



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

DR. VERONICA C. GARCÍA  
SECRETARY OF EDUCATION

BILL RICHARDSON  
Governor

August 30, 2007

MEMORANDUM

**TO:** Superintendents  
Special Education Directors  
Regional Education Cooperative Directors

**FROM:** Ms. Denise Koscielniak (Signature on File)  
State Director of Special Education

**RE: HOME SCHOOLED CHILDREN WITH DISABILITIES**

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Under the previous state rules, for purposes of the Individuals with Disabilities Education Act (IDEA) Part B funding, the New Mexico Public Education Department (NMPED) treated home schooled children the same as parentally placed private school children which meant 34 CFR §§ 300.130-300.144 would then apply, including 34 CFR § 300.134 which would require the local educational agency (LEA) to consult with the parents of a home schooled child regarding the proportionate share of Part B funds available to serve that child. In addition, pursuant to 6.31.2.11(L)(5) NMAC of NMPED's old rules, home schooled children were included in the LEA's child count. The LEA was also required to locate, evaluate and determine the eligibility of children with disabilities who were schooled at home.

However, 6.31.2.8(A) NMAC and 6.31.2.11(L)(5) NMAC have been amended in NMPED's special education rule that went into effect on June 29, 2007 for the following reason. In the *Analysis of Comments and Changes* in the IDEA regulations issued August 14, 2006, OSEP stated as follows: "Whether home-schooled children with disabilities are considered parentally-placed private school children with disabilities is a matter left to State law. Children with disabilities in home schools or home day cares must be treated in the same way as other parentally-placed private school children with disabilities for purposes of Part B of the Act only if the State recognizes home schools or home day cares as private elementary schools or secondary schools." 71 Fed. Reg. 46594 (2006). New Mexico state law defines a "private

school” as follows: " ‘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.” Section 22-1-2(K) NMSA 1978 (Emphasis added).

Since home schools are not private schools under New Mexico law, 6.31.2.11(L)(5) NMAC has been amended to read as follows: “Children schooled at home. Each LEA shall locate, evaluate and determine the eligibility of children with disabilities who are schooled at home pursuant to Secs. 22-2-2(H) NMSA 1978.” This means that the LEA still has child find responsibilities with regard to home schooled children but no longer has an obligation to provide home schooled children with disabilities a free appropriate public education (FAPE). In addition, the LEA will no longer include home schooled children in their child count for Part B funding purposes.

NMPED realizes that this change will require an adjustment on the part of LEAs and that service plans are already in place for home schooled children for the 2007-2008 school year. As a result, LEAs will continue to be allowed to include home schooled children within the geographical boundary of the LEA in their child count for the 2007-2008 school year and to treat them as they have in past years. However, beginning in the 2008-2009 school year, the LEA will no longer be permitted to include home schooled children in their child count for Part B funding purposes and will no longer be required to have a service plan in place for home schooled children with disabilities. This does not include home bound children who are placed at home by the IEP team because of health or other reasons. Those children are still entitled to FAPE and will still be included in the child count.

In order to ensure that parents of home schooled children with disabilities understand that if they home school their children, they are waiving their child’s right to FAPE, before the 2008-2009 school year, LEAs will be required to send a notice to such parents advising them that if they take their children out of the public school, they will be waiving their child’s right to FAPE. The notice should also include an invitation to the parents to enroll their child in your public school so that FAPE can be provided. Should you have questions regarding this memorandum, please call the Special Education Bureau at (505) 827 - 1457 for further assistance.

DK/avg

cc: Veronica C. García, Ed.D., Secretary of Education  
Catherine Cross Maple, Ph.D., Deputy Secretary of Learning and Accountability  
Don Moya, Deputy Secretary of Finance and Operations  
Patricia Parkinson, Ed.D., Assistant Secretary of Instructional Support and Vocational Education  
Robert Piro, Chief Information Officer, Information Technology Division  
Don Duran, Ed.D., Assistant Secretary, Charter Schools Division