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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

Bill Number	<u>HB130</u>	Sponsor	<u>Trujillo, C.</u>
Tracking Number	<u>.219114.1</u>	Committee Referrals	<u>HEC/HSEIC</u>
Short Title	<u>School Gifted Education Requirements</u>		
Analyst	<u>Juliani</u>	Original Date	<u>1/25/2021</u>
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BILL SUMMARY

Synopsis of Bill

House Bill 130 (HB130) requires the Public Education Department (PED) to adopt standards related to the child find mandate in the federal Individuals with Disabilities Education Act and the universal screening, and equity in gifted education; evaluate the equity of identification and effectiveness of gifted programs in each school district and charter school; and create a funding code to track and audit expenditures related to gifted education. HB130 requires school districts to adopt policies and procedures for universal screening and child find, allows students to receive academic acceleration and enrichment, and evaluate annually the equity and effectiveness of gifted identification and services. The bill also adds three additional qualifying areas through which a student can qualify for gifted services. HB130 defines “twice-exceptional” students.

FISCAL IMPACT

HB130 includes no appropriation. However, the bill may entail a fiscal impact. In New Mexico gifted students are considered part of special education and receive services funded through the public school funding formula as part of the state’s special education appropriation. If more students are identified as gifted, more program units will be generated and if not funded, the unit value will be diluted. The state receives no federal funding to support gifted education, and gifted students are not covered by the federal *Individuals with Disabilities Education Act, Part B* (IDEA-B), because, by definition, they are not considered students with disabilities.

SUBSTANTIVE ISSUES

Disproportionality in Gifted Education. HB130 requires PED to develop standards regarding finding and screening students for gifted education services and establish standards for equity and excellence in gifted education for prekindergarten through 12th grade based on national standards from the National Association for Gifted Children. These standards, developed with input from a variety of stakeholders and reflective of current research and best practices, include learning and

development, assessment, curriculum and instruction, learning environments, programming, and professional learning.

Racial and ethnic disproportionality in gifted education is a perennial inequity and long-standing concern, in particular the underrepresentation of high-ability students from underserved, at-risk populations in advanced classes and in programs for students identified as gifted. According to the *Texas State Plan for the Education of Gifted/Talented Students*, equity in gifted education exists when "the population of the total district is reflected in the population of the gifted/talented services program or has been for two of the past three years." Gaps in supports and services for the most advanced students are even more pronounced for students from minority, English learning, and low-income backgrounds.

Only Maryland, Kentucky, and New Hampshire enroll more than 10 percent of their state's black and Hispanic students in gifted programs, and in 22 states, the figure is less than 5 percent. Research indicates ensuring the availability of rigorous coursework and gifted education programs and services at every grade level, combined with equitable identification procedures, would raise the participation of underrepresented students in gifted education programs and help students increase their achievement and maximize their potential. To achieve more equity, scholars have advanced the following recommendations:

- Consider universal screening and other ways to streamline and make more equitable identification processes,
- Identify students for gifted programs using local norms,
- Counter bias in identifying and serving minority gifted students, and
- Implement talent development measures that address academic challenges early.

Identification and Funding of Gifted Students in New Mexico. HB130 creates a funding code to track and audit PED's expenditures related to gifted education. In New Mexico, gifted students are considered part of special education and services to gifted students are provided through the state's special education funding formula. Annual funding for special education and related services for special education students come from two primary sources – the state's federal IDEA-B grant and the state's funding formula, with the latter providing the principal share of annual funding. In FY20, 84 percent, or \$516.7 million, of special education appropriations came from the general fund.

New Mexico's method for funding special education is based on a system of student weights, in which school districts and charter schools receive funding through a formula that assigns special education students a different weight based on the degree of services they are to receive. The Public School Finance Act classifies special education students as class A, B, C, and D service levels, with increasing levels of services and funding. The amount of state funding allocated to each school district and charter school is based on program units generated by special education students and ancillary service staff employed to provide special education services. PED reported its 40th day count data for FY21 indicated the state's public schools had 12,574 gifted students, most of whom are classified level A or B. The department noted gifted students typically do not receive ancillary services, unless they are identified as "dual exceptional," a student who is identified as gifted and meets the criteria for a disability under federal law. PED also indicated schools typically begin to screen and identify gifted students as early as the first grade, but very rarely in kindergarten and never in pre-kindergarten. LESG staff requested information from PED regarding the fiscal and programmatic implications for identifying students for gifted education prior to their entry into Kindergarten and is still awaiting this information.

Each school district and charter school, through the individualized education program process, determines student eligibility and appropriate level of service. Each school board and governing body of a charter school is responsible for allocating the appropriation for services to these students, including students identified as gifted. PED is mandated to ensure all schools are in compliance with all statutes and rules and are providing a free, appropriate public education to all students. Section 22-13-5 NMSA 1978 requires PED to monitor and enforce the department's rules and standards for the provision of special education in the state.

Laws 2019, Chapter 207 (House Bill 5) requires school districts and charter schools to report to PED annually on the program costs generated for and the planned expenditures for special education and for personnel providing ancillary and related services. However, it remains unclear how and to what degree PED scrutinizes these budgets and expenditures for compliance with service requirements.

The department noted it has faced challenges related to ensuring the accuracy of school districts' reported special education spending figures. For much of FY21, PED has been in the process of converting to an online calculator that will display enhanced data from all school districts on special education spending for the last three years in an effort to add greater transparency and to ensure accuracy of the reported dollar amounts. The department's goal was to have this ready to launch by fall 2020. However, as of mid-January 2021, PED staff was still uploading the fiscal data and information onto the online platform and anticipated having the data available on its website in the weeks after the completing the upload. PED noted this online calculator was still a work in progress with no known public release date yet.

Academic Acceleration and Enrichment. HB130 would require school districts offering a gifted education program to adopt an academic acceleration policy that allows early entry into kindergarten, skipping grades, "facilitated enrollment" in dual-credit courses and counting of college credit toward graduation, and credit for "demonstrated mastery" of subject matter. The bill would require schools to adopt an academic acceleration and enrichment policy inclusive of students' disabilities, language differences, and socio-economic differences. Academic acceleration, the advancement of students designated as gifted in a particular subject, is a fundamental best practice in gifted education, with more research behind it than any other intervention. Academic acceleration provides students with level-appropriate material at a rate that places them ahead of where they would be in the regular school curriculum. Acceleration strategies for gifted students generally fall into two categories: enrichment and acceleration.

Enrichment refers to the presentation of curriculum content with more depth, breadth, complexity, or abstractness than the general curriculum. Acceleration refers to the practice of presenting curriculum content earlier or at a faster pace and can occur in many different ways, including acceleration in one or more subject areas; grade skipping; Advanced Placement programs; dual-credit courses offered in high school; and early graduation from high school. Research indicates the choice of how to accelerate the curriculum for a particular student should be based on that student's individual needs.

Research has found gifted students who accelerate are more successful academically. In the short term, accelerated students perform well in school, retain what they have learned, and are well-prepared for the next course in a sequence. Longitudinal studies indicate that accelerated students attend more prestigious colleges, earn more advanced degrees, and earn higher incomes than equally able, nonaccelerated students. According to the research, acceleration does not create social or psychological problems for the majority of students who accelerate, but rather, can

support the social and emotional development of gifted students by placing them with like-minded peers.

Determination of Giftedness. The federal government does not provide guidance or have requirements for providing students with gifted services, unlike students with disabilities, where federal regulation and oversight are considerable. Consequently, the determination of giftedness and range of services students in gifted education receive can vary considerably from state to state and even from district to district. Section 22-13-6.1 NMSA 1978 requires PED to adopt standards for identifying gifted children. New Mexico administrative code, Section 6.31.2.12, defines a gifted child as a child who scores two standard deviations above the mean on a properly administered intelligence measure paired with superior performance on tests involving a total subject area, creativity and divergent thinking, or problem solving and critical thinking. School districts are required to establish procedures for screening and referring potentially gifted students. HB130 adds three categories or types of evidence under which a student can qualify for gifted education – artistry, leadership, and aptitude in a specific academic area. The bill also defines twice-exceptional as “a student who qualifies as a gifted student and meets the criteria for a disability under federal law” and requires such a student remain eligible for special education and related services. HB130 requires school districts offering gifted education services to provide special supports for twice-exceptional students to participate in academic acceleration and enrichment programs. However, the bill does not make clear what these “special supports” may be.

Charter Schools. Charter schools occupy a somewhat ambiguous place within HB130, which contains only one brief mention of charter schools and appears to leave them exempt from any of the requirements placed on school districts regarding gifted education. In the only mention in HB130 of charter schools PED is required to annually evaluate the equity of gifted identification in each school district and charter school. The bill sponsor may wish to consider including a clear statement delineating whether or not the section in the bill referring to the requirements of school districts applies to charter schools.

ADMINISTRATIVE IMPLICATIONS

HB130 requires PED to develop, adopt, and publish standards related to child find, universal screening, and equity and excellence in gifted education. PED will also likely need to develop administrative procedures to creating and monitoring a new funding code on its online budget management system to comply with the bill’s requirement that the department track funds spent on gifted education. PED and school districts will need to develop policies and procedures for universal screening and child find, academic acceleration and enrichment, and evaluate and report on the equity and effectiveness of gifted identification and services. PED would be required to report such data three times per year, while schools would report their findings annually.

OTHER SIGNIFICANT ISSUES

According to the American Association for Gifted Children, preschool students are rarely assessed for giftedness because programs have not been developed to meet students’ specific, developmental needs and assessment tools that would accurately determine a preschool student’s giftedness do not exist. Current assessment tools fail to identify giftedness in students who are economically disadvantaged, English learners, and minority students. Multimodal tools that would allow educators, parents, and other professionals determine a child’s level of giftedness with a more comprehensive approach remain largely in the development stage.

SOURCES OF INFORMATION

- LESC Files

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