

1 SENATE BILL 38

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

4 Mimi Stewart and Elizabeth "Liz" Thomson

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10 AN ACT

11 RELATING TO SPECIAL EDUCATION; ENACTING THE SPECIAL EDUCATION
12 ACT; CREATING THE OFFICE OF SPECIAL EDUCATION; PROVIDING POWERS
13 AND DUTIES; PROVIDING FOR THE TRANSFER OF CERTAIN FEDERAL
14 FUNDING FROM THE PUBLIC EDUCATION DEPARTMENT TO THE EARLY
15 CHILDHOOD EDUCATION AND CARE DEPARTMENT; REORGANIZING THE
16 OFFICE OF THE STATE SPECIAL EDUCATION OMBUD BY REMOVING THE
17 OFFICE FROM THE DEVELOPMENTAL DISABILITIES COUNCIL TO THE
18 PUBLIC EDUCATION DEPARTMENT; RECOMPILING THE SPECIAL EDUCATION
19 OMBUD ACT IN THE PUBLIC SCHOOL CODE; MAKING CONFORMING
20 AMENDMENTS.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

25 "9-24-4. DEPARTMENT CREATED.--

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1 A. The "public education department" is created in
2 the executive branch. The department is a cabinet department
3 and includes the following divisions:

- 4 (1) the administrative services division;
5 (2) the assessment and accountability
6 division;
7 (3) the charter schools division;
8 (4) the educator quality division;
9 (5) the Indian education division;
10 (6) the information technology division;
11 (7) the instructional support and vocational
12 education division;
13 (8) the program support and student
14 transportation division;
15 (9) the quality assurance and systems
16 integration division;
17 (10) the rural education division; [~~and~~]
18 (11) the office of special education;
19 (12) the office of the state special education
20 ombud; and
21 [~~(11)~~] (13) the vocational rehabilitation
22 division.

23 B. The secretary may organize the department and
24 divisions of the department and may transfer or merge functions
25 between divisions and bureaus in the interest of efficiency and

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1 economy."

2 SECTION 2. A new section of the Public School Code is
3 enacted to read:

4 "[NEW MATERIAL] SHORT TITLE.--Sections 2 through 7 of this
5 act may be cited as the "Special Education Act"."

6 SECTION 3. A new section of the Public School Code is
7 enacted to read:

8 "[NEW MATERIAL] DEFINITIONS.--As used in the Special
9 Education Act:

10 A. "deputy secretary" means the deputy secretary of
11 special education;

12 B. "office" means the office of special education;
13 and

14 C. "school district" includes charter schools."

15 SECTION 4. A new section of the Public School Code is
16 enacted to read:

17 "[NEW MATERIAL] OFFICE OF SPECIAL EDUCATION--DEPUTY
18 SECRETARY--POWERS AND DUTIES.--

19 A. The office of special education is created as a
20 division of the department and shall be headed by the deputy
21 secretary of special education who shall be appointed solely on
22 the basis of education and experience. The deputy secretary
23 shall direct the activities of the office and apprise the
24 secretary of federal and state law regarding special education.

25 B. The deputy secretary may, subject to

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1 appropriation, appoint professional and clerical staff as
2 needed to carry out the provisions of the Special Education Act
3 and other duties as provided by law.

4 C. The department shall provide data regarding the
5 state's compliance with federal and state law regarding special
6 education and the state's administration of funding received
7 pursuant to Part B of the federal Individuals with Disabilities
8 Education Improvement Act of 2004."

9 SECTION 5. A new section of the Public School Code is
10 enacted to read:

11 "[NEW MATERIAL] DUTIES OF THE OFFICE.--The office shall:

12 A. oversee and enforce state and school district
13 compliance with federal and state law regarding special
14 education and the rights of students with disabilities,
15 including the federal Individuals with Disabilities Education
16 Improvement Act of 2004, by:

17 (1) soliciting input from special education
18 students, parents, educational decision makers, regional
19 education cooperatives, advocates, licensed school employees
20 and other special education providers;

21 (2) reviewing publicly available information
22 and resources regarding special education services and
23 programs;

24 (3) monitoring academic and nonacademic
25 progress of students with disabilities;

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1 (4) providing procedural safeguards as
2 required by law;

3 (5) performing site visits to public schools,
4 if visits are needed; and

5 (6) requiring remedial action by a school
6 district if a school district or public school is out of
7 compliance;

8 B. ensure that transitional individualized
9 education programs prepare students with disabilities:

10 (1) who are not yet enrolled in kindergarten
11 for public school in coordination with the early childhood
12 education and care department;

13 (2) for transitions within the public school
14 system; and

15 (3) for transition to higher education or the
16 workforce in coordination with the higher education department;

17 C. make and adopt a state plan for special
18 education policy, programs and standards and update that plan
19 every three years;

20 D. review and recommend rules to address the needs
21 of students with disabilities, including highly mobile students
22 with disabilities, and other matters related to special
23 education;

24 E. consult and coordinate with:

25 (1) other divisions and units of the

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1 department to:

2 (a) promote the inclusion of students
3 with disabilities in all educational programs and activities;

4 (b) ensure that gifted students with
5 disabilities receive appropriate services as required by state
6 and federal law;

7 (c) identify and address factors that
8 disproportionately impact students with disabilities, including
9 high mobility; and

10 (d) develop and implement culturally and
11 linguistically responsive and appropriate services, curricula
12 and pedagogy to support students with disabilities;

13 (2) state agencies and public post-secondary
14 educational institutions to prioritize and expand appropriate
15 special education services to children and students with
16 disabilities from birth through transition to college or
17 career;

18 (3) state agencies and state primary and
19 secondary educational institutions to ensure that students with
20 disabilities in state custody or in residential treatment
21 facilities and psychiatric hospitals receive free appropriate
22 public education; and

23 (4) public post-secondary educational
24 institutions to support the education and training of licensed
25 school employees;

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F. develop policies and provide:

(1) guidance for the parents of students with disabilities;

(2) recommendations for school districts to ensure that the school districts' special education services:

(a) are evidence- or research-based;

(b) are designed in collaboration with parents and educational decision makers; and

(c) include student-centered goals;

(3) professional development materials and programming for licensed school employees; and

(4) annual training to all local school boards, charter school governing bodies, school district administrators and school personnel that addresses:

(a) state and federal law regarding the education of students with disabilities, including the federal Individuals with Disabilities Education Improvement Act of 2004;

(b) policies, practices and interventions specific to students with disabilities, including de-escalation practices and techniques and positive behavioral supports;

(c) structured literacy;

(d) the formulation and implementation of individualized education plans and transitional

1 individualized education plans; and

2 (e) engagement and communication with
3 students, parents and educational decision makers;

4 G. provide technical assistance to school districts
5 and other special education providers that implement programs
6 for students with disabilities;

7 H. identify systems and policies that:

8 (1) maximize the provision of special
9 education services;

10 (2) expedite the evaluation of students with
11 disabilities, including students younger than age five; and

12 (3) facilitate effective and meaningful
13 inclusion and integration of students with disabilities in all
14 educational settings;

15 I. monitor:

16 (1) the expenditures of federal and state
17 funding for special education programs and services, including
18 medicaid funding and the state equalization guarantee, and take
19 action to ensure such expenditures are made in accordance with
20 the law; and

21 (2) school district policies and practices for
22 screening and evaluating students suspected of having
23 disabilities;

24 J. work with the office of the state special
25 education ombud, review recommendations from the state ombud,

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1 investigate those recommendations and take appropriate action
2 on those recommendations;

3 K. develop and maintain an online system for the
4 formulation of individualized education plans, which shall be
5 used for all students to whom the federal Individuals with
6 Disabilities Education Improvement Act of 2004 applies; and

7 L. determine which special education data is needed
8 to evaluate the state's compliance with federal and state laws
9 related to special education, coordinate with other divisions
10 of the department to ensure that school districts collect that
11 data in a consistent and uniform manner and submit an annual
12 report to the governor, secretary and legislative education
13 study committee that includes the following data:

14 (1) student demographics;

15 (2) student achievement, outcomes and
16 transitions;

17 (3) state and federal funding and
18 corresponding expenditures;

19 (4) the types of programming and services
20 provided in each school district and statewide and the office's
21 evaluation of that programming and those services;

22 (5) the use of restraint and seclusion of
23 students with disabilities statewide; and

24 (6) national compensation trends for special
25 education teachers and recommendations for recruiting and

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1 retaining qualified special education teachers."

2 SECTION 6. A new section of the Public School Code is
3 enacted to read:

4 "[NEW MATERIAL] SPECIAL EDUCATION SALARY DIFFERENTIAL
5 LEVELS.--No later than July 1, 2026, the department and office
6 shall, in consultation with school districts and licensed
7 school employees, identify strategies for recruitment and
8 retention of licensed school employees who provide
9 instructional support to students with disabilities."

10 SECTION 7. A new section of the Public School Code is
11 enacted to read:

12 "[NEW MATERIAL] TRANSFER OF PRESCHOOL SPECIAL EDUCATION.--

13 A. No later than July 1, 2025, the department shall
14 initiate the transfer of federal grant funding and
15 corresponding powers and duties pursuant to Section 619 of Part
16 B of the federal Individuals with Disabilities Education Act to
17 the early childhood education and care department.

18 B. The early childhood education and care
19 department, through a coordinator appointed pursuant to Section
20 619 of Part B of the federal Individuals with Disabilities
21 Education Act, shall collaborate with the department in:

22 (1) providing special education and related
23 services to students with disabilities who are three through
24 four years of age and who are five years of age but not
25 eligible for kindergarten;

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1 (2) supervising and monitoring the provision
2 of special education and related services to students with
3 disabilities who are three through four years of age and who
4 are five years of age but not eligible for kindergarten;

5 (3) ensuring compliance with federal funding
6 requirements pursuant to Section 619 of Part B of the federal
7 Individuals with Disabilities Education Act; and

8 (4) providing technical assistance with the
9 provision of special education and related services to
10 community-based and school-based pre-kindergarten, early pre-
11 kindergarten and head start programs.

12 C. The department shall retain all oversight
13 responsibilities required pursuant to Section 619 of Part B of
14 the federal Individuals with Disabilities Education Act,
15 including oversight of administrative and fiscal compliance."

16 SECTION 8. Section 22-8-6 NMSA 1978 (being Laws 1967,
17 Chapter 16, Section 60, as amended) is amended to read:

18 "22-8-6. OPERATING BUDGETS--EDUCATIONAL PLANS--
19 SUBMISSION--CERTAIN REPORTS--FAILURE TO SUBMIT.--

20 A. Prior to April 15 of each year, each local
21 school board shall submit to the department an operating budget
22 for the school district and any locally chartered charter
23 school in the school district for the ensuing fiscal year.

24 B. The date for the submission of the operating
25 budget for each school district and each charter school as

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1 required by this section may be extended to a later date fixed
2 by the secretary.

3 C. The operating budget required by this section
4 may include:

5 (1) estimates of the cost of insurance
6 policies for periods up to five years if a lower rate may be
7 obtained by purchasing insurance for the longer term; or

8 (2) estimates of the cost of contracts for the
9 transportation of students for terms extending up to four
10 years.

11 D. The operating budget required by this section
12 shall include a budget for each charter school of the
13 membership projected for each charter school, the total program
14 units generated at that charter school and approximate
15 anticipated disbursements and expenditures at each charter
16 school.

17 E. For fiscal year 2021 and subsequent fiscal
18 years, each school district's and each locally chartered or
19 state-chartered charter school's educational plan shall
20 include:

21 (1) information on the instructional time
22 offered by the school district or charter school, including the
23 number of instructional days by school site and the number of
24 hours in each instructional day and the frequency of early-
25 release days;

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1 (2) a narrative explaining the identified
2 services to improve the academic success of at-risk students;

3 (3) a narrative explaining the services
4 provided to students enrolled in the following programs:

5 (a) extended learning time programs,
6 including a report of how the extended learning time is used to
7 improve the academic success of students and professional
8 learning of teachers; and

9 (b) ~~[K-5]~~ K-12 plus programs;

10 (4) a narrative explaining the school
11 district's or charter school's beginning teacher mentorship
12 programs as well as class size and teaching load information;

13 (5) a narrative explaining supplemental
14 programs or services offered by the school district or charter
15 school to ensure that the Bilingual Multicultural Education
16 Act, the Indian Education Act and the Hispanic Education Act
17 are being implemented by the school district or charter school;

18 (6) a narrative describing the amount of
19 program cost generated for services provided to students with
20 disabilities and gifted students and the spending of these
21 revenues on services provided to those students [~~with~~
22 ~~disabilities~~], which shall include the following:

23 (a) program cost generated for students
24 enrolled in approved special education programs;

25 (b) budgeted expenditures of program

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1 cost, for students enrolled in approved special education
2 programs, on students with disabilities;

3 (c) the amount of program cost generated
4 for personnel providing ancillary and related services to
5 students with disabilities;

6 (d) budgeted expenditures of program
7 cost for personnel providing ancillary and related services to
8 students with disabilities, on special education ancillary and
9 related services personnel; ~~and~~

10 (e) a description of the steps taken to
11 ensure that students with disabilities have access to a free
12 and appropriate public education; and

13 (f) an explanation of how program costs
14 are expended, disaggregated by grade; and

15 (7) a common set of performance targets and
16 performance measures, as determined by the department in
17 consultation with the department of finance and administration,
18 the legislative finance committee and the legislative education
19 study committee.

20 F. In addition to the requirements of Subsection E
21 of this section, a school district or charter school that
22 receives federal or local revenue shall include in its
23 educational plan a narrative explaining how the school district
24 or charter school will use the federal or local revenue to
25 improve outcomes for students or to improve the condition of a

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1 school building. No later than October 1 of each year, a
2 school district or charter school that received federal or
3 local revenue in the prior fiscal year shall report to the
4 department on the actual uses of that revenue, including a
5 comprehensive evaluation of how the programs and services
6 provided with that revenue improved outcomes for students or
7 how capital projects undertaken improved the condition of a
8 school building. A school district or charter school that is
9 required under federal law to consult with tribal entities as a
10 condition of receiving impact aid funds shall include in its
11 educational plan a detailed narrative of its consultations with
12 tribal entities and the results of those consultations. The
13 school district or charter school shall transmit the October 1
14 spending and outcomes report to the appropriate tribal
15 authorities. No later than November 15 of each year, the
16 department shall compile the federal and local revenue outcomes
17 reports into a statewide report to the legislative education
18 study committee and the legislative finance committee that
19 includes an analysis and identification of effective programs
20 and strategies that improve outcomes for students.

21 G. A school district or charter school operating
22 budget and educational plan shall prioritize federal and local
23 revenue for purposes relating to the Indian Education Act; for
24 capital expenditures authorized by the Public School Capital
25 Outlay Act, the Public School Capital Improvements Act or the

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1 Public School Buildings Act; or for research-based or evidence-
2 based social, emotional or academic interventions for which at-
3 risk program units may be used.

4 H. If a local school board or governing board of a
5 charter school fails to submit an operating budget pursuant to
6 this section, the department shall prepare the operating budget
7 for the school district or charter school for the ensuing
8 fiscal year. A local school board or governing board of a
9 charter school shall be considered as failing to submit an
10 operating budget pursuant to this section if the budget
11 submitted exceeds the total projected resources of the school
12 district or charter school or if the budget submitted does not
13 comply with the law or with rules and procedures of the
14 department.

15 I. As used in this section:

16 (1) "federal revenue" means seventy-five
17 percent of the revenue derived from:

18 (a) federal forest reserve funds
19 distributed in accordance with Section 22-8-33 NMSA 1978; or

20 (b) federal assistance to those areas
21 affected by federal activity authorized in accordance with
22 Title 20 of the United States Code, commonly known as "PL 874
23 funds" or "impact aid funds"; and

24 (2) "local revenue" means seventy-five percent
25 of the revenue from a school district one-half mill school

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1 district property tax and revenue from the Oil and Gas Ad
2 Valorem Production Tax Act and the Oil and Gas Production
3 Equipment Ad Valorem Tax Act."

4 SECTION 9. Section 22-13-5 NMSA 1978 (being Laws 1972,
5 Chapter 95, Section 1, as amended) is amended to read:

6 "22-13-5. SPECIAL EDUCATION.--School districts shall
7 provide special education and related services appropriate to
8 meet the needs of students [~~requiring special education and~~
9 ~~related services~~] with disabilities and gifted students. Rules
10 and standards shall be developed and established by the
11 department for the provision of special education in the
12 schools and classes of the public school system in the state
13 and in all institutions wholly or partly supported by the
14 state. The department shall monitor and enforce the rules and
15 standards. School districts shall [~~also~~] identify and provide
16 services for three-year-old and four-year-old [~~preschool~~]
17 children with disabilities, unless the parent or guardian
18 chooses not to enroll the child. Services for students [~~age~~
19 ~~three through twenty-one~~] with disabilities may include [~~but~~
20 ~~are not limited to~~] evaluating particular needs, providing
21 learning experiences that develop cognitive and social skills,
22 arranging for or providing related services as defined by the
23 department and providing parent education. The services may be
24 provided by licensed school employees or contracted for with
25 [~~other community agencies~~] a public or private provider and

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1 shall be provided in age-appropriate, integrated settings,
2 including home, daycare centers, head start programs, schools
3 or community-based settings."

4 SECTION 10. Section 22-13-6 NMSA 1978 (being Laws 1972,
5 Chapter 95, Section 2, as amended) is amended to read:

6 "22-13-6. SPECIAL EDUCATION--DEFINITIONS.--As used in the
7 Public School Code:

8 A. "special education" means the provision of
9 services additional to, supplementary to or different from
10 those provided in the regular school program by a systematic
11 modification and adaptation of instructional techniques,
12 materials and equipment to meet the needs of [~~exceptional~~]
13 children and students with disabilities and gifted students;

14 [~~B. "exceptional children" means school-age persons
15 whose abilities render regular services of the public school to
16 be inconsistent with their educational needs;~~

17 C. [~~"children with disabilities" means those]~~ B.
18 "students with disabilities" means students with physical or
19 mental impairments or specific learning disabilities and who,
20 as a result of those impairments or specific learning
21 disabilities, require special education and related services in
22 accordance with the federal Individuals with Disabilities
23 Education Improvement Act of 2004, and includes children three
24 and four years of age who are classified as developmentally
25 disabled [~~according to~~] in accordance with the Developmental

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1 Disabilities Act and Part B of the federal Individuals with
2 Disabilities Education Improvement Act of 2004;

3 ~~[D.]~~ C. "gifted ~~[child]~~ student" means a school-age
4 person who is determined to be gifted pursuant to Section
5 22-13-6.1 NMSA 1978 and standards adopted by the department
6 pursuant to that section. Nothing in this section shall
7 preclude a school district or charter school from offering
8 additional gifted programs for students who fail to meet the
9 eligibility criteria; however, the state shall only provide
10 state funds for department-approved gifted programs for those
11 students who meet the established criteria;

12 ~~[E.]~~ D. "dyslexia" means a specific learning
13 disability that is neurobiological in origin and that is
14 characterized by difficulty with accurate or fluent word
15 recognition and by poor spelling and decoding abilities, which
16 characteristics typically result from a deficit in the
17 phonological component of language that is often unexpected in
18 relation to other cognitive abilities and the provision of
19 effective classroom instruction and may result in problems in
20 reading comprehension and reduced reading experience that may
21 impede the growth of vocabulary and background knowledge;

22 ~~[F.] "response to intervention" means a multitiered~~
23 ~~intervention model that uses a set of increasingly intensive~~
24 ~~academic or behavioral supports, matched to student need, as a~~
25 ~~framework for making educational programming and eligibility~~

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1 ~~decisions; and]~~

2 E. "highly mobile students" means school-age
3 persons who frequently move to different school districts,
4 including children of military families, migratory children,
5 children who are experiencing homelessness and children in the
6 foster care system;

7 F. "multi-layered system of supports" means a
8 coordinated and comprehensive framework of evidence-based
9 academic and behavioral supports that address a student's needs
10 with graduated intensity based on data collected for the
11 student and provides progress measures, including school-based
12 team structures, professional development, health and wellness
13 and family and community engagement, to provide for additional
14 supports; and

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

21 SECTION 11. Section 22-13-7 NMSA 1978 (being Laws 1972,
22 Chapter 95, Section 3, as amended) is amended to read:

23 "22-13-7. SPECIAL EDUCATION--RESPONSIBILITY.--

24 A. The ~~[state board]~~ office of special education
25 shall make, adopt and keep current a state plan for special

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1 education policy, programs and standards.

2 B. The department [~~of education with the approval~~
3 ~~of the state board~~] shall set standards for diagnosis and
4 screening of and educational offerings for [~~exceptional~~]
5 children and students with disabilities and gifted students in
6 public schools and children in private, nonsectarian, nonprofit
7 training centers and in state institutions under the authority
8 of the secretary of health.

9 C. The [~~state board~~] department shall establish and
10 maintain a [~~program of evaluation of the~~] system to monitor
11 implementation and impact of all programs for [~~exceptional~~]
12 children and students with disabilities and gifted students in
13 the public schools. This [~~program~~] system shall be operated
14 with the cooperation of [~~local~~] school districts. Portions of
15 the program may be subcontracted, and periodic reports
16 regarding the efficacy of programs for [~~exceptional~~] children
17 and students with disabilities and gifted students shall be
18 made to the governor and the legislative education study
19 committee.

20 D. The [~~department of education~~] office of special
21 education shall coordinate programming related to the
22 transition of [~~persons~~] students with disabilities from
23 secondary and post-secondary education programs to employment
24 or vocational placement in accordance with the Special
25 Education Act."

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1 SECTION 12. Section 22-13-32 NMSA 1978 (being Laws 2010,
2 Chapter 59, Section 2, as amended) is amended to read:

3 "22-13-32. [~~INTERVENTION~~] SUPPORTS FOR STUDENTS
4 DISPLAYING CHARACTERISTICS OF DYSLEXIA.--

5 A. Within the course of the 2019-2020 and 2020-2021
6 school years and in each subsequent school year, all first
7 grade students shall be screened for dyslexia.

8 B. A student whose dyslexia screening demonstrates
9 characteristics of dyslexia and who is having difficulty
10 learning to read, write, spell, understand spoken language or
11 express thoughts clearly shall receive appropriate classroom
12 interventions through a multi-layered system of supports or be
13 referred to a student assistance team.

14 C. In accordance with department [~~response to~~
15 ~~intervention~~] procedures for a multi-layered system of
16 supports, guidelines and policies, each school district or
17 charter school shall provide timely, appropriate, systematic,
18 scientific, evidence-based interventions prescribed by the
19 student assistance team, with progress monitoring to determine
20 the student's response or lack of response.

21 D. A parent of a student referred to a student
22 assistance team shall be informed of the parent's right to
23 request an initial special education evaluation at any time
24 during the school district's or charter school's implementation
25 of the interventions prescribed by the student assistance team.

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1 If the school district or charter school agrees that the
2 student may have a disability, the student assistance team
3 shall refer the child for an evaluation. The student shall be
4 evaluated within sixty days of receiving the parental consent
5 for an initial evaluation. If the school district or charter
6 school refuses the parent's request for an initial evaluation,
7 the school district or charter school shall provide written
8 notice of the refusal to the parent, including notice of the
9 parent's right to challenge the school district's or charter
10 school's decision as provided in state and federal law and
11 rules.

12 E. Within the course of the 2019-2020 and 2020-2021
13 school years, every school district and charter school shall
14 develop and implement a literacy professional development plan
15 that includes a detailed framework for structured literacy
16 training by a licensed and accredited or credentialed teacher
17 preparation provider for all elementary school teachers and for
18 training in evidence-based reading intervention for reading
19 interventionists and special education teachers working with
20 students demonstrating characteristics of dyslexia or diagnosed
21 with dyslexia. The plan shall continue to be implemented each
22 school year and may be updated as necessary. The department
23 shall provide lists of recommended teacher professional
24 development materials and opportunities for teachers and school
25 administrators regarding evidence-based reading instruction for

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1 students at risk for reading failure and displaying the
2 characteristics of dyslexia.

3 F. School districts and charter schools shall train
4 school administrators and teachers who teach reading to
5 implement appropriate evidence-based reading interventions.
6 School districts and charter schools shall train special
7 education teachers to provide structured literacy training for
8 students who are identified with dyslexia as a specific
9 learning disability and who are eligible for special education
10 services.

11 G. The department shall provide technical
12 assistance for special education diagnosticians and other
13 special education professionals regarding the formal special
14 education evaluation of students suspected of having a specific
15 learning disability, such as dyslexia.

16 H. The department shall adopt rules, standards and
17 guidelines necessary to implement this section."

18 SECTION 13. Section 28-16C-1 NMSA 1978 (being Laws 2021,
19 Chapter 53, Section 1) is recompiled as Section 22-36-1 NMSA
20 1978 and is amended to read:

21 "22-36-1. SHORT TITLE.--Sections 1 through 11 of [~~this~~
22 ~~act~~] Chapter 22, Article 36 NMSA 1978 may be cited as the
23 "Special Education Ombud Act"."

24 SECTION 14. Section 28-16C-2 NMSA 1978 (being Laws 2021,
25 Chapter 53, Section 2) is recompiled as Section 22-36-2 NMSA

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1 1978 and is amended to read:

2 "22-36-2. DEFINITIONS.--As used in the Special Education
3 Ombud Act:

4 A. [~~"council" means the developmental disabilities~~
5 ~~planning council~~] "department" means the public education
6 department;

7 B. "deputy secretary" means the deputy secretary of
8 special education;

9 [~~B.~~] C. "office" means the office of the state
10 special education ombud;

11 [~~C.~~] D. "parent" includes a legal guardian or
12 custodian who has custody and control of a student or an
13 individual who has legal authority to make educational
14 decisions on behalf of the student;

15 E. "secretary" means the secretary of public
16 education;

17 [~~D.~~] F. "state ombud" means the state special
18 education ombud; and

19 [~~E.~~] G. "student" means a public school student
20 receiving or seeking special education services."

21 SECTION 15. Section 28-16C-3 NMSA 1978 (being Laws 2021,
22 Chapter 53, Section 3) is recompiled as Section 22-36-3 NMSA
23 1978 and is amended to read:

24 "22-36-3. CREATION OF THE OFFICE OF THE STATE SPECIAL
25 EDUCATION OMBUD--GENERAL DUTIES OF THE OFFICE.--

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1 A. The "office of the state special education
2 ombud" is created within the ~~[council]~~ department.

3 B. The ~~[council]~~ secretary shall appoint the "state
4 special education ombud", who shall head the office and
5 supervise the ombuds and other staff of the office. The state
6 ombud may contract for services to assist the office in
7 conducting its duties and may use the services of volunteers.

8 C. The state ombud shall:

9 (1) identify, investigate and resolve concerns
10 pertaining to special education services that are filed with
11 the office by parents;

12 (2) assist students and parents in protecting
13 the educational rights of students, which may include assisting
14 students and parents in individualized education plan meetings
15 or other proceedings pursuant to the federal Individuals with
16 Disabilities Education Act;

17 (3) inform students and parents about special
18 education resources in their community;

19 (4) ensure that students and parents have
20 regular and timely access to the services provided through the
21 office and that students and parents receive timely responses
22 from representatives of the office;

23 (5) identify any patterns of concerns that
24 emerge regarding special education services and educational
25 rights and recommend strategies for improvement to the ~~[public~~

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1 ~~education department]~~ deputy secretary;

2 (6) ~~[collaborate with the public education~~
3 ~~department to]~~ ensure that all dispute resolution processes are
4 available to students and parents, including the special
5 education parent liaison, mediation, facilitated individualized
6 education program meetings, state complaint and investigations
7 and due process hearings;

8 (7) collaborate with the parent training
9 information centers and protection and advocacy agencies within
10 the state to identify and report systemic special education
11 issues to the ~~[public education]~~ department;

12 (8) ensure that office staff, contractors and
13 volunteers are trained in:

14 (a) federal, state and local laws, rules
15 and policies with respect to special education in the state;

16 (b) investigative techniques;

17 (c) dispute resolution; and

18 (d) such other matters as the office
19 deems appropriate;

20 (9) develop procedures for the certification
21 of ombuds. An employee or contractor shall not investigate a
22 concern filed with the office unless that person is certified
23 by the office;

24 (10) analyze, comment on and monitor the
25 development and implementation of federal and state laws, rules

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1 and other governmental policies and actions that pertain to the
2 educational rights of students with respect to the adequacy of
3 special education services in the state;

4 (11) recommend changes to laws, rules,
5 policies and actions pertaining to the special educational
6 rights of students as the office determines to be appropriate;

7 (12) facilitate public comment on proposed
8 laws, rules, policies and actions; and

9 (13) provide information to public and private
10 agencies, legislators and other persons regarding the problems
11 and concerns of special education services and make
12 recommendations related to those problems and concerns."

13 SECTION 16. Section 28-16C-4 NMSA 1978 (being Laws 2021,
14 Chapter 53, Section 4) is recompiled as Section 22-36-4 NMSA
15 1978 and is amended to read:

16 "22-36-4. ANNUAL REPORT--CONTENTS.--No later than
17 December 1 of each year, the office shall prepare a report for
18 the secretary and deputy secretary that includes:

19 A. actions taken by the office in the year for
20 which the report is prepared;

21 B. special education concerns identified by or on
22 behalf of students and parents, resolution of the concerns and
23 the effectiveness of the resolution processes;

24 C. recommendations for improving the quality of
25 special education services provided to students and protecting

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1 the educational rights of students; and

2 D. policy, regulatory and legislative
3 recommendations to solve identified concerns related to special
4 education, to improve processes of resolutions of concerns, to
5 improve the quality of services provided to students, to
6 protect the educational rights of students and to remove
7 barriers to education and educational services."

8 SECTION 17. Section 28-16C-6 NMSA 1978 (being Laws 2021,
9 Chapter 53, Section 6) is recompiled as Section 22-36-6 NMSA
10 1978 and is amended to read:

11 "22-36-6. ACCESS TO STUDENT EDUCATIONAL RECORDS.--Upon
12 request and with consent from the student or the student's
13 parent, the office shall have access to ~~[the]~~ a student's
14 educational records from the ~~[public education]~~ department, a
15 school district or a public school as necessary to carry out
16 the office's responsibilities."

17 SECTION 18. Section 28-16C-7 NMSA 1978 (being Laws 2021,
18 Chapter 53, Section 7) is recompiled as Section 22-36-7 NMSA
19 1978 and is amended to read:

20 "22-36-7. CONFIDENTIALITY OF INFORMATION.--

21 A. All files and records maintained by the office
22 that pertain to students are confidential and not subject to
23 the provisions of the Inspection of Public Records Act. The
24 state ombud shall not disclose the identity of a concerned
25 person or student about whom the office maintains files or

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1 records unless:

2 (1) the concerned person, student or parent
3 consents in writing to the disclosure;

4 (2) the concerned person, student or parent
5 gives oral consent that is documented immediately in writing by
6 a representative of the office. If the student is unable to
7 give oral consent, the student may give consent in any way that
8 the student is able to, and the consent shall also be
9 documented immediately in writing by a representative of the
10 office; or

11 (3) disclosure is ordered by a court.

12 B. The annual report required pursuant to Section
13 [~~4 of the Special Education Ombud Act~~] 22-36-4 NMSA 1978 may be
14 based on confidential information and may be published or
15 furnished to the public, but the report shall not identify
16 individual students directly or indirectly nor violate the
17 privileged or confidential nature of the relationship and
18 communications between the student and the office."

19 SECTION 19. Section 28-16C-8 NMSA 1978 (being Laws 2021,
20 Chapter 53, Section 8) is recompiled as Section 22-36-8 NMSA
21 1978 and is amended to read:

22 "22-36-8. CONFLICT OF INTEREST.--The [~~council~~] department
23 shall promulgate rules to ensure that:

24 A. a person or an immediate family member of that
25 person involved in the designation of an ombud does not have a

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1 conflict of interest;

2 B. an employee or a contractor of the office or an
3 immediate family member of the employee or contractor does not
4 have a conflict of interest; and

5 C. an ombud:

6 (1) does not have an ownership or investment
7 interest, represented by equity, debt or other financial
8 relationship, in a public school providing special education
9 services;

10 (2) is not employed by, or participating in
11 the management of, a public school providing special education
12 services; and

13 (3) does not receive, or have the right to
14 receive, directly or indirectly, remuneration in cash or in
15 kind under a compensation arrangement with a public school
16 providing special education services."

17 SECTION 20. Section 28-16C-10 NMSA 1978 (being Laws 2021,
18 Chapter 53, Section 10) is recompiled as Section 22-36-10 NMSA
19 1978 and is amended to read:

20 "22-36-10. AVAILABILITY OF LEGAL COUNSEL TO THE
21 OFFICE.--The [~~council~~] department shall ensure that adequate
22 legal counsel is available and is able, without conflict of
23 interest, to:

24 A. provide advice and consultation to the office
25 needed to protect the educational rights of students; and

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1 B. assist the office and contractors in the
2 performance of the official duties of the state ombud and
3 representatives."

4 **SECTION 21.** Section 28-16C-11 NMSA 1978 (being Laws 2021,
5 Chapter 53, Section 11) is recompiled as Section 22-36-11 NMSA
6 1978 and is amended to read:

7 "22-36-11. INTERFERENCE WITH THE OFFICE AND RETALIATION
8 PROHIBITED--POTENTIAL ACTIONS FOR NONCOMPLIANCE.--

9 A. A person shall not willfully interfere with the
10 lawful actions of the office.

11 B. A person shall not institute discriminatory,
12 disciplinary or retaliatory action against any student or
13 parent for filing a concern with, providing information to or
14 otherwise cooperating with the office.

15 C. If public school personnel or a contractor or
16 volunteer of a school district or charter school fails to
17 comply with the provisions of the Special Education Ombud Act:

18 (1) the ~~[council]~~ office shall report the
19 noncompliance to the ~~[public education]~~ department;

20 (2) the office shall collaborate with other
21 divisions of the ~~[public education]~~ department to access
22 processes and resources to address special education services
23 concerns; and

24 (3) the office shall collaborate with other
25 divisions of the ~~[public education]~~ department to identify

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1 further appropriate actions to be taken in response to the
2 report, which may include a corrective action plan or any other
3 administrative action that the [~~public education~~] department is
4 authorized to take to ensure that students receive the free and
5 appropriate public education required by the Individuals with
6 Disabilities Education Act and state law. The office shall
7 provide a letter to the concerned person explaining the actions
8 the [~~public education~~] department will take."

9 SECTION 22. RECOMPILATION.--Sections 28-16C-5 and
10 28-16C-9 NMSA 1978 (being Laws 2021, Chapter 53, Sections 5 and
11 9) are recompiled as Sections 22-36-5 and 22-36-9 NMSA 1978.