

1 SENATE BILL 174

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

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10 AN ACT

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

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

21 "9-24-4. DEPARTMENT CREATED.--

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

25 (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.