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## FISCAL IMPACT REPORT

**SPONSOR** Trujillo, CH                      **ORIGINAL DATE** 2/15/17  
**LAST UPDATED** 3/14/17                      **HB** 354/aHEC

**SHORT TITLE** Expand "School-Age Person" Definition                      **SB** \_\_\_\_\_

**ANALYST** Liu

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$0.0 - \$7,018.1	\$0.0 - \$7,018.1	\$0.0 - \$14,036.3	Recurring	Public School Budgets

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB323

### SOURCES OF INFORMATION

LFC Files  
 Legislative Education Study Committee (LESC) Files

Responses Received From  
 Public Education Department (PED)  
 Central New Mexico Community College (CNM)

### SUMMARY

#### Synopsis of HEC Amendment

The House Education Committee amendment to House Bill 354 expands the definition of "qualified student" in the Public School Finance Act to include public school students who are less than five years of age and participating in kindergarten as part of an academic acceleration program. The amendment would make these gifted education participants eligible for program unit generation in the public school funding formula.

Synopsis of Original Bill

House Bill 354 amends the Public School Code definition for “school-age person,” allowing students qualifying for gifted education services to begin kindergarten early as part of an academic acceleration program. The bill adds provisions for school districts offering a gifted program, requiring these districts to consider additional support services, adopt an acceleration policy, allow accelerated- or dual-credit options to count toward graduation, and ensure special education and related services are provided for qualified disadvantaged and disabled gifted students.

**FISCAL IMPLICATIONS**

The bill does not make an appropriation. Any additional costs of evaluating the potential needs of gifted students would be borne by school districts. Given approximately 2.4 percent to 6 percent of the student population is estimated have intellectual abilities two standard deviations above the mean or be identified as gifted, between 8,000 and 20,000 students statewide may need to be considered under provisions of this bill. According to PED, in the 2015-2016 school year there were 14,891 students, or 4.5 percent of the student population in New Mexico, identified as being gifted.

The bill allows gifted students early entrance into kindergarten, which could increase the number of program units generated in the public school funding formula. Assuming the FY17 kindergarten cohort grew by 4.5 percent, an additional 1,225 students would have been eligible for funding. Using the FY17 final unit value of \$3,979.63 and unit factor of 1.44, the fiscal impact of these additional units is estimated at up to \$7 million. The LESC analysis assumes half of eligible students enroll and a unit factor of 2 program units and estimates the fiscal impact will be closer to \$5 million at the FY17 final unit value.

PED notes the cost of providing social work and occupational therapy services cannot be determined at this time. Ancillary or related services do not have caseload minimums or maximums so the cost to the state or school districts due to the increase in ancillary Full-time Equivalent (FTE) is unknown since these decisions are made through the student’s Individualized Education Program (IEP) team. Transportation costs for districts may increase if gifted students need to be transferred to other schools for accelerated study. Additionally, the bill requires school level Student Assistance Teams (SAT) to make acceleration decisions for students considered advanced but do not qualify for gifted services. The cost of assessing these students and providing programs for them cannot be determined. It is unclear if students identified as advanced would generate units under the funding formula or if school districts would be responsible for covering that cost.

CNM notes higher education institutions may experience increased costs associated with offering additional dual-credit courses.

**SIGNIFICANT ISSUES**

PED offers the following analysis:

Since giftedness is considered an exceptional program and not a part of the federal Individuals with Disabilities Education Act (IDEA) unless a student who

is gifted has a disability under the IDEA, the federal term Free Appropriate Public Education (FAPE) does not apply to students who are gifted only in New Mexico. Instead, state special education rules for gifted education determine what procedures and programmatic standards apply as an “appropriate” free public school education for students who are gifted. The student’s IEP team is responsible for determining what is appropriate for the student who is gifted and some of the requirements in HB354 may or may not be appropriate.

HB354 requires school districts to develop academic acceleration policies such as skipping grades, facilitated enrollment in concurrent high school and college credit courses and credit for demonstrated mastery of subject matter. All of these provisions are currently allowed and are decisions to be made for individual students through the IEP team.

HB354 requires school districts to develop academic acceleration policies that require inclusiveness of all students, including those with disabilities, language differences and socioeconomic differences. This provision is already included in Subsection E(2) of 6.31.2.12 NMAC which allows for alternative methods of identification for giftedness due to the student’s cultural background, linguistic background, socioeconomic status or disability condition(s). This would be duplicative of current state law.

HB354 requires school districts to develop procedures for appeal and due process. Under Subsection F of 6.31.2.12 NMAC, procedural safeguards, which include formal state level complaints, due process hearings, and alternative dispute resolution, are already allowable. This would be duplicative of current state law.

If a student meets the eligibility requirements under IDEA they would be eligible for twice exceptional eligibility and all of the procedural safeguards under the IDEA would apply. This has already been established through guidance manuals. See the *Gifted Technical Assistance Manual*:

<http://ped.state.nm.us/ped/RtIdocs/GiftedTAManual.pdf>

According to a 2010 Journal of Advanced Academics study, “both grade-based and content-based acceleration are effective interventions in academic and social-emotional domains for high-ability students. Grade-accelerated students generally outperform their chronologically older classmates academically, and both groups show approximately equal levels of social and emotional adjustment.” The study noted there was no evidence that acceleration had a negative effect on a student’s social-emotional development and recommended the following framework for acceleration options:

**Content-based acceleration**

- Single-subject acceleration, in which a student is temporarily transferred to a higher grade level for one subject area such as math, but returns to take all other grade level courses;
- Curriculum compacting, in which a student engages in advanced content or skill development in a specific area while remaining in the regular classroom;
- Dual enrollment, in which students enroll in higher level coursework;
- Credit by examination or prior experience, in which a student’s instruction entails reduced amounts of introductory material based on preassessment of the student’s

mastery;

- Advanced placement programs, which allow students to earn university credit based on exams; and
- International baccalaureate programs, which allow students to take corresponding university curricula and complete international exams.

**Grade-based acceleration**

- Early entrance to school, typically early entrance to kindergarten or first grade, which shortens the wait time to start school;
- Whole-grade acceleration, commonly known as “grade skipping,” where a student is placed in a grade above the subsequent grade the following year;
- Grade telescoping, in which a group of advanced students is accelerated through more than one year’s curriculum in one year for all academic areas; and
- Early entrance to college; in which a student receives an early diploma or enrolls in a college program early.

In 2015, the Elementary and Secondary Education Act was revised and reauthorized as the Every Student Succeeds Act (ESSA), which now includes several provisions to support gifted students. ESSA signifies the first time that the U.S. Congress makes clear Title I funds may be used to identify and serve gifted students. It also requires states and school districts to specify how they will use such funds to train teachers to identify and meet these students’ academic needs. This legislation replaces No Child Left Behind and effectively shifts the bulk of involvement and authority in public schools from the federal government to states and local school districts.

Provisions of ESSA require states to include student achievement data at each achievement level that is disaggregated by student subgroup. Previously, states provided detailed information for students performing at the proficient level and below. Now, states also will have to include information on students achieving at the advanced level. In applying for Title II professional development funds, states must include information about how they plan to improve the skills of teachers and other school leaders that will enable them to identify gifted and talented students and provide instruction based on the students’ needs. For the first time, ESSA specifically notes that districts may use Title I funds to identify and serve gifted and talented students. In FY15, New Mexico local education agencies received \$112.6 million in Title I funds and \$17 million in Title II funds.

**PERFORMANCE IMPLICATIONS**

Provisions of the bill may affect performance measures related to graduation rates and student proficiency.

**ADMINISTRATIVE IMPLICATIONS**

Provisions of the bill require school districts offering a gifted education program to:

1. Consider the potential need for social work, transportation, and occupational therapy services;
2. Include procedures for appeal and due process and safe reversion of placement if the acceleration is ineffective; and
3. Provide special supports for disadvantaged and disabled students who are also identified as gifted.

PED would need to notify school districts and charter schools regarding the changes to the public school code and the requirements to develop policies and procedures regarding ancillary and transportation services, acceleration programs, special supports for disadvantaged and disabled youth and the acceptance of accelerated credit or college credit towards graduation from the student's home school for students who are gifted or advanced.

## **RELATIONSHIP**

This bill relates to SB323, which allows early enrollment in kindergarten for children who turn five years old between September 1 and December 15 and demonstrate kindergarten readiness.

## **TECHNICAL ISSUES**

PED recommends on page 8, line 6, replacing the word “plan” with “program” to align terminology with state and federal laws.

## **OTHER SUBSTANTIVE ISSUES**

Established in 1988 and reauthorized in ESSA, the Jacob Javits Gifted Education Program remains the only federal program focused on gifted education, with \$12 million included in the FY17 budget. The Javits program funds applied or classroom-based research to help develop effective strategies for identifying and serving high-potential students from populations that have historically been underrepresented in gifted education. Institutions of higher education, local education agencies, nonprofit organizations, tribal entities, and state education agencies are eligible to apply for funds. New Mexico did not receive any Javits program funding in FY14 or FY15.

According to 6.31.2.12 NMAC, “gifted child” means a school-age person whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking meets the following eligibility criteria:

- “Intellectual ability” means a score two standard deviations above the mean as defined by the test author on a properly administered intelligence measure. The test administrator must also consider the standard error of measure in the determination of whether or not criteria have been met in this area.
- “Subject matter aptitude/achievement” means superior academic performance on a total subject area score on a standardized measure, or as documented by information from multiple other sources.
- “Creativity/divergent thinking” means outstanding performance on a test of creativity/divergent thinking, or in creativity/divergent thinking as documented by information from multiple other sources.
- “Problem-solving/critical thinking” means outstanding performance on a test of problem-solving/critical thinking, or in problem-solving/critical thinking as documented by information from multiple other sources.
- For students with “factors” as such as cultural background, socioeconomic status, or disability condition(s), the impact of these factors shall be documented and alternative methods will be used to determine the student's eligibility.

A properly constituted individualized education program (IEP) team will determine that special education services are required to meet the child’s educational needs.

According to the PED Gifted Education in New Mexico – Technical Assistance Manual, state special education rules apply to gifted students with a few exceptions. The list below summarizes the key points of those exceptions.

- Since giftedness (only and not in the presence of another disability under the federal Individuals with Disabilities Education Act, or IDEA) is not a disability category recognized under the IDEA, the federal term “free and appropriate education (FAPE)” does not apply to students who are gifted in New Mexico. That is because although state rules for developing an “appropriate” IEP for students who are gifted contain many of the same required elements, some of the IDEA’s substantive requirements are specifically exempted by state special education rule. In other words, students who are gifted only are not entitled to a FAPE as defined by the IDEA. Instead, state special education rules for gifted education determine what procedures and programmatic standards apply as an “appropriate” free public school education for students who are gifted.
- The public agency responsibilities set forth in 6.31.2.9 NMAC do not apply to gifted education programs.
- “Child Find” as required by the IDEA does not apply. Instead, child find for bright and/or potentially gifted students is a locally-determined procedure conducted through the state’s Response to Intervention (RtI) framework procedures that all schools must implement.
- Identification and evaluation procedures for gifted education are different than they are for students with disabilities. Instead, state rules for gifted education set forth specific identification, evaluation, and eligibility methods.
- The 60-day initial evaluation timeline and the three-year reevaluation requirement does not apply to students who are gifted only. Instead, districts and charter schools must develop their own written, local policy for a gifted initial evaluation/reevaluation timeline system.
- Rules for educational services as provided in 6.31.2.11 NMAC do not apply to students who are gifted only and in state-supported schools, private schools, correction and detention centers, or schooled at home.
- While behavior planning and management is a required IEP component, as necessary, for a student who is gifted, the IDEA requirements for suspensions, expulsions, and disciplinary changes of placement do not apply. Instead, requirements apply under the state’s Student Rights and Responsibilities Act in 6.11.2 NMAC for students without disabilities.
- Transition planning as required by the IDEA does not apply to students who are gifted. Instead, this need for students who are gifted is addressed through the Next-Step Plan procedures found in state statute at Subsection B of 22-13-1.1 NMSA 1978.

According to a 2006 National Education Association report, there are approximately 3 million academically gifted children in grades K-12 in the United States, comprising approximately 6 percent of the total school population. In the 2000–2001 school year, there were nearly 6 million students aged 6–21 served under IDEA. When these pieces of data are overlapped, it is reasonable to estimate that a comparable percentage (approximately 6 percent) of the students served by IDEA may also be academically gifted. It is also reasonable to assume that every school has twice-exceptional students whose unique learning needs must be met. Twice-

exceptional individuals are found within every socioeconomic, cultural, racial, and ethnic population and are present in most school classrooms. Regrettably, no federal agency or organization collects these student statistics resulting in a lack of available empirical prevalence data.

CNM notes asymmetrical development in areas of intelligence and emotional maturity could potentially lead to conflict and college success issues with younger gifted students who are thrust into a college atmosphere at too young an age. CNM cites a 1984 study by Roedell where, “adults, expecting social maturity to match high level intellectual development, may label a highly articulate, logical child as a behavior problem when he or she exhibits an age-appropriate tantrum.”

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