

SENATE EDUCATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 289

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO PUBLIC EDUCATION; CREATING A DIVISION IN THE PUBLIC
EDUCATION DEPARTMENT TO FOCUS ON SPECIAL EDUCATION; CREATING
THE SPECIAL EDUCATION ACT; PROVIDING POWERS AND DUTIES;
CHANGING DEFINITIONS; REQUIRING ACCOUNTABILITY; AMENDING,
REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978;
MAKING AN APPROPRIATION.

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

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

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

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

(1) the administrative services division;

.219115.4

underscoring material = new
[bracketed material] = delete

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

17 B. The secretary may organize the department and
18 divisions of the department and may transfer or merge functions
19 between divisions and bureaus in the interest of efficiency and
20 economy."

21 SECTION 2. Section 22-1-2 NMSA 1978 (being Laws 2003,
22 Chapter 153, Section 3, as amended by Laws 2019, Chapter 206,
23 Section 1 and by Laws 2019, Chapter 207, Section 1) is amended
24 to read:

25 "22-1-2. DEFINITIONS.--As used in the Public School Code:
.219115.4

underscoring material = new
[bracketed material] = delete

1 A. "academic proficiency" means mastery of the
2 subject-matter knowledge and skills specified in state academic
3 content and performance standards for a student's grade level;

4 B. "charter school" means a school authorized by a
5 chartering authority to operate as a public school;

6 C. "commission" means the public education
7 commission;

8 D. "department" means the public education
9 department;

10 E. "home school" means the operation by the parent
11 of a school-age person of a home study program of instruction
12 that provides a basic academic educational program, including
13 reading, language arts, mathematics, social studies and
14 science;

15 F. "instructional support provider" means a person
16 who is employed to support the instructional program of a
17 school district, including educational assistant, school
18 counselor, social worker, school nurse, speech-language
19 pathologist, psychologist, physical therapist, occupational
20 therapist, recreational therapist, marriage and family
21 therapist, interpreter for the deaf and diagnostician;

22 G. "licensed school employee" means teachers,
23 school administrators and instructional support providers;

24 H. "local school board" means the policy-setting
25 body of a school district;

.219115.4

1 I. "local superintendent" means the chief executive
2 officer of a school district;

3 J. "parent" includes a guardian or other [~~person~~
4 ~~having custody and control of a school-age person~~] adult who
5 stands in loco parentis as to the student's schooling;

6 K. "private school" means a school, other than a
7 home school, that offers on-site programs of instruction and
8 that is not under the control, supervision or management of a
9 local school board;

10 L. "public school" means that part of a school
11 district that is a single attendance center in which
12 instruction is offered by one or more teachers and is
13 discernible as a building or group of buildings generally
14 recognized as either an elementary, middle, junior high or high
15 school or any combination of those and includes a charter
16 school;

17 M. "school" means a supervised program of
18 instruction designed to educate a student in a particular
19 place, manner and subject area;

20 N. "school administrator" means a person licensed
21 to administer in a school district and includes school
22 principals, central district administrators and charter school
23 head administrators;

24 O. "school-age person" means a person who is at
25 least five years of age prior to 12:01 a.m. on September 1 of

1 the school year, who has not received a high school diploma or
2 its equivalent and who has not reached the person's twenty-
3 second birthday on the first day of the school year and meets
4 other criteria provided in the Public School Finance Act;

5 P. "school building" means a public school, an
6 administration building and related school structures or
7 facilities, including teacher housing, that is owned, acquired
8 or constructed by the school district as necessary to carry out
9 the functions of the school district;

10 Q. "school bus private owner" means a person, other
11 than a school district, the department, the state or any other
12 political subdivision of the state, that owns a school bus;

13 R. "school district" means an area of land
14 established as a political subdivision of the state for the
15 administration of public schools and segregated geographically
16 for taxation and bonding purposes;

17 S. "school employee" includes licensed and
18 nonlicensed employees of a school district;

19 T. "school principal" means the chief instructional
20 leader and administrative head of a public school;

21 U. "school year" means the total number of contract
22 days offered by public schools in a school district during a
23 period of twelve consecutive months;

24 V. "secretary" means the secretary of public
25 education;

.219115.4

1 W. "state agency" or "state institution" means the
2 New Mexico military institute, New Mexico school for the blind
3 and visually impaired, New Mexico school for the deaf, New
4 Mexico boys' school, girls' welfare home, New Mexico youth
5 diagnostic and development center, Sequoyah adolescent
6 treatment center, Carrie Tingley crippled children's hospital,
7 New Mexico behavioral health institute at Las Vegas and any
8 other state agency responsible for educating resident children;

9 X. "state educational institution" means an
10 institution enumerated in Article 12, Section 11 of the
11 constitution of New Mexico;

12 Y. "student" means a school-age person enrolled in
13 a public school;

14 ~~[Y.]~~ Z. "substitute teacher" means a person who
15 holds a certificate to substitute for a teacher in the
16 classroom; and

17 ~~[Z.]~~ AA. "teacher" means a person who holds a level
18 one, two or three-A license and whose primary duty is classroom
19 instruction or the supervision, below the school principal
20 level, of an instructional program or whose duties include
21 curriculum development, peer intervention, peer coaching or
22 mentoring or serving as a resource teacher for other teachers

23 ~~[AA. "certified school instructor" means a licensed~~
24 ~~school employee; and~~

25 ~~BB. "certified school employee" or "certified~~

1 ~~school personnel" means a licensed school employee]."~~

2 SECTION 3. A new section of the Public School Code,
3 Section 22-13E-1 NMSA 1978, is enacted to read:

4 "22-13E-1. [NEW MATERIAL] SHORT TITLE.--Chapter 22,
5 Article 13E NMSA 1978 may be cited as the "Special Education
6 Act"."

7 SECTION 4. A new section of the Public School Code,
8 Section 22-13E-2 NMSA 1978, is enacted to read:

9 "22-13E-2. [NEW MATERIAL] SPECIAL EDUCATION--
10 DEFINITIONS.--As used in the Special Education Act:

11 A. "assistant secretary" means the assistant
12 secretary of special education;

13 B. "division" means the special education division
14 of the department;

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

25 D. "exceptional student" means a student with

.219115.4

1 disabilities or a gifted student;

2 E. "gifted student" means a school-age person who
3 is determined to be gifted pursuant to the identification,
4 referral and evaluation process undertaken by a
5 multidisciplinary team;

6 F. "school district" includes charter schools;

7 G. "student assistance team" means a school-based
8 group whose purpose, based on procedures and guidelines
9 established by the department, is to provide additional
10 educational support to students who are experiencing
11 difficulties that are preventing them from benefiting from
12 general education instruction; and

13 H. "student with disabilities" means a person who:

14 (1) is at least three years old any time
15 during the school year;

16 (2) has not reached twenty-two years of age on
17 the first day of the school year; and

18 (3) is eligible to receive special education
19 services through a public school pursuant to the federal
20 Individuals with Disabilities Education Act and rules of the
21 department."

22 SECTION 5. A new section of the Public School Code,
23 Section 22-13E-3 NMSA 1978, is enacted to read:

24 "22-13E-3. [NEW MATERIAL] SPECIAL EDUCATION DIVISION--
25 ASSISTANT SECRETARY FOR SPECIAL EDUCATION--POWERS AND DUTIES.--

.219115.4

1 A. The "special education division" is created in
2 the department. The secretary shall appoint an "assistant
3 secretary for special education" who shall:

4 (1) direct the activities of the division and
5 advise the secretary on development of policy regarding the
6 education of students with disabilities;

7 (2) coordinate transition efforts for students
8 with disabilities in public schools with the higher education
9 department and work to expand appropriate special education
10 services for students in preschool through college;

11 (3) coordinate with appropriate administrators
12 and divisions to ensure that department administrators make
13 implementation of special education a priority; and

14 (4) provide adequate professional development
15 for division staff to develop expertise in the requirements of
16 the federal Individuals with Disabilities Education Act and
17 federal regulations promulgated in accordance with that act.

18 B. The division shall:

19 (1) provide assistance, including advice on
20 the allocation of resources to schools, to improve services to
21 meet the educational and other needs of students with
22 disabilities, based on current best practices in special
23 education;

24 (2) seek funds to establish, develop and
25 implement culturally relevant and linguistically appropriate

.219115.4

1 support services for students with disabilities, including:

2 (a) recruitment and retention of
3 qualified special education teachers and instructional support
4 providers who provide special education ancillary services; and

5 (b) professional development for
6 teachers and instructional support providers;

7 (3) audit school districts' implementation of
8 the requirements of the federal Individuals with Disabilities
9 Education Act, including use of appropriate disciplinary
10 measures and implementation of manifestation determination
11 reviews;

12 (4) perform in-person site visits and conduct
13 performance reviews of special education programs at school
14 districts and public schools to determine whether students with
15 disabilities are receiving appropriate special education
16 services. Site visits may include:

17 (a) interviews with school staff,
18 parents, instructional support providers and students with
19 disabilities;

20 (b) review of student demographic data,
21 achievement data and educational records; and

22 (c) review of publicly available
23 information about individual special education programs;

24 (5) provide technical assistance and
25 recommendations to school districts to ensure students with

.219115.4

1 disabilities are receiving special education services that:

2 (a) are evidence-based or research-
3 based;

4 (b) are designed in collaboration with a
5 student's parent and include identification of student-centered
6 goals; and

7 (c) monitor the academic and nonacademic
8 progress of students with disabilities; and

9 (6) support school districts in developing
10 culturally and linguistically appropriate curricula and
11 culturally sustaining pedagogy for exceptional students.

12 C. The division shall work with school districts,
13 public post-secondary educational institutions, the human
14 services department, the children, youth and families
15 department, the early childhood education and care department,
16 the department of health and other experts to develop and
17 maintain a statewide autism spectrum registry so that
18 appropriate stakeholders can identify and support children and
19 students on the autism spectrum."

20 **SECTION 6.** Section 22-13-5 NMSA 1978 (being Laws 1972,
21 Chapter 95, Section 1, as amended) is recompiled as Section
22 22-13E-4 NMSA 1978 and is amended to read:

23 "22-13E-4. SPECIAL EDUCATION.--School districts shall
24 provide special education and related services appropriate to
25 meet the needs of students [~~requiring special education and~~

.219115.4

1 ~~related services]~~ with disabilities. Rules and standards shall
2 be developed and established by the department for the
3 provision of special education in ~~[the]~~ public schools ~~[and~~
4 ~~classes of the public school system in the state]~~ and in all
5 institutions wholly or partly supported by the state. The
6 department shall monitor and enforce the rules and standards.
7 School districts shall also provide services for three-year-old
8 and four-year-old ~~[preschool]~~ children with disabilities,
9 unless the parent ~~[or guardian]~~ chooses not to enroll the child
10 in public school. Services for students age three through
11 twenty-one may include ~~[but are not limited to]~~ evaluating
12 particular needs, providing learning experiences that develop
13 cognitive and social skills, arranging for or providing related
14 services as defined by the department and providing parent
15 education. The services may be provided by licensed school
16 employees or contracted for with ~~[other]~~ community agencies and
17 shall be provided in age-appropriate, integrated settings,
18 including home, daycare centers, head start programs, schools
19 or community-based settings."

20 SECTION 7. Section 22-13-6.1 NMSA 1978 (being Laws 1994,
21 Chapter 25, Section 2, as amended) is recompiled as Section
22 22-13E-7 NMSA 1978 and is amended to read:

23 "22-13E-7. GIFTED ~~[CHILDREN]~~ STUDENTS--DETERMINATION.--

24 A. The department shall adopt standards pertaining
25 to the determination of who is a gifted ~~[child]~~ student and

1 shall publish those standards as part of the educational
2 standards for New Mexico schools.

3 B. In adopting standards to determine who is a
4 gifted [~~child~~] student, the department shall provide for the
5 evaluation of selected [~~school-age children~~] students by
6 multidisciplinary teams from each [~~child's~~] student's school
7 district. That team shall be vested with the authority to
8 designate a [~~child~~] student as gifted. When determining
9 whether a student is gifted, the team shall consider
10 information regarding [~~a child's~~] the student's cultural and
11 linguistic background and socioeconomic background in the
12 identification, referral and evaluation process. The team also
13 shall consider any disabling condition in the identification,
14 referral and evaluation process.

15 C. Each school district offering a gifted education
16 program shall create one or more advisory committees of
17 parents, community members, students and school staff members.
18 The school district may create as many advisory committees as
19 there are high schools in the school district or may create a
20 single districtwide advisory committee. The membership of each
21 advisory committee shall reflect the cultural diversity of the
22 enrollment of the school district or the district's public
23 schools the committee advises. The advisory committee shall
24 regularly review the goals and priorities of the gifted
25 program, including the operational plans for student

.219115.4

1 identification, evaluation, placement and service delivery and
2 shall demonstrate support for the gifted program.

3 D. In determining whether a ~~[child]~~ student is
4 gifted, the multidisciplinary team shall consider diagnostic or
5 other evidence of the ~~[child's]~~ student's:

- 6 (1) creativity or divergent-thinking ability;
7 (2) critical-thinking or problem-solving
8 ability;
9 (3) intelligence; and
10 (4) achievement.

11 E. Nothing in this section shall preclude a
12 school district from offering additional gifted programs for
13 students who fail to meet the eligibility criteria; however,
14 the state shall only provide state funds for department-
15 approved gifted programs for those students who meet the
16 eligibility criteria."

17 SECTION 8. Section 22-13-7 NMSA 1978 (being Laws 1972,
18 Chapter 95, Section 3, as amended) is recompiled as Section
19 22-13E-8 NMSA 1978 and is amended to read:

20 "22-13E-8. SPECIAL EDUCATION FOR EXCEPTIONAL STUDENTS--
21 RESPONSIBILITY.--

22 A. The ~~[state board]~~ department shall make, adopt
23 and keep current a state plan for ~~[special education]~~ policy,
24 programs and standards for exceptional students.

25 B. The department ~~[of education with the approval~~

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

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

15 D. The [~~department of education~~] division shall
 16 coordinate programming related to the transition of persons
 17 with disabilities from secondary and post-secondary education
 18 programs to employment or vocational placement."

19 **SECTION 9. TEMPORARY PROVISION--RECOMPILATION.--**

20 A. Section 22-13-8 NMSA 1978 (being Laws 2009,
 21 Chapter 162, Section 1) is recompiled as Section 22-13E-5
 22 NMSA 1978.

23 B. Section 22-13-32 NMSA 1978 (being Laws 2010,
 24 Chapter 59, Section 2, as amended) is recompiled as Section
 25 22-13E-6 NMSA 1978.

.219115.4

1 **SECTION 10. APPROPRIATION.**--One million dollars
2 (\$1,000,000) is appropriated from the general fund to the
3 public education department for expenditure in fiscal year
4 2022 to provide professional development for teachers,
5 instructional support providers, school administrators,
6 substitute teachers, school resource officers, school police
7 or school security on working effectively with and meeting
8 the needs of special education students. Any unexpended or
9 unencumbered balance remaining at the end of fiscal year 2022
10 shall revert to the general fund.

11 **SECTION 11. REPEAL.**--Section 22-13-6 NMSA 1978 (being
12 Laws 1972, Chapter 95, Section 2, as amended) is repealed.

13 **SECTION 12. EFFECTIVE DATE.**--The effective date of the
14 provisions of this act is July 1, 2021.

underscoring material = new
~~[bracketed material]~~ = delete