

New Mexico Public Education Department
Special Education Bureau

NEW MEXICO SCHOOL FOR THE ARTS
POLICIES AND PROCEDURES
FOR THE
PROVISION OF
SPECIAL EDUCATION SERVICES
FOR
STUDENTS WITH DISABILITIES AND GIFTED STUDENTS

Chapter 6. - LEAST RESTRICTIVE ENVIRONMENT (LRE)

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Chapter 6. - LEAST RESTRICTIVE ENVIRONMENT (LRE)

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Chapter 6. LEAST RESTRICTIVE ENVIRONMENT (LRE)

I. Least Restrictive Environment - Requirements

§300.114 LRE requirements.

(a) General.

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

(b) Additional requirement - State funding mechanism.

(1) General.

- (i) The New Mexico funding mechanism does not result in placements that violate the requirements of paragraph (a) of this section; and**
- (ii) New Mexico does not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that would result in the failure to provide FAPE to a child with a disability according to the unique needs of the child, as described in the child's IEP.**

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

§300.117 Nonacademic settings.

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

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

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES

C. Least restrictive environment

- (1) Except as provided in 34 CFR §300.324(d) and Subsection K of 6.31.2.11 NMAC for children with disabilities who are convicted as adults under state law and incarcerated in adult prisons, all educational placements and services for children with disabilities must be provided in the least restrictive environment that is appropriate to each child's needs in compliance with 34 CFR §§300.114-300.120.**
- (2) In determining the least restrictive environment for each child's needs, public agencies and their IEP teams shall ensure that the following requirements are met.**
 - (a) The requirements of 34 CFR §300.114(a)(2) for each public agency to ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled, and that special classes, separate schooling or other removal of children with disabilities from the general educational environment**

- occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- (b) The required continuum of alternative placements as specified in 34 CFR §300.115.
 - (c) The requirement of 34 CFR §300.116(c) that each child with a disability be educated in the school that he or she would attend if nondisabled unless the child's IEP requires some other arrangement.
 - (d) The requirement of 34 CFR §300.116(e) that a child with a disability not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.
 - (e) The requirements of 34 CFR §300.320(a)(4) that the IEP for each child with a disability include a statement of the special education and related services and supplementary aids and services, based on peer reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities with nondisabled children.
 - (f) The requirement of 34 CFR §300.324(a)(3) that the regular education teacher of a child with a disability, as a member of the IEP Team, must assist in determining the supplementary aids and services, program modifications or supports for school personnel that will be provided for the child in compliance with §300.320(a)(4).
 - (g) The requirement of 34 CFR §300.320(a)(5) that the IEP include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and the activities described in §§300.320(a)(4) and 300.117.
 - (h) The requirements of 34 CFR §300.503 that the public agency give the parents written notice a reasonable time before the agency proposes or refuses to initiate or change the educational placement of the child or the provision of FAPE to the child and that the notice include a description of any other options considered and the reasons why those options were rejected. (*“Reasonable time” is defined in Chapter 2. – Procedural Safeguards.*)
 - (i) The requirement of 34 CFR §300.120 that the department carry out activities to ensure that § 300.114 is implemented by each agency and that, if there is evidence that the public agency makes placements that are inconsistent with §300.114, the department must review the public agency's justification for its actions and assist in planning and implementing any necessary corrective action.

A. Continuum of Alternative Placements

§300.115 Continuum of alternative placements.

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

Authority: 34 CFR §300.39 Special education.

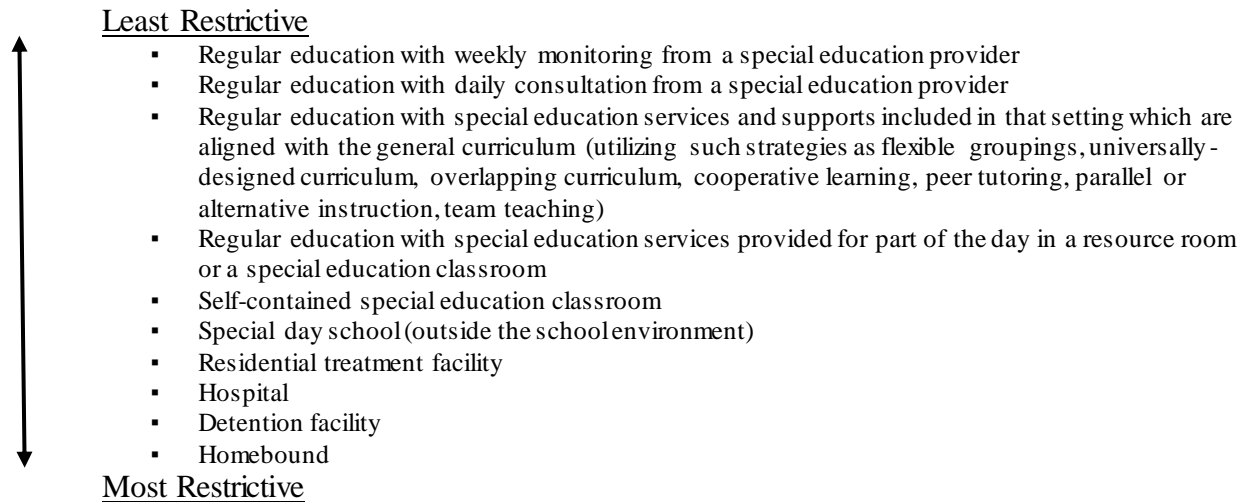
(a) General.

- (1) **Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including--**
 - (i) **Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and**
 - (ii) **Instruction in physical education.**
- (2) **Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section--**
 - (i) **Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards; (*Speech-language is a related service in New Mexico.*)**

- (ii) Travel training; and
- (iii) Vocational education.

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

Example of a Continuum of Service and Setting Options



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

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

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

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

1. *Can education in the general classroom, with the use of supplementary aids and services, be achieved satisfactorily for the student?*
 - a. *Has the public agency taken steps to accommodate the student with disabilities in the general classroom?*
 - (1) *Did the district provide supplementary aids and services?*
 - (2) *Did the district provide accommodations?*
 - b. *Are the services that were provided sufficient?*
 - (1) *The district does not have to provide every conceivable supplementary aid or service.*

- (2) *IDEA (Individuals with Disabilities Education Act) does not require general education teachers to devote all or most of their time to one student with a disability.*
- (3) *IDEA does not require that general education teachers modify the general education program beyond recognition.*
- (4) *General education teachers are not required to modify the general education curriculum to the extent that the student with disabilities is not required to learn any of the skills normally taught in general education.*
- c. *Will the student receive an educational benefit from general education?*
 - (1) *Can the student grasp the New Mexico Standards for Excellence benchmarks of the general education curriculum?*
 - (2) *Consider and document the nature and severity of the student's disability in relation to receiving educational benefits from general education.*
- d. *Examine the student's overall educational experience in the mainstream environment, balancing the benefits of general and special education for each individual student.*
- e. *What effect does the presence of a student with disabilities have on the general classroom environment and, thus, on the education the other students are receiving?*
 - (1) *Discuss and document any disruptions in the classroom.*
 - (2) *Does the student require so much of the teacher's attention that the teacher will have to ignore the other students' needs in order to attend to the student with disabilities?*
- 2. *If education in a general classroom cannot be achieved satisfactorily, determine whether the student has been mainstreamed to the maximum extent appropriate for that student.*
 - a. *Determine if all academic and non-academic classes in general education with nondisabled peers have been considered or tried.*
 - b. *Determine if mainstreaming for lunch, recess, or other times has been considered.*

B. PLACEMENTS:

§300.116 Placements.

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

- (a) **The placement decision--**
 - (1) **Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and**
 - (2) **Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118;**
- (b) **The child's placement--**
 - (1) **Is determined at least annually;**
 - (2) **Is based on the child's IEP; and**
 - (3) **Is as close as possible to the child's home, unless the parent agrees otherwise;**
- (c) **Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;**
- (d) **In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and**
- (e) **A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (*Regular classrooms are public schools in K-12th*).**

§300.110 Program options.

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

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

What is Placement? It is not the physical location of the special education services. Rather, it is the set of services

and the type of environment, or the point on the continuum of services and setting options, in which those services are delivered.

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

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

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

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

The Decision.

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

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

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

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

- Category of the disability
 - Severity of the disability
 - Language and communication needs
 - Needed modifications in the curriculum
 - Configuration of the public agency's delivery system
 - Availability of space or educational and related services
 - Administrative convenience
- e. Keep in mind that where there is a reasonable likelihood that a student with disabilities can be educated in the regular classroom with supplementary aids and supports, then that placement should be tried for as much as the school day as possible.
- f. If the team agrees that the student should receive part or all of the special education services outside of the regular classroom, then the IEP must also provide opportunities for participation in regular education programs in academic, nonacademic, or extracurricular activities, as appropriate.
- g. If the team agrees that the student's IEP cannot be satisfactorily implemented in the regular education classroom with the provision of supplementary services and supports, then the team can consider a more restrictive placement keeping in mind that the regular education classroom is not the LRE for that student at that time. That is, having the understanding that the ultimate plan and goal is to work towards a more fully inclusive placement when possible.
- h. Finally, clearly articulate on the IEP document the placement decision and the justification for it based on the considerations in this booklet.

II. DETERMINING SERVICE LEVELS AND SETTINGS

For more information on the STARS (Student/Teacher Accountability Reporting System), please see the NMPED website with the STARS logo at: <http://www.ped.state.nm.us>; and the SEB Directors Guidance website at: <http://www.ped.state.nm.us/SEB/community/d110/STARS%20PowerPoint.pdf>.

SERVICE LEVEL

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

Service Level – (amount of time the student is receiving special education service regardless of location of service)

Level 1 – Less than 10% of the day

Level 2 – 11% - 50% of the day

Level 3 – More than 50% of the day but not a full day

Level 4 – Up to full day / 3Y, 4Y, 5Y

For students who attend school full-time:

1) Total the minutes of special education service scheduled on the student's IEP. Special education service should include the following:

- Service to a student from a licensed special education teacher or related service provider
- Service to a student from a one-on-one aide or job coach
- Service to a student from a general education teacher who is implementing curriculum modifications developed jointly with the special education teacher
- Service to a general education teacher from a special education teacher who is consulting on a weekly basis with the general education teacher about classroom modifications for a student

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

<u>Grade:</u>	<u>Hours per day:</u>
Kn =	2.5
1-6 =	5.5
7-12 =	6

3) Divide #1 by #2

- 1% - 10% = Level 1 / Minimum / A
- 11% - 49% = Level 2 / Moderate / B
- 50% or more = Level 3 / Extensive / C

- approaching a full day = Level 4 / Maximum / D
- for students on block scheduling, divide the total hours of special education service in the whole year by the total hours in the whole year (i.e., for high school, use 6 hrs/day X 5 days/week X 36 weeks/year = 1080 hours) and use the percents above for each count date to determine funding

For students in grade 3Y/4Y/5Y, the service level is automatically Level 4/Maximum/D.

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

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

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

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

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

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

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

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

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

- **SA05 Public Separate School**
- **SA06 Private Separate School**
- **SA07 Public Residential Facility**
- **SA08 Private Residential Facility**
- **SA09 Juvenile Detention/Corrections** Student receives services in a juvenile detention or corrections facility
- **SA10 Private School – Parentally Placed** (be sure to use **school code 997**) - Student is parentally-placed in a private school but is receiving some special education service with **NEW MEXICO SCHOOL FOR THE ARTS** teachers
- **SA11 Home School** (be sure to use **school code 998**) - Student is parentally-placed in a home school but is receiving some special education service with public agency teachers
- **SA12 Removed to IAES (Onsite)** - by School Personnel (not Hearing Officer)
- **SA13 Removed to IAES (Off-Site)** - by School Personnel (not Hearing Officer)
- **SA14 Alternative School** (Includes Family School)
- **SA15 Removed to IAES** – by Hearing Officer

Authority: NMAC 6.29.1.9 Procedural Requirements

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

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

III. PRIVATE SCHOOLS: ENROLLED BY THE PARENTS

There are no private schools located within the educational boundaries.

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

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

C. New Mexico School for the Deaf (NMSD)

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

- Preschools and kindergartens - comprehensive and stimulating learning environments for young children
- Academics - grades 1 through 12, which encompass traditional and elective subjects with a special emphasis on language and literacy development
- Student Life - a wide range of residential, educational and recreational after-school activities, such as athletics, clubs and life skills development
- Step*Hi - statewide, family centered, early intervention services for babies, toddlers and young children
- Outreach - statewide information and educational support to public schools serving children and youth who are Deaf or Hard of Hearing

- Summer Program - a place where NMSD and non-NMSD students who are deaf or hard of hearing and in grades 3 - 12 come together in fun, adventurous, academic and non-academic ways.
For more information, see website: <http://www.nmsd.k12.nm.us/>

D. State-Supported Educational Programs

Authority: NMAC 6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

- J. Children in state-supported educational programs.
- (1) Children placed or referred by other public agencies.
 - (a) Applicability. The rules in this Paragraph (1) of Subsection J apply to children with disabilities who are being considered for placement in a state-supported educational program or facility by another public agency as a means of providing special education and related services.
 - (b) Responsibility. The public agency shall ensure that a child with a disability who is being considered for placement in a state-supported educational program by another public agency has all the rights of a child with a disability who is served by any other public agency, including being provided special education and related services:
 - (i) in conformance with an IEP;
 - (ii) at no cost to the child's parents; and
 - (iii) at a school or facility that is accredited by the department or licensed by the New Mexico department of health.
 - (c) Service delivery. With informed parent consent pursuant to 34 CFR §300.300 and Subsection F of 6.31.2.13 NMAC, and pursuant to the procedures in 34 CFR §300.304 and Subsection D of 6.31.2.10 NMAC, the state-supported program may conduct such additional evaluations and gather such additional information as it considers necessary to assist the IEP Team in making the placement decision. The referring public agency and the receiving state-supported educational program shall be jointly responsible for developing IEPs and ensuring that the child receives a free appropriate public education.
 - (d) Joint IEPs and interagency agreements. Responsibility for services for children placed in or referred to state-supported educational programs shall be defined by a jointly agreed upon IEP or other written agreement between the referring public agency and the state-supported program.
 - (e) Annual review. At least annually, the referring public agency, the state-supported educational program and the parent shall jointly review the child's IEP and revise it as the joint IEP Team deems appropriate.
 - (2) Children enrolled in state-supported educational programs by parents or other public authorities. A state-supported educational program that accepts a child with a disability at the request of a parent or upon the request or order of a noneducational public authority, and without appropriate participation by the public agency that has primary responsibility for serving the child, assumes all responsibility for ensuring the provision of FAPE. The child's LEA or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a joint IEP or other written agreement between the state-supported program, the other agency and, if appropriate, the parent.

E. Residential Placements / RTC

§300.104 Residential placement.

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

Authority: 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

- B. (3) Placement of students in private residential treatment centers, or other out of home treatment or habilitation programs, by the IEP Team or by a due process decision. In no event shall a child with an IEP be allowed to remain in an out of home treatment or habilitation program for more than 10 days without receiving special education and related services. The school district in which the qualified

student or school-age person lives, whether in-state or out-of-state, is responsible for the educational nonmedical care and room and board costs of that placement.

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

VII. GIFTED PROGRAMS

Authority: NMAC 6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN

F. Applicability of rules to gifted children.

- (1) All definitions, policies, procedures, assurances, procedural safeguards and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the district, except:
 - (a) the requirements of 6.31.2.8 NMAC through 6.31.2.10 NMAC
 - (b) Subsections J, K and L of 6.31.2.11 NMAC regarding child find, evaluations and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities and children with disabilities who are schooled at home;
 - (c) the requirements of 34 CFR §§300.530-300.536, Subsection I of 6.31.2.13 NMAC and 6.11.2.11 NMAC regarding disciplinary changes of placement for children with disabilities; and
 - (d) the requirements of 34 CFR §§300.43, 300.320(b) and 6.31.2.11(G)(2) regarding transition planning. Students identified as gifted must meet the requirements at Subsection B of 22-13-1.1 NMSA 1978, which is the next step for students without disabilities.
- (2) Assuming appropriate evaluations, a child may properly be determined to be both gifted and a child with a disability and be entitled to a free appropriate public education for both reasons. The rules in this section 6.31.2.12 NMAC apply only to gifted children.
- (3) Nothing in these rules shall preclude a school district or a charter school within a district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the NMPED shall only provide funds under Section 22-8-21 NMSA 1978 for department-approved gifted programs for those students who meet the established criteria.

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

who meet the established criteria.

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

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

Guiding Principles from NAGC and Minimum Standards

1. Rather than any single gifted program, a continuum of programming services must exist for gifted learners.
 - 1.0M Gifted programming services must be accessible to all gifted learners.
2. Gifted education must be adequately funded.
 - 2.0M Gifted education funding should be equitable compared to the funding of other local programming.
3. Gifted education programming must evolve from a comprehensive and sound base.
 - 3.0M Gifted education programming must be submitted for outside review on a regular basis.
 - 3.1M Gifted programming must be guided by a clearly articulated philosophy statement and accompanying goals and objectives.
 - 3.2M A continuum of services must be provided across grades pre-K-12.
4. Gifted education programming services must be an integral part of the general education school day.
 - 4.0M Gifted education programming should be articulated with the general education program.
 - 4.1M Appropriate educational opportunities must be provided in the regular classroom, resource classroom, separate, or optional voluntary environments.
5. Flexible groupings of students must be developed in order to facilitate differentiated instruction and curriculum.
 - 5.0M The use of flexible grouping of gifted learners must be an integral part of gifted education programming.
6. Policies specific to adapting and adding to the nature and operations of the general education program are necessary for gifted education.
 - 6.0M Existing and future school policies must include provisions for the needs of gifted learners.

B. Recommendations from:

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

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

C. Special Education Service Delivery Models Least Restrictive Environment

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

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

SELF-CONTAINED

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

PULLOUT PROGRAMS-RESOURCE ROOM

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

GIFTED EDUCATION SEMINARS

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

RESOURCE CENTERS

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

D. General Education and Other Service Delivery Models Ability Grouping

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

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

E. Enrichment

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

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

F. Acceleration

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

- Early Entrance To School
- Grade Skipping
- Multi-Age Level Classes
- Telescoping/Compacting
- College Course Work
- Early Admission To College
- Advanced Placement Program (Ap)
- Accelerated Classes Outside The School Day

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

Guiding Principles (social/emotional development) from NAGC:

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

Minimum Standards relating to the Guiding Principles

- 1.0M Gifted Learners, because of their unique socio-emotional development, must be provided guidance and counseling services by a counselor who is familiar with the characteristics and socio-emotional needs of gifted learners.
- 2.0M Gifted learners must be provided career guidance consistent with their unique strengths.
- 3.0M Gifted learners who are placed at-risk must have special attention, counseling, and support to help them realize their full potential.
- 4.0M Gifted learners must be provided affective curriculum as part of differentiated curriculum and instructional services.
- 5.0M Gifted students who are underachieving must not be exited from gifted programs because of related problems.

VIII. OTHER INSTRUCTIONAL PROGRAMS/SERVICE DELIVERY

§300.110 Program options.

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

A. Adapted Physical Education

§300.108 Physical education.

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

- (a) **General.** Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide PE to children without disabilities in the same grades.
- (b) **Regular physical education.** Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless--
 - (1) The child is enrolled full time in a separate facility; or
 - (2) The child needs specially designed physical education, as prescribed in the child's IEP.
- (c) **Special physical education.** If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.
- (d) **Education in separate facilities.** The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.

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

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

B. Behavior Improvement Classes

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

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

New Mexico School for the Arts is a high school program (9-12).

D. Homebound Instructional Program

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

1. *It is the responsibility of the IEP Team to determine:*
 - a. *the appropriate instructional areas for special education students receiving homebound instruction;*
 - b. *modifications of the student's schedule.*

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

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

E. Home Schooled Students

The New Mexico School of the Arts program requires school attendance.

F. Hospital Classes

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

G. Preschool Program for Children with Disabilities (PPCD)

H. Speech Therapy

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

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

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

I. Vocational Class/Program

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

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

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