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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

Bill Number	<u>HB237</u>	Sponsor	<u>Maestas/Dow</u>
Tracking Number	<u>.218422.3</u>	Committee Referrals	<u>HHHC/HEC</u>
Short Title	<u>Public & School For The Deaf Cooperation</u>		
Analyst	<u>Hoxie</u>	Original Date	<u>2/16/2021</u>
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BILL SUMMARY

Synopsis of Bill

House Bill 237 (HB237) amends the New Mexico School for the Deaf Act, NMSA 1978 to clarify that the New Mexico School for the Deaf (NMSD) may provide services to deaf and hard-of-hearing students attending public schools, expands permissible expenditures by the board of regents to include undergraduate collegiate expenses for deaf student graduates of New Mexico schools rather than restricting those expenditures to graduates from NMSD.

HB237 removes sole authority of the president of the board to approve all agreements and contracts entered in by NMSD and replaces the authority of the president with language to allow the superintendent with approval of the board, to oversee all agreements and contracts. HB237 adds a new section to the Public School Code requiring the Public Education Department (PED) to hire a deaf services coordinator to work with deaf or hard-of-hearing students enrolled in public schools, it is unclear if the bill gives PED authority over deaf education in New Mexico through the creation of this new position and the requirement for greater coordination between PED and NMSD.

HB237 amends the Deaf and Hard-of-Hearing Children's Educational Bill of Rights adding a provision to require an "equal education" for all deaf and hard-of-hearing students regardless of the school they attend.

FISCAL IMPACT

HB237 does not contain an appropriation.

The NMSD receives 22 percent of its revenue from a general fund appropriation from the Legislature, 72 percent of its revenue from the land grant permanent fund, and 6 percent from other revenue sources. NMSD does not receive any funds through the public school funding formula. NMSD's FY21 appropriation was \$18.7 million.

HB327 requires PED to hire a “deaf services coordinator.” The New Mexico Commission for the Deaf and Hard-of-Hearing notes the broad skillset required to fill this role and the cost associated with hiring FTE are indeterminable.

HB327 page 2 line 16 states NMSD “shall not charge public schools when participating in the development of individualized educational plans for deaf or hard-of-hearing students or providing student evaluation or student observations.” NMSD currently provides services for free to public schools on a consultation basis. However, this provision would limit NMSD from entering any intergovernmental agreements in the future. One example provided of an intergovernmental agreement with PED provides for American Sign Language classes for public school staff for a minimum charge.

HB237 would also allow the NMSD board of regents to make expenditures for undergraduate collegiate expenses of deaf students who graduated from any New Mexico school. Under current law, NMSD is only allowed to provide funding for undergraduate collegiate expenses for graduates of NMSD. The financial impact of this eligibility expansion is unclear; for example, in 2019, approximately 2 high seniors graduated from the Albuquerque Sign Language Academy, a charter school in Albuquerque that primarily serves deaf and hard-of-hearing students. If enacted, the bill could place pressure on NMSD to fund the college expenses of these students.

SUBSTANTIVE ISSUES

Background on New Mexico School Deaf (NMSD). NMSD is established under the Article XII, Sections 11, 12 and 13 of the New Mexico Constitution. NMSD is established to provide educational support services to New Mexico’s deaf and hard-of-hearing students as a state educational institution. Under the Enabling Act, NMSD is designated a beneficiary of the land grant permanent fund. Pursuant to the terms of the Enabling Act, if the lands or money derived from the land grant permanent fund are used for something other than the named purpose, which is the operation and maintenance of NMSD, it could be viewed as a violation of the trust. The first paragraph of Section 10 of the Enabling Act notes all lands granted to New Mexico must be held in trust by the state, to be disposed of only in a manner as provided for in the Enabling Act which in this case is for NMSD. Additionally, Article XII, Section 10 of the New Mexico constitution notes all monetary proceeds of any of the lands and products must be held in trust for the institutions specified.

According to the New Mexico State Investment Council, the land grant permanent fund is one of the largest funds of its kind in the country, and every year provides over three-quarters of a billion dollars in benefits to the state’s public schools, universities, and other beneficiaries, including NMSD. The land grant permanent fund has evolved and grown over time due to revenue from leases and royalties produced by non-renewable natural resources in New Mexico and income from returns on invested capital. The State Investment Council noted NMSD’s land grant permanent fund ownership was 1.7 percent, as a beneficiary of the fund.

Deaf Services Coordinator. HB237 adds a new section to the Public School Code requiring PED to hire a deaf services coordinator to work with the deaf and hard-of-hearing students enrolled in public schools. The deaf services coordinator will:

- Oversee the equitable distribution of resources to all deaf and hard-of-hearing students statewide;
- Document and compile data on all deaf and hard-of-hearing students attending public schools;

- Compile data on teachers who are deaf, hard-of-hearing, or fluent in American sign language;
- Study the current findings for deaf and hard-of-hearing students to make recommendations on strategies to make the education system more equitable for deaf and hard-of-hearing students; and
- Propose a mechanism to provide extra funding for deaf and hard-of-hearing students.

Through the creation of deaf services coordinator position, it appears the bill provides PED authority to oversee education for deaf and hard-of-hearing students' statewide, potentially vesting control in PED over NMSD. It is unclear if New Mexico's Enabling Act allows PED to have authority over the School for the Deaf. Additionally, NMSD notes that equitable resources for students is determined for individual students through the Individualized Education Plan (IEP) process required by federal law and determined locally by a student's IEP team. NMSD notes a system to ensure equitable resources is already established and carefully monitored by PED through the IEP process.

PED notes the Special Education Division currently employs an education administrator whose duties include many of those detailed in HB237 related to services for deaf and hard-of-hearing students. Both the Special Education Division and education administrator work in collaboration with NMSD on a variety of activities including: technical assistance document in educational interpreting; Deaf Education Bill of Rights; and coordination of the Deaf Education Task Force.

The New Mexico Commission for the Deaf and Hard-of-Hearing notes many of the responsibilities of the deaf services coordinator established by HB237 are already overseen by both NMSD, PED, and the Department of Health.

HB 237 does not appropriate funding to PED to hire a deaf services coordinator.

Public School Support. By requiring greater coordination between NMSD and public schools, HB237 appears to ensure equal education is provided for all deaf and hard-of-hearing students regardless of the school they attend. NMSD notes there are approximately 560 preschool through 12th grade children who are deaf or hard-of-hearing in the state. NMSD serves deaf and hard-of-hearing children through services provided at NMSD campus locations or through a continuum of services provided in cooperation with public schools and charter schools. NMSD's Santa Fe campus, which offers the most comprehensive services, is available to all deaf and hard-of-hearing students.

During the 2020-2021 school year, NMSD reports 140 students enrolled as day students, taking classes at NMSD's Santa Fe campus. Therefore, the majority of deaf and hard-of-hearing students receiving services from NMSD are enrolled in public schools or charter school statewide. PED notes NMSD does not charge for outreach services to public schools except for some joint power agreements with school districts for preschool services and minimal fees for public school staff participation in American Sign Language classes. Services provided to public schools and charter schools for students and supports for educational team members who work with them by the NMSD statewide center for educational consolation and training program include: IEP attendance, school-based observations, demonstration lessons, program specific workshops, and student specific workshops and trainings. The below chart shows historic data of students served by NMSD.

New Mexico School for the Deaf Programs					
	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Albuquerque, Farmington, Las Cruces and Gallup Preschools	30	35	34	36	32
Santa Fe Campus Preschool-12th grade	130	140	143	145	149
Early Intervention and Developmental Services Birth- age 6 statewide	266	259	258	261	287
Educational Consultation and Training ¹	248	275	249	191	253
Total Deaf and Hard of Hearing Students Served	674	709	684	633	721

1. Students are enrolled in their home districts and charter schools statewide preschool-12th grade

Source: NMSD

Board of Regents Constitutional Challenges. HB237 could be considered impermissible interference with the constitutionally created NMSD board of regents, which has exclusive control and management over the expenditure and disbursement of funds received by NMSD from sources other than the Legislature. NMSD notes 78 percent of funds are derived from sources other than the Legislature. Article XII, Section 13 of the New Mexico Constitution notes the New Mexico Legislature manages state institutions through a board of regents. The Office of Attorney general notes that while HB237 makes providing of services to public schools permissible rather than mandatory, it may still appropriate money for services to entities other than the constitutional purpose of establishing and managing funds for NMSD. For example, if NMSD is directed to allocate any resources in a manner not directed by the board of regents, it may present a constitutional challenge since the board of regents for NMSD has exclusive control and management over the expenditure and distribution of funds received by NMSD.

The Office of the Attorney General notes HB237 requires out of state students pay the cost of tuition. Tuition represents the cost of instruction which contradicts Section 21-6-2 NMSA 1978 which requires all instruction to be free.

ADMINISTRATIVE IMPLICATIONS

HB237 adds a new section to the Public School Code requiring PED to hire a deaf services coordinator to work with the deaf or hard-of-hearing students enrolled in public schools. Because one of the responsibilities of the coordinator is to study funding for deaf and hard-of-hearing students in the 2021 and 2022 calendar years, PED would likely need to hire a deaf services coordinator early in FY22.

NMSD and PED may see increased administrative needs resulting from HB237 collaboration requirements.

TECHNICAL ISSUES

HB237 may provide conflicting provisions for the oversight of contracts entered into by NMSD. On page 3, line 3, HB237 states the board of regents may contract with the veterans’ administration

and the vocational rehabilitation division of PED; however, this conflicts with a provision on page 4, line 2 of the bill which grants the superintendent the authority to enter into contracts with approval of the board of regents.

“President” is replaced by “superintendent” throughout the body of the bill but is not changed in the bill’s title.

OTHER SIGNIFICANT ISSUES

Page 2, line 11 of HB237 amends Section 21-6-2 NMSA 1978 to specify that students who are over the age of majority may only be admitted to the school as day students. Section 22-6-1 NMSA 1978 defines “age of majority” as 18 years old. NMSD notes that this will impact students from very rural communities in New Mexico who attend the school as residential students. According to NMSD, there are eight students – or 12 percent of NMSD total residential body - who are over 18-years-old that are current residential students that will be precluded from living on campus of the bill is enacted.

Equal Education. HB237 amends the Deaf and Hard-of-Hearing Children’s Educational Bill of Rights to ensure an “equal education is provided for all deaf and hard-of-hearing students regardless of the school they attend.” It is unclear how the bill intends “equal education” to be interpreted, as there is no definition of the term. This provision appears to have the goal of “equalization” of public funding. The NMSD notes if PED were mandated to provide “equal” services, or the same services, to every child, the cost would either be prohibitive or services would be diluted.

NMSD notes the Individuals with Disabilities Education Act, the federal law that governs special education, requires students be provided a public education in the least restrictive environment. Diverting funding from NMSD may interfere with student’s access to a free appropriate public education in the least restrictive environment.

Services for Students from Birth to 6 Years Old. NMSD notes there are approximately 180 children age 0- to 3-years-old who are deaf or hard-of-hearing in New Mexico. The Early Childhood Education and Care Department (ECECD) notes children who may be deaf, hard-of-hearing, or may have a delay related to their hearing and language participate in programs administered by ECECD. The NMSD maintains a role within the family, infant and toddler program (FIT), which provides for the delivery of early intervention services to children with developmental delays and disabilities aged birth to 3 years old and their families. NMSD is a FIT early intervention provider, supporting children statewide who are deaf or hard-of-hearing, ranging from birth to 3-years-old. The ECECD notes children participating in prekindergarten, head start programs, and child care programs are given a hearing assessment and are referred for further evaluation if there is a concern.

During the 2019-2020 school year, NMSD deaf mentor and parent infant child programs conducted 4,602 home visits through the Early Interventions and Developmental Services Department:

- Direct early intervention services were provided to 287 children ages birth to 6-years-old;
- Hearing screenings were conducted for 1,200 children at child finds, head start programs, FIT programs, and health fairs; and
- Early childhood community members were served through trainings, workshops, consultations, and conference presentations.

- **SOURCES OF INFORMATION**
- LESC Files
- Office of the Attorney General
- New Mexico School for the Blind and Visually Impaired
- Commission for the Deaf and Hard of Hearing
- New Mexico School for the Deaf
- Public Education Department

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