



CHILD CARE LAW CENTER

221 PINE STREET | 3RD FLOOR | SAN FRANCISCO, CA 94104 | V 415.394.7144 | F 415.394.7140
WWW.CHILDCARELAW.ORG | INFO@CHILDCARELAW.ORG

Questions and Answers about the IDEA & Child Care in ~ New Mexico ~

1. What is the IDEA?

The Individuals with Disabilities Education Act (IDEA) guarantees children with disabilities the same access to education as children who do not have disabilities.¹ Congress passed the IDEA in 1975 in response to frequent discrimination against children with disabilities in public school systems. All states must meet the minimum *federal* IDEA standards regarding the educational rights of children with disabilities. However, *state* laws can expand these rights.

2. Who is eligible for services under the IDEA?

Children ages 0 to 21 with certain disabilities are eligible for these services.

Infants and toddlers (ages 0-3) are eligible for **Early Intervention (EI) services** under the IDEA. EI services are coordinated in in New Mexico by the **Family Infant Toddler Program (FIT)**, run by the Department of Health. Children eligible for these Early Intervention Services are those children who have:

- (1) A developmental delay;
- (2) An established physical, mental, or neurobiological condition that has a high probability of resulting in developmental delay; or
- (3) A biological, medical, or environmental risk for developmental delay.² See Endnote 2 for detailed definitions of (1) – (3).

School-age and preschool children (ages 3-21 or children who will turn 3 during the school year) are eligible for IDEA's **Special Education and related services**. These services are provided for by the **local school district**. Children eligible for these services must have:

- (1) mental retardation, hearing impairments, speech or language impairments, visual impairments, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, and
- (2) who, by reason thereof, needs special education and related services.³

3. What services can families receive under the IDEA?

Early Intervention Services (0-3): Early Intervention services are services designed to meet the developmental needs of an eligible child and the needs of the family related to enhancing the child's development. Related services, for example, can include audiological services, family training, counseling and home visits, and respite services.⁴

Some states charge fees for these services based on a sliding scale and/or require access to public/private insurance. For children receiving such services in New Mexico, the Family Infant Toddler Program (FIT) will access Medicaid or

private insurance, if the family has coverage. If not, all services will be paid for by the Department of Health. There is an array of 16 services that can be utilized to meet the child and family outcomes on the IFSP.

Special Education and Related Services (3-21): Families and children can receive any service that is necessary to help a child benefit from her special education program.⁵ All services under the IDEA for children 3-21 are free⁶ and based on each child's educational need,⁷ not on her disability.⁸

Special education means specially designed instruction, such as adapting the content or delivery of classroom instruction, at no cost to the parents, to meet the unique needs of a child with a disability.⁹ Related services are transportation and developmental, corrective, and other supportive services that help a child with a disability benefit from special education. Related services, for example, can include speech-language pathology services, psychological services occupational and physical therapy, school health services, and parent counseling and training.¹⁰

4. How do families apply to receive services?

Local educational agencies (LEAs) have an obligation under federal law to “actively and systematically seek out” all persons aged 3 to 21 who would be eligible for special education.¹¹ Likewise, the state must identify, locate, and evaluate children ages 0 to 3 with disabilities who would be eligible for early intervention services.¹² Child care providers can refer children they think may be eligible, although the family must consent in writing to an assessment.

A parent of a child ages 3 or older should contact the local school district. For help

in locating the correct school district and office you can call:

- Public Education Department, Special Education Bureau (505) 827-1457

If a parent and/or child care provider is concerned about the development of a child birth to age 3, they can make a referral to their Family Infant Toddler (FIT) provider agency in their community. For help in locating the provider agency in their community you can call:

- Department of Health, Family Infant Toddler (FIT) Program (505) 827-2578 or toll-free 1 (866) 696-1472.

5. What is an IEP?

- An Individualized Educational Program (IEP) outlines a child's special education and related services.¹³ An IEP is for preschool (ages 3 to 5) and school-age children.
- A committee consisting of parents,¹⁴ regular and special education teachers, a representative from the LEA, and anyone else the parent or local school district feel should be present, formulate the IEP plan at a collaborative meeting.
- An IEP is an agreement between the parent and the school district to provide a special education placement and other services for the child.
- The IEP must include the child's present levels of performance, measurable annual goals, and the child's special education and related services.¹⁵ If a child does not participate in the regular classroom or in general nonacademic and extracurricular activities, the IEP must explain why¹⁶ and list supports and program modifications to allow participation in the general classroom.¹⁷ A parent must provide written consent to the services to be provided.¹⁸

- The committee reviews the IEP at least annually, or when either a parent or a teacher request a meeting for a new assessment, lack of anticipated progress by the child, or other matters.¹⁹

6. What is an IFSP?

- An Individualized Family Service Program (IFSP) is very similar to an IEP, but an IFSP is for Early Intervention (EI), children ages 0 to 3.
- An IFSP may include the infant/toddler's present levels of development, the major expected outcomes for the infant/toddler and her family, the specific EI services necessary to meet the needs of the infant/toddler and her family, the natural environments in which the services will be carried out, and steps to help the infant/toddler transition to preschool or other services.²⁰
- An IFSP is evaluated annually and reviewed at least every 6 months or more frequently if the infant/toddler or family needs it.²¹
- An IFSP is to be conducted in the native language of the family.²²

7. What role can child care providers play in the IEP/IFSP process?

At the discretion of the parent or agency, other individuals with "knowledge or special expertise regarding the child," (IEP) or "as appropriate, persons who will be providing services to the child or family" (IFSP) may participate in the IEP or IFSP meeting and planning.²³ This could include child care providers. Child care providers can give input on services or technology that would enable the child to participate in their program.

At a minimum, however, the initial and annual IFSP meeting in New Mexico should include:

- Parents
- Other family members, at the parents' request
- An advocate or person outside the family, at the parents' request
- The Early Intervention Service Coordinator
- A person directly involved in conducting evaluations and assessments of the child *and*
- Personnel who will be providing services to the child and family.²⁴

Please see Endnote 16 to see who is required to participate in an IEP Team.²⁵

8. What placement can families and children obtain under the IDEA?

- The IDEA is designed to guarantee children with disabilities of all ages the opportunity to participate, learn, interact, and succeed in the school setting.
- Children with disabilities in school are assured a Free Appropriate Public Education (FAPE), which is special education and related services at no cost to the child or her/his parents.²⁶ FAPE must be based on the child's educational need.²⁷ Placement is based on the child's individual needs and skills as outlined on her IEP, and not on her/his disability.²⁸
- Inclusion is an important goal of the IDEA. Also, for preschool and school-age children with disabilities, the IDEA requires that they be placed in the Least Restrictive Environment (LRE).²⁹ The LRE is an educational setting where a child with disabilities can receive a free appropriate public education (FAPE) designed to meet his or her education needs while being educated with peers without disabilities

to the maximum extent appropriate. LRE applies to extracurricular and nonacademic activities as well,³⁰ which can include child care.

- EI (age 0 to 3) has a “Natural Environment” requirement similar to the LRE.³¹ A “natural environment” includes a child’s home and “community settings in which children without disabilities participate,”³² and “settings that are natural or normal for the child’s age peers who have no disabilities,”³³ such as child care.

9. How are IDEA services provided at a child care?

If services are listed in the IEP or IFSP, they can be provided through regular visits by teachers, developmental specialists and other related service personnel, and therapists to the child care or preschool setting. School or early intervention personnel can work with the child care staff to systematically embed the individualized goals for children into the curriculum activities and classroom routines.

The school or early intervention personnel consult and partner with the child care staff in order to enhance the participation of children in common preschool activities, and may present ways in which activities or environments may be adapted to promote the child’s participation and learning.

10. Can a family get child care or after-school care through their IEP/IFSP?

IEP

- Children with disabilities, *from ages 3 to 5*, may receive preschool or child care services, or a consultation to the child care program in their IEP. The IDEA makes grants available to states to

extend special education services to eligible preschool aged children.³⁴ Some school districts may try to limit reimbursement for placement in private preschools where there is no universal public preschool, but this is not allowed if the placement is the result of the IEP.³⁵

- If after-school care or extended day is a related service that is necessary for a *school-age child* to benefit from her special education, then a family could receive after-school care through an IEP.³⁶ The related service must be connected to the child’s education and needs, not family or other issues (as is the case in an IFSP).

IFSP

- Part C of IDEA (0-3 years of age) will not fund child care in New Mexico, however families may be able to access respite care (similar to baby-sitting) to give them a break from care giving. Families should talk to their FIT service coordinator if they are interested in respite care services for their family.
- *Early intervention* expressly considers the family’s needs and strengths as well as the child’s.³⁷

11. What assistive technology is available to child care providers for children with disabilities under the IDEA?

- Assistive technology means any equipment, off-the-shelf or customized, used to increase, maintain or improve the functional capacities of children with disabilities.³⁸ Some examples of assistive technology are computers, transportation aids, glasses, and hearing aids.
- If assistive technology helps a student benefit from her special education placement, including child care, then the technology must be provided by

the school district.³⁹ Parents do not have to pay for the equipment.⁴⁰

- The need for assistive technology must be considered in every child's IEP,⁴¹ and it is an EI⁴² service that must be considered in the IFSP process. If the IEP team decides that the child needs access to those devices in non-school settings, for example child care, in order to achieve a FAPE, the LEA must allow the child to use a school-purchased assistive technology device at home or in other settings.⁴³

12. What rights do parents have if the child is denied services or a parent does not like her child's placement?

Parents or the child's representative have the right to a due process hearing if they disagree with their child's IEP or IFSP or on any matter relating to the child's evaluation, placement and services under the IDEA.⁴⁴ A parent can disagree in whole or in part with the IEP or IFSP. In New Mexico, parents have access to the following options for resolving disputes with their child's IFSP:

- **Mediation**
- **Due Process Hearing**
- **Complaint Letter**

You can call the New Mexico Department of Health and request **mediation**, where a trained impartial and unbiased mediator will assist both parties to come to an agreeable resolution. A mediation meeting must be held within 30 days of your request.

If you do not choose mediation, you can request a **Due Process Hearing**. However, choosing mediation does not deny your right to request a due process

hearing. Due Process Hearings are formal hearings in which you are able to provide information about your case before a state-appointed hearing officer. You may be accompanied by an attorney.

If you still feel your rights have been violated, and are dissatisfied with the resolution of your dispute, you can write a **complaint letter** to the FIT Program Manager at:

Department of Health, Long Term
Services Division
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, NM 87502-6110

The Department of Health has 60 days in which to reach a decision about your complaint.

If a parent wishes to contest their child's IEP, the resolution process is very similar to the one described above, with some differences. A detailed fact sheet explains the IEP resolution options for parents. It is called the "Parent and Child Rights in Special Education" Fact Sheet, available at <http://www.ped.state.nm.us/seo/library/parentrights.pdf> (or call (505) 827-1457 for a copy).

Useful Resources

- **Child Care Law Center**, San Francisco, CA. Call (415) 394-7144 if you would like information about child care issues. We are a national and California child care support center for legal services programs. We also provide counsel and advice over the telephone. The following are some of our legal services:
 - Answer legal questions regarding child care legal issues during our telephone intake hours: Monday, Tuesday and Thursday from 12p.m. to 3p.m. (Pacific standard time)
 - Publish many useful publications. Visit our website at www.childcarelaw.org.
 - Conduct trainings for parents, teachers, community agencies, and others regarding legal issues affecting child care.
 - Occasionally we provide legal representation in impact cases.
- ◆ **New Mexico Department of Health, Family Infant Toddler Program (FIT)**, (877)-696-1472, (505) 827-2578, or visit www.health.state.nm.us/hsd/fit. This is IDEA's Part C Early Intervention Services for New Mexico, for children ages 0 – 3.
- ◆ **New Mexico Public Education Department Special Education Bureau**, 505-827-1457, <http://www.ped.state.nm.us/seo/index.htm>. This is IDEA's Part B Special Education Department for children ages 3 – 21. You can contact them to find out which school district is in charge of administering special education services for children ages 3 – 21.
- ◆ **Navajo Nation Office of Special Education**, (928) 871-6338 or (505) 722-1454, <http://www.osers.navajo.org/>.
- ◆ **Navajo Nation "Growing Beauty,"** (505) 368-6536, <http://www.osers.navajo.org/nmecistafflist.htm>. This program helps responsible state agencies to provide information about early childhood intervention services to Navajo families who may be eligible (for children ages 0-5).
- ◆ **Native American Pueblo Parent Resources (NAPPR)**, (505) 345-6289, <http://nappr.org/>. NAPPR is a source of information and services for families and organizations, and advocates for quality services for Native American children and their families an local, state and national levels.
- ◆ **Parents Reaching Out**, (800) 524-5176 or visit www.parentsreachingout.org. This is a statewide non-profit organization that is a resource connection for families, including assisting families with early intervention issues.
- ◆ **Project Jericho**, (505) 262-0801 or visit <http://www.altamiranm.org/program.html>. This project, part of Alta Mira Specialized Family Services, assists both providers and parents on best practices for the inclusion of infants and children ages 0 – 5.
- ◆ **Tresco, Inc.**, (505) 528-2200, or visit <http://trescoinc.org/>. Tresco is an early intervention services provider for families and children birth to three in the Las Cruces Area. They provide respite and personal care among many other services.
- ◆ **Protection and Advocacy Systems, Inc.** is an organization of advocates working together with people who have disabilities in promoting and protecting their legal and service rights. **Native American Protection and Advocacy Office**, Shiprock: (505) 566-5887, www.nativelegalnet.org. **New Mexico Protection and Advocacy Office**, Albuquerque: (505)-256-3100 or (800) 432-4682, <http://www.nmpanda.org>.
- ◆ **For an expansive list of Parent Training and Information Centers and Community Groups**, which provide training and information to parents of infants, toddlers, school-aged children, and young adults with disabilities and the professionals who work with their families in your state, visit <http://www.yellowpagesforkids.com/help/nm.htm> or call the **Technical Assistance Alliance for Parent Centers (the Alliance)** at (612) 827-2966 to reach the parent center in your state.

- ◆ **Easter Seals**, a national non-profit that provides both resources and inclusive child care services. A list of centers and services can be found at their website: <http://www.easter-seals.org>.
- ◆ **New Mexico Child Development Program**, (505) 827-7689, http://www.ecs.org/dbsearches/search_info/PreK_ProgramProfile.asp?state=NM. This program, run by Children, Youth and Families Department, Office of Child Development, funds early care and education services for children from birth to age 5 and their families. This program funds early care and education services for children from birth to age 5 and their families. Programs are collaboratively planned in communities to meet service gaps, and they may include pre-kindergarten, home visiting, programs for infants of teen parents, and provider resource and support programs. Eligibility differs with each program.
- ◆ **New Mexico Children, Youth and Families Department, Child Care Services Bureau**, (505) 841-4825, (505) 827-7946, or visit <http://www.newmexicokids.org>. This is the Licensing as well as the Subsidy Agency for child care providers in New Mexico.
- ◆ **Early Childhood/Even Start Program** of New Mexico, (505) 827-6562, <http://www.nmlites.org/programs/nmevenstart/index.html>. This program, run by New Mexico Department of Education, provides funding for family literacy programs to improve the educational opportunities of young children and their parents.
- ◆ **Healthy Child Care America: New Mexico**, at <http://www.newmexicokids.org/HCCA/default.htm>. This national initiative strives to provide safe, healthy child care environments for all children including those with special needs, and health and mental health consultations and support for families and providers. 1-800-691-9067 is the number for the Health and Safety Question Line for providers.
- ◆ **University of New Mexico Center for Development & Disability (CDD)**, (505) 272-1040, <http://cdd.unm.edu>. The mission of the CDD is the full inclusion of people with disabilities and their families in their community through interdisciplinary training, dissemination of information, provision of exemplary direct service and technical assistance, and research.
- ◆ **National Dissemination Center for Children with Disabilities**, <http://www.nichcy.org/stateshe/nm.htm#other>. This site has a large collection of New Mexico state resources, including parent organizations, disability organizations, and state agencies. They also have publications for parents on creating IFSP's and IEP's.
- ◆ **Boundless Playgrounds**, (860) 243-5854, www.boundlessplaygrounds.org. This nonprofit helps communities develop playgrounds that are accessible to children with disabilities.
- ◆ **Lekotek's AblePlay Website**, <http://www.ableplay.org/>. This one-of-a-kind website provides information and ratings of toys and products for children with special needs.
- ◆ **Texas Migrant Council**, (505) 233-4083, or visit www.tmccentral.org. This organization has a New Mexico location that serves the needs of migrant families and children.
- ◆ **National Early Childhood Technical Assistance Center (NECTAC)**, (919) 962-2001 OR (919) 843-3269 (TDD), <http://www.nectac.org/>. NECTAC provides technical assistance on numerous topics relating to early childhood, including inclusion, early intervention, quality assurance, and much more.
- ◆ **National Early Childhood Consortia for Indian Children with Special Needs (NECCICSN)**, (520) 871-7865, paulas@dns.nncs.ihs.gov. NECCICSN provides technical assistance and promotes information-sharing among tribes and other government agencies that work with children with special needs.
- ◆ **Tri-TAC**, Tribal Child Care Technical Assistance Center through the National Child Care Information Center (NCCIC), (580) 762-8850, killscrew@cablone.net, <http://www.nccic.org/tribal/>.

Endnotes

These endnotes are legal citations for the information above. If you are having trouble understanding these citations, please speak with a reference librarian in your local law library. To look up the laws that apply to you, visit your local law library. Do not hesitate to look up the law and know your rights.

¹20 U.S.C. § 1400 *et. seq.*

²20 U.S.C. § 1432(5); New Mexico Administrative Code 7.30.8.10 (F), cited as NM ADC 7.30.8.10 (F), available at www.health.state.nm.us/ltsd/fit/. **Developmental Delay** is a discrepancy between chronological age and developmental age, after correction for prematurity, in one more of the following areas of development: cognitive, communication physical/motor (including vision and hearing), social or emotional, adaptive. To be eligible for services under the definition of developmental delay, a child must demonstrate 25% or more discrepancy between chronological age, after correction for prematurity and developmental age. The extent of the child's delay must be documented. A determination of developmental delay shall not be based upon behavior related to cultural or language differences. For infants twelve months of age or younger, the professional judgment/clinical opinion of an interdisciplinary team may be used in lieu of the above evaluation process, to interpret and document evidence of delay significant enough for eligibility. The determination of developmental status of the child in each of the developmental areas must be established through an interdisciplinary evaluation process that meets the criteria contained in Section 10 E in these regulations. An **established condition is a diagnosed physical, mental, or neurobiological condition that has a high probability of resulting in developmental delay**. A delay in development may or may not be exhibited at the time of diagnosis. To be eligible for services under the definition of established condition, the determination of the presence of an established condition shall be diagnosed by a physician. The determination of developmental status of the child in each of the developmental areas must be established through an interdisciplinary evaluation process that meets the criteria contained in Section 10 E in these regulations. A biological or medical risk for developmental delay means that without the provision of early intervention services, the child would be at risk of experiencing substantial delay because of the presence of early medical conditions as documented by a physician or other primary health care provider which are known to produce developmental delays in some children. The determination of developmental status of the child in each of the developmental areas must be established through an interdisciplinary evaluation process that meets the criteria contained in Section 10 E in these regulations. **An environmental risk for developmental delay** means a child who would be at risk of experiencing substantial delay if early intervention services were not provided due to factors in the child's environment. To be eligible for services under the definition of environmental risk for developmental delay two or more physical, social and/or economic factors in the child's environment must pose a substantial threat to the child's development. For purposes of determining eligibility based on environmental risk, the IFSP team must include representation from two or more agencies with relevant knowledge of the child and family and the environmental risk factors. One of these agencies may be the early intervention provider. Professional judgment/clinical opinion shall be used in informing eligibility based on risk factors in the child's environment. The determination of developmental status of the child in each of the developmental areas must be established through an interdisciplinary evaluation process that meets the criteria contained in Section 10 E in these regulations.

³20 U.S.C. § 1401(3); *see also* 34 C.F.R. § 300.7(a)(1) (further specifying eligibility criteria for special education including multiply handicapped).

⁴See NM ADC 7.30.8.12 for all available Early Intervention Services in New Mexico.

⁵34 C.F.R. § 300.24(a).

⁶20 U.S.C. § 1401(8)(A).

⁷34 C.F.R. Part 300, App. A.

⁸34 C.F.R. § 300.300(a)(3)(ii).

⁹34 C.F.R. § 300.26; 34 C.F.R. 300.26(b)(3).

¹⁰34 C.F.R. § 300.24.

¹¹20 U.S.C. § 1412(a)(3).

¹²20 U.S.C. § 1435(a)(5); 34 CFR §§303.320-303.322.

¹³20 U.S.C. § 1414(d) (IEP); 20 U.S.C. § 1436 (IFSP).

¹⁴Agencies must take extra steps to include parents if they cannot attend, such as enabling them to participate via conference call. 34 C.F.R. § 300.345. *Id.* Note, also that, "The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English." *Id.*

¹⁵20 U.S.C. § 1414(d)(A).

¹⁶20 U.S.C. § 1414(d)(1)(A)(iv).

¹⁷20 U.S.C. § 1414(d)(1)(A)(iii)(III).

¹⁸20 U.S.C. § 1436(e).

¹⁹20 U.S.C. § 1414(d)(4).

²⁰20 U.S.C. § 1436(d).

²¹20 U.S.C. § 1436(b).

²² NM ADC 7.30.8.11 (A)(2)(b).

²³ 20 U.S.C. § 1414(d)(B) (IEP); 34 C.F.R. § 303.343(a)(1) (IFSP).

²⁴ NM ADC 7.30.8.11 (A)(3).

²⁵ The public agency shall ensure that the IEP team for each child with a disability includes (1) The parents of the child; (2) At least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); (3) At least one special education teacher of the child, or if appropriate, at least one special education provider of the child; (4) A representative of the public agency who (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii) Is knowledgeable about the general curriculum; and (iii) Is knowledgeable about the availability of resources of the public agency; (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (6) of this section; (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (7) If appropriate, the child. See 34 CFR §300.344. It is important to note that when a state has a pre-school program in place, the child care provider/pre-school teacher may also be considered the ‘regular education teacher’ for purposes of the IEP Team Meeting.

²⁶ As used in this part, the term 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 SEA, including the requirements of this part; (c) Include preschool, elementary school, or secondary school education in the State; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.340-300.350. See 34 CFR §300.13.

²⁷ 34 C.F.R. Part 300, App. A.

²⁸ 34 C.F.R. § 300.300(a)(3)(ii).

²⁹ 20 U.S.C. § 1412(a)(5).

³⁰ 20 U.S.C. § 1414(d)(1)(A)(iii).

³¹ 20 U.S.C. § 1432(4)(G); see also 34 C.F.R. § 303.12(b).

³² 20 U.S.C. § 1432(4)(G); see also 34 C.F.R. § 303.12.

³³ 34 C.F.R. § 303.18.

³⁴ 20 U.S.C. § 1419.

³⁵ Id. § 1412(a)(10)(B); see also 34 C.F.R. § 300.401.

³⁶ 34 C.F.R. § 300.24(a).

³⁷ Id.

³⁸ 20 U.S.C. § 1401(1); see also 34 C.F.R. § 300.5.

³⁹ 34 C.F.R. Part 300, App. A, Q. 36.

⁴⁰ Id.

⁴¹ 20 U.S.C. § 1414(d)(3)(B)(v); see also 34 C.F.R. § 300.346(a)(2)(v).

⁴² 34 C.F.R. § 303.12.

⁴³ 34 C.F.R. Part 300, App. A, Q. 36.

⁴⁴ 34 C.F.R. § 300.507.