

**Hondo Valley Public School District  
PROCEDURES  
FOR THE  
PROVISION OF  
SPECIAL EDUCATION SERVICES  
FOR  
STUDENTS WITH DISABILITIES AND GIFTED STUDENTS**

**Chapter 8. – GENERAL ADMINISTRATION**

Chapter 8. Adopted Pursuant to Board Policy: Special Education  
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**Chapter 8 – GENERAL ADMINISTRATION**  
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## **Chapter 8. – GENERAL ADMINISTRATION**

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provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary...."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

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

### **I. SCOPE AND APPLICABILITY**

#### **Authority: 34 CFR §300.1 Purposes.**

The purposes of this part are--

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

#### **Authority: 34 CFR §300.17 Free appropriate public education.**

Free appropriate public education or FAPE means special education and related services that--

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

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

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

#### **Authority: 34 CFR §300.110 Program options.**

The State must ensure that each 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.

#### **Authority: 34 C.F.R. §300.200. Condition of assistance.**

An LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in 300.201 through 300.213.

**Authority: 34 C.F.R. §300.201. Consistency with State policies.**

The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under 300.101 through 300.163, and 300.165 through 300.174.

**Authority: 34 CFR §300.212 Public information.**

The Hondo Valley Public School District must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the Hondo Valley Public School District under Part B of the Act.

**Authority: NMAC 6.31.2.6 OBJECTIVE:**

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

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

- A. All children with disabilities aged 3 through 21 or who will turn 3 at any time during the school year who reside in New Mexico, including children with disabilities who have been suspended or expelled from school, have the right to a free appropriate public education that is made available by one or more public agencies in compliance with all applicable requirements of 34 CFR Secs. 300.101 and 300.120 and these or other department rules and standards. Children with disabilities who are enrolled in private schools have the rights provided by 34 CFR Secs. 300.129-300.148 and Subsection L of 6.31.2.11 NMAC.
- B. Only children who meet the criteria in these rules may be included in calculating special education program units for state funding and counted as eligible children for federal flow-through funds under Part B of the IDEA.

*The Hondo Valley Public School District, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under 34 C.F.R. §§300.101 through 300.163, and 300.165 through 300.174. This document consisting of Chapters 1-8, in its entirety constitutes the Hondo Valley Public School District procedures, developed pursuant to and designed to implement Board policies. .*

## **II. PERSONNEL**

**Authority: 34 CFR §300.156 Personnel qualifications.**

- (a) General. The NMPED must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.
- (b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--
  - (1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and
  - (2) Ensure that related services personnel who deliver services in their discipline or profession--
    - (i) Meet the requirements of paragraph (b)(1) of this section; and
    - (ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
    - (iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part

to be used to assist in the provision of special education and related services under this part to children with disabilities.

- (c) **Qualifications for special education teachers.** The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.
- (d) **Policy.** In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.
- (e) **Rule of construction.** Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular NMPED or Hondo Valley Public School District employee to be highly qualified; or to prevent a parent from filing a complaint about staff qualifications with the NMPED as provided for under this part.

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

- (a) **Requirements for special education teachers teaching core academic subjects.** For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for highly qualified also--
  - (1) Include the requirements described in paragraph (b) of this section; and
  - (2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.
- (b) **Requirements for special education teachers in general.**
  - (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified requires that--
    - (i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law;
    - (ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
    - (iii) The teacher holds at least a bachelor's degree.
  - (2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to certification program under which--
    - (i) The teacher--
      - (A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;
      - (B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;
      - (C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and
      - (D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and
    - (ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.
  - (3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements of paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section.
- (c) **Requirements for special education teachers teaching to alternate achievement standards.** Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either--

- (1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or
  - (2) Meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of subparagraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State.
- (d) Requirements for highly qualified special education teachers teaching multiple subjects. When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either--
- (1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);
  - (2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or
  - (3) In the case of a new special education teacher who teaches multiple subjects, and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single, high objective State standard of evaluation (HOUSSE) covering multiple subjects.
- (e) Separate HOUSSE standards for special education teachers. Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meets all the requirements for a HOUSSE for regular education teachers—
- (1) A State may develop a separate HOUSSE for special education teachers; and
  - (2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects.
- (f) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular NMPED or Hondo Valley Public School District employee to be highly qualified, or to prevent a parent from filing a complaint under §§300.151 through 300.153 about staff qualifications with the NMPED as provided for under this part.
- (g) Applicability of definition to ESEA; and clarification of new special education teacher.
- (1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.
  - (2) For purposes of 300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.
- (h) Private school teachers not covered. The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by the Hondo Valley Public School District to provide equitable services to parentally-placed private school children with disabilities under §300.138.

**Authority: NMAC 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:**

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**B. Public agency funding and staffing**

...

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

“The Act makes clear that the use of paraprofessionals and assistants who are appropriately trained and supervised must be contingent on State law, regulation, and written policy giving States the option of determining whether paraprofessionals and assistants can be used to assist in the provision of special education and related services under Part B of the Act, and, if so, to what extent their use would be permissible. However, it is critical that States that use paraprofessionals and assistants to assist in providing special education and related services to children with disabilities do so in a manner that is consistent with the rights of children with disabilities to FAPE under Part B of the Act. There is no need to provide additional guidance on how States and LEAs should use paraprofessionals and assistants because States have the flexibility to determine whether to use them, and, if so, to determine the scope of their responsibilities.” 71 Fed. Reg. 46612 (August 14, 2006).

*The New Mexico highly qualified teacher requirements including for special education teachers are available through the NMPED website at: [http://www.teachnm.org/highly\\_qualified.html](http://www.teachnm.org/highly_qualified.html).*

*The NMPED has adopted teacher licensure rules including licensure in special education, competency testing rules, ancillary service providers' licensure rules, and special support services licensure rules. These rules are available through the NMPED website at: <http://www.ped.state.nm.us/div/ais/lic/rules/index.html>. The Hondo Valley Public School District will ensure that personnel serving children with disabilities are qualified under state licensure requirements, special education teachers are highly qualified, and paraprofessionals and assistants are appropriately trained and supervised..*

### **III. COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT**

#### **Authority: 34 CFR §300.207 Personnel development.**

The Hondo Valley Public School District will ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of §300.156 (related to personnel qualifications) and section 2122 of the ESEA.

#### **Authority: NMAC 6.65.2.6 [Professional Development] OBJECTIVE:**

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

*The Hondo Valley Public School District's professional development will be guided by State Performance Plan (SPP) and annual performance report (APR) data. Professional development will be provided to special and regular education teachers who teach children with disabilities based on scientifically-based research to improve educational instruction.*

## IV. CLASS LOADS

### Authority: NMAC 6.30.2.10 PROCEDURAL REQUIREMENTS

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

- (1) The student/staff caseload shall not exceed 35:1 for a special education teacher and 60:1 for a speech-language pathologist for special education services or speech-only services, in which properly licensed special education teachers or speech-language pathologists travel from class to class or school to school, providing services to students with disabilities whose individualized education programs (IEPs) require a minimal amount of special education. (A minimal amount of special education services shall not exceed 10 per cent of the school day/week.)**
- (2) The student/staff caseload shall not exceed 24:1 for a special education teacher and 35:1 for a speech-language pathologist for special education services or speech-only services which properly-licensed special education teachers or speech-language pathologists provide to students with disabilities whose IEPs require a moderate amount of special education. (A moderate amount of special education services shall be less than 50 per cent of the school day.)**
- (3) The student/staff caseload shall not exceed 15:1 for special education services in which properly licensed special education teachers provide services to students with disabilities whose IEPs require an extensive amount of special education for a portion of the school day as appropriate to implement the plan. (An extensive amount of special education services shall be provided 50 per cent or more of the school day.)**
- (4) The student/staff caseload shall not exceed 8:1 for special education services in which a properly licensed professional provides services to students with disabilities whose IEPs require a maximum amount of special education. (A maximum amount of special education services shall be provided in an amount approaching a full school day.)**
- (5) The student/adult caseload shall not exceed 4:1 for center-based special education services in which one of the adults in the program is a properly licensed professional providing three- and four-year old children with the amount of special education needed to implement each child's IEP. This includes a child who will turn three at any time during the school year, and who is determined to be eligible for Part B services. The child may be enrolled in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.**
- (6) The student/adult caseload shall not exceed 2:1 for center-based special education services in which three- and four-year old children have profound educational needs. This includes children who will turn three at any time during the school year, and who are determined to be eligible. The child may be enrolled in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.**
- (7) Adequate student/staff caseloads shall be provided to appropriately address needs identified in the IEPs. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to students with disabilities under Part B of IDEA.**
- (8) If the student/staff caseload ratio exceeds the standards provided above, a request for waiver shall be submitted to the department for review and approval by the secretary.**

*The Hondo Valley Public School District will accurately report class loads on the STARS system and comply with class load requirements established by State rule.*

## **V. STARS– Student Teacher Accountably and Reporting System**

### **Authority: 34 CFR §300.211 Information for SEA.**

The Hondo Valley Public School District will provide the NMPED with information necessary to enable the NMPED to carry out its duties under Part B of the Act, including, with respect to §§300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.

### **Authority: 34 CFR §300.213 Records regarding migratory children with disabilities.**

The Hondo Valley Public School District will cooperate in the Secretary’s efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the States, health and educational information regarding those children.

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

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

### **Authority: 34 CFR §300.641 Annual report of children served—information required in the report.**

- (a) For purposes of the annual report required by section 618 of the Act and §300.640, the State and the Secretary of the Interior must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.
- (b) For the purpose of this reporting provision, a child’s age is the child’s actual age on the date of the child count.
- (c) The SEA may not report a child under more than one disability category.
- (d) If a child with a disability has more than one disability, the SEA must report that child in accordance with the following procedure:
  - (1) If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category “deaf-blindness.”
  - (2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category “multiple disabilities.”

### **Authority: 34 CFR §300.645 Annual report of children served—other responsibilities of the SEA.**

In addition to meeting the other requirements of §§ 300.640 through 300.644, the SEA must—

- (a) Establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services;
- (b) Set dates by which those agencies and institutions must report to the SEA to ensure that the State complies with §300.640(a);
- (c) Obtain certification from each agency and institution that an unduplicated and accurate count has been made;
- (d) Aggregate the data from the count obtained from each agency and institution, and prepare the reports required under §§ 300.640 through 300.644; and
- (e) Ensure that documentation is maintained that enables the State and the Secretary to audit the accuracy of the count.

### **Authority: 34 CFR §300.646 Disproportionality.**

- (a) General. Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to--
  - (1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act;
  - (2) The placement in particular educational settings of these children; and
  - (3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

**Authority: NMAC 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:**

...

**E. Significant disproportionality.**

- (1) Pursuant to CFR 34 Sec. 300.646, the Hondo Valley Public School District will provide for the collection and examination of data to determine if significant disproportionality, based on race and ethnicity, is occurring with respect to:
  - (a) the identification of children as children with disabilities including the identification of children as children with disabilities in accordance with a particular impairment as defined by 34 CFR Sec. 300.8;
  - (b) the placement in particular educational settings of these children; and
  - (c) the incidence, duration and type of disciplinary actions, including suspensions and expulsions.

*The STARS system is the system that the NMPED uses to obtain program information for its annual report of children served to the U.S. Secretary of Education. The Hondo Valley Public School District will follow the reporting requirements of the NMPED for the STARS system to ensure a timely, accurate and valid submission of data. Information regarding STARS is available through the NMPED website at: [www.ped.state.nm.us/stars](http://www.ped.state.nm.us/stars).*

**VI. SPECIAL EDUCATION ACCOUNTABILITY SYSTEM (SEAS)**

**Authority: 34 CFR §300.120 Monitoring activities.**

- (a) The NMPED must carry out activities to ensure that §300.114 [LRE requirements] is implemented by the each public agency.
- (b) If there is evidence that a public agency makes placements that are inconsistent with §300.114, the NMPED must-
  - (1) Review the public agency's justification for its actions; and
  - (2) Assist in planning and implementing any necessary corrective action.

**Authority: 34 CFR §300.157 Performance goals and indicators.**

The State must--

- (a) Have in effect established goals for the performance of children with disabilities in the State that--
  - (1) Promote the purposes of this part, as stated in §300.1;
  - (2) Are the same as the State's objectives for progress by children in its definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the ESEA, 20 U.S.C. 6311;
  - (3) Address graduation rates and dropout rates, as well as such other factors as the State may determine; and
  - (4) Are consistent, to the extent appropriate, with any other goals and academic standards for children established by the State;
- (b) Have in effect established performance indicators the State will use to assess progress toward achieving the goals described in paragraph (a) of this section, including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the ESEA, 20 U.S.C. 6311; and
- (c) Annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under paragraph (a) of this section, which may include elements of the reports required under section 1111(h) of the ESEA.

**Authority: 34 CFR §300.170 Suspension and expulsion rates.**

- (a) General. The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--
  - (1) Among LEAs in the State; or
  - (2) Compared to the rates for nondisabled children within those agencies.
- (b) Review and revision of policies. If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs,

the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

**Authority: 34 CFR §300.173 Overidentification and disproportionality.**

The State must have in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in §300.8.

**Authority: 34 CFR §300.646 Disproportionality.**

...

- (b) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior must--
- (1) Provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of the Act.
  - (2) Require any LEA identified under paragraph (a) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) of this section; and
  - (3) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (b)(1) of this section.

**Authority: NMAC 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:**

...

**E. Significant disproportionality.**

...

- (2) Each public agency must reserve the fifteen percent early intervening funds if they are identified for having data that is significantly disproportionate in any one of the following categories:
  - (a) suspension of students with disabilities;
  - (b) over identification of students with disabilities;
  - (c) over identification of students in accordance with a particular impairment as defined by 34 CFR Sec. 300.8; and
  - (d) placement of students with disabilities in a particular setting.
- (3) Review and revision of policies, practices and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with Paragraph (1) of this subsection, the LEA must:
  - (a) provide for the review and, if appropriate, revision of the policies, procedures and practices used in the identification or placement to ensure that the policies, procedures and practices comply with the requirements of the IDEA; and
  - (b) require any LEA identified under Paragraph (1) of this subsection to reserve the maximum amount of funds under 34 CFR Sec. 300.226 to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under Paragraph (1) of this subsection; and
  - (c) require the LEA to publicly report on the revision of policies, practices and procedures described under Subparagraph (b) of this paragraph.

*State Performance Plan (December 2, 2005—updated April 12, 2010) available through the NMPED website at: <http://www.ped.state.nm.us/SEB/dl10/State%20Performance%20Plan.pdf>*

State Annual Performance Report—FFY 2008 (July 1, 2008 – June 30, 2009)(submitted February 1, 2010, and updated April 12, 2010) available through the NMPED website at: <http://www.ped.state.nm.us/SEB/dl10/Annual%20Performance%20Plan.pdf>.

*The Hondo Valley Public School District will work with the NMPED to ensure that it meets requirements of Part B of the Act, including by providing quantitative and qualitative information to the NMPED regarding its performance on the State Performance Plan indicators. It is the goal of the Hondo Valley Public School District to meet the measurable and rigorous targets established by the State in its State Performance Plan.*

## **VII. JOINT POWERS AGREEMENTS (INCLUDING WITH A REC) AND MEMORANDA OF UNDERSTANDING**

### **Authority: Chapter 11. Intergovernmental Agreements and Authorities** **Article 1. Joint Powers Agreements**

**Authority: NMSA 1978 11-1-1. Short title.**  
This act may be cited as the "Joint Powers Agreements Act."

### **Authority: NMSA 1978 11-1-2. Definitions.**

As used in the Joint Powers Agreements Act:

- A. "public agency" means the federal government or any federal department, agency or instrumentality; this state, **another** state or any state department, agency or instrumentality; an Indian nation, tribe or pueblo; a subdivision of an Indian nation, tribe or pueblo that has authority pursuant to the law of that Indian nation, tribe or pueblo to enter into joint powers agreements directly with the state; a county, municipality, public corporation or public district of this state or **another** state; a New Mexico educational institution specified in Article 12, Section 11 of the constitution of New Mexico; and a New Mexico school district;
- B. "agreement" means a written contractual agreement entered into between two or more public agencies subject to any constitutional or legislative restriction imposed upon any of the contracting public agencies, but the Joint Powers Agreements Act does not authorize an interstate water supply agreement or limit the powers of an interstate water compact commission, the interstate stream commission or the state engineer, and it does not limit the powers of a state agency or political subdivision to enter into agreements with the interstate stream commission or the state engineer;
- C. "bonds" means revenue bonds;
- D. "bondholder" means any person who is the bearer of any outstanding bond or the owner of bonds that are at the time registered to other than the bearer;
- E. "indenture" means the instrument providing the terms and conditions for the issuance of the bonds and may be a resolution, order, agreement or other instrument; and
- F. "instrumentality" means a public corporate entity created by state law but which is not subject to the general laws of the state and is not a state agency or department.

### **Authority: NMSA 1978 11-1-3. Authority to enter into agreements; approval of the secretary of finance and administration required.**

If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties, even though one or more of the contracting parties may be located outside this state; provided, however, nothing contained in this Joint Powers Agreements Act shall authorize any state officer, board, commission, department or any other state agency, institution or authority, or any county, municipality, public corporation or public district to make any agreement without the approval of the secretary of finance and administration as to the terms and conditions thereof. Joint powers agreements approved by the secretary of finance and administration shall be reported to the state board of finance at its next regularly scheduled public meeting. A list of the approved agreements shall be filed with the office of the state board of finance and made a part of the minutes.

**Authority: NMSA 1978 11-1-4. Terms and conditions of joint agreements.**

- A. Every agreement executed by one or more public agencies shall clearly specify the purpose of the agreement or for any power which is to be exercised. The agreement shall provide for the method by which the purpose will be accomplished and the manner in which any power will be exercised under such agreement.
- B. The parties to the agreement may provide therein that:
  - (1) contributions from the funds of the public agencies may be made for the purpose set forth in the agreement; or
  - (2) payments of public funds may be made to defray cost of such agreement; or
  - (3) advances of public funds of the public agencies be made for the purpose set forth in the agreement and that such advances be repaid as provided in such agreement.
- C. The agreement may provide that funds be paid to and disbursed by the agency agreed upon by the public agencies under the terms of the agreement.
- D. The agreement shall provide for strict accountability of all receipts and disbursements.
- E. The agreement may be continued for a definite term or until rescinded or terminated, and may provide for the method by which it may be rescinded or terminated by any party.
- F. The agreement shall provide for the disposition, division or distribution of any property acquired as the result of the joint exercise of powers, and shall further provide that after the completion of the agreement's purpose any surplus money on hand shall be returned in proportion to the contributions made.
- G. If the purpose set forth in agreement is the acquisition, construction or operation of a revenue-producing facility, the agreement may provide:
  - (1) for the repayment or return to the parties of all or any part of any contributions, payments or advancements made by the parties pursuant to such agreement; and
  - (2) for payment to the parties of any sum derived from the revenues of such facilities.
- H. Payments, repayments or returns to a public agency shall be made at the time and in the manner specified in the agreement.

**Authority: NMSA 1978 11-1-5. Powers of administering agency under agreement.**

- A. The agency provided by the agreement to administer or execute the agreement may be one of the parties to the agreement or a commission or board constituted pursuant to the agreement.
- B. The administering agency under any such agreement shall be considered under the provisions of this Joint Powers Agreements Act as an entity separate from the parties to such agreement.
- C. The agency shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement, subject to any of the restrictions imposed upon the manner of exercising such power of one of the contracting public agencies or such restrictions of any public agency participating which may be designated or incorporated in the agreement.

**Authority: NMSA 1978 11-1-6. Privileges and immunities, exemptions, benefits.**

All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the activity of officers, agents or employees of any such public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of the Joint Powers Agreements Act .

**Authority: NMSA 1978 11-1-7. Power to issue revenue bonds.**

In addition to other powers, any agency, commission or board provided for by a joint powers agreement pursuant to this Joint Powers Agreements Act may issue revenue bonds to pay the cost and expenses of acquiring or constructing any structures, facilities or equipment necessary to effectuate the purposes of the agreement; provided, however, such authority shall be subject to the provisions of the Joint Powers Agreements Act and the constitutional provisions of this state.

**Authority: NMAC 6.31.2.7 DEFINITIONS:**

...  
(B)  
...

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

**Authority: NMAC 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:**

- A.** Compliance with applicable laws and regulations. Each New Mexico public agency, within the scope of its authority, shall develop and implement appropriate policies, procedures, programs and services to ensure that all children with disabilities who reside within the agency’s educational jurisdiction, including children who are enrolled in private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, or are schooled at home, are identified and evaluated and have access to a free appropriate public education (FAPE) in compliance with all applicable requirements of state and federal laws and regulations. This obligation applies to all New Mexico public agencies that are responsible under laws, rules, regulations or written agreements for providing educational services for children with disabilities, regardless of whether that agency receives funds under the IDEA and regardless of whether it provides special education and related services directly, by contract, by referrals to private schools or facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions or through other arrangements.
- B.** Public agency funding and staffing.
- (1) Each public agency that provides special education or related services to children with disabilities shall allocate sufficient funds, staff, facilities and equipment to ensure that the requirements of the IDEA and all department rules and standards that apply to programs for children with disabilities are met.
- (2) The public agency with primary responsibility for ensuring that FAPE is available to a child with a disability on the date set by the department for a child count or other report shall include that child in its report for that date. Public agencies with shared or successive responsibilities for serving a particular child during a single fiscal year are required to negotiate equitable arrangements through joint powers agreements or memorandums of understanding or interstate agreements for sharing the funding and other resources available for that child. Such agreements shall include provisions with regard to resolving disputes between the parties to the agreement.
- ...
- C.** IDEA applications and assurances. Each New Mexico public agency that desires to receive IDEA flow-through funds shall file an annual application with the department in the form prescribed by the department. Each application shall:
- (1) provide all information requested by the department;
- (2) demonstrate to the department’s satisfaction that the agency is in compliance with all applicable requirements of 34 CFR Secs. 300.200-300.230 and these or other department rules and standards;
- (3) include an agreement that the agency upon request will provide any further information the department requires to determine the agency’s initial or continued compliance with all applicable requirements;
- (4) include assurances satisfactory to the department that the public agency does and will continue to operate its programs in compliance with all applicable federal and state programmatic, fiscal and procedural requirements including the development of joint powers agreements, memoranda of understanding or other interagency agreements to address shared or successive responsibilities to meet the educational needs of a particular child during a single fiscal year; and
- (5) pursuant to Subsection C of Section 22-8-11, NMSA 1978, the department shall not approve and certify an operating budget of any school district or state-chartered charter school that fails to demonstrate that parental involvement in the process was solicited.

**Authority: NMAC 6.23.3.8 ESTABLISHMENT OF REGIONAL EDUCATION COOPERATIVES**

- A. The **Secretary** may authorize the existence and operation of one or more Cooperatives.
- (1) The authorization process is initiated by the receipt of applications and supporting resolutions requesting such authorization by two or more local school boards. By application of their governing authorities, **state agencies or state** institutions may be included.
  - (2) No local school board or state-supported educational institution may be a member of more than one Cooperative.
- B. Procedures
- ...
- (4) Upon authorization by the **Secretary** for the existence and operation of a Cooperative, the local school boards and governing authorities of the state **agencies or state** institutions shall enter into a Joint Powers Agreement. The Joint Powers Agreement, in addition to meeting all requirements of the Joint Powers Agreements Act, shall address those components as may be required by the **Secretary** and shall be subject to the approval of the **Secretary**. The Joint Powers Agreement shall further:
    - (a) establish a mechanism whereby participating local school boards and governing authorities of state-supported educational institutions electing to cooperatively participate in programs funded by monies other than IDEA-Part B notify the Council and the State Department of Education;
    - (b) include a provision requiring participating local school boards and governing authorities of state-supported educational institutions desiring to participate in Cooperative programs funded by monies other than IDEA-Part B to execute a Memorandum of Understanding in accordance with requirements established by the **department**.

*The Hondo Valley Public School District will comply with all requirements pertaining to Joint Powers Agreements.*

*The Hondo Valley Public School District has entered into the following Joint Powers Agreements:*

- *Regional Education IX Cooperative*

*The Hondo Valley Public School District will enter into memoranda of understanding (MOU) as needed or required.*

## **VIII. FUNDING**

**Authority: 34 CFR §300.103 FAPE – methods and payments.**

- (a) The NMPED may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, if it is necessary to place a child with a disability in a residential facility, the NMPED could use joint agreements between the agencies involved for sharing the cost of that placement.
- (b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.
- (c) Consistent with 300.323(c), the NMPED must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

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

- ...
- (f) Use of Part B funds.
    - (1) If the Hondo Valley Public School District is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under this part, to ensure FAPE the Hondo Valley Public School District may use its Part B funds to pay for the service.
    - (2) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the Hondo Valley Public School District may

use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parent's benefits or insurance (e.g., the deductible or co-pay amounts).

- (g) Proceeds from public benefits or insurance or private insurance.
  - (1) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25.
  - (2) If the Hondo Valley Public School District spends reimbursements from Federal funds (e.g., Medicaid) for services under this part, those funds will not be considered "State or local" funds for purposes of the maintenance of effort provisions in §§300.163 and 300.203.
- (h) Construction. Nothing in this part should be construed to alter the requirements imposed on a State Medicaid agency, or any other agency administering a public benefits or insurance program by Federal statute, regulations or policy under title XIX, or title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.

**Authority: NMAC 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:**

...

**B. Public agency funding and staffing**

...

- (6) Pursuant to 34 CFR Sec. 300.154(d), a public agency may use the medicaid or other public benefits or insurance in which a child participates to provide or pay for services required under the IDEA Part B regulations, as permitted under the public insurance program, except as provided in (a) below.
  - (a) With regard to services required to provide FAPE to an eligible child, the public agency:
    - (i) may not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of the IDEA;
    - (ii) may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to the IDEA Part B regulations, but pursuant to 34 CFR Sec. 300.154(f)(2), may pay the cost that the parent otherwise would be required to pay; and
    - (iii) may not use a child's benefits under a public benefits or insurance program if that use would:
      - (A) decrease available lifetime coverage or any other insured benefit;
      - (B) result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school;
      - (C) increase premiums or lead to the discontinuation of benefits or insurance; or
      - (D) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.
  - (b) Pursuant to 34 CFR Sec. 300.142 (e), an educational agency must obtain a parent's informed written consent for each proposed use of private insurance benefits and must inform parents that their refusal to permit the use of their private insurance will not relieve the educational agency of its responsibility to ensure that all required services are provided at no cost to the parents.
  - (c) Pursuant to 34 CFR Sec. 300.154(f):
    - (i) if a public agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under the IDEA Part B regulations, to ensure FAPE the public agency may use its Part B funds to pay for the service; and
    - (ii) to avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

“We do not believe it is necessary to further clarify that the LEA is ultimately responsible for providing services because § 300.154(b)(2) sufficiently requires that if a public agency other than an educational agency fails to provide or pay for the special education and related services in § 300.154(b)(1), the LEA or State agency responsible for developing the child's IEP must provide or pay for these services to the child in a timely manner. Disagreements about the interagency agreements should not stop or delay the receipt of the services described in the child's IEP.

Section 300.103(c) also addresses timely services and clarifies that, consistent with § 300.323(c), the State must ensure there is no delay in implementing a child's IEP, including any situation in which the source for providing or paying for the special education or related services to a child is being determined. Section 612(a)(12)(A)(i) of the Act provides that the financial responsibility of public agencies (other than an educational agency), including Medicaid and other public insurers obligated under Federal or State law or assigned responsibility under State policy, must precede financial responsibility of the LEA." 71 Fed. Reg. 46607 (August 14, 2006).

*The Hondo Valley Public School District will ensure that children with disabilities within the jurisdiction of the Hondo Valley Public School District receive the special education, related services and supplementary aids and services specified in their IEPs at no cost to their parents.*

## **A. Use of IDEA Part B Funds—Requirements of the SEA**

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

- (a) Expenditures. Funds paid to a State under this part must be expended in accordance with all the provisions of this part.
- (b) Prohibition against commingling.
  - (1) Funds paid to a State under this part must not be commingled with State funds.
  - (2) The requirement in paragraph (b)(1) of this section is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a State under this part. Separate bank accounts are not required. (See 34 CFR 76.702 (Fiscal control and fund accounting procedures)).
- (c) State-level nonsupplanting.
  - (1) Except as provided in §300.202, funds paid to a State under Part B of the Act must be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of the NMPED or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those Federal, State, and local funds.
  - (2) If the State provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph (c)(1) of this section if the Secretary concurs with the evidence provided by the State under §300.164.

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

- (a) General. A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.
- (b) Reduction of funds for failure to maintain support. The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.
- (c) Waivers for exceptional or uncontrollable circumstances. The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that--
  - (1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or
  - (2) The State meets the standard in §300.164 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.
- (d) Subsequent years. If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

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

- (a) Except as provided under §§300.202 through 300.205, funds paid to a State under Part B of the Act must be used to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of NMPED or LEAs) expended for special education and related services provided to children with disabilities under Part B of the Act and in no case to supplant those Federal, State, and local funds. A State may use funds it retains under §300.704(a) and (b) without regard to the prohibition on supplanting other funds.
- (b) If a State provides clear and convincing evidence that all eligible children with disabilities throughout the State have FAPE available to them, the Secretary may waive for a period of one year in whole or in part the requirement under §300.162 (regarding State-level nonsupplanting) if the Secretary concurs with the evidence provided by the State.
- (c) If a State wishes to request a waiver under this section, it must submit to the Secretary a written request that includes--
  - (1) An assurance that FAPE is currently available, and will remain available throughout the period that a waiver would be in effect, to all eligible children with disabilities throughout the State, regardless of the public agency that is responsible for providing FAPE to them. The assurance must be signed by an official who has the authority to provide that assurance as it applies to all eligible children with disabilities in the State;
  - (2) All evidence that the State wishes the Secretary to consider in determining whether all eligible children with disabilities have FAPE available to them, setting forth in detail--
    - (i) The basis on which the State has concluded that FAPE is available to all eligible children in the State; and
    - (ii) The procedures that the State will implement to ensure that FAPE remains available to all eligible children in the State, which must include--
      - (A) The State's procedures under §300.111 for ensuring that all eligible children are identified, located and evaluated;
      - (B) The State's procedures for monitoring public agencies to ensure that they comply with all requirements of this part;
      - (C) The State's complaint procedures under §§300.151 through 300.153; and
      - (D) The State's hearing procedures under §§300.511 through 300.516 and §§300.530 through 300.536;
  - (3) A summary of all State and Federal monitoring reports, and State complaint decisions (see §§300.151 through 300.153) and hearing decisions (see §§300.511 through 300.516 and §§300.530 through 300.536), issued within three years prior to the date of the State's request for a waiver under this section, that includes any finding that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions; and
  - (4) Evidence that the State, in determining that FAPE is currently available to all eligible children with disabilities in the State, has consulted with the State advisory panel under §300.167.
- (d) If the Secretary determines that the request and supporting evidence submitted by the State makes a prima facie showing that FAPE is, and will remain, available to all eligible children with disabilities in the State, the Secretary, after notice to the public throughout the State, conducts a public hearing at which all interested persons and organizations may present evidence regarding the following issues:
  - (1) Whether FAPE is currently available to all eligible children with disabilities in the State.
  - (2) Whether the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.
- (e) Following the hearing, the Secretary, based on all submitted evidence, will provide a waiver, in whole or in part, for a period of one year if the Secretary finds that the State has provided clear and convincing evidence that FAPE is currently available to all eligible children with disabilities in the State, and the State will be able to ensure that FAPE remains available to all eligible children with disabilities in the State if the Secretary provides the requested waiver.
- (f) A State may receive a waiver of the requirement of section 612(a)(18)(A) of the Act and §300.164 if it satisfies the requirements of paragraphs (b) through (e) of this section.
- (g) The Secretary may grant subsequent waivers for a period of one year each, if the Secretary determines that the State has provided clear and convincing evidence that all eligible children with disabilities

throughout the State have, and will continue to have throughout the one-year period of the waiver, FAPE available to them.

**Authority: 34 CFR §300.166 Rule of construction.**

In complying with §§ 300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation.

*The regulatory requirements in this subsection are requirements of the NMPED. The Hondo Valley Public School District will comply with the directives of the NMPED in order to ensure that the State satisfies the conditions necessary to receive IDEA Part B funds.*

**B. Use of IDEA Part B Funds—Requirements of the Hondo Valley Public School District**

**Authority: 34 CFR §300.202 Use of amounts.**

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

**Authority: 34 CFR §300.16 Excess costs.**

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

- (a) Amounts received--
- (1) Under Part B of the Act;
  - (2) Under Part A of title I of the ESEA; and
  - (3) Under Parts A and B of title III of the ESEA; and
- (b) Any State or local funds expended for programs that would qualify for assistance under any of the parts described in paragraph (a) of this section, but excluding any amounts for capital outlay or debt service. (see Appendix A to Part 300 for an example of how excess cost must be calculated)

**Authority: 34 CFR §300.203 Maintenance of effort.**

- (a) **General.** Except as provided in §§300.204 and 300.205, funds provided to Hondo Valley Public School District under Part B of the Act will not be used to reduce the level of expenditures for the education of children with disabilities made by the Hondo Valley Public School District from local funds below the level of those expenditures for the preceding fiscal year.
- (b) **Standard.**
  - (1) Except as provided in paragraph (b)(2) of this section, the NMPED must determine that the Hondo Valley Public School District complies with paragraph (a) of this section for purposes of establishing the Hondo Valley Public School District's eligibility for an award for a fiscal year if the LEA budgets, for the education of children with disabilities, at least the same total or per-capita amount from either of the following sources as the Hondo Valley Public School District spent for that purpose from the same source for the most recent prior year for which information is available:
    - (i) Local funds only.
    - (ii) The combination of State and local funds.
  - (2) An LEA that relies on paragraph (b)(1)(i) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in paragraph (b)(1)(i) of this section was used to establish its compliance with this section.
  - (3) The NMPED may not consider any expenditures made from funds provided by the Federal Government for which the NMPED is required to account to the Federal Government or for which the Hondo Valley Public School District is required to account to the Federal Government directly or through the NMPED in determining an LEA's compliance with the requirement in paragraph (a) of this section.

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

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

- (a) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
- (b) A decrease in the enrollment of children with disabilities.
- (c) The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the NMPED, because the child--
  - (1) Has left the jurisdiction of the agency;
  - (2) Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
  - (3) No longer needs the program of special education.
- (d) The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.
- (e) The assumption of cost by the high cost fund operated by the NMPED under §300.704(c).

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

- (a) **Amounts in excess.** Notwithstanding §300.202(a)(2) and (b) and §300.203(a), and except as provided in paragraph (d) of this section and §300.230(e)(2), for any fiscal year for which the allocation received by an LEA under section §300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by §300.203(a) by not more than 50 percent of the amount of that excess.
- (b) **Use of amounts to carry out activities under ESEA.** If the LEA exercises the authority under paragraph (a) of this section, the LEA must use an amount of local funds equal to the reduction in expenditures under paragraph (a) of this section to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.
- (c) **State prohibition.** Notwithstanding paragraph (a) of this section, if an SEA determines that the LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the Act and this part or the SEA has taken action against the LEA under section 616 of the Act and subpart

F of these regulations, the SEA must prohibit the LEA from reducing the level of expenditures under paragraph (a) of this section for that fiscal year.

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

**Authority: 34 CFR §300.206 Schoolwide programs under title I of the ESEA.**

- (a) **General.** Notwithstanding the provisions of §§300.202 and 300.203 or any other provision of Part B of the Act, the Hondo Valley Public School District may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed--
- (1) (i) The amount received by the Hondo Valley Public School District under Part B of the Act for that fiscal year; divided by (ii) The number of children with disabilities in the jurisdiction of the Hondo Valley Public School District; and multiplied by
- (2) The number of children with disabilities participating in the schoolwide program.
- (b) **Funding conditions.** The funds described in paragraph (a) of this section are subject to the following conditions:
- (1) The funds must be considered as Federal Part B funds for purposes of the calculations required by §300.202(a)(2) and (a)(3).
- (2) The funds may be used without regard to the requirements of §300.202(a)(1).
- (c) **Meeting other Part B requirements.** Except as provided in paragraph (b) of this section, all other requirements of Part B of the Act will be met by the Hondo Valley Public School District using Part B funds in accordance with paragraph (a) of this section, including ensuring that children with disabilities in schoolwide program schools--
- (1) Receive services in accordance with a properly developed IEP; and
- (2) Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

**Authority: 34 CFR §300.208 Permissive use of funds.**

- (a) **Uses.** Notwithstanding §§300.202, 300.203(a), and §300.162(b), funds provided to the Hondo Valley Public School District under Part B of the Act may be used for the following activities:
- (1) **Services and aids that also benefit nondisabled children.** For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.
- (2) **Early intervening services.** To develop and implement coordinated, early intervening educational services in accordance with §300.226.
- (3) **High cost education and related services.** To establish and implement cost or risk sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high cost special education and related services.
- (b) **Administrative case management.** The Hondo Valley Public School District may use funds received under Part B of the Act to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.

**Authority: 34 CFR §300.210 Purchase of instructional materials.**

- (a) **General.** Not later than December 3, 2006, an LEA that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, must acquire those instructional materials in the same manner, and subject to the same conditions as an SEA under §300.172.
- (b) **Rights of LEA.**
- (1) Nothing in this section shall be construed to require an LEA to coordinate with the National Instructional Materials Access Center (NIMAC).
- (2) If the Hondo Valley Public School District chooses not to coordinate with the National Instructional Materials Access Center, the Hondo Valley Public School District will provide an assurance to the

NMPED that the Hondo Valley Public School District will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

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

**Authority: 34 CFR §300.226 Early intervening services.**

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

**Authority: NMAC 6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:**

...

**B. Public agency funding and staffing**

- (1) Each public agency that provides special education or related services to children with disabilities shall allocate sufficient funds, staff, facilities and equipment to ensure that the requirements of the IDEA and all department rules and standards that apply to programs for children with disabilities are met.

...

- (5) Educational agencies may seek payment or reimbursement from noneducational agencies or public or private insurance for services or devices covered by those agencies that are necessary to ensure FAPE to children with disabilities. Claims for payment or reimbursement shall be subject to the procedures and limitations established in 34 CFR Secs. 300.154(b) and 300.154(d) through (g), [Section 22-13-9 NMSA 1978](#) and any laws, regulations, executive orders, contractual arrangements or other requirements governing the noneducational payor's obligations.
- (6) Risk pool fund. (Puente para los ninos fund.)
  - (a) Local educational agency high cost fund.
    - (i) In compliance with 34 CFR Sec. 300.704(c) the department shall maintain a risk pool fund to support high cost children with disabilities identified by LEAs.

- (ii) Funds distributed under this program will be on a reimbursable basis.
- (b) Application for funds. LEAs desiring to be reimbursed for the cost of children with disabilities with high needs shall file an application in accordance with the department's puente para los ninos fund as described on the department's website.

...

- C. IDEA applications and assurances. Each New Mexico public agency that desires to receive IDEA flow-through funds shall file an annual application with the department in the form prescribed by the department. Each application shall:
  - (1) provide all information requested by the department;
  - (2) demonstrate to the department's satisfaction that the agency is in compliance with all applicable requirements of 34 CFR Secs. 300.200-300.230 and these or other department rules and standards;
  - (3) include an agreement that the agency upon request will provide any further information the department requires to determine the agency's initial or continued compliance with all applicable requirements;
  - (4) include assurances satisfactory to the department that the public agency does and will continue to operate its programs in compliance with all applicable federal and state programmatic, fiscal and procedural requirements including the development of joint powers agreements, memoranda of understanding or other interagency agreements to address shared or successive responsibilities to meet the educational needs of a particular child during a single fiscal year; and
  - (5) pursuant to Subsection C of Section 22-8-11, NMSA 1978, the department shall not approve and certify an operating budget of any school district or state-chartered charter school that fails to demonstrate that parental involvement in the process was solicited.
- D. Early intervening services set aside funds. Fifteen percent set aside.
  - (1) Pursuant to 34 CFR Secs. 300.208(a)(2) and 300.266, the Hondo Valley Public School District may use up to fifteen percent of the amount the Hondo Valley Public School District receives under Part B of IDEA to implement early intervening services for children with or without disabilities in kindergarten through grade 12 with particular emphasis on children in kindergarten through grade three.
  - (2) Prior to the implementation or use of these set aside funds, the Hondo Valley Public School District will have on record with the department an approved plan for use of these funds as described by 34 CFR Sec. 300.226(b) and how such activities will be coordinated with regional education cooperatives as described in 34 CFR Sec. 300.226(e), if applicable.
  - (3) The Hondo Valley Public School District plan for use of set aside funds will be submitted as an addendum to its annual application for Part B funding. If the Hondo Valley Public School District determines to implement a set aside plan after the initial application, a request for implementation of a set aside plan will be submitted for approval 60 days before the implementation of the plan.
  - (4) If the Hondo Valley Public School District develops and maintains coordinated, early intervening services it will report annually to the department as provided in 34 CFR Sec. 300.226(d).

*The Hondo Valley Public School District will account for the receipt and expenditure of federal funds, and ensure that federal funds are used for allowable costs in accordance with federal fiscal requirements.*

*Access to appropriate educational materials is essential in meeting the needs of students with visual impairments. The Hondo Valley Public School District will ensure that materials specified in the IEP of children with visual impairments are provided at no cost to their parents. Many of these materials can be loaned to schools for eligible students by the New Mexico School for the Blind and Visually Impaired (NMSBVI). Material, equipment and supply order forms are available through the NMSBVI website at: <http://www.nmsbvi.k12.nm.us/content/irc.htm>*

*For the purpose of assisting LEAs or State Supported Educational Programs (SSEP) in addressing the needs of high need students with disabilities, New Mexico has exercised the option of creating a LEA Puente para los Niños Fund (Risk Pool Fund) pursuant to the provisions of 34 CFR §300.704(c) and 6.31.2.9(B)(5) NMAC. The NMPED has issued a guidance document titled, "Puente para los Niños Fund - High Cost Fund" (September 2007) available through the NMPED website at: [http://www.ped.state.nm.us/seo/applications/Risk\\_Pool\\_final\\_9.07.pdf](http://www.ped.state.nm.us/seo/applications/Risk_Pool_final_9.07.pdf). The Hondo Valley Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document. If the Hondo Valley Public School District desires to be reimbursed for the cost of children with disabilities with high need, the Hondo Valley Public*

*School District will file an application in accordance with the NMPED's Puente para los Niños fund as described on the NMPED's website and comply with all of the requirements for such funding.*

### **C. State Funds**

#### **Authority: NMSA 1978 22-8-14. Public school fund.**

- A. The "public school fund" is created.
- B. The public school fund shall be distributed to school districts and state-chartered charter schools in the following parts:
  - (1) state equalization guarantee distribution;
  - (2) transportation distribution; and
  - (3) supplemental distributions:
    - (a) out-of-state tuition to school districts;
    - (b) emergency; and
    - (c) program enrichment.
- C. The distributions of the public school fund shall be made by the department within limits established by law. The balance remaining in the public school fund at the end of each fiscal year shall revert to the general fund, unless otherwise provided by law.

#### **Authority: NMSA 1978 22-8-18. Program cost calculation; local responsibility.**

- A. The total program units for the purpose of computing the program cost shall be calculated by multiplying the sum of the program units itemized as Paragraphs (1) through (5) in this subsection by the instructional staff training and experience index and adding the program units itemized as Paragraphs (6) through (11) in this subsection. The itemized program units are as follows:
  - (1) early childhood education;
  - (2) basic education;
  - (3) special education, adjusted by subtracting the units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers;
  - (4) bilingual multicultural education;
  - (5) fine arts education;
  - (6) size adjustment;
  - (7) at-risk program;
  - (8) enrollment growth or new district adjustment;
  - (9) special education units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers;
  - (10) national board for professional teaching standards certification; and
  - (11) home school student activities.
- B. The total program cost calculated as prescribed in Subsection A of this section includes the cost of early childhood, special, bilingual multicultural, fine arts and vocational education and other remedial or enrichment programs. It is the responsibility of the local school board or governing body of a charter school to determine its priorities in terms of the needs of the community served by that board. Funds generated under the Public School Finance Act [22-8-1 NMSA 1978] are discretionary to local school boards and governing bodies of charter schools, provided that the special program needs as enumerated in this section are met.

#### **Authority: NMSA 1978 22-8-21. Special education program units.**

- A. For the purpose of the Public School Finance Act [22-8-1 NMSA 1978], special education programs for exceptional children are those approved by the department and classified as follows:
  - (1) class A programs, in which department certified individuals provide services to children whose individualized education programs require a minimal amount of special education and in which the ratio of students to professionals is regulated by the state board [department];
  - (2) class B programs, in which department certified individuals provide services to children whose individualized education programs require a moderate amount of special education and in which the ratio of students to professionals is regulated by the state board;

- (3) class C programs, in which department certified individuals provide services to children whose individualized education programs require an extensive amount of special education and in which the ratio of students to professionals is regulated by the state board;
  - (4) class D programs, in which department certified individuals provide services to children whose individualized education programs require a maximum amount of special education and in which the ratio of students to professionals is regulated by the state board. Students in class D programs may be enrolled in private, nonsectarian, nonprofit educational training centers in accordance with the provisions of Section 22-13-8 NMSA 1978; and
  - (5) programs for developmentally disabled three- and four-year-old children meeting standards approved by the state board.
- B. All students assigned to the programs for exceptional children classified in Subsection A of this section shall have been so assigned as a result of diagnosis and evaluation performed in accordance with the standards of the department before the students may be counted in the determination of special education program units as provided in Subsection C of this section.
  - C. The number of special education program units is the sum of the following:
    - (1) the MEM in approved class A and B programs as defined in Subsection A of this section multiplied by the cost differential factor .7;
    - (2) the MEM in approved class C programs as defined in Subsection A of this section multiplied by the cost differential factor 1.0;
    - (3) the MEM in approved class D programs as defined in Subsection A of this section multiplied by the cost differential factor 2.0;
    - (4) the MEM for developmentally disabled three- and four-year-old children as defined in Subsection A of this section multiplied by the cost differential factor 2.0; provided that no developmentally disabled three- or four-year-old student shall be counted for additional ancillary service units; and
    - (5) for related services ancillary to providing special education, the number of full-time-equivalent certified or licensed ancillary service and diagnostic service personnel multiplied by the cost differential factor 25.0.
  - D. For the purpose of calculating membership in class C and class D programs, students shall be counted in actual grade placement or according to chronological age if not in actual grade placement.

**Authority: NMSA 1978 22-8-25. State equalization guarantee distribution; definitions; determination of amount.**

- A. The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that its operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost. For state-chartered charter schools, the state equalization guarantee distribution is the difference between the state-chartered charter school's program cost and the two percent withheld by the department for administrative services.
- B. "Local revenue," as used in this section, means seventy-five percent of receipts to the school district derived from that amount produced by a school district property tax applied at the rate of fifty cents (\$.50) to each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district and to the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act [7-32-1 NMSA 1978] and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act [7-34-1 NMSA 1978].
- C. "Federal revenue," as used in this section, means receipts to the school district, excluding amounts that, if taken into account in the computation of the state equalization guarantee distribution, result, under federal law or regulations, in a reduction in or elimination of federal school funding otherwise receivable by the school district, derived from the following:
  - (1) seventy-five percent of the school district's share of forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978; and
  - (2) seventy-five percent of grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid."
- D. To determine the amount of the state equalization guarantee distribution, the department shall:
  - (1) calculate the number of program units to which each school district or charter school is entitled using an average of the MEM on **second and third reporting dates** of the prior year; or

- (2) calculate the number of program units to which a school district or charter school operating under an approved year-round school calendar is entitled using an average of the MEM on appropriate dates established by the department; or
  - (3) calculate the number of program units to which a school district or charter school with a MEM of two hundred or less is entitled by using an average of the MEM on the **second and third reporting dates** of the prior year or the fortieth day of the current year, whichever is greater; and
  - (4) using the results of the calculations in Paragraph (1), (2) or (3) of this subsection and the instructional staff training and experience index from the October report of the prior school year, establish a total program cost of the school district or charter school;
  - (5) for school districts, calculate the local and federal revenues as defined in this section;
  - (6) deduct the sum of the calculations made in Paragraph (5) of this subsection from the program cost established in Paragraph (4) of this subsection;
  - (7) deduct the total amount of guaranteed energy savings contract payments that the department determines will be made to the school district from the public school utility conservation fund during the fiscal year for which the state equalization guarantee distribution is being computed; and
  - (8) deduct ninety percent of the amount certified for the school district by the department pursuant to the Energy Efficiency and Renewable Energy Bonding Act [6-21D-1 NMSA 1978].
- E. Reduction of a school district's state equalization guarantee distribution shall cease when the school district's cumulative reductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act.
- F. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deductions made in Paragraphs (6) through (8) of Subsection D of this section.
- G. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. The calculation shall be based on the local and federal revenues specified in this section received from June 1 of the previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee distribution is being computed. In the event that a school district or charter school has received more state equalization guarantee funds than its entitlement, a refund shall be made by the school district or charter school to the state general fund [6-4-2 NMSA 1978].

**Authority: NMSA 1978 22-8-37. Public school funds.**

Except for money received for a cafeteria or for an activity fund, all money for public school purposes distributed to a school district, or collected by a county, school district or public school authorities for a school district, shall be delivered to and kept by a county treasurer or a board of finance of a school district in funds approved by the division. Disbursements from these funds shall only be made for matured debts by voucher and warrants or checks of the local school board. In no event shall any money be expended or debts incurred except as authorized by the Public School Finance Act [22-8-1 NMSA 1978]. Money for a cafeteria or for an activity fund shall be deposited in a bank, or in a savings and loan association whose deposits are insured by an agency of the United States, or may be deposited in a credit union, as long as the credit union deposit is insured by an agency of the United States, approved by the local school board. The local school board may deposit any cafeteria funds, any activity funds or any other funds in one or more accounts with any such bank or insured savings and loan association in its county, but no local school board, in any official capacity, shall deposit any cafeteria funds, any activity funds or any other funds in any one such savings and loan association the aggregate of which would exceed the amount of federal savings and loan insurance corporation insurance for a single public account. As used in this section, "deposit" includes share, share certificate and share draft.

*The State funding system for education, including funding of special education including gifted education, is explained by the NMPED in a handbook titled, "Administration and Management" (2007), available through the NMPED website at:*

*<http://www.ped.state.nm.us/div/humanites/gifted/NM%207%20Administration%20&%20Mgmt.doc>. The Hondo Valley Public School District will ensure that IEP Teams make placement decisions in compliance with the least restrictive environment mandate of the IDEA. The Hondo Valley Public School District will provide accurate information to the NMPED to assure a proper program cost calculation. The Hondo Valley Public School District will ensure that State funds are used for allowable costs in accordance with State fiscal requirements.*

## **IX. GIFTED STUDENTS**

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

...

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

### **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 Secs. 300.530-300.536, Subsection I of 6.31.2.13 NMAC and 6.11.2.11 NMAC regarding disciplinary changes of placement for children with disabilities; and
  - (d) the requirements of 34 CFR Secs. 300.43, 300.320(b) and 6.31.2.11(G)(2) regarding transition planning. Students identified as gifted must meet the requirements at Subsection B of 22-13-1.1 NMSA 1978, which is the next step plan for students without disabilities.
- (2) Assuming appropriate evaluations, a child may properly be determined to be both gifted and a child with a disability and be entitled to a free appropriate public education for both reasons. The rules in this section 6.31.2.12 NMAC apply only to gifted children.
- (3) Nothing in these rules shall preclude a school district or a charter school within a district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the state shall only provide funds under Section 22-8-21 NMSA 1978 for department approved gifted programs for those students who meet the established criteria.

#### **G. Advisory committees.**

- (1) Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a district-wide advisory committee.
- (2) The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. Representation from all schools the committee is advising is required.
- (3) Purposes. The advisory committee shall:
  - (a) regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery;
  - (b) demonstrate support for the gifted program;
  - (c) provide information regarding the impact that cultural background, linguistic background, socioeconomic status and disability conditions within the community may have on the child referral, identification, evaluation and service delivery processes;

- (d) advocate for children who have been under-represented in gifted services due to cultural or linguistic background, socioeconomic status, or disability conditions, in order to ensure that these children have equal opportunities to benefit from services for gifted students; and
  - (e) meet three or more times per year at regular intervals.
- (4) Formal documentation of committee membership, activities and recommendations shall be maintained. If proposals are made by the committee to address any of the purposes as listed in Subsection G(3) of 6.31.2.12 NMAC, they shall be submitted in writing to the district administration. The administration shall respond in writing to any proposed actions before the next scheduled meeting of the advisory committee.

*The Hondo Valley Public School District will afford children who are gifted all of the definitions, policies, procedures, assurances, procedural safeguards and services afforded to children with disabilities under State laws and rules except those expressly excepted. The Hondo Valley Public School District will create one or more advisory committees that comply with composition requirements of the State and serve the purposes established by the State. The NMPED has issued a guidance document titled, "Gifted Education Technical Assistance and Training Resource Document" (September 2000), available through the NMPED website at: <http://www.ped.state.nm.us/seo/gifted/gifted.pdf>. The Hondo Valley Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*

## **X. PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN**

**Authority: NMSA 1978 22-1-2 Definitions.** As used in the Public School Code [22-1-1 NMSA 1978]:

...

**K. "private school"** means a school, other than a home school, that offers on-site programs of instruction and that is not under the control, supervision or management of a local school board....

**Authority: 34 CFR §300.133 Expenditures.**

- (a) Formula. To meet the requirement of §300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:
- (1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.
  - (2) (i) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.
  - (ii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in §300.13.
  - (3) If an LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.
- (b) Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under §300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities

attending private schools located in the LEA. (See Appendix B for an example of how proportionate share is calculated).

- (c) Annual count of the number of parentally-placed private school children with disabilities.
  - (1) Each LEA must—
    - (i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with §300.134), determine the number of parentally-placed private school children with disabilities attending private schools located in the LEA; and
    - (ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.
  - (2) The count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.
- (d) Supplement, not supplant. State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part.

**Authority: 34 CFR §300.134 Consultation.**

To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

- (a) Child find. The child find process, including—
  - (1) How parentally-placed private school children suspected of having a disability can participate equitably; and
  - (2) How parents, teachers, and private school officials will be informed of the process.
- (b) Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under §300.133(b), including the determination of how the proportionate share of those funds was calculated.
- (c) Consultation process. The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.
- (d) Provision of special education and related services. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of—
  - (1) The types of services, including direct services and alternate service delivery mechanisms; and
  - (2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
  - (3) How and when those decisions will be made;
- (e) Written explanation by LEA regarding services. How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

**Authority: 34 CFR §300.135 Written affirmation.**

- (a) When timely and meaningful consultation, as required by § 300.134, has occurred, the LEA must obtain a written affirmation signed by the representatives of participating private schools.
- (b) If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.

**Authority: 34 CFR §300.138 Equitable services provided.**

- (a) General.

- (1) The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of §300.18.
- (2) Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

...

(c) Provision of equitable services.

- (1) The provision of services pursuant to this section and §§300.139 through 300.143 must be provided:
  - (i) By employees of a public agency; or
  - (ii) Through contract by the public agency with an individual, association, agency, organization, or other entity.

**Authority: 34 CFR §300.141 Requirement that funds not benefit a private school.**

- (a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.
- (b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting—
  - (1) The needs of a private school; or
  - (2) The general needs of the students enrolled in the private school.

**Authority: 34 CFR §300.142 Use of personnel.**

- (a) Use of public school personnel. An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities—
  - (1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and
  - (2) If those services are not normally provided by the private school.
- (b) Use of private school personnel. An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.130 through 300.144 if—
  - (1) The employee performs the services outside of his or her regular hours of duty; and
  - (2) The employee performs the services under public supervision and control.

**Authority: 34 CFR §300.143 Separate classes prohibited.**

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

- (a) The classes are at the same site; and
- (b) The classes include children enrolled in public schools and children enrolled in private schools.

**Authority: 34 CFR §300.144 Property, equipment, and supplies.**

- (a) A public agency must control and administer the funds used to provide special education and related services under §§300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.
- (b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.
- (c) The public agency must ensure that the equipment and supplies placed in a private school—
  - (1) Are used only for Part B purposes; and
  - (2) Can be removed from the private school without remodeling the private school facility.
- (d) The public agency must remove equipment and supplies from a private school if—
  - (1) The equipment and supplies are no longer needed for Part B purposes; or
  - (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.
- (e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

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

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**L. Children in private schools**

**1. Children enrolled by parents in private schools or facilities.**

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

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

...

(e) Pursuant to 34 CFR Sec. 300.133, each LEA is obligated to spend a proportionate amount of its federal IDEA Part B funds to assist private school children with disabilities placed in a private school or private facility by a parent who assumes responsibility for such placement. In doing so, LEAs must use the formula for calculating proportionate amount and annual count of parentally placed private school children with disabilities in accordance with 34 CFR Sec. 300.133. The public agency shall not use IDEA funds to benefit private schools as provided in 34 CFR Sec. 300.141. The state is not required to distribute state funds for such school-aged persons. Furthermore, the Constitution and laws of New Mexico prohibit public agencies from spending state funds to assist private schools or facilities or their students.

...

(g) Pursuant to 34 CFR Secs. 300.134 and 300.135, LEAs must ensure timely and meaningful consultation with private school representatives and representatives of parents of parentally placed private school children with disabilities. If the LEA fails to engage in meaningful and timely consultation or did not give due consideration to a request from private school officials, private school officials have the right to submit a complaint to the department. The private school official and the LEA must follow the procedures outlined in 34 CFR Sec. 300.136.

*The Hondo Valley Public School District will comply with the requirements for parentally-placed private school children to ensure the equitable provision of IDEA Part B funded services. The U.S. Department of Education has issued a guidance document titled, "Questions and Answers on Serving Children with Disabilities Placed By Their Parents at Private Schools" (March 2006), available through the U.S. Department of Education website at: <http://www.ed.gov/policy/speced/guid/idea/faq-parent-placed.doc>. The guidance document provides detailed responses to frequently asked questions, and provides a clear explanation of the Hondo Valley Public School District's duty to parentally-placed private school children. The Hondo Valley Public School District, by reference in these procedures, and through staff development (as appropriate), shall inform appropriate personnel of this guidance document.*