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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/20/21

SPONSOR Maestas/Dow LAST UPDATED \_\_\_\_\_ HB 237

SHORT TITLE Public and School for the Deaf Cooperation SB \_\_\_\_\_

ANALYST Becerra

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$0.0	\$0 - \$100.0	\$0 - \$100.0	\$0 - \$200.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to:

- HJR1, Permanent Fund for Early Childhood
- SB190, Developmental Disabilities Planning Council
- SB289, Special Education Division of Public Education Department
- SB406, Limit Public School Management Contracts

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico School for the Deaf  
 New Mexico School for the Blind and Visually Impaired  
 Early Childhood Education and Care Department  
 Commission for the Deaf and Hard of Hearing Persons  
 Department of Finance and Administration  
 Office of the Attorney General

#### No Response Received

The Public Education Department  
 Regional Education Cooperatives  
 Albuquerque Public Schools  
 New Mexico Military Institute  
 Department of Health

## SUMMARY

### Synopsis of Bill

House Bill 237 (HB237) amends the New Mexico School for the Deaf Act, NMSA 1978, Chapter 21, Article 6, to clarify that the New Mexico School for the Deaf (NMSD) may provide services to deaf and hard of hearing students attending public schools, in addition to current services, without charge to the schools or districts for services provided. The bill expands permissible expenditures by the board of regents to include undergraduate collegiate expenses for graduates of New Mexico schools rather than restricting those expenditures to graduates from NMSD. HB237 eliminates the minimum \$1,000 charge to out-of-state students for the costs of living on campus, and is replaced with mandatory payment of the cost of tuition, room and board. Additionally, the bill clarifies that in-state students who have reached the age of majority may attend the school as day students.

HB237 removes sole authority of the president of the board to approve all agreements and contracts and replaces it with language to allow the superintendent with approval of the board, to approve all agreements and contracts.. The bill also adds a new section to the Public School Code requiring the Public Education Department (PED) to hire a deaf services coordinator to work with the deaf or hard-of-hearing students enrolled in public schools.

HB237 amends the Deaf and Hard-of-Hearing Children’s Educational Bill of Rights adding the Early Childhood Education and Care Department be recognized by the state of New Mexico as having unique communication needs for children and providing that equal education is provided for all deaf and hard-of-hearing students regardless of the school they attend.

The effective date of this bill is July 1, 2021.

## FISCAL IMPLICATIONS

HB237 does not contain an appropriation.

The Legislature appropriates 22 percent, or \$3.8 million in general fund of NMSD’s total operating revenue. The primary revenue source for NMSD is the land grant permanent fund, providing 72 percent of the school’s revenue and the remaining 6 percent comes from other revenue sources. As provided by the New Mexico Constitution and the Enabling Act, the Board of Regents of the New Mexico School for the Deaf has exclusive control and management over the expenditure and disbursement of funds received by the institution from land granted to it, and held in trust for its benefit.

<b>Appropriations to NMSD</b>			
<b>(In Thousands)</b>			
	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>
<b>General Fund</b>	\$ 3,819.3	\$ 3,876.4	\$ 4,208.1
<b>Permanent Fund</b>	\$ 13,954.0	\$ 14,261.7	\$ 14,490.2
<b>Total</b>	<b>\$ 17,773.3</b>	<b>\$ 18,138.1</b>	<b>\$ 18,698.3</b>

Source: LFC Files

HB237 requires PED to employ a deaf services coordinator to work closely with school districts and charter schools, oversee the equitable distribution of deaf-related resources and conduct

research and propose recommendations on equalizing public funding for the education of deaf and hard-of-hearing students and ways to make the current educational delivery system more effective and equitable. Although PED did not provide a response at the time of analysis, it can be deduced that the department will require funding to staff the position in compliance with the provisions of HB237 and request recurring funds for the position in subsequent years. Currently, the Special Education Bureau consists of 18 employees, ranging in salaries from \$33.9 thousand to \$90.1 thousand annually. The department could potentially incur a cost within that salary estimate range, excluding benefits.

**SIGNIFICANT ISSUES**

**Current Efforts**

**NMSD Services.** NMSD offers a wide range of services to families and students statewide including, Deaf Mentor and Parent Infant Child Programs, Early Childhood and Elementary Programs, and Middle School and High School Programs. NMSD’s Center for Educational Consulting and Training (CECT) provides an array of programs and services that are aimed at helping districts, educators, children and families throughout the state without having to be in the Santa Fe-based institution (if evaluation results provide that these alternative programs are equally beneficial to the child). These services are open to all school districts and charter schools in the state. Their programs include consultation services, interpretation services, and American Sign Language (ASL) tutors and classes.

Services Rendered	2017-2018	2018-2019	2019-2020
Instruction	177	181	181
Early Intervention	258	261	287
Outreach	249	191	253
Total	684	633	721
Unduplicated Total	<b>660<sup>1</sup></b>	<b>612<sup>2</sup></b>	<b>693<sup>3</sup></b>

Source: NMSD Annual Reports and LFC Files

<sup>1</sup>24 of 684 receive services from both Early Intervention and Preschools

<sup>2</sup>28 of 721 receive services from both Early Intervention and Preschools

<sup>3</sup>21 of 633 receive services from both Early Intervention and Preschools

Note: Preschool- 12<sup>th</sup> grade instruction services offered in Santa Fe; Preschools offered in Albuquerque, Farmington and Las Cruces.

CECT provides educational consultation services in collaboration with school district staff and families through individualized education plan (IEP) attendance, school-based observations, demonstration lessons, and workshops or trainings. In the 2019-2020 school year, CECT’s educational consultants completed 270 on-site consultations across 41 districts, provided over 2,000 phone or email consultations with 45 districts, attended 91 IEP meetings in 32 districts and facilitated the completion of 6 student evaluations.

CECT’s K-12 interpreting consultant coordinated 2 interpreter workshops in Rio Rancho, contributed to educational team training in Grady and offered educator interpreter performance assessment (EIPA) study sessions for 5 provisionally licensed interpreters from Las Cruces, Rio Rancho and Farmington. CECT’s speech-language consultant provided speech-language services to the statewide outreach team and the instructional program. NMSD partnered with Grady Municipal Schools to provide a full-time interpreter.

NMSD’s ASL Service Corps program has several locations throughout the state where ASL tutors provide ASL instruction to families and school programs where deaf children live and attend school. During the 2019-2020 school year ASL tutors grew ASL skills through 780 visits in 22

school districts and 368 home visits to 38 families.

NMSD also hosts a number of events statewide including regional community events, student or staff-centered workshops, ASL classes and statewide events. During the 2019-2020 school year, NMSD hosted 3 regional community events in Carlsbad, Farmington and Silver City; 12 workshops in 9 districts; Fall and Spring ASL classes that served 249 participants and 2 statewide ASL immersion week events that reached 258 adults and children.

Additionally, the New Mexico Administrative Code (NMAC 6.31.2.11 (B6), 6.31.2.11 (J2), 6.31.2.11 (K1-4)) ensures that LEAs and NMSD properly evaluate a student and place that student into the program that best fits their interest and complies with statutory requirements under IDEA.

**Legal Implications.** In their analysis of the bill, office of the Attorney General noted that NMSD is created under Art. XII, section 11 of the New Mexico Constitution. NMSD was established pursuant to a grant and that grant is dedicated to the purposes of establishing a school for the deaf. N.M. Const. Art. XII section 12. The New Mexico legislature is to provide for the control and management of the School for the Deaf through the establishment of a Board of regents. N.M. Const. Art. XII section 13. While HB 237 makes providing of services to public schools permissible rather than mandatory, it may still impermissibly appropriate money for services to entities other than the constitutional purpose of establishing and managing the school for the deaf and interfere with the Board of Regent’s constitutional responsibility for managing the school.

Additionally, HB237 may violate the New Mexico Constitution Article XII when appropriating and expending funds from NMSD’s budget to provide services to public schools and impermissible interference with the constitutionally created Board of Regents that grants control and management of the School to the Board.

NMSD referenced *State ex rel. Sego v. Kirkpatrick*, 1974-NMSC-059, ¶ 51 where the NM State Supreme Court has found that the Legislature does not have authority to direct use of funds of Constitutionally established entities that are not appropriated by the Legislature. The analysis also notes that sections 7 and 10 of the Enabling Act that ordered the 100,000 acre land grant was specifically reserved only for schools and asylums for the deaf, dumb, and blind, protect these funds for these institutions and distinguished these specifically identified institutions from “common schools” or public schools throughout New Mexico.

The Department of Finance and Administration noted that in clarifying that NMSD may admit students over the age of majority as day students and by inserting language to guarantee the provision of an “equal education,” HB237 may negatively impact NMSD’s ability to receive federal funding. These changes would conflict with federal standards under the Federal and State Individuals with Disabilities Education Act (IDEA), which mandates the use of individualized programs based on the needs of the child, not the same or equal programs. Likewise, providing that students over the age of majority be admitted as day students may conflict with IDEA requirements because students are considered eligible under IDEA for special education through their 22<sup>nd</sup> birthday.

The Commission for the Deaf and Hard of Hearing Persons notes that prohibiting NMSD’s ability to charge any public schools when participating in the development of individualized plans for deaf or hard-of-hearing students or providing student evaluations or student observations, could prevent NMSD from potentially entering any type of intergovernmental agreements, JPA’s or

MOU 's which would be mutually agreed upon should there be a need for preschool services or fees for ASL classes to public school staff. Such services would improve language acquisition for a student in a public-school setting but could be prevented under this change in the language.

### **PERFORMANCE IMPLICATIONS**

HB237 does not specify any reporting or performance implications. If enacted, PED will likely need additional performance measures to track the progress of the work done by the new Deaf Services Coordinator.

### **ADMINISTRATIVE IMPLICATIONS**

HB 237 may complicate and/or hinder administrative efforts of NMSD regarding the provision of educational services for deaf and hard-of-hearing students by impermissibly restraining NMSD's constitutional functions.

NMSD and PED will likely see increased administrative needs as a result of expanded collaboration efforts.

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

Relates to HJR1, Permanent Fund for Early Childhood

Relates to SB190, Developmental Disabilities Planning Council

Relates to SB289, Special Education Division of Public Education Department

Relates to SB406, Limit Public School Management Contracts

### **TECHNICAL ISSUES**

HB237 requires that out-of-state students pay the cost of tuition. Tuition represents the cost of instruction which contradicts the statute's mandatory requirement that all instruction be free.

“President” is replaced by “superintendent” throughout the body of the statute but not replaced within the statute's title. It is also unclear if the replacement of the terms means the current president will be replaced by a superintendent or if it is just a change in term usage.

MB/rl