEA Part B regulations. Pursuant to 34 CFR §300.154(f)(2), the public agency may pay the cost that the parent otherwise would be required to pay; and

(iii) may not use a child's benefits under a public benefits or insurance program if that use would: (a) decrease available lifetime coverage or any other insured benefit; (b) result in the family paying for services that would otherwise be covered by the public insurance program

and are required for the child outside of school; (c) increase premiums or lead to the discontinuation of benefits or insurance coverage; or (d) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures. (Note: 34 CFR §300.154(d)(2)(iv) and (v) were amended 3/18/13)

(b) Pursuant to 34 CFR §300.154(e), an educational agency must obtain a parent's informed written consent for each proposed use of private insurance benefits and must inform parents that their refusal to permit the use of their private insurance will not relieve the educational agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(c) Pursuant to 34 CFR §300.154(f):

(i) if the LEA is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under the IDEA Part B regulations, to ensure FAPE the LEA may use its Part B funds to pay for the service; and

(ii) to avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the LEA may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

G. Residential Expenses *(See Chapter 6 LRE for references to RTC)*

Authority: NMAC §6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:
B. Public agency funding and staffing

(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.

H. State Funds

The state education funds for special education are weighted dollars based on service level of the student. These funds are distributed as part of the State Equalization Formula and go directly to the districts. Expenditure of these funds is generally used for teacher salaries and is at the discretion of the district.

I. Transportation

Authority: 34 CFR §300.139 Location of services and transportation. *(See also Chapter 6 LRE)*

(a) Services on private school premises. Services to parentally-placed private school children with disabilities may be provided on the premises of private schools, 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) LEAs 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 section may be included in calculating whether the LEA has met the requirement of §300.133. *(§300.133 Expenditures for Parentally placed students)*

Authority: NMSA 1978 § 22-16-6. Reimbursement of parents or guardians.
The LEA local school board may, subject to regulations adopted by the state board [department], provide per capita or per mile reimbursement to a parent or guardian in cases where regular school bus transportation is impractical because of distance, road conditions or sparseness of population or in cases where the local school board has authorized a parent to receive reimbursement for travel costs incurred by having a child attend a school outside the child's attendance zone.

XI. GIFTED STUDENTS

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

Authority: NMSA 1978 22-13-6.1 Gifted children; determination.

A. The NMPED has adopted standards pertaining to the determination of who is a gifted child and published those standards as part of the educational standards for New Mexico schools.

B. In adopting standards to determine who is a gifted child, the NMPED has provided for the evaluation of selected school-age children by multidisciplinary teams from each child's school district. That team will be vested with the authority to designate a child as gifted. The team will consider information regarding a child's cultural and linguistic background and socioeconomic background in the identification, referral and evaluation process. The team also will consider any disabling condition in the identification, referral and evaluation process.

C. Each school district offering a gifted education program will create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a single district wide advisory committee. The membership of each advisory committee will reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. The advisory committee will regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery and shall demonstrate support for the gifted program.

D. In determining whether a child is gifted, the multidisciplinary team will consider diagnostic or other evidence of the child's:

(1) creativity or divergent-thinking ability;
(2) critical thinking or problem solving ability;
(3) intelligence; and
(4) achievement.

Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

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 Secs. 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 Secs. 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 plan 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 2.-Evaluation and 3.-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 2.-Evaluation and 3.-Gifted Students. The NMPED provides funds under Section 22-8-21 NMSA 1978 only for department-approved gifted programs for those students who meet the established criteria.*

G. Advisory committees.
   (1) Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a district-wide advisory committee.
   (2) The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. Representation from all schools the committee is advising is required.
   (3) Purposes. The advisory committee shall:
      (a) regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery;
      (b) demonstrate support for the gifted program;
      (c) provide information regarding the impact that cultural background, linguistic background, socioeconomic status and disability conditions within the community may have on the child referral, identification, evaluation and service delivery processes;
      (d) advocate for children who have been under-represented in gifted services due to cultural or linguistic background, socioeconomic status, or disability conditions, in order to ensure that these children have equal opportunities to benefit from services for gifted students; and
      (e) meet three or more times per year at regular intervals.
   (4) Formal documentation of committee membership, activities and recommendations shall be maintained. If proposals are made by the committee to address any of the purposes as listed in Subsection G(3) of 6.31.2.12 NMAC, they shall be submitted in writing to the district administration. The administration shall respond in writing to any proposed actions before the next scheduled meeting of the advisory committee.

The advisory members should:
- *be knowledgeable and interested in gifted education*
- *reflect the cultural diversity of the school's enrollment*
- *be made up of parents, community members, school staff, and students*

The advisory committee does NOT:
- *conduct MDT/IEP meetings*
- *review confidential information on individual students*
- *monitor the teacher, school or district regarding gifted education*

Guidelines for Curriculum:

Students receiving gifted services must be provided a differentiated education from that regularly provided by New Mexico school districts. It is important that teachers of gifted students be aware of the following curricular issues and resources:

- techniques for differentiation of curriculum
- methods and materials specific to gifted students
- scope and sequence of their district's regular curriculum-standards/benchmarks of district
- academic needs of individual gifted students in relation to the district's regular curriculum
- state standards
- district gifted curriculum guides
- district/community philosophy toward gifted education.

Focused monitoring:

Gifted Education in New Mexico is under the umbrella of Special Education. A gifted child in this state is defined as a school-age person whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking is so outstanding that a properly constituted Individual Education Plan (IEP) team decides special education services are required to meet the child's educational needs.

Each district is responsible for finding children who meet the criteria for services and have a demonstrated need and providing appropriate service. All of the applicable rules for children with disabilities apply to gifted children with **two exceptions**:

- child find in private schools, home schooled children, those enrolled in state supported schools, or children in detention and correctional facilities; and
- the provisions afforded children with disabilities regarding disciplinary changes of placement.

XII. CHARTER SCHOOLS

Authority: 34 CFR §300.7 Charter school.

Charter school has the meaning given the term in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 20 USC 6301 *et. seq.* (ESEA). (Authority: 20 U.S.C. 7221i(1))

Authority: 34 CFR §300.209 Treatment of charter schools and their students.

(a) Rights of children with disabilities. Children with disabilities who attend public charter schools and their parents retain all rights under this part.

(b) Charter schools that are public schools of the LEA.

(1) In carrying out Part B of the Act and these regulations with respect to charter schools that are public schools of the LEA, the LEA must--

(i) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and

(ii) Provides funds under Part B of the Act to those charter schools--

(A) On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

(B) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law.

(2) If the public charter school is a school of the LEA that receives funding under §300.705 (Subgrants to LEAs) and includes other public schools--

(i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and

(ii) The LEA must meet the requirements of paragraph (b)(1) of this section.

(c) Public charter schools that are LEAs. If the public charter school is an LEA, consistent with §300.28, that receives funding under §300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity.

(d) Public charter schools that are not an LEA or a school that is part of an LEA.

(1) If the public charter school is not an LEA receiving funding under §300.705, or a school that is part of an LEA receiving funding under §300.705, the NMPED is responsible for ensuring that the requirements of this part are met.

(2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the NMPED must maintain the ultimate responsibility for ensuring compliance with this part, consistent with §300.149.

Authority: NMAC §6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

I. Children in charter schools.

(1) Pursuant to 34 CFR §300.209, children with disabilities who attend public charter schools and their parents retain all rights under Part B of IDEA.

(2) Charter schools that are public schools of the *cm, if any:

(a) the public agency must serve children with disabilities attending those charter schools in the same manner as the public agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and

(b) the public agency must provide funds under Part B of IDEA to those charter schools on the same basis as the public agency provides funds to the public agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities, and at the same time as the public distributes other federal funds to the public agency's other public schools, consistent with the state's charter school law; and

(c) if the public charter school is a school of an LEA that receives funding under 34 CFR §300.705 and includes other public schools:

(i) the LEA is responsible for ensuring that the requirements of this part are met, unless state law assigns that responsibility to some other entity; and

(ii) the LEA must meet the requirements of Paragraph (2) of this subsection.

(3) Public charter schools that are LEAs. If the public charter school is an LEA, consistent with 34 CFR §300.28, that receives funding under 34 CFR §300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless state law assigns that responsibility to some other entity. Charter schools who are LEAs authorized under the public education commission must satisfy child find requirements for children enrolled in the charter school.

(4) Public charter schools that are not an LEA or a school that is part of an LEA.

(a) If the public charter school is not an LEA receiving funding under 34 CFR §300.705, or a school that is part of an LEA receiving funding under 34 CFR §300.705, the department is responsible for ensuring that the requirements of this part are met.

(b) Subparagraph (a) of this paragraph does not preclude the governor from assigning initial responsibility for ensuring the requirements of this part are met to another entity, however, the department must maintain the ultimate responsibility for ensuring compliance with this part, consistent with 34 CFR §300.149.

For references to New Mexico Statutes on Charter Schools, please see:
http://public.nmcompcomm.us/nmpublic/gateway.dll/?f=templates&fn=default.htm

Authority: NMSA 1978 22-8B-2. Definitions.

As used in the Charter Schools Act [22-8B-1 NMSA 1978]

A. "charter school" means a conversion school or start-up school authorized by the chartering authority to operate as a public school;
B. "chartering authority" means either a local school board or the commission;
C. "commission" means the public education commission;
D. "conversion school" means an existing public school within a school district that was authorized by a local school board to become a charter school prior to July 1, 2007;
E. "division" means the charter schools division of the department;
F. "governing body" means the governing structure of a charter school as set forth in the school's charter; and
G. "start-up school" means a public school developed by one or more parents, teachers or community members authorized by the chartering authority to become a charter school.

Authority: NMSA 1978 22-8B-4. Charter schools' rights and responsibilities; operation.

A. A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services.
B. A charter school shall be governed by a governing body in the manner set forth in the charter; provided that a governing body shall have at least five members; and provided further that no member of a governing body for a charter school that is initially approved on or after July 1, 2005 or whose charter is renewed on or after July 1, 2005 shall serve on the governing body of another charter school.
C. A charter school shall be responsible for:
   (1) its own operation, including preparation of a budget, subject to audits pursuant to the Audit Act; and
   (2) contracting for services and personnel matters.
D. A charter school may contract with a school district, a university or college, the state, another political subdivision of the state, the federal government or one of its agencies, a tribal government or any other third party for the use of a facility, its operation and maintenance and the provision of any service or activity that the charter school is required to perform in order to carry out the educational program described in its charter. Facilities used by a charter school shall meet the standards required pursuant to Section 22-8B-4.2 NMSA 1978.
E. A conversion school chartered before July 1, 2007 may choose to continue using the school district facilities and equipment it had been using prior to conversion, subject to the provisions of Subsection F of this section.
F. The school district in which a charter school is geographically located shall provide a charter school with available facilities for the school's operations unless the facilities are currently used for other educational purposes. A charter school shall not be required to pay rent for the school district facilities if the facilities can be provided at no cost to the school district. If facilities are available but cannot be provided at no cost to the school district, the school district shall not charge more than the actual direct cost of providing the facilities. The available facilities provided by a school district to a charter school shall meet all occupancy standards as specified by the public school capital outlay council. As used in this subsection, "other educational purposes" includes health clinics, daycare centers, teacher training centers, school district administration functions and other ancillary services related to a school district's functions and operations.
G. A locally chartered charter school may pay the costs of operation and maintenance of its facilities or may contract with the school district to provide facility operation and maintenance services.
H. Locally chartered charter school facilities are eligible for state and local capital outlay funds and shall be included in the school district's five-year facilities plan.
I. A locally chartered charter school shall negotiate with a school district to provide transportation to students eligible for transportation under the provisions of the Public School Code [22-1-1 NMSA 1978]. The school district, in conjunction with the charter school, may establish a limit for student transportation to and from the charter school site not to extend beyond the school district boundary.
J. A charter school shall be a nonsectarian, nonreligious and non-home-based public school.
K. Except as otherwise provided in the Public School Code, a charter school shall not charge tuition or have admission requirements.
L. With the approval of the chartering authority, a single charter school may maintain separate facilities at two or more locations within the same school district; but, for purposes of calculating program units pursuant to the Public School Finance Act [22-8-1 NMSA 1978], the separate facilities shall be treated together as one school.

M. A charter school shall be subject to the provisions of Section 22-2-8 NMSA 1978 and the Assessment and Accountability Act [22-2C-1 NMSA 1978].
N. Within constitutional and statutory limits, a charter school may acquire and dispose of property; provided that, upon termination of the charter, all assets of the locally chartered charter school shall revert to the local school board and all assets of the state-chartered charter school shall revert to the state.
O. The governing body of a charter school may accept or reject any charitable gift, grant, devise or bequest; provided that no such gift, grant, devise or bequest shall be accepted if subject to any condition contrary to law or to the terms of the charter. The particular gift, grant, devise or bequest shall be considered an asset of the charter school to which it is given.
P. The governing body may contract and sue and be sued. A local school board shall not be liable for any acts or omissions of the charter school.
Q. A charter school shall comply with all state and federal health and safety requirements applicable to public schools, including those health and safety codes relating to educational building occupancy.
R. A charter school is a public school that may contract with a school district or other party for provision of financial management, food services, transportation, facilities, education-related services or other services. The governing body shall not contract with a for-profit entity for the management of the charter school.
S. To enable state-chartered charter schools to submit required data to the department, an accountability data system shall be maintained by the department.
T. A charter school shall comply with all applicable state and federal laws and rules related to providing special education services. Charter school students with disabilities and their parents retain all rights under the federal Individuals with Disabilities Education Act and its implementing state and federal rules. Each charter school is responsible for identifying, evaluating and offering a free appropriate public education to all eligible children who are accepted for enrollment in that charter school. The state-chartered charter school, as a local educational agency, shall assume responsibility for determining students' needs for special education and related services. The division may promulgate rules to implement the requirements of this subsection.

Authority: NMSA 1978 22-8B-5. Charter schools; status; local school board authority.
A. The local school board may waive only locally imposed school district requirements for locally chartered charter schools.
B. A state-chartered charter school is exempt from school district requirements. A state-chartered charter school is responsible for developing its own written policies and procedures in accordance with this section.
C. The department shall waive requirements or rules and provisions of the Public School Code [22-1-1 NMSA 1978] pertaining to individual class load, teaching load, length of the school day, staffing patterns, subject areas, purchase of instructional material, evaluation standards for school personnel, school principal duties and driver education. The department may waive requirements or rules and provisions of the Public School Code pertaining to graduation requirements. Any waivers granted pursuant to this section shall be for the term of the charter granted but may be suspended or revoked earlier by the department.
D. A charter school shall be a public school accredited by the department and shall be accountable to the chartering authority for purposes of ensuring compliance with applicable laws, rules and charter provisions
E. A local school board shall not require any employee of the school district to be employed in a charter school.
F. A local school board shall not require any student residing within the geographic boundary of its district to enroll in a charter school.
G. A student who is suspended or expelled from a charter school shall be deemed to be suspended or expelled from the school district in which the student resides.

Authority: NMSA 1978 22-8B-10. Charter schools; employees.
A. A charter school shall hire its own employees. The provisions of the School Personnel Act [22-10A-1 NMSA 1978] shall apply to such employees; provided, however, that a charter school may determine by indicating in its charter that either its governing body or head administrator shall make all employment decisions. The governing body shall be deemed to be responsible for making all employment decisions if the charter does not specify the decision maker.
B. A charter school shall not initially employ or approve the initial employment of a head administrator who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter or daughter-in-law of a member of the governing body. A charter school shall not initially employ or approve the initial employment of a licensed school employee who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law,

daughter or daughter-in-law of the head administrator. The governing body may waive the nepotism rule for family members of a head administrator.

C. Nothing in this section shall prohibit the continued employment of a person employed on or before July 1, 2007.

Authority: NMSA 1978 22-8B-13. Charter school financing.

A. The amount of funding allocated to a charter school shall be not less than ninety-eight percent (98%) of the school-generated program cost. The school district or division may withhold and use two percent of the school-generated program cost for its administrative support of a charter school.
B. That portion of money from state or federal programs generated by students enrolled in a locally chartered charter school shall be allocated to that charter school serving students eligible for that aid. Any other public school program not offered by the locally chartered charter school shall not be entitled to the share of money generated by a charter school program.
C. When a state-chartered charter school is designated as a board of finance pursuant to Section 22-8-38 NMSA 1978, it shall receive state and federal funds for which it is eligible.
D. Charter schools may apply for all federal funds for which they are eligible. .
E. All services centrally or otherwise provided by a local school district, including custodial, maintenance and media services, libraries and warehousing shall be subject to negotiation between the charter school and the school district. Any services for which a charter school contracts with a school district shall be provided by the district at a reasonable cost.

Authority: NMSA 1978 22-2-8. School standards.

The state board [department] shall prescribe standards for all public schools in the state. A copy of these standards shall be furnished by the department to each local school board, local superintendent and school principal. The standards shall include standards for the following areas:

A. curriculum, including academic content and performance standards;
B. organization and administration of education;
C. the keeping of records, including financial records prescribed by the department;
D. membership accounting;
E. teacher preparation;
F. the physical condition of public school buildings and grounds; and
G. educational facilities of public schools, including laboratories and libraries.

The LEA will follow NMPED's advice, to the extent it applies, as outlined in the following letters regarding Charter Schools.

Feb. 7, 2007, letter from Patricia Parkinson, EdD.

Is the LEA required to make existing behavioral supports that are available to all schools of the LEA also available to the charter schools that it has authorized?

20 USC §1413(a)(5)(A) of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) provides that the LEA "serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools." See also 34 C.F.R. §§300.209(b)(i) and 6.31.2.11(I)(1) NMAC. It is clear from these citations that the LEA must provide services to its charter schools on the same basis as it does to other schools within the District. Therefore, if it provides behavioral supports to its other schools within the District, it must provide those same behavioral supports to the charter school.

Must a charter school offer a continuum of services to students with IEPs enrolled in the charter school and must a representative of the LEA attend the student's IEP meeting?

Pursuant to §6.31.2.11(I)(2) NMAC, each charter school is responsible for serving children with disabilities in the same manner as in other schools within the LEA. Therefore, the charter would have to provide services to their special education students in the same manner as those services are provided at schools that are not Responsibilities to Charter Schools charters. However, based on the statute and regulations cited in the above paragraph, the LEA would have to provide the charter school with the same level of support that is provided in its other schools.

Does a representative of the LEA have to attend an IEP meeting for a student enrolled in a charter school?

The IEP team members are listed in 34 CFR §300.321(a). One of the team members is a representative of the public agency who is qualified to supervise the provision of special education services, and is knowledgeable about the general curriculum and the availability of resources of the public agency. 34 C.F.R. §300.321(a)(4). That description does not necessarily describe someone from the LEA administration, although it could. In comments to the IDEA regulations, the following was said about §300.321(a)(4):

> Section 300.321(a)(4) incorporates the language in section 614(d)(1)(B)(iv) of the Act and requires the IEP Team to include a representative of the public agency who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities; is knowledgeable about the general education curriculum; and is knowledgeable about the availability of LEA resources. A public agency may determine which specific staff member will serve as the agency representative in a particular IEP Team meeting, so long as the individual meets these requirements. It is important, however, that the agency representative have the authority to commit agency resources and be able to ensure that whatever services are described in the IEP will actually be provided.

71 Fed. Reg. 156, p. 46670 (2006). If no one within the charter school has the authority to commit agency resources, it may be assumed that someone from the LEA administration with that authority would have to attend the IEP meeting. The LEA could designate who they want as the agency representative, just so long as that person has authority to commit agency resources. Moreover, if the principal or special education coordinator of the charter school involved has the requisite authority to commit school resources to the services described in the IEP, no one from the LEA need attend.

The question of who has the authority to commit agency resources with respect to charters is answered by both IDEA and state law. IDEA requires an LEA to provide Part B funds to its charter schools on the same basis and at the same time it provides such funds to its other public schools, consistent with the State's charter school law. 20 USC §1413(a)(5)(B). Pursuant to 22-8-6.1 NMSA 1978, as amended, a state-chartered charter school is required to submit a school-based budget to the charter school division of the NMPED. The locally-chartered charter school will continue to submit its school-based budget to the local school board.

Once the budget is approved, a charter school representative has the authority to commit resources out of the charter school budget for services required by an IEP. If the required services are within the charter school budget, an LEA representative need not attend the student's IEP meeting. However, if the services required by the student's IEP exceed the budget of the charter school, a representative of the LEA would need to attend IEP meetings since a commitment of LEA resources would be required to comply with the student's IEP.

December 5, 2000, letter from Michael J. Davis
The SDE advises as follows:

- charter school budgets should be reviewed by the schools and the local district to ensure that enough funds are available from the state equalization guarantee and federal IDEA funds to meet each school's needs for special education and related services. All future charter school budgets will be required to allocate enough funds to meet each school's foreseeable special education responsibilities before the budgets will be approved by the SDE.
- Charter schools may provide special education and related services to eligible students with their own staffs or through contracts with their districts, regional cooperatives or other qualified service providers.
- A charter school should only ask the district to provide additional services for students with special needs if the school has exhausted its state and federal special education funds and budgeted emergency reserves. In every such case, the district must participate appropriately in the determination of eligibility and the development of the student's individualized education program (IEP).

XIII. STATE PERFORMANCE PLAN - SPP

The New Mexico PED submitted to the Submitted to the Office of Special Education Programs United States Department of Education, the State Performance Plan for Special Education FFY 2005-2010. The plan was effective December 2, 2005, and was revised: January 20, 2006. The State Performance Plan is available to the public on the website: http://www.ped.state.nm.us/seo/data/SPP.1.20.06.final.pdf

XIV. STATE-IMPOSED RULES (not required by IDEA or Federal regulations)

IDEA 2004 requires the listing of areas in which state rules, regulations and policies exceed the federal regulations. Areas listed below were submitted by the NMPED in the Part B Annual State Application: FFY 2010 OMB No. 1820-0030/Expiration Date – 06/30/2012.

State-imposed Rules (not required by IDEA or Federal Regulations)

6.31.2 NMAC--CHILDREN WITH DISABILITIES/GIFTED CHILDREN

6.31.2.7-Definitions
- 6.31.2.7(B)--State-specific definitions.
- 6.31.2.7(C)(1)-(2)—Definitions related to dispute resolution. "State-specific alternative dispute resolution (ADR) options.
- 6.31.2.7(D)—Definitions relating to Educational Services for Gifted Children.

6.31.2.9—Public Agency Responsibilities
- 6.31.2.9(B)(2)—Child Count reporting.
- 6.31.2.9(B)(3)—" Placement of students in private or public residential treatment centers, or other out of home treatment or habilitation programs, by the IEP team."
- 6.31.2.9(C)(5)—*Requirement of §22.8.11(C) NMSA 1978*

6.31.2.10—Identification, Evaluations and Eligibility Determinations
- 6.31.2.10(D)(1)(c)(iii)—*Evaluation referral records.*
- 6.31.2.10(E)(6)—*Assessment of culturally and linguistically diverse students.*
- 6.31.2.10(F)(2)— Optional use of developmentally delayed classification for children ages 3--9. *Developmentally delayed classification option.*

6.31.2.11—Educational Services for Children with Disabilities
- 6.31.2.11(A)(4)(g)—*Timeline for IFSP, IEP or IFSP-IEP development.*
- 6.31.2.11(B)(3)—*IEP team member signatures.*
- 6.31.2.11(G)(1)—*Graduation planning.*
- 6.31.2.11(G)(3)—*Development of post-school goals beginning at age 14.*
- 6.31.2.11(G)(6)—*Allows students who turn 22 during school year to continue to receive services to end of school year.*
- 6.31.2.11(K)(2)(b)—*Provides LEA summer emergency contract for purposes of providing records for children entering juvenile correction facilities during summer months.*

6.31.2.12—Educational Services for Gifted Children
- *(entire section) Services for Gifted Children.*

6.31.2.13—Additional Rights of Parents, Students and Public Agencies
- 6.31.2.13(G)(2)(c)—*Complaint Assistance IEP (CAIEP) and Facilitated IEP (FIEP) meetings.*
- 6.31.2.13(H)(2)(a)—*State complaint requirements.*
- 6.31.2.13(H)(3)—*"Preliminary meeting", CAIEP and FIEP meetings.*
- 6.31.2.13(H)(6)—*"Complaints against the department." Appointment of and investigation by an impartial person.*
- 6.31.2.13(I)(1)(b)—*Gifted services.*
- 6.31.2.13(I)(2)(c)—*Summary due process hearing.*
- 6.31.2.13(I)(3)(d)—*Scope of due process hearings.*
- 6.31.2.13(I)(5)(g)—*Due process hearing request requirements.*
- 6.31.2.13(I)(7)(b)—*IEP facilitator.*

- 6.31.2.13(I)(8)(b)—*FIEP meeting.*
- 6.31.2.13(I)(8)(c)(ii)—*FIEP meetings.*
- 6.31.2.13(I)(10)(b)—*Initial prehearing conference.*
- 6.31.2.13(I)(11)—*"Withdrawal of request for hearing." Withdrawal of due process hearing request.*
- 6.31.2.13(I)(12)—*"Prehearing procedures." Prehearing conference.*
- 6.31.2.13(I)(14)—*Stipulated facts.*
- 6.31.2.13(I)(15)—*"Summary due process hearing." Summary due process hearing.*
- 6.31.2.13(I)(20)(c),(d),(e) & (f)—*Expedited due process hearings (timeline, etc.).*
- 6.31.2.13(I)(24)—*"Expenses of the hearing." Hearing expenses.*
- 6.31.2.13(I)(25)(b)—*Civil action (timeline, gifted services as basis for action).*
- 6.31.2.13(I)(26)(b),(d) & (e)—*Attorneys' fees.*
- 6.31.2.13(I)(29)—*"Effective date and transitional provisions." Effect of revised due process rules.*
- 6.31.2.13(L)(3)(a)—*Civil "Transfer of student records." FERPA notice requirement.*
- 6.31.2.13(L)(5)(b)—*Personally identifiable information.*
- 6.31.2.13(L)(6)—*"Educational records retention and disposition schedules."*

6.30.2 NMAC—STANDARDS FOR EXCELLENCE

6.29.1 9—Procedural requirements.
- 6.29.1.9(D)- Student Intervention System-- three-tier structure
- 6.29.1.9(H)—"Student/staff ratios in gifted and special education." *Student/staff ratios*.
- 6.29.1.9(J)—*Graduation requirements.*
- 6.29.1.11—Program requirements.
- 6.29.1.11(F)—*Special education program requirements*.

6.11.2 NMAC—RIGHTS AND RESPONSIBILITIES OF THE PUBLIC SCHOOL AND PUBLIC SCHOOL STUDENTS

6.11.2.10—Discipline of students with disabilities.
- 6.11.2.10(G)(3)—*"Program prescriptions." Specification of disciplinary measures in IEP.*
- 6.11.2.10(G)(4)—*"Immediate removal." Immediate removal of students with disabilities.*

6.41.4 NMAC—STANDARDS FOR PROVIDING TRANSPORTATION FOR ELIGIBLE STUDENTS

6.41.4.8—Local board of Education Responsibilities.
- 6.41.4.8(A)(5)(b),(d),(g) &(h)—*IEP team responsibilities regarding discipline and transportation.*