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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Lara</u>	<b>LAST UPDATED</b> _____ <b>ORIGINAL DATE</b> <u>2/5/24</u>
<b>SHORT TITLE</b> <u>Special Education Support Services</u>	<b>BILL NUMBER</b> <u>House Bill 229</u> <u>Rovang/Lobaugh/</u> <b>ANALYST</b> <u>Liu</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
School Budgets		\$0 to \$26,321.1	\$0 to \$26,321.1	\$0 to \$52,642.2	Recurring	General Fund
<b>Total</b>		<b>\$0 to \$26,321.1</b>	<b>\$0 to \$26,321.1</b>	<b>\$0 to \$52,642.2</b>	<b>Recurring</b>	<b>General Fund</b>

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

Duplicates Senate Bill 132  
 Relates to Senate Bill 143 and House Bill 228

### Sources of Information

LFC Files

Agency Analysis Received From  
 Health Care Authority (HCA)

Agency Analysis was Solicited but Not Received From  
 Public Education Department (PED)

## SUMMARY

### Synopsis of House Bill 229

House Bill 229 amends the current public education funding formula, broadening the definition of special education ancillary and diagnostic services to include additional specialized support services. School districts and charter schools would then be able to generate 25 program units within the formula for specialized support service providers—about \$156 thousand per FTE.

The bill defines “specialized support services” as medical, behavioral health, and adaptive physical education support services identified through a student’s individualized education program (IEP). The bill also requires every school district and charter school to report on specialized support services in the annual educational plan. The effective date of this bill is July 1, 2024.

## FISCAL IMPLICATIONS

The bill does not include an appropriation for the state equalization guarantee (SEG) distribution but instead redistributes money within the existing appropriation, shifting SEG distributions toward districts and charter schools with specialized support service personnel from those that do not have these positions. In the current formula, the number of full-time-equivalent certified or licensed ancillary services or diagnostic service personnel is multiplied by a cost differential factor of 25. In other words, for each additional ancillary or diagnostic staff member a district or charter school employs, they will receive an additional 25.0 program units (about \$156 thousand) within the public education funding formula.

PED regulation currently defines support staff as “anyone who provides services for a public school or state institution as an educational assistant, school counselor, school social worker, school nurse, speech-language pathologist, psychologist, physical therapist, physical therapy assistant, occupational therapist, marriage and family therapist, occupational therapy assistant, recreational therapist, signed language interpreter, educational, alcohol and drug abuse counselor, substance abuse associate and other service providers who are employed to support the instructional program of a school district or charter school.”

The bill enumerates three classes of staff who will explicitly be recognized within the funding formula as ancillary staff: medical providers, behavioral health providers, and adaptive physical education service providers. As elucidated above, many of the professions within these categories are already specifically listed in the state’s administrative code, except for behavioral health professionals.

In 2021, New Mexico had 8,434 behavioral healthcare providers, including 4,681 independently licensed psychotherapists statewide. Over half of all providers were in the counties of Bernalillo and Santa Fe. Assuming 2 percent of these behavioral healthcare providers provide full-time services in public schools, the potential fiscal impacts to the SEG formula could be \$26.3 million. Given the sparsity of providers in rural areas and large caseloads, it is likely most rural districts and charters would contract for part-time or shared services while larger, urban districts would increase staffing and SEG funding for behavioral health.

Overall costs would also be limited to IEPs needing behavioral health services, although reported behavioral needs have grown since the Covid-19 pandemic. As such, the actual fiscal impacts are largely indeterminate. Absent an appropriation for provisions of this bill, many districts and charter schools could choose to maintain their current staffing levels and not hire new personnel within these categories. In this case, the overall additional operating budget impact could be negligible.

## SIGNIFICANT ISSUES

A 2013 LFC program evaluation noted the number of ancillary and related service personnel for special education is not directly connected to the number of students in special education. State rules do not define student-to-staff caseload ratios for most ancillary and related service providers for students in special education. Except for speech pathologists (60 students per FTE), PED does not currently provide guidance regarding the maximum caseloads for ancillary and support staff. The bill does not provide additional guidance to districts or charter schools about

how to structure their support staff ratios nor detail how PED should evaluate the proposed support services (and potential additional hires) enumerated in district and charter educational plans.

The current state funding formula treats all ancillary staff as equivalent from a financial perspective, even though salary schedules vary dramatically based on position type. For instance, the FY24 salary schedule for Santa Fe Public Schools (SFPS) specified the following (based on 10 years of experience for each position):

Position in Santa Fe Public Schools	Annual Salary (not including benefits)
Educational and Behavioral Health Associate	\$29,415
Physical Therapy Assistant	\$50,000
Level 2 Program Support Specialist	\$74,730
Diagnostician (holding an MA)	\$104,524

Additionally, increasing the funding to districts and charter schools to hire these positions does not address underlying issues of capacity and system-wide shortages among many support positions. LFC’s 2023 special education progress report revealed Santa Fe Public Schools (SFPS) nearly entered into a \$1.5 million contract with a private company in 2023 to provide special education to 32 students with intensive behavioral needs. However, SFPS was able to cancel the contract after it enacted a \$10 thousand to \$20 thousand stipend for existing staff instead. The report also unequivocally showed special education funds are not entirely being used for education, and teacher and staff shortages remain significant challenges across the state.

The bill will redistribute money within the existing funding formula to districts and charter schools that either already have support services personnel or schools located in regions where hiring is easier (i.e. metropolitan areas).

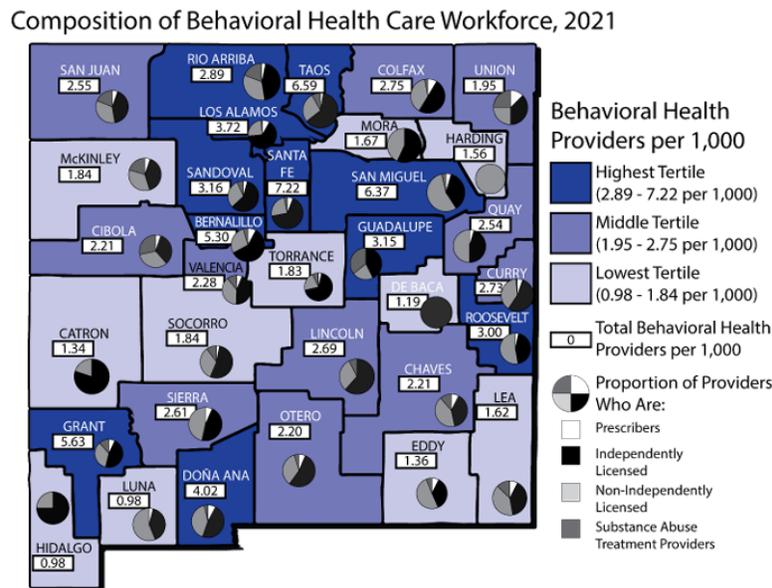


Figure 6.1. White boxes in each county show the total number of behavioral health providers per 1,000 population. County colors indicate whether each county ranks in the top (dark), middle (medium) or bottom (light) third of counties for this measure. Each county’s pie chart shows the proportion of prescribers (white), independently-licensed clinicians (black), non-independently licensed clinicians (light gray), or substance use clinicians (dark gray).

Source: 2022 New Mexico Health Care Workforce Committee report

HSD notes some services provided by schools are outside the scope of billing for Medicaid

school-based services, including applied behavioral analysis and adaptive physical education. These services are also not viewed as related services under federal special education law. As such, provisions of this bill would provide a state revenue stream for these specialized services.

## **PERFORMANCE IMPLICATIONS**

A 2023 LFC progress report on special education found special education enrollment 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. In FY24, public schools will receive around \$716 million in state funding and \$119 million in federal funding for a total of \$835 million for special education to serve roughly 68 thousand students in special education 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 rates.

Public schools are also not fully utilizing state and federal special education funds, leading to substantial carryover and underspending. While teacher compensation has increased, there is still a shortage of special education teachers. The special education teacher shortage is 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 reveal non-compliance within school districts and charter schools concerning special education law. Most complaints revolve around the IEP process, and there is a disproportionate rate of informal removals for students with disabilities, signaling the need for more robust oversight and standardized practices.

## **ADMINISTRATIVE IMPLICATIONS**

Districts and charter schools will need to add language regarding special education support services to their educational plans, and PED will need to approve these additions.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

This bill is a duplicate of Senate Bill 132. The bill also relates to House Bill 228 and Senate Bill 143, which creates an additional disability language program unit within the SEG distribution.

SR/CL/SL/al/ne