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FISCAL IMPACT REPORT

BILL NUMBER: Senate Bill 64/aSEC/aSFC

SHORT TITLE: Create Office of Special Education

SPONSOR: Sens. Stewart, Nava/Rep. Garratt

LAST UPDATE: 2/3/26 **ORIGINAL DATE:** 1/24/26 **ANALYST:** Liu

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		\$129.7 - \$1,390.5	\$129.7 - \$1,390.5	\$259.4 - \$2,781.0	Recurring	General Fund
Total		\$129.7 - \$1,390.5	\$129.7 - \$1,390.5	\$259.4 - \$2,781.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 120 and Senate Bill 37

Sources of Information

LFC Files

Legislative Education Study Committee Files

U.S. Department of Education

Agency or Agencies Providing Analysis

Public Education Department

Regional Education Cooperatives

New Mexico Commission for Deaf and Hard of Hearing

Division of Vocational Rehabilitation

Commission for the Blind

Developmental Disabilities Planning Council

SUMMARY

Synopsis of SFC Amendment

The Senate Finance Committee amendment to Senate Bill 64 adds a requirement for the Office of Special Education to consult with a committee of district and charter leaders selected by their peers on a quarterly basis to plan and implement continuous improvement measures related to special education systems and services.

Synopsis of SEC Amendment

The Senate Education Committee amendment to Senate Bill 64 adds a definition for exceptional child and gifted child, clarifies the office's responsibility to monitor compliance with laws that prohibit discrimination against students with disabilities and enforcement of state and federal special education laws, and removes a provision that inadvertently limits department standards to just developmentally-delayed 3- and 4-year-old children whose parents request special education services from school districts.

Synopsis of Senate Bill 64

Senate Bill 64 (SB64) creates an Office of Special Education within the Public Education Department (PED) and outlines its duties and authority. The bill provides definitions for dyslexia, multilayered system of supports, special education, student assistance teams, and student with disabilities and further moves statutes related to dyslexia, private educational training centers, and residential treatment centers into the Special Education Act. The bill repeals a section of statute that includes a definition of gifted child.

This bill is endorsed by the Legislative Education Study Committee (LESC), and the effective date of this bill is July 1, 2026.

FISCAL IMPLICATIONS

The bill does not include an appropriation but establishes a new office under PED in law. Currently, the special education division within the agency operates with 24 FTE. As of December 2025, the division had three vacant positions and posted current personnel salary costs of slightly over \$2 million.

In FY26, PED requested a \$2 million expansion of 10 FTE for the Office of Special Education. The Legislature ultimately settled on the use of \$609.5 thousand in additional federal special education (IDEA-B) funding to cover costs of 5 FTE for the office focused on fiscal support, monitoring, compliance, and complaint mediation. Assuming PED base operating budget already includes \$609.5 thousand for the office, the estimated remaining costs could be up to \$1.4 million.

For FY27, PED requested an expansion of 1 FTE for the Office of Special Education at \$129.7 thousand. The LESC budget recommendation supports this expansion as well as a \$4 million appropriation for special education initiatives and \$8.5 million for a statewide student information system (SIS), which includes funding for a uniform individualized education program (IEP) system. Neither the executive nor LFC recommendations supported the 1 FTE expansion, but both supported the \$4 million for special education initiatives and \$8.5 million for the statewide SIS. The LFC recommendation further includes \$900 thousand in additional federal IDEA-B funding in PED's operating budget above the FY26 budget level. Given the department's request for an additional 1 FTE, this analysis assumes the costs of the position represent the lower end of potential fiscal impacts of this bill for FY27.

SIGNIFICANT ISSUES

In 2023, the governor issued an executive order (2023-062) directing PED to establish an Office of Special Education, appoint a director, recommend special educator salary differential levels,

transfer preschool special education to the Early Childhood Education and Care Department, and transition PED's special education division to the office. The order followed an attempt to codify the office in statute, which stalled during the 2023 session (House Bill 285). Another bill during the 2025 session (Senate Bill 38) to establish the office also failed to pass.

Special education enrollment in New Mexico has grown by 10 percent in the past decade, particularly among students with specific learning disabilities such as dyslexia. Meanwhile, per-pupil funding for students in special education has increased 60 percent. For FY26, public schools will generate around \$840 million in state funding and \$119 million in federal funding for a total of \$959 million to serve roughly 73 thousand students with disabilities statewide. However, this increase has not corresponded with improved student outcomes, and New Mexico remains in the bottom third of states for special education student proficiency measures.

In 2018, the 1st Judicial District Court ruled special education students were receiving an inadequate education, citing insufficient services, chronic staff shortages, misidentification, and inadequate oversight as special education issues in the *Martinez-Yazzie* education sufficiency lawsuit. Since then, the state has established new administrative offices dedicated to elevating special education policy issues and improving outcomes and services. The Legislature established an Office of the State Special Education Ombud at DDPC in 2021, and the governor created an Office of Special Education at PED in 2023 through executive order. Provisions of this bill would codify the Office of Special Education under PED in law.

The federal Individuals with Disabilities Education Act (IDEA), originally passed in 1975, is the main federal law governing special education for children from birth through age 21. IDEA regulates the flow of federal funding to states for special education. IDEA also requires states to provide every student with disabilities a free appropriate public education, or free educational services designed to meet a student's special education needs based on an individualized education program (IEP) developed by school personnel and the student's family. A 2018 LFC program evaluation found schools spend most of IDEA funding on instruction, instructional support services, and student support services.

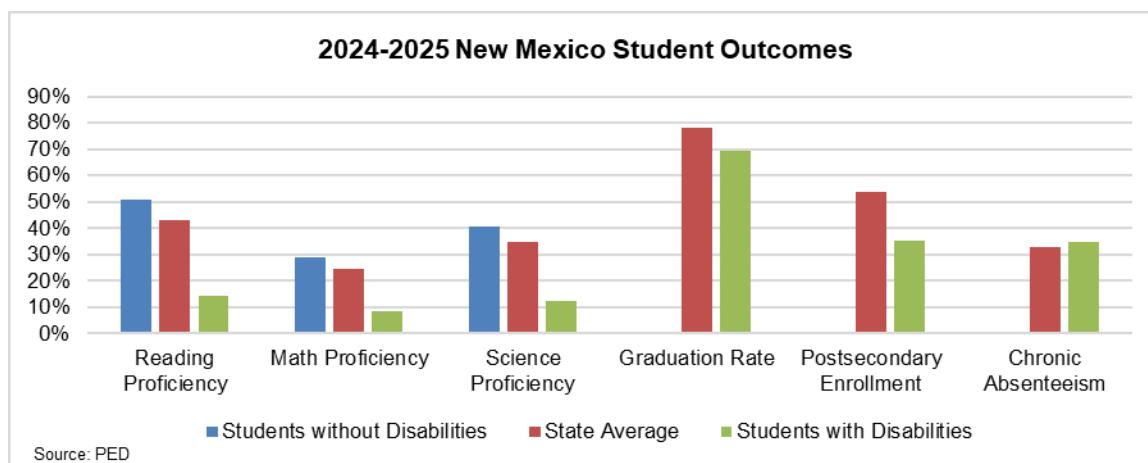
A 2023 LFC program evaluation found the state increased funding for special education students by 60 percent between FY14 and FY24; however, schools did not fully utilize state and federal special education funds, leading to substantial carryover and underspending. While teacher compensation also increased over that period, there was still a shortage of special education teachers. The special education teacher shortage was less about a lack of licensed teachers than an inability to attract existing working teachers with multiple licenses to teach special education. PED's investigations frequently revealed non-compliance within school districts and charter schools concerning special education law. Most complaints revolved around the individualized education program (IEP) process, and there was a disproportionate rate of informal removals for students with disabilities, signaling the need for more robust oversight and standardized practices.

In FY24, the U.S. Department of Education (USDE) finalized a consolidated performance review of PED, finding the department only met 15 out of 83 requirements for oversight and administration of large federal education grant programs, including its federal Title programs and ESSER pandemic aid funds. USDE made eight recommended improvements and outlined 60 corrective actions for the department, including basic monitoring practices, establishing internal controls, and reviewing formulas and awards for accuracy. The report flagged significant

compliance and quality concerns related to PED's inability to monitor or determine whether district and charter were meeting maintenance of effort (MOE) requirements for special education spending levels. The report also noted PED incorrectly calculated the high school graduation rate by including students with a conditional certificate of completion—a pathway offered to students with disabilities. PED could not demonstrate whether its conditional high school certificates of completion held students to the same standards as a standard graduation diploma. Additionally, PED did not include some required federal reporting elements related to students with disabilities, nor did it provide school report cards in a format accessible to individuals with disabilities.

PERFORMANCE IMPLICATIONS

Students with disabilities in New Mexico continue to have the lowest performance outcomes of any students subgroup. Provisions of this bill attempt to standardize monitoring and enforcement of services for this subgroup.



ADMINISTRATIVE IMPLICATIONS

Provisions of this bill clarifies responsibilities of the office related to oversight, monitoring, and enforcement of special education services across schools such as:

- Ensuring students with disabilities are provided with the same opportunity for education as students without disabilities,
- Verifying that all students with disabilities receive a free appropriate public education, regardless of the nature or severity of the disabilities,
- Ensuring stability and consistency of services for students with disabilities,
- Developing and maintaining a statewide uniform online system for the formulation of IEPs and requiring all school districts to use the system to document services, monitor progress and ensure consistency, fidelity and compliance with the federal Individuals with Disabilities Education Act timelines and safeguards,
- Enforcing laws regarding the education of students with disabilities, including the federal Individuals with Disabilities Education Act, the Special Education Act and laws that prohibit discrimination against students with disabilities, and
- Per the SFC amendment, consult with a committee of district and charter leaders selected by their peers on a quarterly basis to plan and implement continuous improvement measures related to special education systems and services.

DDPC notes with the continuation of the Office of Special Education's work, the need for ombud services at the Office of the Special Education Ombud should decline over time.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill makes technical amendments to statutes related to dyslexia and is related to Senate Bill 37, which creates new literacy screening, coaching, and instructional material requirements. The bill also relates to House Bill 120, which amends procedures for the restraint or seclusion of students.

TECHNICAL ISSUES

The bill repeals Section 22-13-6 NMSA 1978, which includes definitions for special education, exceptional children, children with disabilities, gifted child, dyslexia, response to intervention, and student assistance team. The bill recompiles the definitions for dyslexia, special education, student with disabilities, and student assistance team and adds “multilayered system of supports” to replace response to intervention, effectively repealing definitions for “exceptional children” and “gifted child.” However, the bill does not repeal Section 22-13-6.1 NMSA 1978, which references “gifted child” and includes provisions for the determination of who is a gifted child. The SEC amendment adds back definitions for exceptional child and gifted child.

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