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## FISCAL IMPACT REPORT

SPONSOR Campos DATE TYPED 02/21/05 HB \_\_\_\_\_  
 SHORT TITLE Special Education Hearing Officer Payments SB 854  
 ANALYST Chabot

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			(See Narrative)		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General (AG)  
 Department of Finance and Administration (DFA)  
 New Mexico Public School Insurance Authority (NMPSIA)  
 Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

Senate Bill 854 adds a new section to Chapter 22, Article 13 NMSA 1978 to limit fees paid to hearing officers in special education due process hearings pursuant to the federal Individuals with Disabilities Education Act (IDEA) to a maximum of \$5 thousand, and PED is to pay the costs of the hearing officers instead of the districts and provide yearly training and support on case and time management to the hearing officers.

#### Significant Issues

AG states there is currently no ceiling to the compensation for hearing officers. A per-hour fee is applied to the total time spent on the case. The bill is “motivated by concern over escalating special education hearing costs. This may be a legitimate concern, but placing an arbitrary limit on hearing officers’ compensation may create further problems. Parties to such cases have a due process right to a hearing, the duration of which is not controlled solely by either party, and certainly not the hearing officer.” Should the hearing officer’s time extend beyond the time the \$5,000 would normally pay for, the hearing officer would either have to work free or cut short the case time. “The former would, be unpalatable to any hearing officer; and the latter would

probably be a breach of professional responsibility as it would almost certainly compromise one or more parties' due process right."

According to PED, the state special education rules (6.31.2.13(I)(17) NMAC) have required school districts to pay the costs of special education hearing officers. PED would have to assume this cost but has no method of estimating what it would be without surveying districts on average past expenditures. However, PED states that 24 out of 27 due process hearings had a median bill of \$11,400. These costs were based upon rates of \$100 per hour and the market rate is \$125-\$130 an hour paid for contract legal services arranged through the General Services Department Risk Management Division or the Public Schools Insurance Authority.

The department further states the cost of hearings is directly related to two issues: the number and complexity of the legal issues under IDEA and the adversarial methods used by attorneys in resolving the issues.

PED doubts a \$5,000 cap "would allow it to recruit and equip enough other lawyers with the level of expertise required to decide an IDEA case on sound legal and procedural grounds before a possible searching review in federal court...."

PED also points out "changes in the 2004 reauthorization of the IDEA will limit the issues that can be raised in due process hearing filed after July 1, 2005."

PED reports it provides "one or two days of specialized training for hearing officers every 12 to 18 months." In addition, this year, professional development training will be provided in April and May 2005. The May session is the 26<sup>th</sup> Annual Institute on Legal Problems of Educating Individuals with Disabilities on "How to Become a More Efficient, More Effective Hearing Officer."

PSIA states hearing officer fees in FY04 ranged from "a low of \$212 to a high of \$16,436; the average hearing officer payment for FY04 was \$5,832." The agency supports efforts to reduce these costs.

## **FISCAL IMPLICATIONS**

PED and DFA assess this bill will require PED to assume costs for hearing officers on IDEA which is not included in the operating budget.

## **ALTERNATIVES**

AG suggests "existing administrative oversight of the hearing process by PED, which already exists, might be as effective an approach to this problem as a legislative action.

## **POSSIBLE QUESTIONS**

1. What is the average cost of hearing officer fees?
2. Will fees vary by district?
3. What will be the estimated cost to PED to assume payments for hearing officers in IDEA cases?