

SENATE BILL 38

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Mimi Stewart

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO SPECIAL EDUCATION; ENACTING THE SPECIAL EDUCATION ACT; CREATING THE OFFICE OF SPECIAL EDUCATION; PROVIDING POWERS AND DUTIES; PROVIDING FOR THE TRANSFER OF CERTAIN FEDERAL FUNDING FROM THE PUBLIC EDUCATION DEPARTMENT TO THE EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT; SFC→~~REORGANIZING THE OFFICE OF THE STATE SPECIAL EDUCATION OMBUD BY REMOVING THE OFFICE FROM THE DEVELOPMENTAL DISABILITIES COUNCIL TO THE PUBLIC EDUCATION DEPARTMENT; RECOMPILING THE SPECIAL EDUCATION~~

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~~OMBUD ACT IN THE PUBLIC SCHOOL CODE~~ ←SFC SFC→ **DISTINGUISHING**
SPECIAL EDUCATION FROM GIFTED EDUCATION ←SFC ; MAKING CONFORMING
AMENDMENTS.

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

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SFC→and←SFC

SFC→(12) the office of the state special
education ombud; and←SFC

[<11>] SFC→(13)←SFC SFC→(12)←SFC the
vocational rehabilitation division.

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

SECTION 2. A new section of the Public School Code is
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 2 through 7 of this
act may be cited as the "Special Education Act"."

SECTION 3. A new section of the Public School Code is
enacted to read:

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

A. "deputy secretary" means the deputy secretary of
special education;

B. "office" means the office of special education;
and

C. "school district" includes charter schools."

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

"[NEW MATERIAL] OFFICE OF SPECIAL EDUCATION--DEPUTY

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SECRETARY--POWERS AND DUTIES.--

A. The office of special education is created as a division of the department and shall be headed by the deputy secretary of special education who shall be appointed solely on the basis of education and experience. The deputy secretary shall direct the activities of the office and apprise the secretary of federal and state law regarding special education.

B. The deputy secretary may, subject to appropriation, appoint professional and clerical staff as needed to carry out the provisions of the Special Education Act and other duties as provided by law.

C. The department shall provide data regarding the state's compliance with federal and state law regarding special education and the state's administration of funding received pursuant to Part B of the federal Individuals with Disabilities Education Improvement Act of 2004."

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

"[NEW MATERIAL] DUTIES OF THE OFFICE.--The office shall:

A. oversee and enforce state and school district compliance with federal and state law regarding special education and the rights of students with disabilities, including the federal Individuals with Disabilities Education Improvement Act of 2004, by:

- (1) soliciting input from special education

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students, parents, educational decision makers, regional education cooperatives, advocates, licensed school employees and other special education providers;

(2) reviewing publicly available information and resources regarding special education services and programs;

(3) monitoring academic and nonacademic progress of students with disabilities;

(4) providing procedural safeguards as required by law;

(5) performing site visits to public schools, if visits are needed; and

(6) requiring remedial action by a school district if a school district or public school is out of compliance;

B. ensure that transitional individualized education programs prepare students with disabilities:

(1) who are not yet enrolled in kindergarten for public school in coordination with the early childhood education and care department;

(2) for transitions within the public school system; and

(3) for transition to higher education or the workforce in coordination with the higher education department;

C. make and adopt a state plan for special

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education policy, programs and standards and update that plan every three years;

D. review and recommend rules to address the needs of students with disabilities, including highly mobile students with disabilities, and other matters related to special education;

E. consult and coordinate with:

(1) other divisions and units of the department to:

(a) promote the inclusion of students with disabilities in all educational programs and activities;

(b) ensure that gifted students with disabilities receive appropriate services as required by state and federal law;

(c) identify and address factors that disproportionately impact students with disabilities, including high mobility; and

(d) develop and implement culturally and linguistically responsive and appropriate services, curricula and pedagogy to support students with disabilities;

(2) state agencies and public post-secondary educational institutions to prioritize and expand appropriate special education services to children and students with disabilities from birth through transition to college or career;

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(3) state agencies and state primary and secondary educational institutions to ensure that students with disabilities in state custody or in residential treatment facilities and psychiatric hospitals receive free appropriate public education; and

(4) public post-secondary educational institutions to support the education and training of licensed school employees;

F. develop policies and provide:

(1) guidance for the parents of students with disabilities;

(2) recommendations for school districts to ensure that the school districts' special education services:

(a) are evidence- or research-based;

(b) are designed in collaboration with parents and educational decision makers; and

(c) include student-centered goals;

(3) professional development materials and programming for licensed school employees; and

(4) annual training to all local school boards, charter school governing bodies, school district administrators and school personnel that addresses:

(a) state and federal law regarding the education of students with disabilities, including the federal Individuals with Disabilities Education Improvement Act of

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2004;

(b) policies, practices and interventions specific to students with disabilities, including de-escalation practices and techniques and positive behavioral supports;

(c) structured literacy;

(d) the formulation and implementation of individualized education plans and transitional individualized education plans; and

(e) engagement and communication with students, parents and educational decision makers;

G. provide technical assistance to school districts and other special education providers that implement programs for students with disabilities;

H. identify systems and policies that:

(1) maximize the provision of special education services;

(2) expedite the evaluation of students with disabilities, including students younger than age five; and

(3) facilitate effective and meaningful inclusion and integration of students with disabilities in all educational settings;

I. monitor:

(1) the expenditures of federal and state funding for special education programs and services, including

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medicaid funding and the state equalization guarantee, and take action to ensure such expenditures are made in accordance with the law; and

(2) school district policies and practices for screening and evaluating students suspected of having disabilities;

J. work with the office of the state special education ombud, review recommendations from the state ombud, investigate those recommendations and take appropriate action on those recommendations;

K. develop and maintain an online system for the formulation of individualized education plans, which shall be used for all students to whom the federal Individuals with Disabilities Education Improvement Act of 2004 applies; and

L. determine 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 the department to ensure that school districts collect that data in a consistent and uniform manner and submit an annual report to the governor, secretary and legislative education study committee that includes the following data:

- (1) student demographics;
- (2) student achievement, outcomes and transitions;
- (3) state and federal funding and

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corresponding expenditures;

(4) the types of programming and services provided in each school district and statewide and the office's evaluation of that programming and those services;

(5) the use of restraint and seclusion of students with disabilities statewide; and

(6) national compensation trends for special education teachers and recommendations for recruiting and retaining qualified special education teachers."

SECTION 6. A new section of the Public School Code is enacted to read:

"[NEW MATERIAL] SPECIAL EDUCATION SALARY DIFFERENTIAL LEVELS.--No later than July 1, 2026, the department and office shall, in consultation with school districts and licensed school employees, identify strategies for recruitment and retention of licensed school employees who provide instructional support to students with disabilities."

SECTION 7. A new section of the Public School Code is enacted to read:

"[NEW MATERIAL] TRANSFER OF PRESCHOOL SPECIAL EDUCATION.--

A. No later than July 1, 2025, the department shall initiate the transfer of federal grant funding and corresponding powers and duties pursuant to Section 619 of Part B of the federal Individuals with Disabilities Education Act to the early childhood education and care department.

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B. The early childhood education and care department, through a coordinator appointed pursuant to Section 619 of Part B of the federal Individuals with Disabilities Education Act, shall collaborate with the department in:

(1) providing special education and related services to students with disabilities who are three through four years of age and who are five years of age but not eligible for kindergarten;

(2) supervising and monitoring the provision of special education and related services to students with disabilities who are three through four years of age and who are five years of age but not eligible for kindergarten;

(3) ensuring compliance with federal funding requirements pursuant to Section 619 of Part B of the federal Individuals with Disabilities Education Act; and

(4) providing technical assistance with the provision of special education and related services to community-based and school-based pre-kindergarten, early pre-kindergarten and head start programs.

C. The department shall retain all oversight responsibilities required pursuant to Section 619 of Part B of the federal Individuals with Disabilities Education Act, including oversight of administrative and fiscal compliance."

SECTION 8. Section 22-8-6 NMSA 1978 (being Laws 1967, Chapter 16, Section 60, as amended) is amended to read:

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"22-8-6. OPERATING BUDGETS--EDUCATIONAL PLANS--
SUBMISSION--CERTAIN REPORTS--FAILURE TO SUBMIT.--

A. Prior to April 15 of each year, each local school board shall submit to the department an operating budget for the school district and any locally chartered charter school in the school district for the ensuing fiscal year.

B. The date for the submission of the operating budget for each school district and each charter school as required by this section may be extended to a later date fixed by the secretary.

C. The operating budget required by this section may include:

(1) estimates of the cost of insurance policies for periods up to five years if a lower rate may be obtained by purchasing insurance for the longer term; or

(2) estimates of the cost of contracts for the transportation of students for terms extending up to four years.

D. The operating budget required by this section shall include a budget for each charter school of the membership projected for each charter school, the total program units generated at that charter school and approximate anticipated disbursements and expenditures at each charter school.

E. For fiscal year 2021 and subsequent fiscal

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years, each school district's and each locally chartered or state-chartered charter school's educational plan shall include:

(1) information on the instructional time offered by the school district or charter school, including the number of instructional days by school site and the number of hours in each instructional day and the frequency of early-release days;

(2) a narrative explaining the identified services to improve the academic success of at-risk students;

(3) a narrative explaining the services provided to students enrolled in the following programs:

(a) extended learning time programs, including a report of how the extended learning time is used to improve the academic success of students and professional learning of teachers; and

(b) ~~[K-5]~~ K-12 plus programs;

(4) a narrative explaining the school district's or charter school's beginning teacher mentorship programs as well as class size and teaching load information;

(5) a narrative explaining supplemental programs or services offered by the school district or charter school to ensure that the Bilingual Multicultural Education Act, the Indian Education Act and the Hispanic Education Act are being implemented by the school district or charter school;

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(6) a narrative describing the amount of program cost generated for services provided to students with disabilities and gifted students and the spending of these revenues on services provided to those students [~~with disabilities~~], which shall include the following:

(a) program cost generated for students enrolled in approved special education programs;

(b) budgeted expenditures of program cost, for students enrolled in approved special education programs, on students with disabilities;

(c) the amount of program cost generated for personnel providing ancillary and related services to students with disabilities;

(d) budgeted expenditures of program cost for personnel providing ancillary and related services to students with disabilities, on special education ancillary and related services personnel; SEC→~~[and]~~←SEC SEC→~~and~~←SEC

(e) a description of the steps taken to ensure that students with disabilities have access to a free and appropriate public education; and

SEC→~~(f) an explanation of how program costs are expended, disaggregated by grade; and~~←SEC

(7) a common set of performance targets and performance measures, as determined by the department in consultation with the department of finance and administration,

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the legislative finance committee and the legislative education study committee.

F. In addition to the requirements of Subsection E of this section, a school district or charter school that receives federal or local revenue shall include in its educational plan a narrative explaining how the school district or charter school will use the federal or local revenue to improve outcomes for students or to improve the condition of a school building. No later than October 1 of each year, a school district or charter school that received federal or local revenue in the prior fiscal year shall report to the department on the actual uses of that revenue, including a comprehensive evaluation of how the programs and services provided with that revenue improved outcomes for students or how capital projects undertaken improved the condition of a school building. A school district or charter school that is required under federal law to consult with tribal entities as a condition of receiving impact aid funds shall include in its educational plan a detailed narrative of its consultations with tribal entities and the results of those consultations. The school district or charter school shall transmit the October 1 spending and outcomes report to the appropriate tribal authorities. No later than November 15 of each year, the department shall compile the federal and local revenue outcomes reports into a statewide report to the legislative education

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study committee and the legislative finance committee that includes an analysis and identification of effective programs and strategies that improve outcomes for students.

G. A school district or charter school operating budget and educational plan shall prioritize federal and local revenue for purposes relating to the Indian Education Act; for capital expenditures authorized by the Public School Capital Outlay Act, the Public School Capital Improvements Act or the Public School Buildings Act; or for research-based or evidence-based social, emotional or academic interventions for which at-risk program units may be used.

H. If a local school board or governing board of a charter school fails to submit an operating budget pursuant to this section, the department shall prepare the operating budget for the school district or charter school for the ensuing fiscal year. A local school board or governing board of a charter school shall be considered as failing to submit an operating budget pursuant to this section if the budget submitted exceeds the total projected resources of the school district or charter school or if the budget submitted does not comply with the law or with rules and procedures of the department.

I. As used in this section:

(1) "federal revenue" means seventy-five percent of the revenue derived from:

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(a) federal forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978; or

(b) federal assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid funds"; and

(2) "local revenue" means seventy-five percent of the revenue from a school district one-half mill school district property tax and revenue from the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Production Equipment Ad Valorem Tax Act."

SECTION 9. Section 22-13-5 NMSA 1978 (being Laws 1972, Chapter 95, Section 1, as amended) is amended to read:

"22-13-5. SPECIAL EDUCATION.--School districts shall provide special education and related services appropriate to meet the needs of students [~~requiring special education and related services~~] with disabilities SEC→and gifted

students←SEC. Rules and standards shall be developed and established by the department for the provision of special education in the schools and classes of the public school system in the state and in all institutions wholly or partly supported by the state. The department shall monitor and enforce the rules and standards. School districts shall [~~also~~] identify and provide services for three-year-old and four-year-old [~~preschool~~] children with disabilities, unless the parent

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or guardian chooses not to enroll the child. Services for students [~~age three through twenty-one~~] with disabilities may include [~~but are not limited to~~] evaluating particular needs, providing learning experiences that develop cognitive and social skills, arranging for or providing related services as defined by the department and providing parent education. The services may be provided by licensed school employees or contracted for with [~~other community agencies~~] a public or private provider and shall be provided in age-appropriate, integrated settings, including home, daycare centers, head start programs, schools or community-based settings."

SECTION 10. Section 22-13-6 NMSA 1978 (being Laws 1972, Chapter 95, Section 2, as amended) is amended to read:

"22-13-6. SPECIAL EDUCATION--DEFINITIONS.--As used in the Public School Code:

A. "special education" means the provision of services additional to, supplementary to or different from those provided in the regular school program by a systematic modification and adaptation of instructional techniques, materials and equipment to meet the needs of [~~exceptional~~] children and students with disabilities SEC→and gifted students←SEC;

[B. ~~"exceptional children" means school-age persons whose abilities render regular services of the public school to be inconsistent with their educational needs;~~

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~~C. "children with disabilities" means those]~~ B.
"students with disabilities" means students with physical or mental impairments or specific learning disabilities and who, as a result of those impairments or specific learning disabilities, require special education and related services in accordance with the federal Individuals with Disabilities Education Improvement Act of 2004, and includes children three and four years of age who are classified as developmentally disabled [according to] in accordance with the Developmental Disabilities Act and Part B of the federal Individuals with Disabilities Education Improvement Act of 2004;

~~[D.]~~ C. "gifted [~~child~~] student" means a school-age person who is determined to be gifted pursuant to Section 22-13-6.1 NMSA 1978 and standards adopted by the department pursuant to that section. Nothing in this section shall preclude a school district or charter school from offering additional gifted programs for students who fail to meet the eligibility criteria; however, the state shall only provide state funds for department-approved gifted programs for those students who meet the established criteria;

~~[E.]~~ D. "dyslexia" means a specific learning disability that is neurobiological in origin and that is characterized by difficulty with accurate or fluent word recognition and by poor spelling and decoding abilities, which characteristics typically result from a deficit in the

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phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction and may result in problems in reading comprehension and reduced reading experience that may impede the growth of vocabulary and background knowledge;

~~[F. "response to intervention" means a multitiered intervention model that uses a set of increasingly intensive academic or behavioral supports, matched to student need, as a framework for making educational programming and eligibility decisions; and]~~

E. "highly mobile students" means school-age persons who frequently move to different school districts, including children of military families, migratory children, children who are experiencing homelessness and children in the foster care system;

F. "multi-layered system of supports" means a coordinated and comprehensive framework of evidence-based academic and behavioral supports that address a student's needs with graduated intensity based on data collected for the student and provides progress measures, including school-based team structures, professional development, health and wellness and family and community engagement, to provide for additional supports; and

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

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established by the department, is to provide additional educational support to students who are experiencing difficulties that are preventing them from benefiting from general instruction."

SFC→~~SEC→SECTION 11. Section 22-13-6.1 NMSA 1978 (being Laws 1994, Chapter 25, Section 2, as amended) is amended to read:~~

~~"22-13-6.1. GIFTED CHILDREN--DETERMINATION.--~~

~~A. School districts shall provide gifted education appropriate to meet the needs of gifted students. The department shall promulgate rules and standards for the provision of gifted education in public schools, state educational institutions and other institutions wholly or partially supported by the state. The department shall monitor and enforce implementation of the rules and standards for the provision of gifted education.~~

~~[A.] B. The department shall adopt standards pertaining to the determination of who is a gifted child and shall publish those standards as part of the educational standards for New Mexico schools.~~

~~[B.] C. In adopting standards to determine who is a gifted child, the department shall provide for the evaluation of selected school-age children by multidisciplinary teams from each child's school district. That team shall be vested with~~

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~~the authority to designate a child as gifted. The team shall consider information regarding a child's cultural and linguistic background and socioeconomic background in the identification, referral and evaluation process. The team also shall consider any disabling condition in the identification, referral and evaluation process.~~

~~{C.} D. Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a single districtwide advisory committee. The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. The advisory committee shall regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery and shall demonstrate support for the gifted program.~~

~~{D.} E. In determining whether a child is gifted, the multidisciplinary team shall consider diagnostic or other evidence of the child's:~~

- ~~(1) creativity or divergent-thinking ability;~~
- ~~(2) critical-thinking or problem-solving~~

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ability;

~~(3) intelligence; and~~

~~(4) achievement."~~ ← SEC ← SFC

SFC → SECTION 11. Section 22-13-6.1 NMSA 1978 (being Laws 1994, Chapter 25, Section 2, as amended) is amended to read:

"22-13-6.1. GIFTED [CHILDREN] STUDENTS--DETERMINATION.--

A. School districts shall provide gifted education appropriate to meet the needs of gifted students. The department shall promulgate rules and standards for the provision of gifted education in public schools, state educational institutions and other institutions wholly or partially supported by the state. The department shall monitor and enforce implementation of the rules and standards for the provision of gifted education.

[A.] B. The department shall adopt standards pertaining to the determination of who is a gifted [child] student and shall publish those standards as part of the educational standards for New Mexico schools.

[B.] C. In adopting standards to determine who is a gifted [child] student, the department shall provide for the evaluation of selected [school-age children] students by multidisciplinary teams from each [child's] student's school district. That team shall be vested with the authority to designate a [child] student as gifted. The team shall consider

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information regarding a [child's] student's cultural and linguistic background and socioeconomic background in the identification, referral and evaluation process. The team also shall consider any disabling condition in the identification, referral and evaluation process.

[G-] D. Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a single districtwide advisory committee. The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. The advisory committee shall regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery and shall demonstrate support for the gifted program.

[D-] E. In determining whether a [child] student is gifted, the multidisciplinary team shall consider diagnostic or other evidence of the [child's] student's:

- (1) creativity or divergent-thinking ability;
- (2) critical-thinking or problem-solving

ability;

(3) intelligence; and

(4) achievement."←SFC

SECTION SFC→SEC→11.←SEC SEC→12.←SEC←SFC SFC→12.←SFC

Section 22-13-7 NMSA 1978 (being Laws 1972, Chapter 95, Section 3, as amended) is amended to read:

"22-13-7. SPECIAL EDUCATION--RESPONSIBILITY.--

A. The [~~state board~~] office of special education shall make, adopt and keep current a state plan for special education policy, programs and standards.

B. The department [~~of education with the approval of the state board~~] shall set standards for diagnosis and screening of and educational offerings for [~~exceptional~~] children and students with disabilities SEC→**and gifted students**←SEC in public schools and children in private, nonsectarian, nonprofit training centers and in state institutions under the authority of the secretary of health.

C. The [~~state board~~] department shall establish and maintain a [~~program of evaluation of the~~] system to monitor implementation and impact of all programs for [~~exceptional~~] children and students with disabilities SEC→**and gifted students**←SEC in the public schools. This [~~program~~] system shall be operated with the cooperation of [~~local~~] school districts. Portions of the program may be subcontracted, and periodic reports regarding the efficacy of programs for [~~exceptional~~] children and students with disabilities SEC→**and**

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~~gifted students~~ ← SEC shall be made to the governor and the
legislative education study committee.

D. The [~~department of education~~] office of special
education shall coordinate programming related to the
transition of [~~persons~~] students with disabilities from
secondary and post-secondary education programs to employment
or vocational placement in accordance with the Special
Education Act."

SECTION SFC → ~~SEC → 12.~~ ← SEC ~~SEC → 13.~~ ← SEC ← SFC SFC → 13. ← SFC
Section 22-13-32 NMSA 1978 (being Laws 2010, Chapter 59,
Section 2, as amended) is amended to read:

"22-13-32. [~~INTERVENTION~~] SUPPORTS FOR STUDENTS
DISPLAYING CHARACTERISTICS OF DYSLEXIA.--

A. Within the course of the 2019-2020 and 2020-2021
school years and in each subsequent school year, all first
grade students shall be screened for dyslexia.

B. A student whose dyslexia screening demonstrates
characteristics of dyslexia and who is having difficulty
learning to read, write, spell, understand spoken language or
express thoughts clearly shall receive appropriate classroom
interventions through a multi-layered system of supports or be
referred to a student assistance team.

C. In accordance with department [~~response to~~
~~intervention~~] procedures for a multi-layered system of
supports, guidelines and policies, each school district or

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charter school shall provide timely, appropriate, systematic, scientific, evidence-based interventions prescribed by the student assistance team, with progress monitoring to determine the student's response or lack of response.

D. A parent of a student referred to a student assistance team shall be informed of the parent's right to request an initial special education evaluation at any time during the school district's or charter school's implementation of the interventions prescribed by the student assistance team. If the school district or charter school agrees that the student may have a disability, the student assistance team shall refer the child for an evaluation. The student shall be evaluated within sixty days of receiving the parental consent for an initial evaluation. If the school district or charter school refuses the parent's request for an initial evaluation, the school district or charter school shall provide written notice of the refusal to the parent, including notice of the parent's right to challenge the school district's or charter school's decision as provided in state and federal law and rules.

E. Within the course of the 2019-2020 and 2020-2021 school years, every school district and charter school shall develop and implement a literacy professional development plan that includes a detailed framework for structured literacy training by a licensed and accredited or credentialed teacher

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preparation provider for all elementary school teachers and for training in evidence-based reading intervention for reading interventionists and special education teachers working with students demonstrating characteristics of dyslexia or diagnosed with dyslexia. The plan shall continue to be implemented each school year and may be updated as necessary. The department shall provide lists of recommended teacher professional development materials and opportunities for teachers and school administrators regarding evidence-based reading instruction for students at risk for reading failure and displaying the characteristics of dyslexia.

F. School districts and charter schools shall train school administrators and teachers who teach reading to implement appropriate evidence-based reading interventions. School districts and charter schools shall train special education teachers to provide structured literacy training for students who are identified with dyslexia as a specific learning disability and who are eligible for special education services.

G. The department shall provide technical assistance for special education diagnosticians and other special education professionals regarding the formal special education evaluation of students suspected of having a specific learning disability, such as dyslexia.

H. The department shall adopt rules, standards and

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guidelines necessary to implement this section."

~~SFC→SECTION SFC→SEC→13.←SEC SEC→14.←SEC←SFC
SFC→14.←SFC Section 28-16C-1 NMSA 1978 (being Laws 2021,
Chapter 53, Section 1) is recompiled as Section 22-36-1 NMSA
1978 and is amended to read:~~

~~"22-36-1. SHORT TITLE.--Sections 1 through 11 of [this
act] Chapter 22, Article 36 NMSA 1978 may be cited as the
"Special Education Ombud Act"."~~

~~SECTION SFC→SEC→14.←SEC SEC→15.←SEC←SFC SFC→15.←SFC
Section 28-16C-2 NMSA 1978 (being Laws 2021, Chapter 53,
Section 2) is recompiled as Section 22-36-2 NMSA 1978 and is
amended to read:~~

~~"22-36-2. DEFINITIONS.--As used in the Special Education
Ombud Act:~~

~~A. ["council" means the developmental disabilities
planning council] "department" means the public education
department;~~

~~B. "deputy secretary" means the deputy secretary of
special education;~~

~~[B.] C. "office" means the office of the state
special education ombud;~~

~~[C.] D. "parent" includes a legal guardian or
custodian who has custody and control of a student or an
individual who has legal authority to make educational~~

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~~decisions on behalf of the student;~~

~~E. "secretary" means the secretary of public education;~~

~~[D.] F. "state ombud" means the state special education ombud; and~~

~~[E.] G. "student" means a public school student receiving or seeking special education services."~~

~~SECTION SFC→SEC→15.←SEC SEC→16.←SEC←SFC SFC→16.←SFC
Section 28-16G-3 NMSA 1978 (being Laws 2021, Chapter 53,
Section 3) is recompiled as Section 22-36-3 NMSA 1978 and is
amended to read:~~

~~"22-36-3. CREATION OF THE OFFICE OF THE STATE SPECIAL
EDUCATION OMBUD--GENERAL DUTIES OF THE OFFICE.--~~

~~A. The "office of the state special education
ombud" is created within the [council] department.~~

~~B. The [council] secretary shall appoint the "state
special education ombud", who shall head the office and
supervise the ombuds and other staff of the office. The state
ombud may contract for services to assist the office in
conducting its duties and may use the services of volunteers.~~

~~C. The state ombud shall:~~

~~(1) identify, investigate and resolve concerns
pertaining to special education services that are filed with
the office by parents;~~

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~~(2) assist students and parents in protecting the educational rights of students, which may include assisting students and parents in individualized education plan meetings or other proceedings pursuant to the federal Individuals with Disabilities Education Act;~~

~~(3) inform students and parents about special education resources in their community;~~

~~(4) ensure that students and parents have regular and timely access to the services provided through the office and that students and parents receive timely responses from representatives of the office;~~

~~(5) identify any patterns of concerns that emerge regarding special education services and educational rights and recommend strategies for improvement to the [public education department] deputy secretary;~~

~~(6) [collaborate with the public education department to] ensure that all dispute resolution processes are available to students and parents, including the special education parent liaison, mediation, facilitated individualized education program meetings, state complaint and investigations and due process hearings;~~

~~(7) collaborate with the parent training information centers and protection and advocacy agencies within the state to identify and report systemic special education~~

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~~issues to the [public education] department;~~

~~(8) ensure that office staff, contractors and volunteers are trained in:~~

~~(a) federal, state and local laws, rules and policies with respect to special education in the state;~~

~~(b) investigative techniques;~~

~~(c) dispute resolution; and~~

~~(d) such other matters as the office deems appropriate;~~

~~(9) develop procedures for the certification of ombuds. An employee or contractor shall not investigate a concern filed with the office unless that person is certified by the office;~~

~~(10) analyze, comment on and monitor the development and implementation of federal and state laws, rules and other governmental policies and actions that pertain to the educational rights of students with respect to the adequacy of special education services in the state;~~

~~(11) recommend changes to laws, rules, policies and actions pertaining to the special educational rights of students as the office determines to be appropriate;~~

~~(12) facilitate public comment on proposed laws, rules, policies and actions; and~~

~~(13) provide information to public and private~~

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~~agencies, legislators and other persons regarding the problems and concerns of special education services and make recommendations related to those problems and concerns."~~

~~SECTION SFC→SEC→16.←SEC SEC→17.←SEC←SFC SFC→17.←SFC~~

~~Section 28-16C-4 NMSA 1978 (being Laws 2021, Chapter 53, Section 4) is recompiled as Section 22-36-4 NMSA 1978 and is amended to read:~~

~~"22-36-4. ANNUAL REPORT--CONTENTS.--No later than December 1 of each year, the office shall prepare a report for the secretary and deputy secretary that includes:~~

~~A. actions taken by the office in the year for which the report is prepared;~~

~~B. special education concerns identified by or on behalf of students and parents, resolution of the concerns and the effectiveness of the resolution processes;~~

~~C. recommendations for improving the quality of special education services provided to students and protecting the educational rights of students; and~~

~~D. policy, regulatory and legislative recommendations to solve identified concerns related to special education, to improve processes of resolutions of concerns, to improve the quality of services provided to students, to protect the educational rights of students and to remove barriers to education and educational services."~~

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~~SECTION SFC→SEC→17.←SEC SEC→18.←SEC←SFC SFC→18.←SFC~~

~~Section 28-16C-6 NMSA 1978 (being Laws 2021, Chapter 53, Section 6) is recompiled as Section 22-36-6 NMSA 1978 and is amended to read:~~

~~"22-36-6. ACCESS TO STUDENT EDUCATIONAL RECORDS.--Upon request and with consent from the student or the student's parent, the office shall have access to [the] a student's educational records from the [public education] department, a school district or a public school as necessary to carry out the office's responsibilities."~~

~~SECTION SFC→SEC→18.←SEC SEC→19.←SEC←SFC SFC→19.←SFC~~

~~Section 28-16C-7 NMSA 1978 (being Laws 2021, Chapter 53, Section 7) is recompiled as Section 22-36-7 NMSA 1978 and is amended to read:~~

~~"22-36-7. CONFIDENTIALITY OF INFORMATION.--~~

~~A. All files and records maintained by the office that pertain to students are confidential and not subject to the provisions of the Inspection of Public Records Act. The state ombud shall not disclose the identity of a concerned person or student about whom the office maintains files or records unless:~~

~~(1) the concerned person, student or parent consents in writing to the disclosure;~~

~~(2) the concerned person, student or parent~~

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~~gives oral consent that is documented immediately in writing by a representative of the office. If the student is unable to give oral consent, the student may give consent in any way that the student is able to, and the consent shall also be documented immediately in writing by a representative of the office; or~~

~~(3) disclosure is ordered by a court.~~

~~B. The annual report required pursuant to Section [4 of the Special Education Ombud Act] 22-36-4 NMSA 1978 may be based on confidential information and may be published or furnished to the public, but the report shall not identify individual students directly or indirectly nor violate the privileged or confidential nature of the relationship and communications between the student and the office."~~

~~SECTION SFC→SEC→19.←SEC SEC→20.←SEC←SFC SFC→20.←SFC~~

~~Section 28-16C-8 NMSA 1978 (being Laws 2021, Chapter 53, Section 8) is recompiled as Section 22-36-8 NMSA 1978 and is amended to read:~~

~~"22-36-8. CONFLICT OF INTEREST.--The [council] department shall promulgate rules to ensure that:~~

~~A. a person or an immediate family member of that person involved in the designation of an ombud does not have a conflict of interest;~~

~~B. an employee or a contractor of the office or an~~

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~~immediate family member of the employee or contractor does not have a conflict of interest; and~~

~~C. an ombud:~~

~~(1) does not have an ownership or investment interest, represented by equity, debt or other financial relationship, in a public school providing special education services;~~

~~(2) is not employed by, or participating in the management of, a public school providing special education services; and~~

~~(3) does not receive, or have the right to receive, directly or indirectly, remuneration in cash or in kind under a compensation arrangement with a public school providing special education services."~~

~~SECTION SFC→SEC→20.←SEC SEC→21.←SEC←SFC SFC→21.←SFC Section 28-16C-10 NMSA 1978 (being Laws 2021, Chapter 53, Section 10) is recompiled as Section 22-36-10 NMSA 1978 and is amended to read:~~

~~"22-36-10. AVAILABILITY OF LEGAL COUNSEL TO THE OFFICE.--The [council] department shall ensure that adequate legal counsel is available and is able, without conflict of interest, to:~~

~~A. provide advice and consultation to the office needed to protect the educational rights of students; and~~

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~~B. assist the office and contractors in the performance of the official duties of the state ombud and representatives."~~

~~SECTION SFC→SEC→21.←SEC SEC→22.←SEC←SFC SFC→22.←SFC Section 28-16C-11 NMSA 1978 (being Laws 2021, Chapter 53, Section 11) is recompiled as Section 22-36-11 NMSA 1978 and is amended to read:~~

~~"22-36-11. INTERFERENCE WITH THE OFFICE AND RETALIATION PROHIBITED--POTENTIAL ACTIONS FOR NONCOMPLIANCE.--~~

~~A. A person shall not willfully interfere with the lawful actions of the office.~~

~~B. A person shall not institute discriminatory, disciplinary or retaliatory action against any student or parent for filing a concern with, providing information to or otherwise cooperating with the office.~~

~~C. If public school personnel or a contractor or volunteer of a school district or charter school fails to comply with the provisions of the Special Education Ombud Act:~~

~~(1) the [council] office shall report the noncompliance to the [public education] department;~~

~~(2) the office shall collaborate with other divisions of the [public education] department to access processes and resources to address special education services concerns; and~~

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~~(3) the office shall collaborate with other divisions of the [public education] department to identify further appropriate actions to be taken in response to the report, which may include a corrective action plan or any other administrative action that the [public education] department is authorized to take to ensure that students receive the free and appropriate public education required by the Individuals with Disabilities Education Act and state law. The office shall provide a letter to the concerned person explaining the actions the [public education] department will take."~~

~~SECTION SFC →SEC →22. ←SEC SEC →23. ←SEC ←SFC SFC →23. ←SFC RECOMPILATION.--Sections 28-16C-5 and 28-16C-9 NMSA 1978 (being Laws 2021, Chapter 53, Sections 5 and 9) are recompiled as Sections 22-36-5 and 22-36-9 NMSA 1978. ←SFC~~