

STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

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August 23, 2010

MEMORANDUM

TO: Legislative Education Study Committee

FR: Pamela Herman, J.D.

**RE: STAFF REPORT: SPECIAL EDUCATION ISSUES: CONTRACTS
BETWEEN SCHOOL DISTRICTS AND RESIDENTIAL TREATMENT
CENTERS (PUBLIC EDUCATION DEPARTMENT (PED) RESPONSE TO
LESC REQUEST)**

In 2009, after studying the issue over four interims, the Legislative Education Study Committee (LESC) endorsed legislation that was passed, Laws 2009, Chapter 162, to clarify the responsibility of school districts, the Public Education Department (PED), and other parties to provide a free, appropriate public education (FAPE) to students placed in private residential treatment centers (RTCs) (see Attachment 1, CS/HB 199, *School District & Training Center Agreements*).

At its September 2009 meeting, the LESC heard a presentation regarding the status of the implementation of the law, including the proposed PED agency rule to implement the statute. At that time, committee members posed questions to PED staff regarding the implications of the law for the future relationships between local school districts and the RTCs within their jurisdictional boundaries. The committee noted that the department was responsible under law to review and approve all agreements between local school boards and RTCs. At that time, the committee asked PED staff to develop contract templates that would serve as guidance for school districts doing business with RTCs, and to return during the 2010 interim to report progress to the committee.

This report covers the following:

- the draft documents prepared by PED at the request of the LESC;
- questions regarding the obligation of school districts to provide educational services to general education students in private, for-profit treatment centers; and
- an update on the discharge by the Children, Youth and Families Department (CYFD) of its duty to promulgate a rule under the new law.

The draft documents prepared by PED at the request of the LESC

At the request of the LESC, PED staff prepared three documents to assist local school boards and school district staff contracting with RTCs to provide special education and related services to students for whom they are responsible to provide a free and appropriate public education in compliance with the 2009 law:

- a draft memorandum to superintendents and state charter school administrators from the director of the Special Education Bureau of PED regarding providing services to students placed in private RTCs, which explains when and under what circumstances a school district becomes responsible for providing any or all of the educational, non-medical care and room and board costs of placement in an RTC (see Attachment 2, *Memorandum: Providing Services to Students Placed in Private Residential Treatment Centers*);
- a draft template for a contractual agreement between a school district placing a student in a private, nonsectarian, nonprofit training center or RTC, the district in which the center is located, and the training center or RTC (referred to as the contractor) (see Attachment 3, *Contractual Services Agreement*); and
- a draft application form to be used by a school district seeking reimbursement from PED for the cost of placement of an individual in an RTC outside the individual's resident school district, based on the various scenarios enumerated in the statute (see Attachment 4, *Application for Reimbursement*).

PED staff has disseminated copies of these draft documents to school district special education directors and attorneys for comments and feedback.

The obligation of school districts to provide educational services to students in private, for-profit treatment centers

In addition to requesting templates that school districts could use in developing contracts with RTCs, at the September 2009 presentation committee members asked about the responsibility of local school districts to provide educational services to school-age general education students enrolled in private, for-profit residential psychiatric care and substance abuse treatment centers. The committee heard testimony indicating that local school districts were

providing such services, although many students were in the centers for just days or weeks. The committee heard that many of these students were costly to educate either because there were very few of them or because of the issues that brought them to the treatment centers in the first place.

In 1988, an Attorney General's opinion responded to the question: "Do public schools have a constitutional or statutory obligation to provide educational services to students within private, for-profit adolescent psychiatric care and substance abuse treatment centers?" The opinion, based on a section of the *Mental Health and Developmental Disabilities Code* that has since been repealed, was "No, but if the student is handicapped, federal law may require such education." However, in 2007, when the *Children's Code* was rewritten, a new section of law was enacted to grant children in out-of-home treatment or habilitation programs (such as private RTCs) a catalog of rights including the right to a free public education. (See Attachment 5, *Section 32A-6A-12. Personal rights of a child in an out-of-home treatment or habilitation program; scope.*)

Pursuant to Section 32A-6A-12, the child "shall be educated in regular classes with nondisabled children whenever appropriate. In no event shall a child be allowed to remain in an out-of-home treatment or habilitation program for more than 10 days without receiving educational services. If the child's placement . . . is the result of an individualized education plan. . . the sending school is responsible for the provision of education to the child. In all other situations, the local school district in which the out-of-home treatment or habilitation program is located is responsible for the provision of educational services to the child. Nothing in this section shall limit a child's right of public education under state, tribal or federal law."

An update on the discharge by CYFD of its duty to promulgate a rule under the new law

Another matter touched upon during the September 2009 presentation to the LESC was a requirement imposed upon CYFD by the 2009 statute to include in its minimum standards for RTCs that they make reasonable provision for adequate physical space for a school district to provide a FAPE to its students. At that time, the committee heard testimony that CYFD had not yet begun to discharge that duty by amending its facility licensing rule. However, LESC staff advised the committee that CYFD had indicated it had a plan to hold focus groups with providers and other stakeholders immediately in order to begin get the rule-making process.

However, as of August 16, 2010, the CYFD rule regarding licensing requirements for child and adolescent mental health facilities, Section 7.20.12 NMAC, has not been amended. The rule does not include any requirement for licensees to provide space for the education of residents. CYFD Youth and Family Services staff indicate that they have conducted a survey of providers, all of whom claims that they are providing adequate space for the educational needs of their residents. However, CYFD states that because of staff shortages, the department has not had time to conduct hearings to amend its rule, nor would the department be able to inspect facilities annually in the future to determine if they were in compliance with the rule if the it were amended as required by the statute.

Presenters

- Ms. Denise Koscielniak, Special Education Director, Special Education Bureau, PED
- Mr. Albert Gonzales, Assistant General Counsel, Office of General Counsel, PED



The Legislature
of the
State of New Mexico

49th Legislature, 1st Session

LAWS 2009

CHAPTER 162

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR

HOUSE BILL 199

Introduced by



Chapter 162

AN ACT

1
2 RELATING TO SPECIAL EDUCATION; CLARIFYING THE STATE'S
3 RESPONSIBILITY TO PROVIDE SPECIAL EDUCATION SERVICES;
4 REQUIRING PUBLIC EDUCATION DEPARTMENT PARTICIPATION IN
5 DEVELOPMENT OF AGREEMENTS BETWEEN SCHOOL DISTRICTS AND PRIVATE
6 EDUCATIONAL TRAINING CENTERS AND RESIDENTIAL TREATMENT
7 CENTERS; REQUIRING STUDENT IDENTIFICATION NUMBERS FOR STUDENTS
8 ATTENDING EDUCATIONAL TRAINING CENTERS AND RESIDENTIAL
9 TREATMENT CENTERS; REQUIRING EDUCATIONAL TRAINING CENTERS AND
10 RESIDENTIAL TREATMENT CENTERS TO PROVIDE REASONABLE PHYSICAL
11 SPACE FOR EDUCATIONAL PROGRAMMING.

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

14 Section 1. Section 22-13-8 NMSA 1978 (being Laws 1972,
15 Chapter 95, Section 4, as amended) is repealed and a new
16 Section 22-13-8 NMSA 1978 is enacted to read:

17 "22-13-8. SPECIAL EDUCATION--PRIVATE EDUCATIONAL
18 TRAINING CENTERS AND RESIDENTIAL TREATMENT CENTERS.--

19 A. Notwithstanding other provisions of the Public
20 School Code, as used in this section:

21 (1) "qualified student" means a public
22 school student who:

23 (a) has not graduated from high school;

24 (b) is regularly enrolled in one-half

25 or more of the minimum course requirements approved by the

1 department for public school students; and

2 (c) in terms of age: 1) is at least
3 five years of age prior to 12:01 a.m. on September 1 of the
4 school year or will be five years of age prior to 12:01 a.m.
5 on September 1 of the school year if the student is enrolled
6 in a public school extended-year kindergarten program that
7 begins prior to the start of the regular school year; 2) is at
8 least three years of age at any time during the school year
9 and is receiving special education pursuant to rules of the
10 department; or 3) has not reached the student's twenty-second
11 birthday on the first day of the school year and is receiving
12 special education in accordance with federal law; and

13 (2) "school-age person" means a person who
14 is not a qualified student but who meets the federal
15 requirements for special education and who:

16 (a) will be at least three years old at
17 any time during the school year;

18 (b) is not more than twenty-one years
19 of age; and

20 (c) has not received a high school
21 diploma or its equivalent.

22 B. The responsibility of school districts, state
23 institutions and the state to provide a free appropriate
24 public education for qualified students who need special
25 education is not diminished by the availability of private

1 schools and services. It is a state responsibility to ensure
2 that all qualified students who need special education receive
3 the education to which federal and state laws entitle them
4 whether provided by public or private schools and services.

5 C. A school district in which a private,
6 nonsectarian, nonprofit educational training center or
7 residential treatment center is located shall not be
8 considered the resident school district of a school-age person
9 if residency is based solely on the school-age person's
10 enrollment at the facility and the school-age person would not
11 otherwise be considered a resident of the state.

12 D. For a qualified student in need of special
13 education or school-age person who is placed in a private,
14 nonsectarian, nonprofit educational training center or
15 residential treatment center by a school district or by a due
16 process decision, the school district in which the qualified
17 student or school-age person lives, whether in-state or out-
18 of-state, is responsible for the educational, nonmedical care
19 and room and board costs of that placement.

20 E. For a school-age person placed in a private,
21 nonsectarian, nonprofit educational training center or
22 residential treatment center not as a result of a due process
23 decision but by a parent who assumes the responsibility for
24 such placement, the department shall ensure that the school
25 district in which the facility is located is allocating and

1 distributing the school-age person's proportionate share of
2 the federal Individuals with Disabilities Education Act Part B
3 funds but the state is not required to distribute state funds
4 for that school-age person.

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

16 G. Except as provided in Subsection D of this
17 section, the department shall determine which school district
18 is responsible for the cost of educating a qualified student
19 in need of special education who has been placed in a private,
20 nonsectarian, nonprofit educational training center or
21 residential treatment center outside the qualified student's
22 resident school district. The department shall determine the
23 reasonable reimbursement owed to the receiving school
24 district.

25 H. A local school board, in consultation with the

1 department, may make an agreement with a private,
2 nonsectarian, nonprofit educational training center or
3 residential treatment center for educating qualified students
4 in need of special education and for whom the school district
5 is responsible for providing a free appropriate public
6 education under the federal Individuals with Disabilities
7 Education Act and for providing payment for that education.

8 All financial agreements between local school boards and
9 private, nonsectarian, nonprofit educational training centers
10 and residential treatment centers must be negotiated in
11 accordance with rules promulgated by the department.

12 I. All agreements between local school boards and
13 private, nonsectarian, nonprofit educational training centers
14 and residential treatment centers must be reviewed and
15 approved by the secretary. The agreements shall ensure that
16 all qualified students placed in a private, nonsectarian,
17 nonprofit educational training center or residential treatment
18 center receive the education to which they are entitled
19 pursuant to federal and state laws. All agreements must
20 provide for:

- 21 (1) student evaluations and eligibility;
22 (2) an educational program for each
23 qualified student that meets state standards for such
24 programs, except that teachers employed by private schools are
25 not required to be highly qualified;

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

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

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

14 K. A qualified student for whom the state is
15 required by federal law to provide a free appropriate public
16 education and who is attending a private, nonsectarian,
17 nonprofit educational training center or a residential
18 treatment center is a public school student and shall be
19 counted in the special education membership of the school
20 district that is responsible for the costs of educating the
21 student as provided in the individualized education program
22 for the student.

23 L. The department shall adopt the format to report
24 individual student data and costs for any qualified student or
25 school-age person attending public or private educational

1 training centers or residential treatment centers and shall
2 include those reports in the student teacher accountability
3 reporting system by using the same student identification
4 number issued to a public school student pursuant to Section
5 22-2C-11 NMSA 1978 or by assigning a unique student identifier
6 for school-age persons, including those who are not residents
7 of this state but who are attending a private, nonsectarian,
8 nonprofit educational training center or residential treatment
9 center in this state. Every public and private educational
10 training center and every public and private residential
11 treatment center that serves school-age persons in this state
12 shall comply with this provision.

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

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

17 "32A-12-2. RESIDENTIAL TREATMENT PROGRAMS--RULES.--The
18 secretary of children, youth and families shall adopt rules to
19 provide for:

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

25 B. procedures and forms for applying for a

1 departmental grant or contract;

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

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

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

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

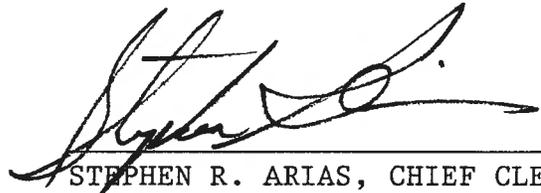
13 Section 3. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2009. _____

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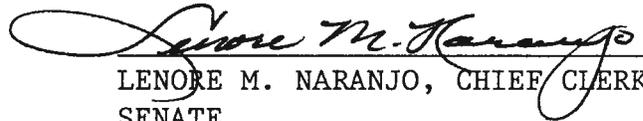
BEN LUJAN, SPEAKER
HOUSE OF REPRESENTATIVES



STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES



DIANE D. DENISH, PRESIDENT
SENATE



LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this 4th day of April, 2009



BILL RICHARDSON, GOVERNOR
STATE OF NEW MEXICO

RECEIVED IN THE
OFFICE OF THE
GOVERNOR
MAY 12 2009

ATTACHMENT 2

STATE OF NEW MEXICO
PUBLIC EDUCATION DEPARTMENT
300 DON GASPAR
SANTA FE, NEW MEXICO 87501-2786
Telephone (505) 827-5800
www.ped.state.nm.us

DR. VERONICA C. GARCÍA
SECRETARY OF EDUCATION

BILL RICHARDSON
Governor

August __, 2010

MEMORANDUM

TO: Superintendents
State Chartered Charter School Administrators

FROM: Denise Koscielniak,
Special Education Director, Special Education Bureau

**RE: PROVIDING SERVICES TO STUDENTS PLACED IN PRIVATE
RESIDENTIAL TREATMENT CENTERS**

As part of the 2009 Regular Legislative Session, House Bill 199 School District and Training Center Agreements was introduced and became effective July 1, 2009. In accordance with Section 22-13-8 NMSA 1978, a school district is responsible for providing a Free Appropriate Public Education (FAPE) to qualified students in need of special education placed in private, nonsectarian, nonprofit educational training centers or residential treatment centers within their jurisdiction as per approved agreements and depending on how the student came to be placed.

There are two mutually exclusive categories of students under the statute. In accordance with Section 22-13-8(A)(1) NMSA 1978, a “qualified student” is considered to be a public school student if he/she met the following criteria:

- is at least five years of age or will be five years of age prior to 12:01 a.m. on September 1 of the school year;
- is at least three years of age at any time during the school year and is receiving special education pursuant to rules of the department;
- has not graduated from high school;
- is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students;
- has not reached the student’s twenty-second birthday on the first day of the school year; and is receiving special education in accordance with Federal law.

On the other hand, pursuant to Section 22-13-8(A)(2), a "school-age person" is a person who is not a qualified student but who meets the federal requirements for special education and who:(a) will be at least three years old at any time during the school year and (b) is not more than twenty-one years of age, and (c) has not received a high school diploma or its equivalent;

If a school district places a student in a private residential treatment center (RTC) in order to provide FAPE, that district shall be responsible for the educational, nonmedical care and room and board costs of that placement. Likewise, should a due process hearing officer rule that a student needs placement in a private RTC to provide FAPE, the district which is the party to that due process proceeding shall be responsible for the educational, nonmedical care and room and board costs of that placement.

In order to clarify who is responsible for the costs of placement in a private RTC, all districts should enter into agreements with the private RTC and possibly with other agencies who may be responsible for the costs of the placement. All agreements made between local school boards and private, nonsectarian, nonprofit educational training centers and residential treatment centers must be reviewed and approved by the Secretary of Education. The agreements shall ensure that all qualified students placed in a private, nonsectarian, nonprofit educational training center or residential treatment center receive FAPE according to federal and state laws. All agreements must include the following:

- 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 or RTCs are not required to be highly qualified;
- 3) special education and related services as stated in the qualified student's IEP that meets the requirements of federal and state law; and
- 4) adequate classroom and other physical space at the center(s), in accordance with State rules, that allows the school district to provide an appropriate education.

The students shall be counted in the special education membership of the school district that is responsible for the costs of providing the services outlined in the students' Individualized Education Program (IEP).

The school district is responsible for providing the following range of services to those qualified students who are placed in the referenced centers as determined by the IEP team or through a Due Process decision:

- Educational services;
- Nonmedical care services ; and
- Room and board costs of that placement.

In accordance with Section 22-13-8(E) NMSA 1978, students who are placed by their parents in private residential treatment facilities or group homes are considered the same as students who are placed in private schools by their parents. Those parentally placed students must meet the definition under 34 CFR § 300.130. In accordance with 34 CFR § 300.132(b), the services to be provided as determined by the school district in consultation with the private RTC are to be

implemented through a service plan. As part of the child find responsibility of the district, the district in which the RTC is located shall be responsible for allocating the school aged person's proportionate share of the Individuals with Disabilities Education Act Part B funds to provide the services required by the service plan.

If a qualified student is placed in a private residential treatment center (RTC) which is outside the qualified student's resident school district by a New Mexico public noneducational agency or a New Mexico court of competent jurisdiction or under any circumstance other than a school district or due process placement, the school district in which the RTC is located shall be responsible for the planning and delivery of special education and related services, unless the qualified student's or school-aged person's resident school district has an agreement with the RTC to provide such services. Reimbursement for the costs of these services of the receiving school district can be sought by submitting an application for reimbursement to the Special Education Bureau of the Public Education Department. The application form can be found at <http://www.ped.state.nm.us/seb/>. The Special Education Bureau (SEB) will determine which school district is responsible for reimbursing the expense of the RTC placement and the amount of reimbursement based on the information submitted in the application. The application must be submitted to the SEB within 30 days of the student's exit from the RTC.

Please refer to the following link to view and/or download an enacted copy of House Bill 199, <http://legis.state.nm.us/Sessions/09%20Regular/final/HB0199.pdf>. If you need further clarification on this guidance, please contact the Education Administrator assigned to your district with the SEB at (505) 827-1457.

cc: Susanna M. Murphy, Ph.D., Secretary of Education Designate
Sheila Hyde, Ph.D., Interim Deputy Secretary, Learning and Accountability
Kris Meurer, Ph.D., Interim Assistant Secretary, Student Success Division
Education Administrators, Special Education Bureau
Special Education Directors
Regional Education Cooperative Directors

**CONTRACTUAL SERVICES AGREEMENT
PRIVATE, NONSECTARIAN, NONPROFIT EDUCATIONAL TRAINING CENTER
OR
RESIDENTIAL TREATMENT CENTER**

This agreement is made by and between [LEGAL NAME OF DISTRICT PLACING CHILD] hereinafter referred to as the RESIDENT DISTRICT, the [LEGAL NAME OF DISTRICT IN WHICH THE PRIVATE, NONSECTARIAN, NONPROFIT EDUCATIONAL TRAINING CENTER OR RESIDENTIAL TREATMENT CENTER IS LOCATED], hereinafter referred to as the SERVICE DISTRICT, and [LEGAL NAME OF PRIVATE, NONSECTARIAN, NONPROFIT EDUCATIONAL TRAINING CENTER OR RESIDENTIAL TREATMENT CENTER], hereinafter referred to as the CONTRACTOR, pursuant to Section 22-13-8 NMSA 1978, as amended. It is hereby agreed between the parties:

1. SCOPE OF WORK

- a. The RESIDENT DISTRICT will obtain written informed parental consent in compliance with 34 CFR Sec. 300.300 before (a) conducting an initial evaluation or reevaluation and (b) initial provision of special education and related services to a child with a disability.
- b. The RESIDENT DISTRICT will ensure that all evaluations and reevaluations are performed in accordance with the requirements of 6.31.2.10 NMAC. The RESIDENT DISTRICT will further ensure that prior written notice meeting the requirements of 34 CFR Sec. 300.503 is provided. The RESIDENT DISTRICT may contract with the SERVICE DISTRICT for evaluations or reevaluations as follows: [SPECIFY SERVICES TO BE PROVIDED BY THE SERVICE DISTRICT.]
- c. The RESIDENT DISTRICT shall, prior to placing a child with, or referring a child to, the CONTRACTOR, initiate and conduct a meeting to develop the Individualized Education Program (IEP). The CONTRACTOR agrees that its representative will attend the meeting. The RESIDENT DISTRICT hereby acknowledges its final responsibility for insuring that the IEP meets the requirements of 34 CFR Secs. 300.320-300.324 and Subsection B of 6.31.2.11 NMAC.
- d. Unless the placement is made by a due process decision, the RESIDENT DISTRICT is responsible for ensuring that the least restrictive environment regarding placement has been considered and documented on the IEP in accordance with 34 CFR Secs. 300.114-300.120 and Subsection C of 6.31.2.11 NMAC.
- e. At the request of either party, the CONTRACTOR'S administrator and designated personnel and the RESIDENT DISTRICT'S designated personnel shall confer to review compliance with the terms of this Agreement, the programs provided and the progress of students placed with, or referred to the CONTRACTOR by the RESIDENT DISTRICT pursuant to this Agreement. If the CONTRACTOR initiates and conducts these meetings, the RESIDENT DISTRICT shall ensure

that any proposed changes in an IEP are made in accordance with a properly constituted and convened IEP team and that prior written notice is provided to the parents by the RESIDENT DISTRICT.

- f. Special education and related services will be provided to children placed under this Agreement as follows:
 - i. The CONTRACTOR will provide special education and related services in accordance with the student's IEP. The CONTRACTOR agrees that all special education will meet the requirements of 34 CFR Part 300 and 6.31.2 NMAC. The CONTRACTOR will provide services as follows:
 - 1. [Item 1]
 - 2. [Item 2]
 - 3. [Item 3]
 - ii. The RESIDENT DISTRICT will provide special education and related services as follows:
 - 1. [Item 1]
 - 2. [Item 2]
 - 3. [Item 3]
 - iii. The SERVICE DISTRICT will provide special education and related services as follows:
 - 1. [Item 1]
 - 2. [Item 2]
 - 3. [Item 3]
- g. The parties acknowledge that there will be no charges or fees to the primary caretaker, parent, guardian, or person having custody of a child placed with, or referred to, the CONTRACTOR by the RESIDENT DISTRICT pursuant to this Agreement. This provision shall not be construed to prohibit the RESIDENT DISTRICT from accessing the parents' private health insurance benefits to pay for related services required for a free appropriate public education if the parents provide informed consent in accordance with 34 CFR Sec. 300.154(e) or from using Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under IDEA Part B as permitted under the public benefits or insurance program in accordance with 34 CFR Sec. 300.154(d). Parents must be informed that accessing the parents' private health insurance benefits may negatively impact future benefits.
- h. The CONTRACTOR shall provide the RESIDENT DISTRICT with a list of its licensed teachers and related service providers. The list must be provided prior to the RESIDENT DISTRICT'S submission of the proposed Agreement to the New Mexico Public Education Department (NMPED) and must be kept current during the term of the Agreement. The list shall include the name and license number of each teacher or related service provider. All teachers and related service providers must have valid and current New Mexico licenses as required by the NMPED and the New Mexico Regulation and Licensing Department.
- i. The CONTRACTOR shall have a licensed professional present with children placed with, or referred to, the CONTRACTOR by the RESIDENT DISTRICT pursuant to this Agreement at all times. Services provided by non-professional personnel shall be provided only under the supervision of a licensed special

education professional or therapist. The CONTRACTOR shall further provide the RESIDENT DISTRICT with comparable information about each aide assisting the licensed personnel.

- j. The [SPECIFY RESIDENT DISTRICT, SERVICE DISTRICT AND/OR CONTRACTOR] will provide related services as specified in the student's IEP as follows: [PROVIDE DETAILED DESCRIPTION OF SERVICES AND PROVIDER]
- k. The [SPECIFY RESIDENT DISTRICT OR CONTRACTOR] will provide transportation services at no cost to the parent (s) as described: [PROVIDE DETAILED DESCRIPTION OF TRANSPORTATION SERVICES]
- l. The [SPECIFY RESIDENT DISTRICT, SERVICE DISTRICT AND/OR CONTRACTOR] will provide instructional materials as described: [PROVIDE DETAILED DESCRIPTION OF INSTRUCTIONAL MATERIALS]
- m. The [SPECIFY RESIDENT DISTRICT, SERVICE DISTRICT OR CONTRACTOR] will provide food services as described: [PROVIDE DETAILED DESCRIPTION OF FOOD SERVICES]
- n. The RESIDENT DISTRICT shall be responsible for the maintenance of child identifiable data. The CONTRACTOR agrees to maintain education records as defined by 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act) and 34 CFR Sec. 300.611 under its control in accordance with said regulations.
- o. CONTRACTOR further agrees to utilize the student identification number or unique student identifier as supplied by the district in preparing and maintaining all reports required by this Agreement.
- p. The CONTRACTOR undertakes and agrees to maintain, to make available and to submit, on official RESIDENT DISTRICT forms such reports and records as are required of RESIDENT DISTRICT by the NMPED.
- q. The CONTRACTOR agrees that its facility or facilities have adequate classroom and other physical space for providing the services required under this Agreement. Compliance with the Statewide Adequacy Standards established in 6.27.30 NMAC shall be deemed to be adequate space. If CONTRACTOR'S facility or facilities do not comply with the requirements of 6.27.30 NMAC, the RESIDENT DISTRICT shall provide written justification to the NMPED addressing the adequacy of the facility or facilities. The justification must be submitted to the NMPED with the proposed Agreement.

2. COMPENSATION

- a. The RESIDENT DISTRICT will reimburse the CONTRACTOR and the SERVICE DISTRICT on a monthly basis for services rendered pursuant to this Agreement.
- b. The CONTRACTOR and the SERVICE DISTRICT shall submit a monthly certification to the RESIDENT DISTRICT describing in detail the services provided on the child for the month for which reimbursement is sought. Claims for reimbursement must be submitted on forms approved by the NMPED.
- c. The RESIDENT DISTRICT shall reimburse the CONTRACTOR in the amount NOT TO EXCEED \$ _____ PER MONTH for services provided pursuant to

this Agreement. The monthly fee will be prorated based on student attendance and receipt of services.

3. TERM

This Agreement shall be effective for the period commencing on [BEGINNING DATE] and ending [ENDING DATE]. (This Agreement shall terminate on the ending date, at the latest, unless terminated pursuant to paragraph 4, infra.) NEITHER [NO] PARTY SHALL PERFORM ANY ACT OR SERVICE CONTEMPLATED BY THIS AGREEMENT PRIOR TO THE DATE OF FINAL APPROVAL BY THE NMPED. THE CONTRACTOR SHALL FORFEIT ALL CLAIMS TO COMPENSATION FOR ANY ACT OR SERVICE PERFORMED PRIOR TO THE DATE OF FINAL APPROVAL BY THE NMPED. The parties agree that the Agreement shall be amended to reflect any subsequent changes to student's IEP.

4. TERMINATION

This Agreement may be terminated by any party upon written notice delivered to other parties at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. Notwithstanding the provisions of this paragraph, reimbursement will be made to the CONTRACTOR and the SERVICE DISTRICT solely for services provided.

5. STATUS OF CONTRACTOR

[If CONTRACTOR is a private, nonsectarian, nonprofit educational training center, insert the following assurance: CONTRACTOR holds a 501(c)(3) Form from the Internal Revenue Service verifying nonprofit status.]

6. LICENSING

- a. The CONTRACTOR warrants and assures that it holds and will maintain all required licensing, including but not limited to the following licensing requirements:
 - i. Facilities governed by the provisions of 7.8.3 NMAC (REGULATIONS GOVERNING RESIDENTIAL SHELTER CARE FACILITIES FOR CHILDREN), including public or private, profit or nonprofit residential facilities providing services as outlined by 7.8.3 NMAC and any facility providing services as outlined by 7.8.3 NMAC which by State or federal law or regulation must be licensed by the State of New Mexico.
 - ii. Room and board facilities in public or private schools accredited or supervised by the NMPED and inspected for fire and safety by the New Mexico State Fire Marshal's office.

- iii. Residential treatment services and day treatment services that provide children and adolescent mental health services, which are licensed by Children, Youth and Families Department, Certification Unit.
- b. If CONTRACTOR will provide services outside of the State of New Mexico, CONTRACTOR certifies that it holds and will maintain in good standing all required licensure from the state in which the facility is located. CONTRACTOR must provide copies of all required licenses to the RESIDENT DISTRICT prior to the provision of services to a student under this Agreement, which copies shall be maintained by the RESIDENT DISTRICT.
- c. The CONTRACTOR [and the SERVICE DISTRICT] shall ensure that any person teaching, supervising an instructional program or providing instructional support services and any person providing health care and administering medications or performing medical procedures pursuant to this Agreement shall hold a valid license or certificate from the NMPED and the New Mexico Regulation and Licensing Department authorizing the person to perform that function. The CONTRACTOR shall provide a list of names, including any updates, together with licensure file numbers, to the RESIDENT DISTRICT of all persons providing services to the child and for whom a license is required.
- d. The CONTRACTOR shall further perform background checks on all contractor's employees who provide services pursuant to this Agreement and have unsupervised access to students. The background checks shall be submitted through the RESIDENT DISTRICT and shall be at the expense of the CONTRACTOR.

7. ASSIGNMENT

Neither party shall assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement.

8. SUBCONTRACTING

The CONTRACTOR shall not subcontract any portion of the service to be performed under this Agreement without the prior written approval of the RESIDENT DISTRICT.

9. CONFLICT OF INTEREST

The CONTRACTOR warrants that it has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement.

10. APPROPRIATION

The terms of this Agreement are contingent upon receipt of funds under the Public School Finance Act or Part B of the Individuals with Disabilities Education Act, with authorization being made available by the NMPED for performance of this Agreement. If

sufficient appropriations and authorizations are not available, this Agreement shall terminate upon written notice given by the RESIDENT DISTRICT. The decision of the RESIDENT DISTRICT as to whether sufficient appropriations are available shall be accepted by the CONTRACTOR and shall be final.

11. RECORDS

The CONTRACTOR will maintain records indicating date, length of time and nature of services rendered. These records shall be subject to periodic scheduled or unscheduled inspection by the RESIDENT DISTRICT, the NMPED, the United States Department of Education, the Department of Finance and Administration and the State Auditor or designee.

12. AMENDMENT

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto, and approved by all required approving agencies.

13. SCOPE OF AGREEMENT

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereof concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents, shall be valid or, otherwise enforceable unless embodied in this Agreement.

14. NON-WAIVER

Nothing in this Agreement shall constitute a waiver of existing legal rights and remedies in the event of a breach of this Agreement.

15. APPLICABLE LAW

This Agreement shall be governed by the laws of the State of New Mexico.

16. EQUAL OPPORTUNITY COMPLIANCE

The CONTRACTOR agrees to abide by all Federal and State laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of State of New Mexico, the CONTRACTOR agrees to assure that no person in the United States shall, on grounds of race, color, national origin, sex, sexual preference age or disability, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under this agreement. If CONTRACTOR is found to be not in

compliance with these requirement during the life of this Agreement, CONTRACTOR agrees to take appropriate steps to correct these deficiencies.

17. COMPLIANCE WITH STATE AND FEDERAL REQUIREMENTS

The CONTRACTOR shall abide by all state and federal statutory and regulatory requirements.

18. ACKNOWLEDGMENT OF LOCAL BOARD AND NMPED AUTHORITY AND RESPONSIBILITY

The parties acknowledge the authority and responsibility of the RESIDENT DISTRICT and the NMPED to conduct on-site evaluations of programs and pupil progress to ensure meeting state standards.

In Witness Whereof, the parties have executed this Agreement as of the date first written above.

[LEGAL NAME OF RESIDENT DISTRICT]

By: _____
Superintendent

Date: _____

[LEGAL NAME OF SERVICE DISTRICT]

By: _____
Superintendent

Date: _____

[LEGAL NAME OF CONTRACTOR]

By: _____
Title

Date: _____

RECOMMENDED FOR APPROVAL

The proposed agreement meets the requirements of Section 22-13-8 NMSA and Subsection B of 6.31.2.9 NMAC

By: _____ Date: _____
Special Education Director, Special Education Bureau

APPROVED AS TO FORM:

By: _____ Date: _____
Assistant General Counsel

APPROVED:

By: _____
Secretary of Education
New Mexico Public Education Department

DISCUSSION DRAFT



**STATE OF NEW MEXICO
PUBLIC EDUCATION DEPARTMENT
300 DON GASPAR
SANTA FE, NEW MEXICO 87501-2786
Telephone (505) 827-5800
www.ped.state.nm.us**

DR. SUSANNA M. MURPHY
SECRETARY OF EDUCATION

BILL RICHARDSON
Governor

SEB Use Only	Date Received
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Request (Check one)

Initial Placement
Continuing Placement

**APPLICATION FOR REIMBURSEMENT
OF PLACEMENT IN
RESIDENTIAL TREATMENT CENTER¹**

INSTRUCTIONS: When a qualified student² or a school-age person³ is placed in a private, nonsectarian, nonprofit training center or a residential treatment center (RTC) which is outside the qualified student's or school-aged person's resident school district by a New Mexico public noneducational agency or a New Mexico court of competent jurisdiction or under any circumstances other than a school district or due process placement, this form is to be completed and submitted to the New Mexico Public Education Department (NMPED) Special Education Bureau (SEB) within 30 days of the student exiting the RTC to allow reimbursement for the placement. Reimbursement for tuition, room and board, nonmedical care and special education services provided for qualified students may be submitted to the SEB by a school district on the following basis:

- A school district in which a private, nonsectarian, nonprofit educational training center or residential treatment center 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;
- For a qualified student in need of special education or school-age person who is placed in a private, nonsectarian, nonprofit educational training center or residential treatment center by a school district or by a due process decision, 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.

¹ This application may only be used to reimburse costs relating to the placement of a special education student and does not apply to a regular education student placed in a private residential treatment center.

² For purposes of placements in private, nonsectarian, nonprofit educational training centers or residential treatment centers, a "qualified student" means a public school student who (a) has not graduated from high school; (b) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and (c) in terms of age: 1) is at least five years of age prior to 12:01 a.m. on September 1 of the school year or will be five years of age prior to 12:01 a.m. on September 1 of the school year if the student is enrolled in a public school extended-year kindergarten program that begins prior to the start of the regular school year; 2) is at least three years of age at any time during the school year and is receiving special education pursuant to rules of the department; or 3) has not reached the student's twenty-second birthday on the first day of the school year and is receiving special education in accordance with federal law. Section 22-13-8(A)(1), NMSA 1978.

³ For purposes of placements in private, nonsectarian, nonprofit educational training centers or residential treatment centers, a "school-age person" "school-age person" means a person who is not a qualified student but who meets the federal requirements for special education and who: (a) will be at least three years old at any time during the school year; (b) is not more than twenty-one years of age; and (c) has not received a high school diploma or its equivalent.

Application for Reimbursement for Placement in RTC

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- For a school-age person placed in a private, nonsectarian, nonprofit educational training center or residential treatment center not as a result of a due process decision but by a parent who assumes the responsibility for such placement, the department shall ensure that the school district in which the facility is located is allocating and distributing the school-age person's proportionate share of the federal Individuals with Disabilities Education Act Part B funds but the state is not required to distribute state funds for that school-age person;
- For a qualified student or school-age person in need of special education placed in a private, nonsectarian, nonprofit educational training center or residential treatment center 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; and
- Except for placement of a qualified student in need of special education or school-age person who is placed in a private, nonsectarian, nonprofit educational training center or residential treatment center by a school district or by a due process decision, the NMPED shall 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, nonsectarian, nonprofit educational training center or residential treatment center outside the qualified student's resident school district. The department shall determine the reasonable reimbursement owed to the receiving school district.

PART I – IDENTIFICATION

Name of Student			
Last	First	MI	Birth Date (mm/dd/yyyy)
Student's Resident District			
Student ID No.			
Name of RTC	Address of /RTC	Contact Person	Contact Phone No.
Student's Receiving District			
Student's primary disability (as indicated on most recent IEP)		Student's secondary disability(ies), if any (as indicated on most recent IEP)	

PART II – Information on Placement

1. How was placement made? _____
2. Did the receiving school district participate in crafting the current IEP? _____
3. Was the student disenrolled from his/her resident school district? _____
4. Are there properly constituted IEPs in place and are they up to date? _____
5. Please provide a copy of the student's current IEP.

Part III – Information on Costs

1. Provide the date the student entered the RTC and the date the student exited the RTC.
2. Up until the date of placement, which school district included the student in its child count?
3. Provide a detailed description of the costs incurred in placing the student in the RTC and for which reimbursement is sought.
4. Provide copies of all contracts and invoices that pertain to the student's placement in the RTC.

Part IV – Processing of Application

Upon receipt of the application and based on the information provided in the application, the SEB will determine who is responsible for the costs of educating a qualified student placed in the private RTC and the amount to be reimbursed to the receiving school district. The applicant will then be notified of the decision on the application.

Application for Reimbursement for Placement in RTC
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Contact information for person/persons filling out the application:

Name: _____

Title: _____

Phone number: _____ Email Address: _____

Date application completed: _____

32A-6A-12. Personal rights of a child in an out-of-home treatment or habilitation program; scope.

A. A child in an out-of-home treatment or habilitation program shall have, in addition to other rights set forth in the Children's Mental Health and Developmental Disabilities Act, the right to:

- (1) be placed in a manner consistent with the least restrictive means principle;
- (2) have access to the state's designated protection and advocacy system and access to an attorney of the child's choice, provided that the child is not entitled to appointment of an attorney at public expense, except as otherwise provided in Subsection C of Section 13 [32A-6A-13 NMSA 1978] of the Children's Mental Health and Developmental Disabilities Act;
- (3) receive visitors of the child's own choosing on a daily basis, subject to restrictions imposed in the best interests of the child by the child's clinician for good cause. Hours during which visitors may be received shall be limited only in the interest of effective treatment and the reasonable efficiency of the program and shall be sufficiently flexible to accommodate the individual needs of the child and the child's visitors. Notwithstanding the provisions of this subsection, each child has the right to receive visits from the child's attorney, physician, psychologist, clergy, guardian ad litem, representatives from the state's protection and advocacy system or children, youth and families department in private at any reasonable time, irrespective of visiting hours, provided the visitor shows reasonable cause for visiting at times other than normal visiting hours;
- (4) have writing materials and postage stamps reasonably available for the child's use in writing letters and other communications. Reasonable assistance shall be provided for writing, addressing and posting letters and other documents upon request. The child has the right to send and receive sealed and uncensored mail. The child has the right to reasonable private access to telephones and, in cases of personal emergencies when other means of communication are not satisfactory, the child shall be afforded reasonable use of long distance calls; provided that for other than mail or telephone calls to a court, an attorney, a physician, a psychologist, a clergy, a guardian ad litem, a representative from the state's protection and advocacy system or a social worker, mailing or telephone privileges may be restricted by the child's clinician for good cause shown. A child who is indigent shall be furnished writing, postage and telephone facilities without charge;
- (5) reasonable access to a legal custodian and a family member through visitation, videoconferencing, telephone access and opportunity to send and receive mail. In-person-visitation is preferred and reasonable efforts shall be made to facilitate such visitation unless the child and family choose otherwise. Access by legal custodians and family members to the child shall be limited only in the interest of effective treatment and the reasonable efficiency of the program and shall be sufficiently flexible to accommodate the individual needs of legal custodians and family members. Treatment needs that justify limitation on the access rights of a

legal custodian or family member must be specifically documented by the clinician in the child's record and any such limitation automatically expires in seven days;

(6) follow or abstain from the practice of religion. The program shall provide appropriate assistance in this connection, including reasonable accommodations for religious worship and transportation to nearby religious services. A child who does not wish to participate in religious practice shall be free from pressure to do so or to accept religious beliefs;

(7) a humane psychological and physical environment. The child shall be provided a comfortable bed and adequate changes of linen and reasonable secure storage space for personal possessions. Except when curtailed for reasons of safety or therapy as documented in the child's record by the child's physician, the child shall be afforded reasonable privacy in sleeping and personal hygiene practices;

(8) reasonable daily opportunities for physical exercise and outdoor exercise and reasonable access to recreational areas and equipment, including equipment adapted to the child's developmental and physical needs;

(9) a nourishing, well-balanced, varied and appetizing diet;

(10) prompt and adequate medical attention for a physical ailment. Each child shall receive a complete physical examination upon admission, except when documentation is provided that the child has had such examination within the six months immediately prior to the current admission. Each child shall receive a complete physical examination every twelve months thereafter;

(11) a clean, safe and comfortable environment in a structure that complies with applicable fire and safety requirements;

(12) appropriate medication and freedom from unnecessary or excessive medication. Medication shall not be used as discipline, as a substitute for programs, for the convenience of staff or in quantities that interfere with the child's treatment or habilitation program. No medication shall be administered unless by written order of a clinician licensed to prescribe medication or by an oral order noted immediately in the patient's medical record and signed by that clinician within twenty-four hours. All prescriptions for psychotropic medications must be reviewed at least every thirty days. Notation of each child's medication shall be kept in the child's medical records and shall include a notation by the clinician licensed to prescribe medication of the behavioral or symptomatic baseline data upon which the medication order was made; and

(13) a free public education. The child shall be educated in regular classes with nondisabled children whenever appropriate. In no event shall a child be allowed to remain in an out-of-home treatment or habilitation program for more than ten days without receiving educational services. If the child's placement in an out-of-home treatment or habilitation program is required by an individualized education plan that conforms to the requirements of state and federal law, the sending school is responsible for the provision of education to the child. In all other situations, the local school district in which the out-of-home treatment or

habilitation program is located is responsible for the provision of educational services to the child. Nothing in this subsection shall limit a child's right to public education under state, tribal or federal law.

B. A child receiving services in an out-of-home treatment or habilitation program, including but not limited to residential treatment or habilitation programs, shall be provided notice of rights immediately upon admission to such program.

History: Laws 2007, ch. 162, § 12.

Cross references. — For personal rights of residential clients applicable to the Adult Mental Health and Developmental Disabilities Code, see 43-1-6 NMSA 1978.

For provisions of the 1995 Children's Mental Health and Developmental Disabilities Act, relating to personal rights of children, see the 2006 NMSA 1978 (32-6A-6) on New Mexico One Source of Law DVD.

Effective dates. — Laws 2007, ch. 162 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.