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HOUSE BILL 199

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Thomas A. Garcia

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO SPECIAL EDUCATION; CLARIFYING THE STATE'S
RESPONSIBILITY TO PROVIDE SPECIAL EDUCATION SERVICES; REQUIRING
PUBLIC EDUCATION DEPARTMENT PARTICIPATION IN DEVELOPMENT OF
AGREEMENTS BETWEEN SCHOOL DISTRICTS AND PRIVATE TRAINING
CENTERS AND RESIDENTIAL TREATMENT PROGRAMS; REQUIRING STUDENT
IDENTIFICATION NUMBERS FOR STUDENTS ATTENDING TRAINING CENTERS
AND RESIDENTIAL TREATMENT PROGRAMS; REQUIRING TRAINING CENTERS
AND RESIDENTIAL TREATMENT PROGRAMS TO PROVIDE REASONABLE
PHYSICAL SPACE FOR EDUCATIONAL PROGRAMMING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-1-2 NMSA 1978 (being Laws 2003,
Chapter 153, Section 3, as amended) is amended to read:

"22-1-2. DEFINITIONS.--As used in the Public School Code:

A. "academic proficiency" means mastery of the

1 subject-matter knowledge and skills specified in state academic
2 content and performance standards for a student's grade level;

3 B. "adequate yearly progress" means the measure
4 adopted by the department based on federal requirements to
5 assess the progress that a public school or school district or
6 the state makes toward improving student achievement;

7 C. "commission" means the public education
8 commission;

9 D. "department" means the public education
10 department;

11 E. "forty-day report" means the report of qualified
12 student membership of each school district and of those
13 eligible to be qualified students but enrolled in a private
14 school or a home school for the first forty days of school;

15 F. "home school" means the operation by the parent
16 of a school-age person of a home study program of instruction
17 that provides a basic academic educational program, including
18 reading, language arts, mathematics, social studies and
19 science;

20 G. "instructional support provider" means a person
21 who is employed to support the instructional program of a
22 school district, including educational assistant, school
23 counselor, social worker, school nurse, speech-language
24 pathologist, psychologist, physical therapist, occupational
25 therapist, recreational therapist, interpreter for the deaf and

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1 diagnostician;

2 H. "licensed school employee" means teachers,
3 school administrators and instructional support providers;

4 I. "local school board" means the policy-setting
5 body of a school district;

6 J. "local superintendent" means the chief executive
7 officer of a school district;

8 K. "parent" includes a guardian or other person
9 having custody and control of a school-age person;

10 L. "private school" means a school, other than a
11 home school, that offers on-site programs of instruction and
12 that is not under the control, supervision or management of a
13 local school board;

14 M. "public school" means that part of a school
15 district that is a single attendance center in which
16 instruction is offered by one or more teachers and is
17 discernible as a building or group of buildings generally
18 recognized as either an elementary, middle, junior high or high
19 school or any combination of those and includes a charter
20 school;

21 N. "school" means a supervised program of
22 instruction designed to educate a student in a particular
23 place, manner and subject area;

24 O. "school administrator" means a person licensed
25 to administer in a school district and includes school

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1 principals and central district administrators;

2 P. "school-age person" means a person who is at
3 least five years of age prior to 12:01 a.m. on September 1 of
4 the school year and who has not received a high school diploma
5 or its equivalent. A maximum age of twenty-one shall be used
6 for a school-age person who is classified as needing special
7 education [~~membership as defined in Section 22-8-21 NMSA 1978~~
8 ~~or as a resident of a state institution~~];

9 Q. "school building" means a public school, an
10 administration building and related school structures or
11 facilities, including teacher housing, that is owned, acquired
12 or constructed by the school district as necessary to carry out
13 the functions of the school district;

14 R. "school bus private owner" means a person, other
15 than a school district, the department, the state or any other
16 political subdivision of the state, that owns a school bus;

17 S. "school district" means an area of land
18 established as a political subdivision of the state for the
19 administration of public schools and segregated geographically
20 for taxation and bonding purposes;

21 T. "school employee" includes licensed and
22 nonlicensed employees of a school district;

23 U. "school principal" means the chief instructional
24 leader and administrative head of a public school;

25 V. "school year" means the total number of

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1 [contract] instructional days offered by public schools in a
2 school district during a period of twelve consecutive months;

3 W. "secretary" means the secretary of public
4 education;

5 X. "special education" means the provision of
6 services additional to, supplementary to or different from
7 those provided in the general school program of a public school
8 to students who are required by the federal Individuals with
9 Disabilities Education Act to have an individualized education
10 program, and including developmentally disabled three- and
11 four-year-old children attending public school;

12 [~~X.~~] Y. "state agency" or "state institution" means
13 the New Mexico military institute, New Mexico school for the
14 blind and visually impaired, New Mexico school for the
15 deaf, New Mexico boys' school, girls' welfare home, New Mexico
16 youth diagnostic and development center, Sequoyah adolescent
17 treatment center, Carrie Tingley crippled children's hospital,
18 New Mexico behavioral health institute at Las Vegas and any
19 other state agency responsible for educating resident children;

20 [~~Y.~~] Z. "state educational institution" means an
21 institution enumerated in Article 12, Section 11 of the
22 constitution of New Mexico;

23 AA. "student" means a school-age person who is a
24 public school student;

25 [~~Z.~~] BB. "substitute teacher" means a person who

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1 holds a certificate to substitute for a teacher in the
2 classroom;

3 ~~[AA-]~~ CC. "teacher" means a person who holds a
4 level one, two or three-A license and whose primary duty is
5 classroom instruction or the supervision, below the school
6 principal level, of an instructional program or whose duties
7 include curriculum development, peer intervention, peer
8 coaching or mentoring or serving as a resource teacher for
9 other teachers;

10 ~~[BB-]~~ DD. "certified school instructor" means a
11 teacher or instructional support provider; and

12 ~~[CC-]~~ EE. "certified school employee" or "certified
13 school personnel" means a licensed school employee."

14 Section 2. Section 22-13-5 NMSA 1978 (being Laws 1972,
15 Chapter 95, Section 1, as amended) is amended to read:

16 "22-13-5. SPECIAL EDUCATION.--

17 A. School districts shall provide special education
18 and related services appropriate to meet the needs of [~~all~~
19 ~~children~~] public school students requiring special education
20 and related services. [~~Regulations~~] Rules and standards shall
21 be developed and established by the [~~state board~~] department
22 for the provision of special education in the schools and
23 classes of the public school system in the state and in all
24 institutions wholly or partly supported by the state. The
25 [~~state board~~] department shall monitor and enforce the

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1 ~~[regulations]~~ rules and standards.

2 B. Except as otherwise provided in this section,
3 the state institution in which a school-age person is detained
4 or enrolled shall be responsible for providing educational
5 services for the school-age person. A school-age person who is
6 a client as defined in Section 43-1-3 NMSA 1978 in a state
7 institution under the authority of the secretary of health has
8 a right to attend public school in the school district in which
9 the state institution in which the school-age person is a
10 client is located if:

11 (1) the school-age person has been recommended
12 for placement in a public school by the educational appraisal
13 and review committee of the school district in which the
14 institution is located; or

15 (2) the school-age person has been recommended
16 for placement in a public school as a result of the appeal
17 process as provided in the special education rules of the
18 department.

19 C. School districts shall also provide services
20 for three-year-old and four-year-old ~~[preschool]~~ children with
21 disabilities, unless the parent ~~[or guardian]~~ chooses not to
22 enroll ~~[his]~~ the child. If a child receiving services in the
23 department of health's family infant toddler program has ~~[his]~~
24 a third birthday during the school year, the child's ~~[parents]~~
25 parent shall have the option of having the child complete the

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1 school year in the family infant toddler program or enrolling
2 the child in the public school's preschool program. A child
3 with a disability who enrolls in the public school's preschool
4 program and who has [~~his~~] a third birthday during a school year
5 may receive special education and related services from the
6 beginning of that school year.

7 D. Services for students age three through
8 twenty-one may include, but are not limited to, evaluating
9 particular needs, providing learning experiences that develop
10 cognitive and social skills, arranging for or providing related
11 services as defined by the [~~state board~~] department and
12 providing parent education. The services may be provided by
13 [~~certified~~] licensed school [~~personnel~~] employees or contracted
14 for [~~with other community agencies~~] and shall be provided in
15 age-appropriate, integrated settings, including home, daycare
16 centers, head start programs, schools or community-based
17 settings."

18 Section 3. Section 22-13-7 NMSA 1978 (being Laws 1972,
19 Chapter 95, Section 3, as amended) is amended to read:

20 "22-13-7. SPECIAL EDUCATION--RESPONSIBILITY.--

21 A. The [~~state board~~] department shall make, adopt
22 and keep current a state plan for special education policy,
23 programs and standards.

24 B. The department [~~of education with the approval~~
25 ~~of the state board~~] shall set standards for diagnosis and

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1 screening of and educational offerings for exceptional children
2 in public schools and school-age persons in private,
3 nonsectarian, nonprofit training centers or residential
4 treatment centers for whom a school district is responsible and
5 in state institutions under the authority of the secretary of
6 health.

7 C. The [~~state board~~] department shall establish and
8 maintain a program of evaluation of the implementation and
9 impact of all programs for exceptional children in the public
10 schools. [~~This~~] The evaluation program shall be operated with
11 the cooperation of [~~local~~] school districts, and portions of
12 the evaluation program may be subcontracted [~~and~~]. Periodic
13 reports regarding the efficacy of educational programs for
14 exceptional children shall be made to the legislative education
15 study committee.

16 D. The department [~~of education~~] shall coordinate
17 programming related to the transition of persons with
18 disabilities from secondary and post-secondary education
19 programs to employment or vocational placement."

20 Section 4. Section 22-13-8 NMSA 1978 (being Laws 1972,
21 Chapter 95, Section 4, as amended) is amended to read:

22 "22-13-8. SPECIAL EDUCATION--PRIVATE.--

23 A. The responsibility of school districts, state
24 institutions and the state to provide a free public education
25 for [~~exceptional children~~] school-age persons who need special

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1 education is not diminished by the availability of private
2 schools and services. [~~Whenever such schools or services are~~
3 ~~utilized, it continues to be~~] It is a state responsibility to
4 [~~assure~~] ensure that all [~~exceptional children~~] special
5 education students receive the education to which [~~the~~] federal
6 and state laws [~~of the state~~] entitle them whether provided by
7 public or private schools and services.

8 B. A school district in which a private,
9 nonsectarian, nonprofit training center or residential
10 treatment center is located shall not be considered the
11 resident school district of a school-age person in need of
12 special education if residency is based solely on the school-
13 age person's enrollment at the facility and the school-age
14 person would not otherwise be considered a resident of the
15 state.

16 C. For a student or school-age person placed in a
17 private, nonsectarian, nonprofit training center or residential
18 treatment center by a school district, by an order of a court
19 of competent jurisdiction or by a due process decision, the
20 school district where the student lives, whether in-state or
21 out-of-state, is responsible for the educational costs of that
22 placement.

23 D. For a school-age person in need of special
24 education placed in a private, nonsectarian, nonprofit training
25 center or residential treatment center not as a result of a due

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1 process decision but by a parent who assumes the responsibility
2 for such placement, the department shall ensure that the school
3 district where the facility is located is allocating and
4 distributing that student's proportionate share of the federal
5 Individuals with Disabilities Education Act Part B funds as
6 required by federal law.

7 E. For a school-age person in need of special
8 education placed in a private, nonsectarian, nonprofit training
9 center or residential treatment center by a New Mexico public
10 agency with custody or control of the school-age person or by a
11 New Mexico court of competent jurisdiction, the school district
12 in which the facility is located shall be responsible for the
13 planning and delivery of special education and related
14 services, unless the school-age person's resident school
15 district has an agreement with the facility to provide such
16 services.

17 F. The department shall determine which school
18 district is responsible for the cost of educating a special
19 education student who has been placed in a private,
20 nonsectarian, nonprofit training center or residential
21 treatment center outside the student's resident school
22 district. The department shall determine the reasonable
23 reimbursement owed to the receiving school district.

24 ~~[B-]~~ G. A local school board, in consultation with
25 the department, may make an agreement with a private,

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1 nonsectarian, nonprofit educational training [~~centers~~] center
2 or residential treatment center for educating [~~exceptional~~
3 ~~children~~] special education students for whom the school
4 district is responsible for providing a free appropriate public
5 education and for providing [~~for~~] payment for [~~such~~] that
6 education. All financial agreements between local school
7 boards and private, nonsectarian, nonprofit educational
8 training centers and residential treatment centers must be
9 negotiated in accordance with [~~regulations~~] rules promulgated
10 by the [~~director~~] department. Payment for education and
11 services under [~~such~~] those agreements shall be made by the
12 local school board [~~of education~~] where the student lives from
13 available funds. [~~available~~].

14 G.] H. All agreements between local school boards
15 and private, nonsectarian, nonprofit educational training
16 centers and residential treatment centers must be reviewed and
17 approved by the [~~state superintendent~~] secretary. The
18 agreements shall ensure that all special education students
19 placed in private, nonsectarian, nonprofit training centers or
20 residential treatment centers receive the education to which
21 they are entitled laws pursuant to federal and state laws. All
22 agreements must provide for:

- 23 (1) diagnosis [~~and~~];
24 (2) an educational program for each [~~child~~
25 ~~which~~] public school student that meets state standards for

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1 such programs, except that teachers employed by private schools
2 are not required to be highly qualified;

3 (3) special education and related services in
4 conformance with an individualized education program that meets
5 the requirements of federal and state law; and

6 (4) adequate classroom and other physical
7 space provided at the training center or residential treatment
8 center that allows the school district to provide an
9 appropriate education.

10 I. The agreements must also acknowledge the
11 authority and responsibility of the local school board and the
12 department [~~of education~~] to conduct on-site evaluations of
13 programs and [~~pupil~~] student progress to [~~insure~~] ensure that
14 the education provided to public school students is meeting
15 state standards.

16 [~~D. Exceptional children~~] J. A special education
17 student for whom the state is required by federal law to
18 provide a free appropriate public education and who is
19 attending a private, nonsectarian, nonprofit training center or
20 a residential treatment center is a public school student and
21 shall be counted in the special education membership of the
22 school district [~~as enrolled in the Class D special education~~
23 ~~program~~] that is responsible for the costs of educating the
24 student in the class level identified as appropriate in the
25 individualized educational plan for the student.

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1 K. The department shall adopt the format to report
2 individual student data and costs for any school-age person
3 attending public or private training centers or residential
4 treatment programs and shall include those reports in the
5 student teacher accountability reporting system by using the
6 same student identification number issued to a public school
7 student pursuant to Section 22-2C-11 NMSA 1978 or by assigning
8 a unique student identifier for a school-age person who is not
9 a resident of this state but who is attending a private
10 training center or residential treatment program in this state.
11 Every public and private training center and every public and
12 private residential treatment program that serves school-age
13 persons in this state shall comply with this provision.

14 L. The department shall promulgate rules to carry
15 out the provisions of this section."

16 Section 5. Section 32A-12-2 NMSA 1978 (being Laws 1979,
17 Chapter 227, Section 2, as amended) is amended to read:

18 "32A-12-2. RESIDENTIAL TREATMENT PROGRAMS--~~[REGULATIONS]~~
19 RULES.--The secretary of children, youth and families shall
20 adopt ~~[regulations]~~ rules to provide for:

21 A. minimum standards that shall be met by a
22 residential treatment program, including a requirement that the
23 program make reasonable provisions for adequate physical space
24 for a school district to provide the required free appropriate
25 public education;

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1 B. procedures and forms for applying for a
2 departmental grant or contract;

3 C. procedures and criteria for review and approval
4 or denial of such applications;

5 D. procedures for approval of facilities and
6 programs in or through which services are to be performed;

7 E. procedures and specifications of programmatic
8 and financial information to be reported by residential
9 treatment programs to the children, youth and families
10 department for purposes of evaluating the effectiveness of
11 programs funded by the department; and

12 F. procedures for review of potential clients for
13 residential treatment or therapeutic group home care."

14 Section 6. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2009.