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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
56th Legislature, 1st Session, 2023

Bill Number	<u>HB285</u>	Sponsor	<u>Thomson/Chasey/Romero, GA/Lopez</u>
Tracking Number	<u>.223788.5GLG</u>	Committee Referrals	<u>HEC/HGEIC</u>
Short Title	<u>Office of Special Education</u>		
Analyst	<u>Andrews</u>	Original Date	<u>2/20/2023</u>
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BILL SUMMARY

Synopsis of Bill

House Bill 285 (HB285) both creates and amends several sections of law related to special education in New Mexico schools. Notably, the bill creates the Office of Special Education in the Public Education Department (PED) and mandates the office as the only division of PED that cannot be transferred or merged “in the interest of efficiency and economy.” HB285 provides for an interdepartmental transition from the current Special Education Division of PED to the proposed Office of Special Education. This transfer would move all personnel currently responsible for the implementation of laws related to special education of public school students, and three- and four-year-old students who are developmentally disabled, to the proposed Office of Special Education. This transfer would also add the proposed provisions of HB285 to the responsibilities of the transferred personnel.

HB285 creates the Special Education Act in the Public School Code, and specifies the governor must appoint the director of the Office of Special Education, and the director may appoint staff to assist the director in carrying out the powers and duties of the office. The bill enumerates the powers and duties of the Office of Special Education in over twenty subsections of law (see **Substantive Issues**).

HB285 provides both technical and substantive cleanup of the Public School Code related to special education, including changes to comply with the federal Individuals with Disabilities Education Improvement Act of 2004 (IDEA), amends the submission requirements of annual educational plans by local education agencies (LEAs), and also provides several definitions and responsibilities.

The effective date is July 1, 2023.

FISCAL IMPACT

This bill does not contain an appropriation.

The House Appropriations and Finance Committee Substitute for House Bills 2 and 3 (HB2/HAFCS) includes \$2 million from the public education reform fund in FY24 for special education training and credentials.

In FY23, the Legislature appropriated \$604 million for special education programs and services through the state equalization guarantee. Those funds are based on student needs as specified in their individualized education plan (IEP), along with the number of full-time-equivalent certified or licensed staff providing diagnostic services or speech therapy and other ancillary services. Additionally, the federal IDEA distributes grant funding for states to provide special education and related services for students between the ages of 3 and 21 who have been identified as having a disability. In FY23, those grant programs will distribute \$103 million to public schools in New Mexico.

SUBSTANTIVE ISSUES

Transitioning to the Office of Special Education. HB285 provides for a transition from PED's current Special Education Division to the Office of Special Education, which would be responsible for carrying out the provisions of the proposed Special Education Act and other laws that relate to special education of public school students, or three and four-year-old children who are developmentally disabled. The bill requires PED and the Office of Special Education to identify appropriate salary differential levels, time allocations, and other supports for licensed school employees and other school personnel who educate or provide instructional support to students with disabilities in consultation with educators and school districts by July 1, 2024.

The bill specifies the duties of the Office of Special Education, including but not limited to :

- Enforcing federal and state special education law including IDEA;
- Developing state special education rules;
- Developing policies and technical guidance on special education for public schools, parents, and students;
- Coordinating with other units of PED, school districts, other state agencies including children and youth in custody of the Children, Youth, and Families Department (CYFD), and public institutions of higher education (IHEs) to prioritize and expand appropriate special education services to New Mexico residents from birth to career;
- Developing professional development programs and materials for licensed school employees, special education assistants, and other instructional support providers;
- Coordinating with public IHEs on the education and training of licensed school employees in teaching or providing instructional support to students with disabilities and gifted students;
- Providing assistance in the implementation of special education programs in public schools and other settings, including identifying systems and policies that maximize provision of special education services;
- Ensuring diagnoses, screenings, and educational evaluations of students for special education services are completed comprehensively;
- Monitoring the spending of state and federal funds; developing culturally and linguistically relevant services, curricula, and pedagogy to support students with disabilities and gifted students;
- Prioritizing the recruitment and retention of qualified special education teachers and personnel;

- Analyzing the recommendations of the Office of the State Special Education Ombud and taking appropriate action as needed;
- Developing an annual state plan for special education;
- Submitting an annual report to the Governor and the Legislative Education Study Committee (LESC) including specific special education data;
- Determining special education data needed to evaluate the state’s compliance with federal law, including IDEA, and ensuring school districts collect the data in a consistent manner;
- Auditing implementation of federal and state special education law, including conducting performance reviews, site visits, and taking disciplinary measures if a school district or public school is out of compliance;
- Providing technical assistance and recommendations to school districts and public schools to ensure special education services are evidence- or research-based, are designed in collaboration with students’ parents and educational decision makers, and include student-centered goals;
- Providing targeted annual training to all school boards, governing bodies of charter schools, and school personnel that address the requirements of federal and state special education law, disabilities-specific policies, de-escalation techniques, positive behavioral supports, structured literacy, formulation and implementation of effective IEPs, and effective engagement and communication with students, parents, and educational decision makers;
- Ensuring the transition of IEPs prepare three- and four-year-olds with disabilities to transition to public school, special education students to transition within the public school system, and special education students to transition to IHEs or the workforce;
- Ensuring public schools comply with federal and state special education law by soliciting input from special education stakeholders and reviewing publically available information regarding special education services and programs;
- Ensuring students with disabilities and gifted students receive appropriate services as required by federal and state law; and
- Monitoring special education compensation trends in other states and make compensation recommendations to the PED and the Legislature.

HB285 transfers the preschool special education coordinator to the Early Childhood Education and Care Department (ECECD) in compliance with IDEA. HB285 amends the requirements for local education agency (LEA) submission of annual educational plans to include a narrative describing the program cost generated for services for exceptional students with disabilities by class and grade level and the spending of these revenues on services to those students. The bill also provides cleanup to the definition of exceptional students and students with disabilities, references to the Office of Special Education, specifies it is the responsibility of the Office of Special Education to promulgate rulemaking to implement the requirements of school districts to provide special education and related services, and to specify reporting requirements. HB285 also transfers the responsibilities of implementing the requirements of Section 22-13-32 NMSA 1978, interventions for students displaying characteristics of dyslexia, to the Office of Special Education.

Special Education in New Mexico. Approximately 17 percent—or just under 54 thousand—students in New Mexico required special education services as of the 2020–2021 school year. Nationally, 14.5 percent of all public school students received special education services in the 2020–2021 school year, meaning New Mexico has a greater share of students receiving special education services than the national average. Special education qualifying disability categories are outlined in both federal law and state administrative rule. Students who qualify are legally entitled to special education services. Federally defined categories include: autism, deaf blindness,

developmental delay, emotional disturbance, hearing impairment/deafness, intellectual disability, multiple disabilities, orthopedic impairment, other health impaired, specific learning disability, speech-language impairment, traumatic brain injury, and visual impairment.

Outcomes for Special Education Students. Historically, educational outcomes for special education students have been consistently below their non-special education peers. LESC analysis of PED data shows in the 2021-2022 school year, the achievement gap between special education and their non-special education peers persisted across subjects:

- In English language arts, the achievement gap between special education students and their non-special education peers was 30.2 percent;
- In math, the achievement gap between special education students and their non-special education peers was 21.3 percent; and
- In science, the achievement gap between special education students and their non-special education peers was 27.8 percent.

PED Oversight and Other Supports. PED’s current Special Education Division provides fiscal oversight and support to assist school districts and charter schools in ensuring services are provided to students with disabilities. Much of this oversight involves technical assistance to help school districts and charter schools remain in fiscal and programmatic compliance in serving students with disabilities, support in providing behavioral intervention and mental health services, meeting personnel shortages, and building capacity to improve the delivery of student services. PED has noted the need for urgent action to better support students with disabilities, indicating, in particular, the necessity for more support from general education teachers, more timely student evaluations, more special education teachers, improved communication with parents, and a rejection of seclusion and restraint as behavior interventions. Nevertheless, problems persist in ensuring services for students with disabilities are reaching these students.

Concerns of Advocates and Parents. Advocates and parents have raised a series of concerns related to the services available to students with disabilities. Parents have described the state’s special education system as adversarial, lacking accountability, and in need of greater collaboration. The advocacy group, Disability Rights New Mexico, noted a fundamental failure of teachers and school administrators to understand students’ disabilities, citing a lack of training on how specific disabilities affect student learning. Parents have recounted their experiences trying to ensure their child receives appropriate services and encountering minimal oversight and roadblocks that prevent or delay delivery of these services as specified in the child’s IEP.

Advocates and parents have offered a range of solutions, including more robust professional development, a more proactive PED role in building an infrastructure at the state level to support teachers in understanding students’ disabilities and providing appropriate strategies to serve students more effectively, employing more behavioral health professionals, eliminating the use of restraint and seclusion and the use of law enforcement or school resource officers as means of behavior management, and providing more meaningful transition services to support students’ postsecondary aspirations.

Federal Special Education Laws. There are two federal laws that ensure a right to an education for children with disabilities—Section 504 of the Rehabilitation Act of 1973 (commonly known as Section 504)—and IDEA. Section 504, a civil rights law, protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance. It also requires schools to provide a “free appropriate public education” (FAPE) to each qualified student, regardless of the nature or severity of the disabilities. IDEA also covers every student in the United

States who receives special education services. This federal law spells out what states must do to meet the specific needs of each student with a disability by requiring schools to develop an IEP for each student. In essence, IDEA is a law that ensures a FAPE for all children with disabilities by requiring individualized services, which may also include specialized instruction, therapies, and services. IDEA also governs how states and public agencies must provide special education, intervention services, and any other related services to all students.

ADMINISTRATIVE IMPLICATIONS

The New Mexico School for the Blind and Visually Impaired (NMSBVI) notes they are concerned about possible unanticipated consequences of this bill, which may include lack of consistency in a governor appointed position within the department (the director) and any other unforeseen consequences related to the special schools. According to NMSBVI, as a state special school, they work well with the current Special Education Division at PED. NMSBVI notes they support many of the initiatives in this bill including looking at special education compensation trends, partnering with agencies, and ensuring proper fund expenditures.

The New Mexico School for the Deaf (NMSD) indicates they are supportive of many of the concepts presented in HB285 including, but not limited to, a proposal of the salary differential for special education teachers, the study of program costs, and data collection studies. NMSD notes a need for increased oversight to ensure that state special education funding goes directly to support special education students, and this could be calculated under a system similar to the excess cost system that is utilized by the Federal Government. According to NMSD, it is unclear why this could not happen under the current Special Education Division that has a PED cabinet secretary appointed by the governor.

According to ECECD, HB285 requires stronger interagency collaboration, which could improve outcomes for children birth through 21. ECECD notes transferring the preschool special education 619 coordinator to ECECD—the agency that is responsible for the administration of New Mexico prekindergarten—will further strengthen and enhance the delivery of inclusive services for children with special needs and their families. ECECD reports while HB285 does not provide for an appropriation concerning these duties, ECECD maintains the undertaking of such duties is inherent to its mission and welcomes the responsibility. ECECD asserts HB285 would increase effective, timely, and data-driven services for children in special education by publicizing data on student achievement, school district transition plans for students, and all incidents of student restraint and seclusion.

OTHER SIGNIFICANT ISSUES

In 2019, the 1st Judicial Court issued a final judgement and order in the consolidated *Martinez-Yazzie* education sufficiency lawsuit, finding New Mexico's public education system failed to provide a constitutionally sufficient and adequate education for at-risk students, defined as English language learners, Native American students, students with disabilities, and students from low-income families. The court pointed to low high school graduation rates, low student test proficiencies, and high college remediation rates as indicators of how the state is not meeting its constitutional obligation to ensure all students are college, career, and civics ready. The court's findings suggested overall public school funding levels, financing methods, and PED oversight were deficient. As such, the court enjoined the state to provide sufficient resources, including instructional materials, properly trained staff, and curricular offerings, necessary for providing the opportunity for a sufficient education for all at-risk students. Additionally, the court noted the state

would need a system of accountability to measure whether the programs and services actually provided the opportunity for a sound basic education and to assure that local school districts spent funds provided in a way that efficiently and effectively met the needs of at-risk students. However, the court stopped short of prescribing specific remedies and deferred decisions on how to achieve education sufficiency to the legislative and executive branch instead.

RELATED BILLS

Related to HB483, School Gifted Education Requirements, which imposes requirements on school districts offering gifted education.

Related to SB387, School Student Restraint or Isolation, which amends the Public School Code to require less restrictive interventions on a student before the use of restraint or seclusion and requires that restraint or seclusion is used only by teachers who are trained in less restrictive interventions.

SOURCES OF INFORMATION

- LESC Files
- New Mexico School for the Blind and Visually Impaired (NMSBVI)
- Early Childhood Education and Care Department (ECECD)
- New Mexico School for the Deaf (NMSD)

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