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

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| Bill Number | <u>HB213</u> | Sponsor | <u>Sweetser/Dow/Zamora</u> |
| Tracking Number | <u>.218691.3</u> | Committee Referrals | <u>HEC/HAFC</u> |
| Short Title | <u>School District Special Ed Services Fund</u> | | |
| Analyst | <u>Hoxie</u> | Original Date | <u>2/4/2021</u> |
| | | Last Updated | <u>2/12/2021</u> |

BILL SUMMARY

Synopsis of Bill

House Bill 213 (HB213) enacts a temporary provision effective July 1, 2021 requiring all school districts to create and maintain a special education services fund. Districts are to use the special education services fund to reimburse out-of-pocket expenses incurred by families of children with individualized education programs (IEP) who paid for special education services required by an IEP but not provided by the school district. The special education services fund will be funded by a percentage of each school district's special education funds received through the state equalization guarantee. The provisions set forth in HB213 expire when the governor terminates the public health emergency declaration related to the Covid-19 pandemic.

FISCAL IMPACT

HB213 does not contain an appropriation.

HB213 requires, on a monthly basis, school districts operating a hybrid model allocate 25 percent of the school districts program costs distributed through special education program units to maintain a special education services fund.

HB213 requires, on a monthly basis, school districts not providing in-person instruction or in-person special education services allocate 50 percent of the school districts program costs distributed through special education program units to maintain a special education services fund.

After the family provides the required documentation, a school district shall reimburse the family for services received that fall within a student's IEP.

Preliminary numbers indicate the public school funding formula distributed \$517.6 million, generated through special education units, of which \$482.4 million went to public school districts in FY21. Assuming similar funding levels in FY22, this could result in between \$129.4 million and \$258.8 million in school district special education service funds.

SUBSTANTIVE ISSUES

Services and Programs for Students with Disabilities. Formula funding for special education is based on headcount. In 2020, 16.6 percent of New Mexico public school students were identified as having learning disabilities, higher than the national rate of 13.8 percent. Persistent gaps exist in academic outcomes between students with disabilities and their peers throughout the state. In FY19, the most recent year of statewide standardized testing, 12 percent of students with disabilities scored proficient in reading and 8 percent in math, compared with 34 percent and 20 percent, respectively, of general education students.

Remote Learning and Special Education Services. Despite calls from some stakeholders, the U.S. Department of Education declined to issue waivers for Individuals with Disabilities Education Act (IDEA) requirements during Covid-19-related school closures and indicated schools must continue to provide students a free, appropriate public education, including compensatory services (educational services determined by a student's IEP). Remote learning presents many challenges for students with disabilities, who are more likely than their peers to fall behind academically, socially, and behaviorally without in-person support. The Public Education Department (PED) recognized the risks online learning poses to students with disabilities by allowing school districts to provide students with disabilities in-person services in a five-to-one student-teacher ratio. Districts have taken advantage of this allowance unevenly, leading to disparities in services offered for students receiving special education services. A Legislative Finance Committee evaluation noted that 47 percent of special education teachers reported working remotely and district superintendents noted considerable variability in terms of in-person services that were available at all, the number of service-hours students received per week, and how many students were accessing in-person learning.

Accessing Funds. PED requires special education teachers hold a license authorizing them to teach students with a disability. The requirements of this license are defined by New Mexico Administrative Code 6.61.6. While the licensure requirements of service providers in public schools is clear, HB213 does not identify specific licensure requirements for service providers contracted by families independent of the student's public school. Paragraph one in Subsection C in HB213 requires a family to keep a detailed record of the costs of services received and to provide the record of services to the school district on a monthly basis. However, this subsection does not incorporate licensure requirements for the provider. Analysis provided by the office of Attorney General notes this could open school districts up to potential litigation or fraud.

TECHNICAL ISSUES

The bill only requires school districts to create and maintain a special education services fund. Under the bill a student not enrolled in a school district could be eligible for reimbursement from the school district even though the school district does not generate state equalization guarantee funding for the unenrolled student.

This does not require charter schools to set aside equivalent amounts of money for a special education services fund.

OTHER SIGNIFICANT ISSUES

Qualifying for Federal Special Education Funding. To qualify for federal special education funding under IDEA, states must maintain their levels of state financial support for special education and related services from year to year, while requiring each school district to demonstrate a level of funding for students with disabilities that does not decline from year to year

– targets known as “maintenance-of-effort” (MOE). New Mexico’s state-level MOE target is based on funding for students with disabilities provided through the public school funding formula.

Unclear Definitions. HB213 does not define the term “family.” Office of the Attorney General notes that without a definition, the term might “*limit those who are able to submit for reimbursement to a student’s own parents or immediate family members. Conversely, a broad interpretation of “family” could include a variety of individuals raising concern for potential fraudulent reimbursements to be sought by family members who are not the student’s parent or legal guardian, or who are otherwise not financially responsible for the student.*”

Reimbursement Requests Outpacing Funds. Office of Attorney General notes, paragraph one in Subsection D of the bill indicates that school districts “shall” reimburse families for services received. Such a requirement could create a risk of litigation if a district receives more reimbursement request than the district can afford to pay out.

POSSIBLE QUESTIONS

Would payment under this bill be counted towards local and state maintenance of effort requirements by the U.S. Department of Education?

RELATED BILLS

SB289 creates a new Special Education Division and assistant secretary for special education within PED.

SOURCES OF INFORMATION

- LESC Files
- Office of the Attorney General

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