



STATE OF NEW MEXICO
PUBLIC EDUCATION DEPARTMENT
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SECRETARY OF EDUCATION

SUSANA MARTINEZ
GOVERNOR

November 25, 2015

MEMORANDUM

TO: Superintendents
Charter School Directors

FROM: Eileen Marrujo-Gallegos, Director of Operations *EMG*
Michael Lovato, Director of Special Education *ML*

RE: **Services for homeschooled students with disabilities, students with giftedness and dual exceptional students**

Under the Public School Finance Act, a qualified student, under Section 22-8-2 NMSA 1978, is defined as a public school student who:

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

Students with disabilities as defined under the Individuals with Disabilities Education Act (IDEA) and Subsection B(2) of 6.31.2.7 of the New Mexico Administrative Code (NMAC) who are qualified students (enrolled in one-half or more of the minimum courses) are entitled to a Free Appropriate Public Education (FAPE). Students who are gifted as defined by Subsection A of 6.31.2.12 NMAC who are qualified students (enrolled in one-half or more of the minimum courses) are entitled to gifted services. The same regulations and rules apply to those students considered to have a disability and giftedness or considered dual exceptional.

School districts and charter schools are eligible for home school student program units under Section 22-8-23.9 NMSA 1978 if the student enrolls in one or more classes and by enrolling in the classes does not exceed one half or more of the course requirements.

Students with disabilities as defined under the Individuals with Disabilities Education Act (IDEA) and Subsection B(2) of 6.31.2.7 of the New Mexico Administrative Code (NMAC) who are not qualified students (not enrolled in one-half or more of the minimum courses) are not entitled to a Free Appropriate Public Education (FAPE). Students who are gifted as defined by Subsection A of 6.31.2.12 NMAC who are not qualified students (not enrolled in one-half or more of the minimum courses) are not entitled to gifted services. The same regulations and rules apply to those students considered to have a disability and giftedness or considered dual exceptional. Homeschooled students with disabilities that enroll in one or more courses, not exceeding one half or more of the course requirements, may, however, be eligible for Section 504 accommodations as needed.

If you have program questions about students who are gifted, please contact Beth Gudbrandsen at (505) 827-6952 or beth.gudbrandsen@state.nm.us. If you have program questions about students with disabilities, please contact Michael Lovato at (505) 827-1457 or michael.lovato@state.nm.us. Questions about program units should be directed to the budget analyst assigned to your district.

cc: Paul "Hipolito" Aguilar, Deputy Secretary, Finance and Operations
Denise Koscielniak, Director, Federal Programs
Annjenette Torres, Director, Constituent Services
Business Managers
Special Education Directors
Regional Education Cooperative Directors