

**Cloudcroft Municipal School District
PROCEDURES
FOR THE
PROVISION OF
SPECIAL EDUCATION SERVICES
FOR
STUDENTS WITH DISABILITIES AND GIFTED STUDENTS**

Chapter 6. - LEAST RESTRICTIVE ENVIRONMENT (LRE)

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Chapter 6. - LEAST RESTRICTIVE ENVIRONMENT (LRE)

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Chapter 6. LEAST RESTRICTIVE ENVIRONMENT (LRE)

The Cloudercroft Municipal School District recognizes the Public Education Department's rulemaking authority (established by the Public Education Department Act) as follows: "The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions.... Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary...." (NMSA 1978 §9-24-8(D)).

In addition to making and adopting rules, the NMPED provides guidance to local educational agencies. To the extent that the NMPED's guidance is consistent with the IDEA (and its implementing federal regulations and state statutes and rules), and does not impose a requirement that is not otherwise imposed by the IDEA (and its implementing federal regulations and state statutes and rules) without specific notice under 34 C.F.R. §300.299(a)(2), the Cloudercroft Municipal School District will follow the guidance of the PED.

I. LEAST RESTRICTIVE ENVIRONMENT

Authority: 34 CFR §300.114 LRE requirements.

(a) General.

- (1) Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§300.115 through 300.120.**
- (2) The Cloudercroft Municipal School District will ensure that --**
 - (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and**
 - (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.**

Authority: 34 CFR §300.116 Placements.

In determining the educational placement of a child with a disability, including a preschool child with a disability, the Cloudercroft Municipal School District will ensure that--

(a) The placement decision--

- (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and**
- (2) Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118;**

(b) The child's placement--

- (1) Is determined at least annually;**
- (2) Is based on the child's IEP; and**
- (3) Is as close as possible to the child's home, unless the parent agrees otherwise;**

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

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

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

Authority: 34 CFR §300.324 Development, review, and revision of IEP.

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(d) Children with disabilities in adult prisons.

...

(2) Modifications of IEP or placement.

- (i) Subject to paragraph (c)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison may modify the child's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.**
- (ii) The requirements of §§300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section.**

Authority: 34 CFR §300.117 Nonacademic settings.

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

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

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C. Least restrictive environment

- (1) Except as provided in 34 CFR Sec. 300.324(d) and Subsection K of 6.31.2.11 NMAC for children with disabilities who are convicted as adults under state law and incarcerated in adult prisons, all educational placements and services for children with disabilities must be provided in the least restrictive environment that is appropriate to each child's needs in compliance with 34 CFR Secs. 300.114-300.120.**
- (2) In determining the least restrictive environment for each child's needs, the Cloudfcroft Municipal School District and its IEP teams will ensure that the following requirements are met.**
 - (a) The requirements of 34 CFR Sec. 300.114(a)(2) for the Cloudfcroft Municipal School District to ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled, and that special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.**
 - (b) The required continuum of alternative placements as specified in 34 CFR Sec. 300.115.**
 - (c) The requirement of 34 CFR Sec. 300.116(c) that each child with a disability be educated in the school that he or she would attend if nondisabled unless the child's IEP requires some other arrangement.**
 - (d) The requirement of 34 CFR Sec. 300.116(e) that a child with a disability not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.**
 - (e) The requirements of 34 CFR Sec. 300.320(a)(4) that the IEP for each child with a disability include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities with nondisabled children.**
 - (f) The requirement of 34 CFR Sec. 300.324(a)(3) that the regular education teacher of a child with a disability, as a member of the IEP team, must assist in determining the supplementary aids and services, program modifications or supports for school personnel that will be provided for the child in compliance with Sec. 300.320(a)(4).**
 - (g) The requirement of 34 CFR Sec. 300.320(a)(5) that the IEP include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and the activities described in Sec. 300.320(a)(4) and 300.117.**

- (h) The requirements of 34 CFR Sec. 300.503 that the Cloudcroft Municipal School District give the parents written notice a reasonable time before the agency proposes or refuses to initiate or change the educational placement of the child or the provision of FAPE to the child and that the notice include a description of any other options considered and the reasons why those options were rejected.
- (i) The requirement of 34 CFR Sec. 300.120 that the department carry out activities to ensure that Sec. 300.114 is implemented by each agency and that, if there is evidence that a public agency makes placements that are inconsistent with Sec. 300.114, the department must review the public agency's justification for its actions and assist in planning and implementing any necessary corrective action.

The NMPED has issued a guidance document titled, "Frequently Asked Questions About Least Restrictive Environment (LRE), Placement, and Inclusion under the IDEA" (January 22, 2003), available through the NMPED website at: <http://www.ped.state.nm.us/seo/lre/lre.faq.pdf>. The Cloudcroft Municipal School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.

The NMPED has issued a guidance document titled, "Placement in the Least Restrictive Environment (LRE): Understanding and Making the Placement Decision" (February 2003), available through the NMPED website at: <http://www.ped.state.nm.us/seo/lre/lre.booklet.pdf>. The guidance document contains a checklist to assist IEP Teams in making an individualized inquiry as to the least restrictive environment. The Cloudcroft Municipal School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.

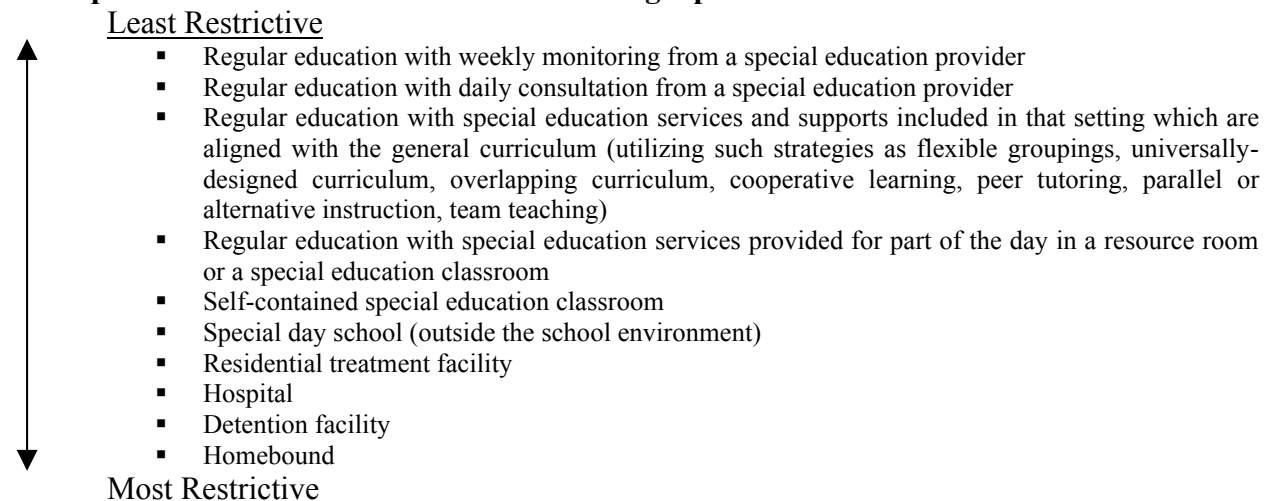
The Cloudcroft Municipal School District will ensure that children with disabilities have available an instructional day commensurate with that of children without disabilities. The IEP Team may provide for a shortened school day as part of the child's IEP only in rare circumstances specific to the needs of the individual child. The NMPED has issued memoranda containing guidance regarding "Shortened School Days for Students with Disabilities" (November 13, 2002) available through the NMPED website at: <http://www.ped.state.nm.us/seo/guide/shortened.school.day.swd.pdf> and "Length of School Day and Instructional Time" (January 3, 2003) available through the NMPED website at: <http://www.ped.state.nm.us/seo/guide/length.school.day.pdf>. The Cloudcroft Municipal School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance.

A. Continuum of Alternative Placements

Authority: 34 CFR §300.115 Continuum of alternative placements.

- (a) The Cloudcroft Municipal School District will ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
- (b) The continuum required in paragraph (a) of this section must--
 - (1) Include the alternative placements listed in the definition of special education under §300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
 - (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

Example of a Continuum of Service and Setting Options



The Cloudcroft Municipal School District will make available a full continuum of placements.

The NMPED has issued a guidance document titled, “Technical Assistance Manual for Gifted Education in New Mexico” (December 2007, marked “DRAFT”), available through the NMPED website at: <http://www.ped.state.nm.us/Humanities/Gifted/dl08/TechnicalAssistanceTotalPackage.pdf#pagemode=bookmarks>. Chapter 5 addresses program design and service delivery for gifted children including inclusion and pull-out services. The Cloudcroft Municipal School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.

B. LRE Standard

The Tenth Circuit Court of Appeals in *L.B. v. Nebo School District*, 379 F.3d 966 (10th Cir. 2004), has adopted the Fifth Circuit standard set forth in *Daniel R.R. v. SBOE*, 874 F.2d 1036 (5th Cir. 1989). In *Daniel R.R.*, there were five factors the court identified for consideration when reviewing an LRE dispute:

- (1) Whether the district has taken steps to accommodate the child with disabilities in regular education (by providing supplementary aids and services or modifying its regular education program);
- (2) Whether these efforts were sufficient or token (because although the requirement that districts modify and supplement regular education is broad, districts need not provide every conceivable supplementary aid or service to assist the child);
- (3) Whether the child will receive an educational benefit from regular education;
- (4) The child’s overall educational experience in the mainstreamed environment, balancing the benefits of regular and special education (since, on the one hand, the nonacademic benefit that the child receives from mainstreaming may tip the balance in favor of mainstreaming, even if the child cannot flourish academically; while on the other hand, placing the child in regular education may be detrimental to the child); and
- (5) The effect the disabled child’s presence has on the regular classroom environment.

The Cloudcroft Municipal School District will ensure that the IEP Team follows the Tenth Circuit standard for determining the least restrictive environment.

C. Statement in the IEP

Authority: 34 CFR §300.320 Definition of individualized education program.

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§300.320 through 300.324, and that must include—

...

(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section....

The Cloudfroft Municipal School District will ensure that the IEP Team makes the placement decision and documents its decision in the child's IEP.

II. PLACEMENT IN A STATE-SUPPORTED EDUCATIONAL PROGRAM

Authority: NMAC 6.31.2.7 DEFINITIONS:

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

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(6) 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 joint powers agreements (JPA) or memoranda 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.

...

(19) 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.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

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J. Children in state-supported educational programs.

(1) Children placed or referred by other public agencies.

(a) Applicability. The rules in this Paragraph (1) of Subsection J apply to children with disabilities who are being considered for placement in a state-supported educational program or facility by another public agency as a means of providing special education and related services.

(b) Responsibility. Each public agency shall ensure that a child with a disability who is being considered for placement in a state-supported educational program by another public agency has all the rights of a child with a disability who is served by any other public agency, including being provided special education and related services:

(i) in conformance with an IEP;

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

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

(c) Service delivery. With informed parent consent pursuant to 34 CFR Sec. 300.300 and Subsection F of 6.31.2.13 NMAC, and pursuant to the procedures in 34 CFR Sec. 300.304 and Subsection D of 6.31.2.10 NMAC, the state-supported program may conduct such additional evaluations and gather such additional information as it considers necessary to assist the IEP

- team in making the placement decision. The referring public agency and the receiving state-supported educational program shall be jointly responsible for developing IEPs and ensuring that the child receives a free appropriate public education.
- (d) **Joint IEPs and interagency agreements.** Responsibility for services for children placed in or referred to state-supported educational programs shall be defined by a jointly agreed upon IEP or other written agreement between the referring public agency and the state-supported program.
 - (e) **Annual review.** At least annually, the referring public agency, the state-supported educational program and the parent shall jointly review the child's IEP and revise it as the joint IEP team deems appropriate.
- (2) **Children enrolled in state-supported educational programs by parents or other public authorities.** A state-supported educational program that accepts a child with a disability at the request of a parent or upon the request or order of a noneducational public authority, and without appropriate participation by the public agency that has primary responsibility for serving the child, assumes all responsibility for ensuring the provision of FAPE. The child's LEA or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a joint IEP or other written agreement between the state-supported program, the other agency and, if appropriate, the parent.

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

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

B. New Mexico School for the Deaf (NMSD)

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

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

More information is available on the NMSD website: <http://www.nmsd.k12.nm.us/>

III. PRIVATE SCHOOL PLACEMENT BY THE Cloudfcroft Municipal School District

Authority: 34 CFR §300.2 Applicability of this part to State and local agencies.

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- (c) Private schools and facilities. The Cloudfcroft Municipal School District is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities--
 - (1) Referred to or placed in private schools and facilities by the Cloudfcroft Municipal School District....

Authority: 34 CFR §300.104 Residential placement.

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

Authority: 34 CFR §300.145 Applicability of §§300.145 through 300.147.

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

Authority: 34 CFR §300.146 Responsibility of SEA.

Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency--

- (a) Is provided special education and related services--
 - (1) In conformance with an IEP that meets the requirements of §§300.320 through 300.325; and
 - (2) At no cost to the parents;
- (b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for §300.18 [Highly Qualified Special Education Teachers] and §300.156(c) [Qualifications for special education teacher]; and
- (c) Has all of the rights of a child with a disability who is served by a public agency.

Authority: 34 CFR §300.147 Implementation by State educational agency.

In implementing §300.146, the SEA must--

- (a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
- (b) Disseminate copies of applicable standards to each private school and facility to which the Cloudfcroft Municipal School District has referred or placed a child with a disability; and
- (c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.

Authority: 34 CFR §300.325 Private school placements by public agencies.

(a) Developing IEPs.

- (1) Before the Cloudfcroft Municipal School District places a child with a disability in, or refers a child to, a private school or facility, the Cloudfcroft Municipal School District will initiate and conduct a meeting to develop an IEP for the child in accordance with §§300.320 and 300.324.
- (2) The Cloudfcroft Municipal School District will ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the Cloudfcroft Municipal School District must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(b) Reviewing and revising IEPs.

- (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the Cloudfcroft Municipal School District.
- (2) If the private school or facility initiates and conducts these meetings, the Cloudfcroft Municipal School District must ensure that the parents and a Cloudfcroft Municipal School District representative--
 - (i) Are involved in any decision about the child's IEP; and
 - (ii) Agree to any proposed changes in the IEP before those changes are implemented.

- (c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the Cloudercroft Municipal School District and the NMPED.

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

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- B. The responsibility of school districts, state institutions and the state to provide a free appropriate public education for qualified students who need special education is not diminished by the availability of private schools and services. It is a state responsibility to ensure that all qualified students who need special education receive the education to which federal and state laws entitle them whether provided by public or private schools and services.

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- H. A local school board, in consultation with the department, may make an agreement with a private, nonsectarian, nonprofit educational training center or residential treatment center for educating qualified students in need of special education and for whom the school district is responsible for providing a free appropriate public education under the federal Individuals with Disabilities Education Act and for providing payment for that education. All financial agreements between local school boards and private, nonsectarian, nonprofit educational training centers and residential treatment centers must be negotiated in accordance with rules promulgated by the department.

- I. All agreements between local school boards and private, nonsectarian, nonprofit educational training centers and residential treatment centers must be reviewed and approved by the secretary. The agreements shall ensure that all qualified students placed in a private, nonsectarian, nonprofit educational training center or residential treatment center receive the education to which they are entitled pursuant to federal and state laws. All agreements must provide for:
- (1) student evaluations and eligibility;
 - (2) an educational program for each qualified student that meets state standards for such programs, except that teachers employed by private schools are not required to be highly qualified;
 - (3) special education and related services in conformance with an individualized education program that meets the requirements of federal and state law; and
 - (4) adequate classroom and other physical space provided at the private, nonsectarian, nonprofit educational training center or residential treatment center that allows the school district to provide an appropriate education.

- J. The agreements must also acknowledge the authority and responsibility of the local school board and the department to conduct on-site evaluations of programs and student progress to ensure that the education provided to the qualified student is meeting state standards.

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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.
- B. Public agency funding and staffing.

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(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 [ø] 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.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

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B. Individualized education programs (IEPs).

(1) Except as provided in 34 CFR Secs. 300.130-300.144 for children enrolled by their parents in private schools, each public agency (1) shall develop, implement, review and revise an IEP in compliance with all applicable requirements of 34 CFR Secs. 300.320-300.328 and these or other department rules and standards for each child with a disability (within its educational jurisdiction); and (2) shall ensure that an IEP is developed, implemented, reviewed and revised in compliance with all applicable requirements of 34 CFR Secs. 300.320-300.328, and these or other department rules and standards for each child with a disability who is placed in or referred to a private school or facility by the public agency.

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

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L. Children in private schools

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

IV. PRIVATE SCHOOL PLACEMENT BY OTHER AUTHORITIES

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

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L. Children in private schools or facilities

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

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

~~(4)~~(5) Children placed in private schools or facilities by parents when FAPE is at issue. The responsibility of a local educational agency to pay for the cost of education for a child with a disability who is placed in a private school or facility such as residential treatment centers, day treatment centers, hospitals or mental health institutions, by parents who allege that the LEA failed to offer FAPE is governed by the requirements of 34 CFR Sec. 300.148. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of Subsection I of 6.31.2.13 NMAC.

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

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

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

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

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

V. PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES

...

L. Children in private schools or facilities.

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

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

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

Authority: 34 CFR §300.139 Location of services and transportation.

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

Authority: 34 CFR §300.143 Separate classes prohibited.

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

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

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

The NMPED has issued a memorandum containing guidance regarding “IDEA 2004: 20 U.S.C. Sec. 1412(a)(10)(A)(B)(C)—Children in Private Schools” (November 14, 2005), available through the NMPED website at: <http://www.ped.state.nm.us/seo/guide/Private.School.Memo.111405.pdf>. The Cloudcroft Municipal School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance.

The U.S. Department of Education has issued a guidance document titled, “Questions and Answers On Serving Children with Disabilities Placed By Their Parents at Private Schools” (March 2006), available through the U.S. Department of Education website at: <http://www.ed.gov/policy/speced/guid/idea/faq-parent-placed.doc> . The guidance document provides detailed responses to frequently asked questions, and provides a clear explanation of the Cloudcroft Municipal School District’s duty to parentally-placed private school children. The Cloudcroft Municipal School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.