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FISCAL IMPACT REPORT

ORIGINAL DATE 1/24/08
LAST UPDATED 2/08/08 **HB** _____

SPONSOR Nava

SHORT TITLE Educational Due Process Reimbursements Cap **SB** 145/aSEC/aSFC

ANALYST Haug/Escudero

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

Public School Insurance Authority (PSIA)

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee Amendment strikes the appropriation.

Synopsis of SEC Amendment

The Senate Education Committee amendment adds language requested by the New Mexico Public School Insurance Authority (PSIA) which permits the PSIA to determine the amount of money available for due process reimbursements prior to the beginning of each fiscal year and how the money will be distributed to the school districts and charters. The PSIA was concerned that the amount left for member districts, after taking out the share of nonmember Albuquerque Public School, would require the PSIA to deficit-spend if PSIA's risk fund budget in HB 3 was not sufficient to cover the claims made. The amendment gives PSIA more control over the coverage extended.

The amendment provides administrative direction on the process of submitting and payment of due process reimbursement claims. The PSIA memorandum of coverage will outline the claim submission process for districts and charters to seek reimbursement of IDEA due process hearing

costs. It also allows the PSIA to reimburse on a percentage share when funds are not sufficient to cover the IDEA costs up to the maximum reimbursement of \$100,000.

Synopsis of Original Bill

Senate Bill 145 amends 22-29-2 NMSA 1978, adding to the purpose clause of the Public School Insurance Authority Act language to include reimbursement for costs incurred by member schools associated with due process hearings for students with disabilities.

The bill amends 22-29-12 NMSA 1978, adding “member” to qualify districts from whom PSIA is authorized to collect the due process reimbursement premium and lowering the maximum payment per claim from \$150,000 to \$100,000.

Senate Bill 145 appropriates \$1,500.0 from the general fund to the state equalization guarantee distribution to fund the cost of due process reimbursement insurance coverage.

FISCAL IMPLICATIONS

The appropriation of \$1,500.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2009 shall not revert to the general fund.

SIGNIFICANT ISSUES

According to the PED, in a report dated December 12, 2005, the PED reported to the LESC the results of its survey of due process costs experienced by the districts. For the school year previous to the survey, total due process hearing (DPH) costs for all districts reporting were \$1,245,983. During the three years surveyed, total DPH costs per year ranged from \$270,000 for Albuquerque Public Schools to \$479 for Chama Valley Independent Schools. Twenty-two districts reported experiencing DPH costs but only eight reported experiencing DPH costs each year of the three-year survey period. In the 2004-2005 school year, there were only five due process hearing requests; there were 39 in the 2005-2006 school year; and there were 20 in the 2006-2007 school year.

Further, PED notes that since State Equalization Guarantee (SEG) funding is non-categorical, there will be no way to determine whether or not the funding appropriated by this bill is actually spent on due process reimbursement insurance coverage. In addition, the appropriation could potentially increase the program unit value under the funding formula.

The PSIA states:

The appropriation level of \$1.5 million is included in the insurance costs portion of the Public School support figure. Since this flows through to all districts, APS will receive approximately 35% of the appropriation. This would leave \$975,000 flowing to PSIA member districts.

At the same time, PSIA’s risk fund budget in HB3 will have to be increased by \$975,000 so it can collect premium from its members to cover potential claims. If claims are filed for more than \$975,000, PSIA will have to deficit spend. This problem could be solved by adding the language suggested in the Amendments section below.

PSIA asserts that the word “member” is added to clearly exclude Albuquerque Public Schools.

PERFORMANCE IMPLICATIONS

The PED states that this bill has implications with regard to the State Performance Plan (SPP) required by the federal IDEA, which provides for indicators relating to, among others, due process hearings being fully adjudicated within the 45-day or properly extended timeline and due process requests being resolved by resolution session settlement agreements. The Special Education Bureau must file an Annual Performance Report with the federal Education Department based on the indicators in the SPP.

TECHNICAL ISSUES

PSIA proposes the following amendment to address significant issues discussed above.

Page 2, line 12, add: “Prior to each fiscal year the authority shall determine the amount of funds available for special education due process reimbursement in the risk fund. The authority shall set forth in its general liability memorandum of coverage provisions for distribution to its members of that amount, including the process by which members shall submit claims for reimbursement prior to the end of the fiscal year, and the method for distributing the available funds to members on a pro rata basis if funds are not sufficient to cover all claims.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

PSIA states that since no appropriation exists in the current language, PSIA will bill member districts sufficient premium to provide \$150,000 reimbursement, and the districts will continue to have to carry the financial burden of paying for DPH costs from available sources.

GH/PME:bb