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SENATE BILL 174

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO PUBLIC EDUCATION; CREATING A DIVISION IN THE PUBLIC EDUCATION DEPARTMENT TO FOCUS ON SPECIAL EDUCATION; PROVIDING POWERS AND DUTIES; REQUIRING ACCOUNTABILITY; INCREASING THE SPECIAL EDUCATION COST DIFFERENTIAL FACTORS; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 9-24-4 NMSA 1978 (being Laws 2004, Chapter 27, Section 4, as amended) is amended to read:

"9-24-4. DEPARTMENT CREATED.--

A. The "public education department" is created in the executive branch. The department is a cabinet department and includes the following divisions:

- (1) the administrative services division;

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- 1 (2) the assessment and accountability
2 division;
- 3 (3) the charter schools division;
- 4 (4) the educator quality division;
- 5 (5) the Indian education division;
- 6 (6) the information technology division;
- 7 (7) the instructional support and vocational
8 education division;
- 9 (8) the program support and student
10 transportation division;
- 11 (9) the quality assurance and systems
12 integration division;
- 13 (10) the rural education division; [~~and~~]
- 14 (11) the special education division; and
- 15 [~~(11)~~] (12) the vocational rehabilitation
16 division.

17 B. The secretary may organize the department and
18 divisions of the department and may transfer or merge functions
19 between divisions and bureaus in the interest of efficiency and
20 economy."

21 SECTION 2. Section 22-1-2 NMSA 1978 (being Laws 2003,
22 Chapter 153, Section 3, as amended by Laws 2019, Chapter 206,
23 Section 1 and by Laws 2019, Chapter 207, Section 1) is amended
24 to read:

25 "22-1-2. DEFINITIONS.--As used in the Public School Code:
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1 A. "academic proficiency" means mastery of the
2 subject-matter knowledge and skills specified in state academic
3 content and performance standards for a student's grade level;

4 B. "charter school" means a school authorized by a
5 chartering authority to operate as a public school;

6 C. "children with disabilities" means children who
7 are either classified as developmentally disabled according to
8 the Developmental Disabilities Act or are classified as having
9 a disability in one or more of the disabilities categories of
10 the federal Individuals with Disabilities Education Act;

11 ~~[G-]~~ D. "commission" means the public education
12 commission;

13 ~~[D-]~~ E. "department" means the public education
14 department;

15 F. "dyslexia" means a specific learning disability
16 that is neurobiological in origin and that is characterized by
17 difficulty with accurate or fluent word recognition and by poor
18 spelling and decoding abilities, which characteristics
19 typically result from a deficit in the phonological component
20 of language that is often unexpected in relation to other
21 cognitive abilities and the provision of effective classroom
22 instruction and may result in problems in reading comprehension
23 and reduced reading experience that may impede the growth of
24 vocabulary and background knowledge;

25 G. "exceptional children" means school-age persons

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1 who are gifted, have a developmental disability or have been
2 identified as having a disability in one or more disability
3 categories whose abilities render general education services of
4 the public school to be inconsistent with their educational
5 needs;

6 H. "gifted child" means a school-age person who is
7 determined to be gifted pursuant to Section 22-13-6.1 NMSA 1978
8 and standards adopted by the department pursuant to that
9 section;

10 ~~[E.]~~ I. "home school" means the operation by the
11 parent of a school-age person of a home study program of
12 instruction that provides a basic academic educational program,
13 including reading, language arts, mathematics, social studies
14 and science;

15 ~~[F.]~~ J. "instructional support provider" means a
16 person who is employed to support the instructional program of
17 a school district, including educational assistant, school
18 counselor, social worker, school nurse, speech-language
19 pathologist, psychologist, physical therapist, occupational
20 therapist, recreational therapist, marriage and family
21 therapist, interpreter for the deaf and diagnostician;

22 ~~[G.]~~ K. "licensed school employee" means teachers,
23 school administrators and instructional support providers;

24 ~~[H.]~~ L. "local school board" means the policy-
25 setting body of a school district;

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1 ~~[H.]~~ M. "local superintendent" means the chief
2 executive officer of a school district;

3 ~~[J.]~~ N. "parent" includes a guardian or other
4 person having custody and control of a school-age person;

5 ~~[K.]~~ O. "private school" means a school, other than
6 a home school, that offers on-site programs of instruction and
7 that is not under the control, supervision or management of a
8 local school board;

9 ~~[L.]~~ P. "public school" means that part of a school
10 district that is a single attendance center in which
11 instruction is offered by one or more teachers and is
12 discernible as a building or group of buildings generally
13 recognized as either an elementary, middle, junior high or high
14 school or any combination of those and includes a charter
15 school;

16 Q. "response to intervention" means a multitiered
17 intervention model that uses a set of increasingly intensive
18 academic or behavioral supports, matched to student need, as a
19 framework for informing and making education program decisions
20 before testing a student for a possible disability;

21 ~~[M.]~~ R. "school" means a supervised program of
22 instruction designed to educate a student in a particular
23 place, manner and subject area;

24 ~~[N.]~~ S. "school administrator" means a person
25 licensed to administer in a school district and includes school

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1 principals, central district administrators and charter school
2 head administrators;

3 [Θ-] T. "school-age person" means a person who is
4 at least five years of age prior to 12:01 a.m. on September 1
5 of the school year, who has not received a high school diploma
6 or its equivalent and who has not reached the person's twenty-
7 second birthday on the first day of the school year and meets
8 other criteria provided in the Public School Finance Act;

9 [P-] U. "school building" means a public school, an
10 administration building and related school structures or
11 facilities, including teacher housing, that is owned, acquired
12 or constructed by the school district as necessary to carry out
13 the functions of the school district;

14 [Q-] V. "school bus private owner" means a person,
15 other than a school district, the department, the state or any
16 other political subdivision of the state, that owns a school
17 bus;

18 [R-] W. "school district" means an area of land
19 established as a political subdivision of the state for the
20 administration of public schools and segregated geographically
21 for taxation and bonding purposes;

22 [S-] X. "school employee" includes licensed and
23 nonlicensed employees of a school district;

24 [T-] Y. "school principal" means the chief
25 instructional leader and administrative head of a public

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1 school;

2 [U-] Z. "school year" means the total number of
3 contract days offered by public schools in a school district
4 during a period of twelve consecutive months;

5 [V-] AA. "secretary" means the secretary of public
6 education;

7 BB. "special education" means the provision of
8 services additional to, supplementary to or different from
9 those provided in the regular school program by individualized
10 modification and adaptation of instructional techniques,
11 materials and equipment based upon the needs of an exceptional
12 child;

13 [W-] CC. "state agency" or "state institution"
14 means the New Mexico military institute, New Mexico school for
15 the blind and visually impaired, New Mexico school for the
16 deaf, New Mexico boys' school, girls' welfare home, New Mexico
17 youth diagnostic and development center, Sequoyah adolescent
18 treatment center, Carrie Tingley crippled children's hospital,
19 New Mexico behavioral health institute at Las Vegas and any
20 other state agency responsible for educating resident children;

21 [X-] DD. "state educational institution" means an
22 institution enumerated in Article 12, Section 11 of the
23 constitution of New Mexico;

24 EE. "student assistance team" means a school-based
25 group whose purpose, based on procedures and guidelines

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1 established by the department, is to provide additional
2 educational support to students who are experiencing
3 difficulties that are preventing them from benefiting from
4 general instruction in the general education program before
5 referring the student for special education services;

6 [Y.] FF. "substitute teacher" means a person who
7 holds a certificate to substitute for a teacher in the
8 classroom;

9 [Z.] GG. "teacher" means a person who holds a level
10 one, two or three-A license and whose primary duty is classroom
11 instruction or the supervision, below the school principal
12 level, of an instructional program or whose duties include
13 curriculum development, peer intervention, peer coaching or
14 mentoring or serving as a resource teacher for other teachers;

15 [~~AA.~~] HH. "certified school instructor" means a
16 licensed school employee whose primary job is to teach; and

17 [~~BB.~~] II. "certified school employee" or "certified
18 school personnel" means a licensed school employee."

19 **SECTION 3.** Section 22-8-21 NMSA 1978 (being Laws 1974,
20 Chapter 8, Section 11, as amended) is amended to read:

21 "22-8-21. SPECIAL EDUCATION PROGRAM UNITS.--

22 A. For the purpose of the Public School Finance
23 Act, special education programs for exceptional children are
24 those approved by the department and classified as follows:

25 (1) class A programs, in which [~~department-~~

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1 ~~certified individuals~~] licensed teachers and instructional
2 support providers provide services to [~~children~~] students whose
3 individualized education programs require a minimal amount of
4 special education and in which the ratio of students to
5 professionals is regulated by the [~~state board~~] department;

6 (2) class B programs, in which [~~department-~~
7 ~~certified individuals~~] licensed teachers and instructional
8 support providers provide services to [~~children~~] students whose
9 individualized education programs require a moderate amount of
10 special education and in which the ratio of students to
11 professionals is regulated by the [~~state board~~] department;

12 (3) class C programs, in which [~~department-~~
13 ~~certified individuals~~] licensed teachers and instructional
14 support providers provide services to [~~children~~] students whose
15 individualized education programs require an extensive amount
16 of special education and in which the ratio of students to
17 professionals is regulated by the [~~state board~~] department;

18 (4) class D programs, in which [~~department-~~
19 ~~certified individuals~~] licensed teachers and instructional
20 support providers provide services to [~~children~~] students whose
21 individualized education programs require a maximum amount of
22 special education and in which the ratio of students to
23 professionals is regulated by the [~~state board~~] department.

24 Students in class D programs may be enrolled in private,
25 nonsectarian, nonprofit educational training centers in

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1 accordance with the provisions of [~~Section 22-13-8 NMSA 1978~~]
2 the Special Education Act; and

3 (5) programs for developmentally disabled
4 three- and four-year-old children meeting standards approved by
5 the [~~state board~~] department.

6 B. All students assigned to the programs for
7 exceptional children classified in Subsection A of this section
8 shall have been so assigned as a result of diagnosis and
9 evaluation performed in accordance with the standards of the
10 department before the students may be counted in the
11 determination of special education program units as provided in
12 Subsection C of this section.

13 C. The number of special education program units is
14 the sum of the following:

15 (1) the MEM in approved class A and B programs
16 as defined in Subsection A of this section multiplied by the
17 cost differential factor [~~.7~~] 1.03;

18 (2) the MEM in approved class C programs as
19 defined in Subsection A of this section multiplied by the cost
20 differential factor [~~1.0~~] 1.33;

21 (3) the MEM in approved class D programs as
22 defined in Subsection A of this section multiplied by the cost
23 differential factor [~~2.0~~] 2.33;

24 (4) the MEM for developmentally disabled
25 three- and four-year-old children as defined in Subsection A of
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1 this section multiplied by the cost differential factor [~~2.0~~
2 2.33; provided that no developmentally disabled three- or four-
3 year-old [~~student~~] child shall be counted for additional
4 ancillary service units; and

5 (5) for [~~related services ancillary to~~
6 ~~providing special education~~] instructional support providers,
7 the number of full-time-equivalent [~~certified or~~] licensed
8 [~~ancillary service and diagnostic service personnel~~]
9 instructional support providers multiplied by the cost
10 differential factor [~~25.0~~] 25.33.

11 D. For the purpose of calculating membership in
12 class C and class D programs, students shall be counted in
13 actual grade placement or according to chronological age if not
14 in actual grade placement."

15 SECTION 4. A new section of the Public School Code is
16 enacted to read:

17 "[NEW MATERIAL] SHORT TITLE.--Sections 4 through 10 of
18 this act may be cited as the "Special Education Act"."

19 SECTION 5. A new section of the Public School Code is
20 enacted to read:

21 "[NEW MATERIAL] SPECIAL EDUCATION--DEFINITIONS.--As used
22 in the Special Education Act:

23 A. "assistant secretary" means the assistant
24 secretary of special education; and

25 B. "division" means the special education

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1 division."

2 SECTION 6. Section 22-13-5 NMSA 1978 (being Laws 1972,
3 Chapter 95, Section 1, as amended) is recompiled in the Special
4 Education Act and is amended to read:

5 "SPECIAL EDUCATION.--School districts and charter schools
6 shall provide special education and related services
7 appropriate to meet the needs of students requiring special
8 education and related services. Rules and standards shall be
9 developed and established by the department for the provision
10 of special education in the public schools and classes of the
11 public school system in the state and in all institutions
12 wholly or partly supported by the state. The department shall
13 monitor and enforce the rules and standards. School districts
14 and charter schools shall also provide services for three-year-
15 old and four-year-old preschool children with disabilities,
16 unless the parent or guardian chooses not to enroll the child.
17 Services for students age three through twenty-one may include
18 [~~but are not limited to~~] evaluating particular needs, providing
19 learning experiences that develop cognitive and social skills,
20 arranging for or providing related services as defined by the
21 department and providing parent education. The services may be
22 provided by licensed school employees or contracted for with
23 other community agencies and shall be provided in age-
24 appropriate, integrated settings, including home, daycare
25 centers, head start programs, schools or community-based

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1 settings."

2 SECTION 7. Section 22-13-6.1 NMSA 1978 (being Laws 1994,
3 Chapter 25, Section 2, as amended) is recompiled in the Special
4 Education Act and is amended to read:

5 "GIFTED [~~CHILDREN~~] STUDENTS--DETERMINATION.--

6 A. The department shall adopt standards pertaining
7 to the determination of who is a gifted child and shall publish
8 those standards as part of the educational standards for New
9 Mexico schools.

10 B. In adopting standards to determine who is a
11 gifted child, the department shall provide for the evaluation
12 of selected [~~school-age children~~] students by multidisciplinary
13 teams from each [~~child's~~] student's school district or charter
14 school. That team shall be vested with the authority to
15 designate a child as gifted. The team shall consider
16 information regarding a child's cultural and linguistic
17 background and socioeconomic background in the identification,
18 referral and evaluation process. The team also shall consider
19 any disabling condition in the identification, referral and
20 evaluation process.

21 C. Each school district or charter school offering
22 a gifted education program shall create one or more advisory
23 committees of parents, community members, students and school
24 staff members. The school district may create as many advisory
25 committees as there are high schools in the school district or

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1 may create a single districtwide or charter school advisory
2 committee. The membership of each advisory committee shall
3 reflect the cultural diversity of the enrollment of the school
4 district or charter school and the public schools the committee
5 advises. The advisory committee shall regularly review the
6 goals and priorities of the gifted program, including the
7 operational plans for student identification, evaluation,
8 placement and service delivery and shall demonstrate support
9 for the gifted program.

10 D. In determining whether a child is gifted, the
11 multidisciplinary team shall consider diagnostic or other
12 evidence of the child's:

- 13 (1) creativity or divergent-thinking ability;
- 14 (2) critical-thinking or problem-solving
15 ability;
- 16 (3) intelligence; and
- 17 (4) achievement.

18 E. Nothing in this section shall preclude a
19 school district or charter school from offering additional
20 gifted programs for students who fail to meet the eligibility
21 criteria; however, the state shall only provide state funds
22 for department-approved gifted programs for those students
23 who meet the established criteria."

24 SECTION 8. Section 22-13-7 NMSA 1978 (being Laws 1972,
25 Chapter 95, Section 3, as amended) is recompiled in the

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1 Special Education Act and is amended to read:

2 "SPECIAL EDUCATION--RESPONSIBILITY.--

3 A. The [~~state board~~] division shall make, adopt
4 and keep current a state plan for special education policy,
5 programs and standards.

6 B. The department [~~of education with the approval~~
7 ~~of the state board~~] shall set standards for diagnosis and
8 screening of and educational offerings for exceptional
9 children in public schools, in private, nonsectarian,
10 nonprofit training centers and in state institutions under
11 the authority of the secretary of health.

12 C. The [~~state board~~] division shall establish and
13 maintain a program of evaluation of the implementation and
14 impact of all programs for exceptional children in the public
15 schools. This program shall be operated with the cooperation
16 of [~~local~~] school districts or charter schools. Portions of
17 the program may be subcontracted, and periodic reports
18 regarding the efficacy of programs for exceptional children
19 shall be made to the legislative education study committee.

20 D. The department [~~of education~~] shall coordinate
21 programming related to the transition of persons with
22 disabilities from secondary and post-secondary education
23 programs to employment or vocational placement."

24 SECTION 9. A new section of the Public School Code is
25 enacted to read:

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1 "[NEW MATERIAL] SPECIAL EDUCATION DIVISION--ASSISTANT
2 SECRETARY FOR SPECIAL EDUCATION--POWERS AND DUTIES.--

3 A. The "special education division" is created in
4 the department. The secretary shall appoint an "assistant
5 secretary for special education" who shall:

6 (1) direct the activities of the division
7 and advise the secretary on development of policy regarding
8 the education of special education students;

9 (2) coordinate transition efforts for
10 special education students in public schools;

11 (3) coordinate with appropriate
12 administrators and divisions to ensure that department
13 administrators make implementation of special education a
14 priority; and

15 (4) provide adequate professional
16 development for division staff to develop expertise in the
17 requirements of the federal Individuals with Disabilities
18 Education Act and federal regulations promulgated in
19 accordance with that act.

20 B. The division shall:

21 (1) provide assistance, including advice on
22 allocation of resources to school districts and charter
23 schools to improve services to meet the educational and other
24 needs of special education students, based on current
25 published best practices in special education;

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1 (2) seek funds to establish, develop and
2 implement culturally relevant support services for special
3 education students, including:

4 (a) recruitment and retention of
5 highly qualified special education teachers and instructional
6 support providers who provide special education ancillary
7 services; and

8 (b) teacher and instructional support
9 provider preparation, induction and professional development;

10 (3) monitor special education programs in
11 school districts and charter schools to determine if families
12 and students are receiving adequate services, including:

13 (a) research-based special education
14 services appropriate for individual student needs;

15 (b) best practices for special
16 education staff and families to design appropriate services,
17 including: 1) assessments; 2) individualized education
18 plans; 3) student-centered goals, interventions and plans; 4)
19 appropriate interventions; 5) transition plans; 6)
20 reevaluation every three years; and 7) student exit plans
21 from special education; and

22 (c) on-site focus monitoring based on
23 school and student data that includes parents and leads to
24 yearly monitored plans;

25 (4) provide school districts and charter

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1 schools with support for the development of culturally rooted
2 and multicultural education curriculum and pedagogy for all
3 students of all ability levels;

4 (5) encourage the use of health education,
5 the arts, physical education and extended learning programs
6 as avenues for developing special education students'
7 multiple literacies and capacities for learning through
8 exploration, play and enrichment;

9 (6) help school districts and charter
10 schools find education placement options for cognitive,
11 social and emotional development goals for students with
12 severe behavioral needs who are at risk of harming themselves
13 or others;

14 (7) assist school districts and charter
15 schools with developing transition plans with students,
16 including from high school to post-secondary education plans;

17 (8) monitor curriculum and services provided
18 to students in alternative settings due to suspension and
19 ensure that the educational services fully comply with
20 constitutional and statutory requirements for services to
21 special education students;

22 (9) monitor where school discipline and lack
23 of adequate service lead to prison;

24 (10) monitor public schools' processes for
25 developing and implementing individualized education plans;

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- 1 (11) monitor the manifestation process;
- 2 (12) monitor the use of safe and uncovered
3 classroom doors and windows, so as not discriminating against
4 children with disabilities in use of coverings;
- 5 (13) monitor the use of seclusion rooms and
6 recommend that they only be used under the supervision of a
7 school psychologist, with that psychologist supervising on-
8 site during the time of seclusion; and
- 9 (14) monitor the use of interventions,
10 adaptations and modifications as being determined for each
11 individual student based on the student's diagnostic report
12 and individualized educational plan.

13 C. The department shall work with school
14 districts and charter schools, the university of New Mexico
15 center for development and disability, the human services
16 department, the children, youth and families department, the
17 department of health and other experts to develop and
18 maintain a statewide autism spectrum registry so that
19 appropriate stakeholders can identify and support children
20 and students on the autism spectrum."

21 **SECTION 10. APPROPRIATION.**--One million dollars
22 (\$1,000,000) is appropriated from the general fund to the
23 public education department for expenditure in fiscal year
24 2021 to provide all teachers and school staff, including
25 administrators, school resource officers, education

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1 assistants and substitute teachers, with professional
2 development to effectively work with and meet the
3 instructional needs of students with special needs in the
4 classroom. Any unexpended or unencumbered balance remaining
5 at the end of fiscal year 2021 shall revert to the general
6 fund.

7 SECTION 11. TEMPORARY PROVISION--RECOMPILATION.--
8 Section 22-13-8 NMSA 1978 (being Laws 2009, Chapter 162,
9 Section 1) is recompiled in the Special Education Act.

10 SECTION 12. REPEAL.--Section 22-13-6 NMSA 1978 (being
11 Laws 1972, Chapter 95, Section 2, as amended) is repealed.