

SENATE EDUCATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 289

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

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 PUBLIC EDUCATION; CREATING A DIVISION IN THE PUBLIC EDUCATION DEPARTMENT TO FOCUS ON SPECIAL EDUCATION; CREATING THE SPECIAL EDUCATION ACT; PROVIDING POWERS AND DUTIES; CHANGING DEFINITIONS; REQUIRING ACCOUNTABILITY; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978 SFC→; ←SFC SFC→~~MAKING AN APPROPRIATION~~←SFC .

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

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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 special education division; and
- [~~(11)~~] (12) the vocational rehabilitation division.

B. The secretary may organize the department and divisions of the department and may transfer or merge functions

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between divisions and bureaus in the interest of efficiency and economy."

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

"22-1-2. DEFINITIONS.--As used in the Public School Code:

A. "academic proficiency" means mastery of the subject-matter knowledge and skills specified in state academic content and performance standards for a student's grade level;

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

C. "commission" means the public education commission;

D. "department" means the public education department;

E. "home school" means the operation by the parent of a school-age person of a home study program of instruction that provides a basic academic educational program, including reading, language arts, mathematics, social studies and science;

F. "instructional support provider" means a person who is employed to support the instructional program of a school district, including educational assistant, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, marriage and family therapist, interpreter for the deaf and diagnostician;

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G. "licensed school employee" means teachers, school administrators and instructional support providers;

H. "local school board" means the policy-setting body of a school district;

I. "local superintendent" means the chief executive officer of a school district;

J. "parent" includes a guardian or other ~~[person having custody and control of a school-age person]~~ adult who stands in loco parentis as to the student's schooling;

K. "private school" means a school, other than a home school, that offers on-site programs of instruction and that is not under the control, supervision or management of a local school board;

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

M. "school" means a supervised program of instruction designed to educate a student in a particular place, manner and subject area;

N. "school administrator" means a person licensed to administer in a school district and includes school

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principals, central district administrators and charter school head administrators;

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

P. "school building" means a public school, an administration building and related school structures or facilities, including teacher housing, that is owned, acquired or constructed by the school district as necessary to carry out the functions of the school district;

Q. "school bus private owner" means a person, other than a school district, the department, the state or any other political subdivision of the state, that owns a school bus;

R. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes;

S. "school employee" includes licensed and nonlicensed employees of a school district;

T. "school principal" means the chief instructional leader and administrative head of a public school;

U. "school year" means the total number of contract days offered by public schools in a school district during a period of twelve consecutive months;

V. "secretary" means the secretary of public

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education;

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

X. "state educational institution" means an institution enumerated in Article 12, Section 11 of the constitution of New Mexico;

Y. "student" means a school-age person enrolled in a public school;

[Y.] Z. "substitute teacher" means a person who holds a certificate to substitute for a teacher in the classroom; and

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

~~[AA. "certified school instructor" means a licensed school employee; and~~

~~BB. "certified school employee" or "certified school personnel" means a licensed school employee]."~~

SECTION 3. A new section of the Public School Code, Section 22-13E-1 NMSA 1978, is enacted to read:

"22-13E-1. [NEW MATERIAL] SHORT TITLE.--Chapter 22, Article 13E NMSA 1978 may be cited as the "Special Education Act"."

SECTION 4. A new section of the Public School Code, Section 22-13E-2 NMSA 1978, is enacted to read:

"22-13E-2. [NEW MATERIAL] SPECIAL EDUCATION--
DEFINITIONS.--As used in the Special Education Act:

- A. "assistant secretary" means the assistant secretary of special education;
- B. "division" means the special education division of the department;
- C. "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 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;
- D. "exceptional student" means a student with disabilities or a gifted student;
- E. "gifted student" means a school-age person who

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is determined to be gifted pursuant to the identification, referral and evaluation process undertaken by a multidisciplinary team;

F. "school district" includes charter schools;

G. "student assistance team" means a school-based group whose purpose, based on procedures and guidelines established by the department, is to provide additional educational support to students who are experiencing difficulties that are preventing them from benefiting from general education instruction; and

H. "student with disabilities" means a person who:

- (1) is at least three years old any time during the school year;
- (2) has not reached twenty-two years of age on the first day of the school year; and
- (3) is eligible to receive special education services through a public school pursuant to the federal Individuals with Disabilities Education Act and rules of the department."

SECTION 5. A new section of the Public School Code, Section 22-13E-3 NMSA 1978, is enacted to read:

"22-13E-3. [NEW MATERIAL] SPECIAL EDUCATION DIVISION-- ASSISTANT SECRETARY FOR SPECIAL EDUCATION--POWERS AND DUTIES.--

A. The "special education division" is created in the department. The secretary shall appoint an "assistant

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secretary for special education" who shall:

(1) direct the activities of the division and advise the secretary on development of policy regarding the education of SEC→exceptional←SEC students SEC→with disabilities←SEC ;

(2) coordinate transition efforts for students with disabilities in public schools with the higher education department and work to expand appropriate special education services for students in preschool through college;

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

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

B. The division shall:

(1) provide assistance, including advice on the allocation of resources to schools, to improve services to meet the educational and other needs of SEC→exceptional←SEC students SEC→with disabilities←SEC , based on current best practices in special education;

(2) seek funds to establish, develop and implement culturally relevant and linguistically appropriate support services for students with disabilities, including:

(a) recruitment and retention of qualified special education teachers and instructional support providers who provide special education ancillary services; and

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(b) professional development for teachers and instructional support providers;

(3) audit school districts' implementation of the requirements of the federal Individuals with Disabilities Education Act, including use of appropriate disciplinary measures and implementation of manifestation determination reviews;

(4) perform in-person site visits and conduct performance reviews of special education programs at school districts and public schools to determine whether students with disabilities are receiving appropriate special education services. Site visits may include:

(a) interviews with school staff, parents, instructional support providers and students with disabilities;

(b) review of student demographic data, achievement data and educational records; and

(c) review of publicly available information about individual special education programs;

(5) provide technical assistance and recommendations to school districts to ensure students with disabilities are receiving special education services that:

(a) are evidence-based or research-based;

(b) are designed in collaboration with a

student's parent and include identification of student-centered goals; and

(c) monitor the academic and nonacademic progress of students with disabilities; and

(6) support school districts in developing culturally and linguistically appropriate curricula and culturally sustaining pedagogy for exceptional students.

C. The division shall work with school districts, public post-secondary educational institutions, the human services department, the children, youth and families department, the early childhood education and care department, the department of health and other experts to develop and maintain a statewide autism spectrum registry so that appropriate stakeholders can identify and support children and students on the autism spectrum."

SECTION 6. Section 22-13-5 NMSA 1978 (being Laws 1972, Chapter 95, Section 1, as amended) is recompiled as Section 22-13E-4 NMSA 1978 and is amended to read:

"22-13E-4. 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. Rules and standards shall be developed and established by the department for the provision of special education in [~~the~~] public 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 provide services for three-year-old

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and four-year-old [~~preschool~~] children with disabilities, unless the parent [~~or guardian~~] chooses not to enroll the child in public school. Services for students age three through twenty-one 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 and shall be provided in age-appropriate, integrated settings, including home, daycare centers, head start programs, schools or community-based settings."

SECTION 7. Section 22-13-6.1 NMSA 1978 (being Laws 1994, Chapter 25, Section 2, as amended) is recompiled as Section 22-13E-7 NMSA 1978 and is amended to read:

"22-13E-7. GIFTED [~~CHILDREN~~] STUDENTS--DETERMINATION.--

A. 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. 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

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designate a [~~child~~] student as gifted. When determining whether a student is gifted, the team shall consider information regarding [~~a child's~~] the 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.

C. 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 school 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 district's public 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. 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.

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E. Nothing in this section shall preclude a school district 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 eligibility criteria."

SECTION 8. Section 22-13-7 NMSA 1978 (being Laws 1972, Chapter 95, Section 3, as amended) is recompiled as Section 22-13E-8 NMSA 1978 and is amended to read:

"22-13E-8. SPECIAL EDUCATION FOR EXCEPTIONAL STUDENTS-- RESPONSIBILITY.--

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

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~~] students with disabilities in public schools and for children with disabilities in private, nonsectarian, nonprofit training centers and in state institutions under the authority of the secretary of health.

C. The [~~state board~~] division shall establish and maintain a program of evaluation of the implementation and impact of all programs for exceptional [~~children~~] students in the public schools. This program 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~~] students shall be made to the legislative education study committee.

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

SECTION 9. TEMPORARY PROVISION--RECOMPILATION.--

A. Section 22-13-8 NMSA 1978 (being Laws 2009, Chapter 162, Section 1) is recompiled as Section 22-13E-5 NMSA 1978.

B. Section 22-13-32 NMSA 1978 (being Laws 2010, Chapter 59, Section 2, as amended) is recompiled as Section 22-13E-6 NMSA 1978.

SFC→~~SECTION 10. APPROPRIATION.--One million dollars (\$1,000,000) is appropriated from the general fund to the public education department for expenditure in fiscal year 2022 to provide professional development for teachers, instructional support providers, school administrators, substitute teachers, school resource officers, school police or school security on working effectively with and meeting the needs of special education students. Any unexpended or unencumbered balance remaining at the end of fiscal year 2022 shall revert to the general fund.~~←SFC

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

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SECTION SFC→12.←SFC SFC→11.←SFC EFFECTIVE DATE.--The

effective date of the provisions of this act is July 1, 2021.

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