

AN ACT

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

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

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 Section 22-13-8 NMSA 1978 (being Laws 1972, Chapter 95, Section 4, as amended) is repealed and a new Section 22-13-8 NMSA 1978 is enacted to read:

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

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

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

(a) has not graduated from high school;

(b) is regularly enrolled in one-half

or more of the minimum course requirements approved by the

department for public school students; and

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

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

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

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

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

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

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

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

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

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

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

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

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

H. A local school board, in consultation with the

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

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

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

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

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

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

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

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

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

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

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

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

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

B. procedures and forms for applying for a

departmental grant or contract;

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

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

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

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

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