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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
57th Legislature, 1st Session, 2025

Bill Number	<u>SB38</u>	Sponsor	<u>Stewart</u>
Tracking Number	<u>.229423.4GLG</u>	Committee Referrals	<u>SEC/SFC</u>
Short Title	<u>Special Education Act</u>		
Analyst	<u>Andrews</u>	Original Date	<u>2/10/2025</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

Senate Bill 38 (SB38) would create and amend several sections of law related to special education in New Mexico public schools. SB38 would create the Office of Special Education (OSE) within the Public Education Department (PED) and create the position of deputy secretary of special education who would report directly to the PED secretary. The OSE would carry out the provisions of the proposed Special Education Act, enumerated in 12 sections of law (see **Substantive Issues**).

The Special Education Act would require the office to carry out numerous duties, including but not limited to the following:

- Developing and providing professional development programs and materials for licensed school employees;
- Monitoring spending of all funds including the state equalization guarantee (SEG)—the state’s public school funding formula—for students with disabilities and taking actions to ensure appropriate spending as needed;
- Developing a statewide online system for the development and maintenance of individual education programs (IEPs) for all students with disabilities which must be used for all students with disabilities attending public schools within the state; and
- Ensuring gifted students with disabilities receive appropriate services.

SB38 would also move the Office of the Special Education Ombud (OSEO) from its current location in the Developmental Disabilities Council (DDC) to PED and recompile the Special Education Ombud Act in the Public School Code (see **Substantive Issues**).

SB38 would require PED and the new OSE to identify appropriate salary differential levels, time allocations, and other supports for licensed school employees, educational assistants, and other instructional support providers who educate students with disabilities by July 1, 2026.

SB38 would require PED and OSE to coordinate with the Early Childhood Education and Care Department (ECECD) to transfer the federal Individuals with Disabilities Education Act (IDEA)

part B, section 619 coordinator—who supports effective transitions from prekindergarten or special education programs to kindergarten to ensure continuity of services for children with disabilities—and corresponding IDEA funding to ECECD.

SB38 would also amend requirements for annual educational plans to require local education agencies (LEAs) to report all funding generated for students with disabilities and gifted students by class and grade level, and how these revenues will be spent on services for students with disabilities and gifted students.

SB38 would require public schools to identify and provide services for three- and four-year-old children with disabilities (see **Substantive Issues**).

Finally, SB38 would also specify that LEAs must provide special education and related services not just to students with disabilities, but also to gifted students (see **Substantive Issues**).

FISCAL IMPACT

SB38 does not contain an appropriation.

LESC staff estimate SB38 would have a fiscal impact on PED. SB38 would require OSE to take on new duties that would have a fiscal impact, including but not limited to:

- Developing and providing professional development materials and programming for licensed school employees;
- Providing targeted annual training to all local school boards, charter schools governing bodies, school administrators, and school personnel that address state and federal law regarding the education of students with disabilities, including IDEA; disabilities-specific policies, practices, and interventions; de-escalation practices and techniques; positive behavior supports; structured literacy; and formulation and implementation of effective IEPs and transitional IEPs; and effective engagement and communication with students, parents, and educational decision makers;
- Developing and maintaining an online system for IEPs; and
- Ensuring gifted students receive appropriate services.

PED's OSE currently has 20 FTE positions, including a deputy secretary of OSE, a deputy director of OSE, a chief counsel, and personnel tasked with roles and responsibilities that support students and families who require special education services. For FY26, PED requested a \$2.8 million increase to its operating budget to support 15 new FTE for OSE. The LESL recommendation for public school support in FY26 supported PED's request, while LFC recommended an increase of \$802 thousand. LFC recommends PED use \$610 thousand in federal IDEA-B funds to fund 5 new FTE.

SB38 would also require LEAs to take on additional duties that would have a fiscal impact, including but not limited to:

- Establishing procedures to identify all three- and four-year-old prekindergarten students as students with disabilities or gifted students, including students not funded through the SEG (53.4 percent of three- and four-year-old (9,818) funded prekindergarten slots are not served by public schools);
- Transitioning to a new online IEP system; and

- The provision of services supplementary to, or different from, those provided in the regular school program by systematic modification and adaption of instructional techniques, materials, and equipment to meet the needs of gifted students.

In FY25, the Legislature appropriated \$783.9 million for special education programs and services through the SEG. Those funds are based on student needs as specified in their IEP, along with the number of full-time-equivalent certified or licensed staff providing diagnostic services or speech therapy and other ancillary services. Special education funding through the state's SEG is based on the number of students in the district or charter school who qualify as "exceptional" because their educational needs cannot be met in the regular classroom; in the SEG, this includes students identified as gifted. Additionally, the federal IDEA distributes grant funding for states to provide special education and related services for students between the ages of 3 and 21 who have been identified as having a disability. In FY25, those grant programs will distribute \$112.9 million to public schools in New Mexico.

The LESC public school support recommendation for FY26 includes funding that could support the implementation of SB38, including \$12 million in nonrecurring funding for a statewide student information system housing the statewide IEP, and \$4 million in nonrecurring funds for special education initiatives.

SUBSTANTIVE ISSUES

Proposed Special Education Act. On May 25, 2023, Governor Michelle Lujan Grisham announced Executive Order 2023-062 establishing the Office of Special Education within PED. SB38 would codify work OSE is already performing, such as duties related to oversight and enforcement of state and federal special education law, but would also would require OSE to take on numerous other duties. For example, SB38 would require OSE to train all school boards and governing bodies, school administrators, and school personnel on specific topics related to the education of students with disabilities. SB38 would also require OSE to ensure gifted students receive appropriate services as required by state and federal law.

Specifically, SB38 outlines more than 40 duties of the OSE to carry out the provisions of the proposed Special Education Act; see **Other Significant Issues** for a comprehensive list.

Transfer of the Office of the Special Education Ombud to PED. SB38 would transfer the Office of the Special Education Ombud OSEO from the DDC to PED. The PED secretary would be required to appoint the ombud who heads the OSEO, rather than the DDC appointing this role. As noted in the DDC bill analysis, OSEO provides comprehensive and personalized information, resources, and support to public school students with disabilities and their families who need assistance acquiring education services. OSEO was established by Laws 2021, Chapter 53 (HB222) to serve as an independent advocate and watchdog for public school students and to provide comprehensive support for families navigating the special education system. With the passage of Laws 2021, Chapter 53, New Mexico joined 22 other states that established a Children's Ombudsman/Office of the Child Advocate to assist in providing oversight of children's services, including investigating complaints related to government services for children and families.

By moving OSEO to PED, OSEO will no longer serve as an independent agency, potentially making it more difficult for the office to provide objective oversight and accountability of state special education services for children and families. However, as DDC notes in their bill analysis,

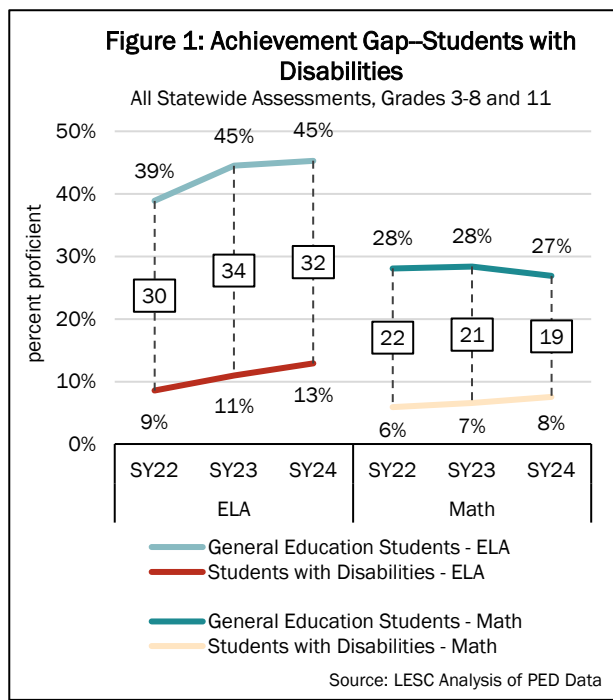
the transfer of OSEO to PED would allow more comprehensive and streamlined special education data, particularly data on barriers to special education services and student outcomes.

Increased Services for Gifted Students. SB38 makes numerous amendments to the Public School Code to increase protections for gifted students. As gifted students are not covered or funded through the federal IDEA, it appears SB38's inclusion of gifted students within special education would provide students identified as gifted with protections under New Mexico law beyond requirements of federal law. SB38 explicitly includes gifted students within the purview of OSE and within the definition of the provision of special education and related services for school districts.

PED analysis of SB38 notes the bill may help extend similar rights afforded to students with disabilities under IDEA to both gifted students and students with disabilities. The department may need to amend rule or set standards to explicitly specify the related services that must be provided for gifted students who demonstrate need or explicitly state they are the same as for students protected under IDEA.

Identification of Three- and Four-Year-Old Children with Disabilities. SB38 would require school districts to identify and provide services for three- and four-year-old gifted children and children with disabilities, unless the parent or guardian chooses not to enroll the child. Under current law, public schools are only required to provide services for three- and four-year-olds enrolled in public school prekindergarten programs. SB38 would require school districts to both identify and provide services for all three- and four-year-olds with disabilities. While SB38 notes that the services may be contracted for with a public or private provider, it appears SB38 requires school districts to provide, and thus fund, these services, regardless of whether or not these students are in public school-based, community-based, or private prekindergarten settings.

Special Education in New Mexico. Since 1973, federal law has required states to provide students with disabilities the same opportunity for education as students without disabilities. However, a wide achievement gap between students with disabilities and general education students illustrates special education students are not being adequately served. As illustrated by **Figure 1: Achievement Gap—Students with Disabilities**, for the past three years there has been a wide, persistent gap in performance on all statewide assessments between students receiving special education services and their general education peers. In SY24, 13 percent of special education students were proficient in ELA, compared with 45 percent of general education students and 8 percent of special education students were proficient in math compared with 27 percent of general education students.



Students with disabilities were one of the student groups identified in the consolidated *Martinez-Yazzie* lawsuit that found the state failed to provide an adequate, sufficient education to these

students, in addition to Native American students, English learners, and economically disadvantaged students. In both the 2023 and 2024 interims, LESC studied issues impacting students receiving special education services with the understanding that while the Legislature had made significant investments to address the court's findings, few of those initiatives had specifically addressed special education.

In 2023, LESC staff facilitated nine listening sessions statewide to provide an opportunity for stakeholders to share feedback and suggestions about special education services in New Mexico. This feedback was used as a starting place for a special education stakeholder working group that met in 2024 and developed [policy proposals](#) that reflected both research and community voices. During the 2024 interim, LESC staff focused on supporting policy proposals that arose from LESC's special education stakeholder engagement process: the development and standardization of a universal IEP, salary differentials for special education teachers, and drafting legislation to clearly define restraint and seclusion. See **Other Significant Issues** for a discussion of policy proposals that were developed through the LESC's listening sessions and working groups in 2023 and 2024.

PED Oversight and Other Supports. OSE provides fiscal oversight and support to assist school districts and charter schools in ensuring services are provided to students with disabilities. Much of this oversight involves technical assistance to help school districts and charter schools remain in fiscal and programmatic compliance in serving students with disabilities, support in providing behavioral intervention and mental health services, meeting personnel shortages, and building capacity to improve the delivery of student services.

ADMINISTRATIVE IMPLICATIONS

While SB38 codifies the OSE that PED has already established, it also increases the expected workload and responsibilities of the office. This could create considerable administrative implications for PED to carry out these additional duties. As noted in the **Fiscal Impact** section of this analysis, the PED budget request for FY26 includes an additional 15 FTE for OSE.

SB38 directs OSE to provide annual structured literacy training; PED's Literacy and Humanities Bureau currently is funded for, and provides, structured literacy training for all elementary educators and select secondary schools.

ECECD noted in their bill analysis that if SB38 passes, the department will receive federal 619 part B IDEA funds from PED. The department notes they have factored in the headcount and contracts needed for the work to continue.

OTHER SIGNIFICANT ISSUES

Proposed Duties of OSE. SB38 would codify the following duties for OSE:

- Overseeing and enforcing state and district compliance with federal and state special education law, including IDEA, by:
 - Soliciting input from special education stakeholders;
 - Reviewing publicly available information and resources regarding special education services and programs;
 - Monitoring academic and nonacademic progress of students with disabilities;
 - Providing procedural safeguards;

- Performing site visits to public schools as needed; and
 - Requiring remedial action by a school district if a district or school is out of compliance.
- Ensuring that transitional IEPs prepare students with disabilities:
 - Who are not yet enrolled in kindergarten in coordination with ECECD; and
 - For transitions within the public school system, and for transitions to postsecondary education or the workforce in coordination with HED.
- Making and adopting a state plan for special education policy, programs, and standards that must be updated every three years.
- Reviewing and recommending rules to address the needs of students with disabilities, including highly mobile students with disabilities.
- Consulting and coordinating with:
 - Other divisions of PED to promote the inclusion of students with disabilities in all educational programs and activities; ensure gifted students with disabilities receive appropriate services; identify and address factors that disproportionately impact students with disabilities, including high mobility; and develop and implement culturally and linguistically responsive and appropriate services to support students with disabilities;
 - State agencies and public postsecondary institutions to prioritize and expand appropriate special education services to children and students with disabilities from birth through transition to college or career;
 - State agencies and state educational institutions to ensure students with disabilities in state custody or in residential treatment facilities and psychiatric hospitals receive free appropriate public education (FAPE);
 - Public postsecondary educational institutions to support the education and training of licensed school employees.
- Developing policies and providing:
 - Guidance for parents of students with disabilities;
 - Recommendations for districts to ensure special education services are evidence- or research-based, are designed in collaboration with parents and educational decision makers, and include student-centered goals;
 - Professional development materials and programming for licensed school employees; and
 - Annual training to all local school boards, charter school governing bodies, school district administrators and school personnel that address state and federal law regarding the education of students with disabilities, including IDEA; policies, practices, and interventions specific to students with disabilities, including de-escalation practices and techniques, and positive behavioral supports; structured literacy; the formulation and implementation of IEPs and transitional IEPs; and engagement and communication with students, parents, and educational decision makers.
- Providing technical assistance to school districts and other special education providers that implement programs for students with disabilities.
- Identifying systems and policies that:
 - Maximize the provision of special education services;
 - Expedite the evaluation of students with disabilities, including students younger than five-years-old; and
 - Facilitate effective and meaningful inclusion and integration of students with disabilities in all educational settings.
- Monitoring:

- Expenditures of federal and state funding for special education programs and services, including Medicaid and SEG funding, and taking action to ensure such expenditures are made in accordance with the law; and
 - District policies and practices for screening and evaluating students suspected of having disabilities.
- Working with the Office of the State Special Education Ombud, including reviewing recommendations, investigating, and taking appropriate action on those recommendations.
- Developing and maintaining an online system for the formulation of IEPs, which must be used for all students with disabilities.
- Determining which special education data is needed to evaluate the state’s compliance with federal and state laws related to special education, coordinate with other divisions of PED to ensure districts collect data in a uniform and consistent manner, and submit an annual report to the governor, PED Secretary, and LESC that includes student demographics; student achievement, outcomes, and transitions; state and federal funding and corresponding expenditures; the types of programming and services provided in each district, and statewide, and the OSE’s evaluation of that programming and those services; the use of restraint and seclusion of students with disabilities statewide; and national compensation trends for special education teachers and recommendations for recruiting and retaining qualified special education educators.

LESC Special Education Listening Session and Working Group Policy Proposals. LESC’s nine listening sessions provided stakeholders with an opportunity to share feedback and suggestions about special education services in New Mexico. Combined, listening sessions ran 19.57 hours, 411 stakeholders attended the nine sessions, and LESC staff received 73 emails from 44 unique stakeholders that were included in the qualitative analysis process. The following “buckets” of opportunities for the Legislature to consider emerged from the listening sessions: funding, a need for more high-quality staff, training, and accountability. These recommendations are outlined in depth in LESC’s September 2023 [Special Education Stakeholder Listening Sessions Report](#).

As detailed in LESC’s December 2023 [Special Education in New Mexico: A Landscape Analysis from Communities and Stakeholders](#), these proposals were used as a starting place for the special education stakeholder working group. The working group identified the following policy suggestion topics: resources for teachers and training, funding, accountability, and behavioral supports.

It is important to note that SB38 contains several important elements of these policy recommendations, such as the development and standardization of a universal IEP, salary differentials for special education teachers, and training requirements, but does not address other elements, such as funding.

Federal Special Education Laws. Two federal laws ensure children with disabilities have a right to an education —Section 504 of the Rehabilitation Act of 1973 (commonly known as Section 504)—and IDEA. Section 504, a civil rights law, protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance. It also requires schools to provide FAPE to each qualified student, regardless of the nature or severity of the disabilities.

IDEA applies to every student in the United States who receives special education services. This federal law spells out what states must do to meet the specific needs of each student with a disability by requiring schools to develop an IEP for each student. In essence, IDEA is a law that

ensures a FAPE for all children with disabilities by requiring individualized services, which may also include specialized instruction, therapies, and services. IDEA also governs how states and public agencies must provide special education, intervention services, and any other related services to all students.

Martinez-Yazzie Consolidated Lawsuit. In 2019, the 1st Judicial Court issued a final judgement and order on the consolidated *Martinez-Yazzie* education sufficiency lawsuit, finding New Mexico’s public education system failed to provide a constitutionally sufficient and adequate education for at-risk students, defined as English learners, Native American students, students with disabilities, and students from low-income families. The court pointed to high school graduation rates, student test proficiencies, and college remediation rates as indicators of how the state is not meeting its constitutional obligation to ensure all students are college, career, and civics ready. The court’s findings suggested overall public school funding levels, financing methods, and PED oversight were deficient. As such, the court enjoined the state to provide sufficient resources, including instructional materials, properly trained staff, and curricular offerings, necessary for providing the opportunity for a sufficient education for all at-risk students. Additionally, the court noted the state would need a system of accountability to measure whether the programs and services actually provided the opportunity for a sound basic education and to assure that local school districts spent funds provided in a way that efficiently and effectively met the needs of at-risk students. However, the court stopped short of prescribing specific remedies and deferred decisions on how to achieve education sufficiency to the legislative and executive branch instead.

RELATED BILLS

Relates to House Bill 260, Allowable Responses to Student Behavior, which would amend existing law to clearly define what constitutes restraint and seclusion, including which actions are allowed, and which are prohibited in public schools. These bills provide duplicative and contrasting requirements regarding training and reporting of restraint and seclusion.

SOURCES OF INFORMATION

- LESC Files
- Developmental Disabilities Council (DDC)
- Early Childhood Education and Care Department (ECECD)
- Public Education Department (PED)
- New Mexico Regional Cooperatives (NMRECA)

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