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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
57th Legislature, 2nd Session, 2026

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| Bill Number | <u>SB64/aSEC/aSFC</u> | Sponsor | <u>Stewart/Garratt</u> |
| Tracking Number | <u>.232661.3</u> | Committee Referrals | <u>SEC/SFC;HGEIC/HEC</u> |
| Short Title | <u>Create Office of Special Education</u> | | |
| Analyst | <u>Andrews</u> | Original Date | <u>1/23/2026</u> |
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FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

BILL SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee Amendment to SB64 (SB64/aSEC/aSFC) adds language requiring the Office of Special Education (OSE) to consult with a committee of school district superintendents and charter school head administrators selected by their peers on a quarterly basis to plan and implement continuous improvement measures related to the systems and services provided to students with disabilities throughout the state.

Synopsis of SEC Amendment

The Senate Education Committee Amendment to SB64 (SB64/aSEC) is technical clean up. The first technical change in the amendment ensures “gifted child” and “exceptional child” are still defined in state law by moving these definitions to the broader Public School Code. SB64/aSEC cleans up and recompiles existing special education law, and adding these definitions to the broader Public School Code ensures funding for gifted students remains in place.

The SB64/aSEC amendment also adds language to clarify the Office of Special Education (OSE) will both monitor and enforce compliance with laws that prohibit discrimination against students with disabilities.

Finally, the SEC amendment removes language that had incorrectly specified that parents of developmentally delayed three- and four-year-old children must request services; in practice, it is up to school districts to identify three- and four-year-old children with developmental delays.

Synopsis of Original Bill

Senate Bill 64 (SB64) creates the Special Education Act in the Public School Code and codifies the Office of Special Education (OSE) within the Public Education Department (PED). SB64 is accompanied by Senate Executive Message No. 4. The bill creates the position of deputy secretary

of special education in law and requires the deputy secretary to report directly to the PED secretary. The proposed Special Education Act assigns the office responsibilities and duties including enforcing state and federal law regarding the education of students with disabilities; ensuring stability and consistency of service for students with disabilities; and providing for the study, development, and implementation of systems and policies that positively affect the educational success of students with disabilities.

SB64 also requires the OSE to develop and maintain—and for school districts and charter schools to use—a statewide uniform online system for the formulation of individualized education programs (IEPs).

The bill also removes gifted education and Section 504 from the Special Education Act to align state law with federal law, and current department practice.

SB64 also recompiles existing law addressing special education, such as Section 22-13-32 NMSA 1978 outlining supports for students displaying characteristics of dyslexia, into the proposed Special Education Act. SB64 would also add definitions, such as multilayered systems of support (MLSS) and student assistance team (SAT), to the Public School Code.

The bill would be effective July 1, 2026.

FISCAL IMPACT

SB64/aSEC/aSFC does not contain an appropriation.

PED has already established and staffed an office focused on special education within the department so additional funding needed to continue duties is expected to be minimal. The House Appropriations and Finance Committee Substitute for House Bills 2 and 3 (HB2/HAFCS) includes \$4 million in recurring funding to support special education initiatives.

In FY26, the state equalization guarantee (SEG), the state's public school funding formula, distributed \$840.4 million for special education programs and services, including gifted education programs and services. Those funds are based on student needs as specified in their IEP or Gifted Individualized Education Plans (GIEP), 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 Individuals with Disabilities Education Act (IDEA) distributes grant funding for states to provide special education and related services for students between the ages of three and 21 who have been identified as having a disability. In FY26, those grant programs will distribute [\\$108.8 million](#) to public schools in New Mexico. The Legislature also appropriated \$12 million in nonrecurring funding for a statewide student information system to house the statewide IEP in FY26.

HB2/HAFCS also includes \$8.5 million in nonrecurring funding to support the statewide student information system housing the statewide IEP.

SUBSTANTIVE ISSUES

Special Education in New Mexico. SB64/aSEC/aSFC creates the Special Education Act, creates the cabinet-level position of the deputy secretary for special education in law, and assigns OSE responsibilities, including:

- Enforcing state and federal law regarding the education of students with disabilities and laws that prohibit discrimination against students with disabilities;
- Verifying that all students with disabilities receive a free appropriate public education (FAPE) as required in federal law;
- Ensuring stability and consistency of service for students with disabilities;
- And providing for the study, development, and implementation of systems and policies that positively affect the educational success of students with disabilities.

SB64/aSEC/aSFC also requires OSE to develop and maintain a statewide uniform online system for the formulation of IEPs, and requires all schools to use the system to document services, monitor progress, and ensure consistency, fidelity, and compliance with IDEA timelines and safeguards. It is important to note OSE has already developed the online system for the formulation of IEPs; SB64/aSEC/aSFC ensures all schools use the online IEP system. It is important for the online system for the formulation of IEPs to be statewide and uniform to ensure consistency of services when a student transfers schools or school districts.

Since 1973, IDEA has required states to provide students with disabilities the same educational opportunities as students without disabilities. However, a wide achievement gap between students with disabilities and general education students illustrates special education students are not being adequately served. For the past three years there has been a wide, persistent gap in performance on all statewide assessments between students receiving special education services and their general education peers. In SY25, 14.3 percent of special education students were proficient in English language arts (ELA), compared with 43 percent of general education students. Additionally, 8.6 percent of special education students were proficient in math compared with 25 percent of general education students.

Gifted Education and Section 504 in New Mexico. In New Mexico, special education, gifted education, and supports for students with Section 504 plans are housed within different departments in PED, mirroring the separation of these programs in federal law. It is important to note gifted education and Section 504 supports are not changed as proposed in SB64/aSEC/aSFC.

Gifted education and Section 504 will remain in the courses of instruction and school programs section of state law (Section 22-13 NMSA 1978). Special education and gifted education will continue to be funded as delineated within the Public School Finance Act (Section 22-8-21 NMSA 1978). In other words, SB64/aSEC/aSFC does not change administration of or funding for gifted education or Section 504 programs.

New Mexico state law (Section 22-13-6.1 NMSA 1978) and New Mexico Administrative Code (NMAC 6.31.3) specific to gifted education are also not impacted by SB64/aSEC/aSFC, ensuring all gifted students have gifted education and related services to meet their individual needs, ensure the rights of gifted students and their parents are protected, and ensure schools provide for the education of all gifted students.

PED Oversight and Other Supports. PED's OSE currently has 26 full-time employees (FTE), including a deputy secretary of OSE, an executive manager of OSE, and attorneys. Other staff include personnel tasked with roles and responsibilities that support students and families who require special education services. OSE 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. SB64/aSEC/aSFC would codify many of these responsibilities.

Federal Special Education Laws. Two federal laws ensure children with disabilities have a right to an education—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 receiving federal financial assistance. It also requires schools to provide free appropriate public education (FAPE) to each qualified student, regardless of the nature or severity of the disabilities.

IDEA applies to 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. SB64/aSEC/aSFC would codify responsibilities to ensure compliance with both state and federal laws.

ADMINISTRATIVE IMPLICATIONS

SB64/aSEC/aSFC codifies the OSE that PED has already established. SB64/aSEC/aSFC would align law with practice by removing gifted education and Section 504 from under the purview of special education, as gifted education is currently overseen by PED’s Curriculum and Instruction Division, and Section 504 is overseen by PED’s Safe and Healthy Schools Bureau.

OTHER SIGNIFICANT ISSUES

LESC Special Education Listening Session and Working Group Policy Proposals. Students with disabilities are one of the student groups identified in the consolidated *Martinez-Yazzie* lawsuit that found the state failed to provide an adequate, sufficient education to these students, in addition to Native American students, English learners, and economically disadvantaged students. During the 2023 interim, LESC initiated a study on issues impacting students receiving special education services. Although the Legislature has made significant investments to address the court’s findings, few initiatives prior to 2023 had specifically addressed special education. In summer 2023, LESC staff facilitated nine listening sessions statewide to provide an opportunity for stakeholders to share feedback and suggestions about special education services in New Mexico. This feedback was used as a starting place for a special education stakeholder working group that met last fall and developed [policy proposals](#) reflecting research and community voices. During the 2024 interim, LESC staff focused on supporting policy proposals that arose from LESC’s special education stakeholder engagement process: the development and standardization of a universal IEP, salary differentials for special education teachers, and drafting legislation to clearly define restraint and seclusion.

LESC’s nine listening sessions also provided stakeholders with an opportunity to share feedback and suggestions about special education services in New Mexico. Combined, listening sessions ran 19.57 hours, 411 stakeholders attended the nine sessions, and LESC staff received 73 emails from 44 unique stakeholders that were included in the qualitative analysis process. The following “buckets” of opportunities for the Legislature to consider emerged from the listening sessions:

funding, a need for more high-quality staff, training, and accountability. These recommendations are outlined in depth in LESC’s September 2023 [Special Education Stakeholder Listening Sessions Report](#).

As detailed in LESC’s December 2023 [Special Education in New Mexico: A Landscape Analysis from Communities and Stakeholders](#), these proposals were used as a starting place for the special education stakeholder working group. The working group identified the following policy suggestion topics: resources for teachers and training, funding, accountability, and behavioral supports.

It is important to note SB64/aSEC/aSFC contains several important elements of these policy recommendations, such as the development and standardization of a universal IEP.

Martinez-Yazzie Consolidated Lawsuit. In 2019, the 1st Judicial Court issued a final judgement and order on 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 learners, Native American students, students with disabilities, and students from low-income families. The court pointed to high school graduation rates, student test proficiencies, and 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.

SOURCES OF INFORMATION

- LESC Files
- Commission for Deaf and Hard-of-Hearing Persons (CDHH)
- New Mexico Commission for the Blind (NMCB)
- Public Education Department (PED)
- Regional Education Cooperative (REC)
- Division of Vocational Rehabilitation (DVR)

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