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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Sen. Stewart/Rep. Thomson</u>	<b>LAST UPDATED</b> <u>2/20/25</u> <b>ORIGINAL DATE</b> <u>2/11/25</u>
<b>SHORT TITLE</b> <u>Special Education Act</u>	<b>BILL NUMBER</b> <u>Senate Bill 38/aSEC/aSFC</u>
<b>ANALYST</b> <u>Liu/Lobaugh</u>	

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
SEO Budget		\$1,390.5	\$1,390.5	\$2,781.0	Recurring	General Fund
Statewide Activities		\$4,000.0	\$4,000.0	\$8,000.0	Recurring	General Fund
IEP System		\$4,000.0		\$4,000.0	Nonrecurring	General Fund
Total		\$9,390.5	\$5,390.5	\$14,781.0		

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 260  
 Relates to an appropriation in the General Appropriation Act

### Sources of Information

LFC Files  
 Legislative Education Study Committee (LESC) Files  
 U.S. Department of Education (USDE)

Agency Analysis Received From  
 Public Education Department (PED)  
 Developmental Disabilities Planning Council (DDPC)  
 Early Childhood Care and Education Department (ECECD)  
 Regional Education Cooperatives (REC)

## SUMMARY

### Synopsis of SFC Amendment to Senate Bill 38

The Senate Finance Committee amendment to Senate Bill 38 (SB38) changes the term gifted “children” to gifted “students” and removes the transfer of the Office of the State Special Education Ombud (OSSEO) to PED.

### Synopsis of SEC Amendment to Senate Bill 38

The Senate Education Committee amendment to Senate Bill 38 (SB38) removes requirements for school districts and charter schools to report how funding for students with disabilities and gifted

students is spent by grade level. The amendment also replaces mention of “gifted students” throughout the bill with a clause in Section 22-13-6.1 NMSA 1978 requiring schools to provide gifted education appropriate to meet the needs of gifted students and requiring PED to promulgate and enforce rules and standards for gifted education.

### **Synopsis of Senate Bill 38**

Senate Bill 38 (SB38) creates an Office of Special Education (SEO) under the Public Education Department (PED) and transfers the Office of the State Special Education Ombud (OSSEO) from the Developmental Disabilities Planning Council (DDPC) to PED. The bill also transfers federal grant funding and oversight for special education in early childhood to the Early Childhood Care and Education Department (ECECD). The bill further authorizes SEO to oversee and enforce compliance with federal and state law regarding special education and to create a state plan for special education policy, programs, and standards. The bill requires additional reporting from schools and adds definitions for gifted students, highly mobile students, and multilayered system of supports (MLSS).

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

### **FISCAL IMPLICATIONS**

The bill does not include an appropriation but establishes two new divisions under PED and transfers jurisdiction of early childhood special education federal funds and programs to ECECD. The executive FY26 budget recommendation for public schools includes a \$2 million recurring general fund appropriation for SEO, \$4 million nonrecurring appropriation for special education initiatives, and \$4 million IT appropriation for a statewide individualized education program (IEP) system. The LFC recommendation includes \$609.5 thousand in federal special education funding at PED for SEO operations and \$12 million for a statewide student information system. Estimated fiscal impacts of this bill assume the executive recommendation covers the full cost of implementation and reflect the difference from the LFC recommendation.

Much of PED’s need for staffing stems from significant growth in state and federal funding as more staff are dedicated to overseeing new programs and activities. With federal pandemic aid expiring, the department anticipates nearly \$16.8 million in federal operating funds spent in FY24 will no longer be available by FY26. Despite this loss in federal revenues, PED still has nearly \$10 million in total federal operating grant revenue from existing awards that are not being budgeted, including \$3.1 million from available federal special education dollars under Subpart B of the Individuals with Disabilities Education Act (IDEA-B) award. Of the IDEA-B federal funds, PED can set aside about \$2 million for administrative overhead and \$845 thousand for complaint mediation. The remaining \$10 million must be used for state-directed activities. The executive and LESC budget recommendations include a \$2 million general fund expansion for 10 FTE at PED for SEO. LFC recommends the use of \$609.5 thousand in federal IDEA-B funding to cover costs of 5 FTE in OSE focused on fiscal support, monitoring, compliance, and complaint mediation.

## SIGNIFICANT ISSUES

Special education enrollment in New Mexico has grown by 10 percent in the past decade, particularly among students with dyslexia and other specific learning disabilities. Meanwhile, per-pupil funding for students in special education has increased 60 percent. In FY24, public schools received around \$716 million in state funding and \$119 million in federal funding for a total of \$835 million to serve roughly 68 thousand students with disabilities statewide. However, this increase has not corresponded with improved student outcomes, and New Mexico remains in the bottom third of states for special education student proficiency measures.

In 2018, the 1<sup>st</sup> Judicial District Court ruled special education students were receiving an inadequate education, citing insufficient services, chronic staff shortages, misidentification, and inadequate oversight as special education issues in the *Martinez-Yazzie* education sufficiency lawsuit. Since then, the state has established new administrative offices dedicated to elevating special education policy issues and improving outcomes and services. The Legislature established an Office of the State Special Education Ombud (OSSEO) at DDPC in 2021, and the governor created an Office of Special Education (SEO) at PED in 2023 through executive order. Provisions of this bill would codify both entities as divisions under PED in law.

The federal Individuals with Disabilities Education Act (IDEA), originally passed in 1975, is the main federal law governing special education for children from birth through age 21. IDEA regulates the flow of federal funding to states for special education. IDEA also requires states to provide every student with disabilities a free, appropriate public education or free educational services designed to meet a student’s special education needs based on an individualized education program (IEP) developed by school personnel and the student’s family. A 2018 LFC program evaluation found schools spend most of IDEA funding on instruction, instructional support services, and student support services.

In FY24, USDE finalized a consolidated performance review of PED, finding the department only met 15 out of 83 requirements for oversight and administration of large federal education grant programs, including its pandemic aid funds. USDE made eight recommended improvements and outlined 60 corrective actions for the department, including establishing basic monitoring practices, establishing internal controls, and reviewing formulas and awards for accuracy. The report flagged significant compliance and quality concerns related to PED’s inability to monitor or determine whether school districts and charter schools were meeting maintenance of effort (MOE) requirements for special education spending levels. The report also noted PED incorrectly calculated the high school graduation rate by including students with a conditional certificate of completion—a pathway offered to students with disabilities. PED could not demonstrate whether its conditional high school certificates of completion held students to the same standards as a standard graduation diploma. Additionally, PED did not include some required federal reporting elements related to students with disabilities, nor did it provide school report cards in a format accessible to individuals with disabilities.

## PERFORMANCE IMPLICATIONS

According to a 2024 New Mexico State University report on teacher vacancies, the state had 280 special education teacher vacancies in in September 2024. Provisions of the bill require PED and SEO to consult with schools and employees to identify strategies for recruitment and retention of

personnel who provide support to students with disabilities by July 1, 2026. A 2023 LFC program evaluation report on special education found New Mexico's special education teacher shortage was less about a lack of licensed special education teachers than an inability to attract existing working teachers with multiple licenses to teach special education. Specifically, the 2023 LFC report found that New Mexico needs roughly 255 special education teachers statewide but there are roughly 1,300 teachers with special education licenses who are choosing to teach in general education classrooms instead. The 2023 LFC report highlighted research indicating salary differentials for special education are an effective way to attract teachers to work in special education.

The 2023 LFC program evaluation report also recommended that PED require a statewide process for implementing special education IEPs to improve the consistency of special education services and enhance oversight of local special education programs. The report found PED investigations of local special education programs often identify issues with IEP processes.

## ADMINISTRATIVE IMPLICATIONS

Provisions of this bill include substantive changes to oversight, monitoring, and enforcement of special education services across state agencies and schools, notably placing SEO and OSSEO under PED.

Office of Special Education (SEO) duties:

- Oversee and enforce state and school compliance with state and federal special education laws,
- Solicit input from special education stakeholders,
- Review information and resources regarding special education services and programs,
- Monitor academic and nonacademic progress of students with disabilities,
- Provide procedural safeguards,
- Perform site visits to public schools,
- Require remedial action by school districts or public schools that are noncompliant,
- Ensure transitional IEPs prepare students with disabilities from early childhood to postsecondary,
- Make a state plan for special education policy with an update every 3 years,
- Review and recommend rules to address the needs of students with disabilities (including highly mobile students),
- Consult and coordinate with other PED divisions, state agencies, special schools, state institutions, and higher education to support students with disabilities,
- Provide guidance to parents of students with disabilities,
- Provide recommendations for school districts on special education services,
- Provide materials and professional development for school employees,
- Provide annual training to all school administrators on special education laws, de-escalation practices, positive behavioral supports, structured literacy, formulation of IEPs, and community engagement, and
- Provide technical assistance to schools and special education providers,
- Identify systems and policies that maximize provision of special education evaluations and services,
- Monitor and ensure expenditures for special education programs and services,

- Monitor school screening and evaluation policies and practices,
- Work with OSSEO on recommendations,
- Develop and maintain an online system for IEPs, and
- Collect, evaluate, and report special education data in a uniform manner to the governor, PED, and LESC.

The bill transfers funding and oversight of Section 619 IDEA-B to ECECD, which relates to special education and related services for students with disabilities between the ages of 3-5 and not eligible for kindergarten. The bill requires schools to report on gifted student services and an explanation of expenditures for special education, disaggregated by grade level.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

This bill relates to House Bill 260, which clarifies definitions around restraint and seclusion practices in schools.

This bill also relates to the PED budget in the General Appropriation Act and a \$4 million nonrecurring appropriation for special education initiatives recommended by the executive. The bill also relates to a \$4 million recommendation in the executive budget for a statewide IEP system and a \$12 million recommendation in the LFC and LESC budgets for a statewide student information system.

## **OTHER SUBSTANTIVE ISSUES**

From December 2021 through October 2023, OSSEO assisted 390 families in 61 school districts across 27 counties. In FY24, the special education ombud employed 5 FTE, including the state special education ombud, a case intake coordinator, and three regional coordinators. The special education ombud also has four part-time contractors (costing a total of \$172 thousand) and makes recommendations to policymakers for addressing concerns with special education laws and regulations. In 2022, the special education ombud recommended improved teacher training, reduced seclusion and restraint practices, and improved goal setting and process monitoring of student academic success. Provisions of this bill would require OSSEO to make these recommendations to PED instead of the public.

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