

Legal FAQs

- Q:** Can CYFD continue to contract with private providers to deliver early learning services using school permanent funds?
- A:** Yes. The details of the contracts will determine compliance. Until then, there can be no claim that these contracts would violate the NM constitution or Enabling Act. Contract provisions will be guided by criteria in enabling legislation, rules and regulations, and individual contract development.
- Q:** Will Congress need to approve changes in relation to the NM Enabling Act?
- A:** Yes, this year's legislation includes language that says that implementation is contingent on approval by Congress. This is not a significant barrier as Congress has approved changes to the Enabling Act as recently as 1997 and 1990. Traditionally, once voters have spoken in favor of such a change in the constitution, federal bodies would concur.
- Q:** Would the proposal violate the anti-donation clause?
- A:** No. The constitution clearly permits the exchange of money for contracted services.
- Q:** Would early learning contracts be allowed to go to programs based in a religious or sectarian institution?
- A:** Yes, programs may be located at a religious institution, but the Constitutional Amendment stipulates that public funds may not be used to support religious or sectarian education.

Source: David Buchholtz, J.D., Constitutional and Public Finance Law; Brownstein Hyatt Farber Schreck, LLP