

Special Education

Summary

Although the educational and financial landscape has shifted over the past ten years, many of the issues surrounding special education revealed in LFC's 2013 program evaluation remain. In New Mexico public schools, one out of every five students receives special education because they are identified as having a disability or being gifted.

The Evaluation: The 2013 LFC program evaluation, *Special Education*, reviewed special education performance outcomes and analyzed special education funding and spending patterns.

The evaluation identified low student outcomes, potential incentives for over-identifying students, and cost inefficiencies in special education.

Four of the 2013 program evaluation's 11 recommendations (or 36 percent) have been implemented or progressed toward implementation. However, new research and increased special education funding has made some of the 2013 evaluation's recommendations less relevant.

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 measures.

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.

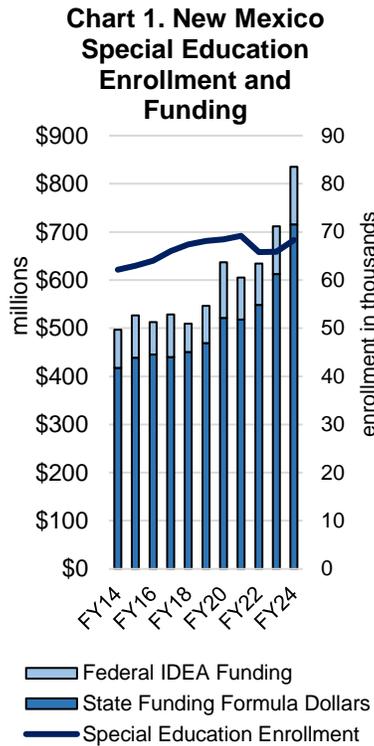
The Public Education Department's investigations frequently reveal non-compliance within school districts and charter schools concerning special education law. Most complaints revolve around the Individualized Education Plan (IEP) process, and there is a disproportionate rate of informal removals for students with disabilities, signaling the need for more robust oversight and standardized practices.

Progress Reports foster accountability by assessing the implementation status of previous program evaluation reports, recommendations and need for further changes.



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Multiple Reports Over the Past Decade Have Raised Concerns Regarding Special Education in New Mexico



New Mexico public schools will receive an estimated \$835 million in state and federal funds for special education in FY24. However, despite these resources, multiple reports have raised concerns over special education services, staffing, and oversight in New Mexico. A 2013 LFC program evaluation identified low outcomes, incentives for over-identifying students with disabilities, and cost inefficiencies in special education. In 2018, the first judicial district court cited insufficient services, chronic staff shortages, misidentification, and inadequate oversight as special education issues in the *Martinez-Yazzie* education sufficiency lawsuit. 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 Special Education Ombud at the state’s Developmental Disabilities Planning Council in 2021 and the governor enacted a new Office of Special Education at the Public Education Department (PED) in 2023.

For FY24, public schools will receive \$716 million in state funds and \$119 million in federal IDEA funds to serve approximately 68 thousand students in special education. The state public education funding formula, also called the State Equalization Guarantee (SEG), provides additional funding for special education based on a district’s special education enrollment and the level of intervention those students need. The funding formula categorizes students receiving special education into different levels depending on whether the student requires a minimal amount (A-level), moderate amount (B-level), extensive amount (C-level), or the maximum full-day amount (D-level) of special education. The formula provides an additional 70 percent to 200 percent funding per student for each special education student depending on their level of need. The formula also allocates additional funding to school districts and charter schools serving developmentally disabled 3- and 4-year-olds and employing ancillary special education staff such as diagnosticians or speech therapists. As Table 2 shows, the categories of A/B-Level and Related Services staff generate the majority of the revenue.

Table 1. State Public Education Funding Formula Allocations for Special Education, FY24

SEG Formula Component for Special Education	Students or Staff	Additional Funding per Student/Staff	Total Funding Allocated Statewide
Students in A/B level Special Education	47,965	\$ 4,369	\$ 209,567,191
Students in C-level Special Education	8,678	\$ 6,242	\$ 54,165,212
Students in D-level Special Education	8,190	\$ 12,483	\$ 102,238,555
3-4 year olds with developmental delays	3,487	\$ 12,483	\$ 43,523,165
Special Education Ancillary or Related Service Staff	1,962	\$ 156,042	\$ 306,107,101
Grand Total			\$715,601,224

Source: LFC analysis of PED FY24 preliminary funding formula.

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, which means free educational services designed to meet a student’s special education needs based on an individualized education plan (IEP) developed by school personnel and the student’s family. The 2018 LFC program evaluation, *Federal Funding in New Mexico Public Schools*, found schools spend the majority of IDEA funding on instruction, instructional support services, and student support services.

The 2013 LFC program evaluation described low and declining reading and math proficiencies for students with disabilities. The evaluation also raised concerns over incentives within the state public education funding formula for schools to over-identify students with disabilities. Additionally, the 2013 evaluation discussed options for meeting FY09 special education funding levels after state revenues had decreased because of the Great Recession. The 2013 program evaluation also recommended implementing a statewide system for special education individualized education plans (IEPs), revising the state’s special education due process policies, and funding special education based on total statewide enrollment (or census) rather than on a local per-pupil basis. To date, the Legislature and the state public education department (PED) have made progress toward implementing four of the 11 initial recommendations from the 2013 evaluation (see Appendix A for a complete list). However, the financial, legal, and research landscape regarding special education in New Mexico has changed over the past 10 years and some of the original recommendations are less relevant today. For example, new research suggests the census-based approach to funding special education has limited impacts unless strictly implemented, which can lead to under-identification, underfunding, and legal noncompliance (See Appendix G).

Table 2. PED Progress on Select LFC Recommendations from 2013

2013 Recommendation	Progress
Implement a standardized IEP statewide	Not completed
Promote alternatives to formal due process hearings	Progressing
Promote statewide best practices, such as data-driven instruction	Progressing

Note: See appendix A for more information

Source: LFC.

In the Martinez-Yazzie lawsuit, the court ruled PED is not exercising adequate oversight over how special education funds are being used in school districts and charter schools. In 2018, the first judicial district court concluded New Mexico’s “dismal” achievement outcomes for at-risk students, including students with disabilities, was evidence of an insufficient education system. The court highlighted persistent staffing and teacher shortages within special education and, like the 2013 LFC evaluation, cited low teacher salaries and lack of professional development opportunities as possible causes for recruitment and retention issues. The court also found misidentification of learning disabilities among certain groups, such as Native American students who were also English learners. Additionally, the court concluded PED was not exercising adequate oversight and supervision over how special education funds are used in school districts and charter schools. In response to the court ruling in the *Martinez-Yazzie* education sufficiency lawsuit, PED produced a discussion draft action plan in May 2022 outlining the actions the agency planned to take to address the court’s findings. PED’s discussion draft plan included four broad strategies related to special education: (1) academic supports, including evaluating dyslexia; (2) educator training, recruitment, and retention; (3) family advocacy; and (4) dispute resolution. PED requested written public input on its discussion draft by June 17, 2022 but has not issued a final plan.

Table 3. Office of Special Education Ombud

Division	PED Special Education Division (April 2023)
Funding	\$537,303
Number of FTE	5
Vacant FTE	2 (40% vacancy)
Contractors	4
Responsibilities	Provide information and support to families navigating special education, make policy recommendations to policymakers

Source: LFC staff analysis of October 2023 special education ombud and state personnel office organizational listing information.

In 2021, the Legislature established an Office of the Special Education Ombud to help families navigate the special education system. During the 2021 regular legislative session, the Legislature created a new office of the special education ombud housed at the state’s developmental disabilities planning council (Laws 2021, Chapter 53; House Bill 222). The special education ombud helps families navigate the special education system by attending school meetings with families, providing information, and answering questions. From December 2021 through October 2023, the special education ombud office assisted 390 families in 61 school districts across 27 counties. For FY24, the special education ombud has five FTE, including the state special education ombud, a case intake coordinator, and three regional coordinators. The special education

ombud also has four part-time contractors (costing a total of \$172 thousand). The special education ombud also makes recommendations to policymakers for addressing concerns with special education laws and regulations. In 2022, the special education ombud recommended improved teacher training, reduced seclusion and restraint practices, and improved goal setting and process monitoring of student academic success.

Table 4. PED Special Education Funding, Staffing, and Duties Before and After Executive Order

Division	PED Special Education Division (April 2023)	PED Office of Special Education (October 2023)
Funding (Federal)	\$1,645,197	\$1,828,946
Total FTE	22	23
Vacant FTE	5 (23% vacant)	9 (39% vacant)
Responsibilities	Ensure compliance with federal and state special education laws, develop annual statewide goals, monitor spending of funds, proposes policy and rule updates, and provide technical assistance.	Ensure compliance with federal and state special education laws, develop annual statewide plan, monitor spending of funds, proposes policy and rule updates, and provide technical assistance.

Note: The one additional FTE from April to October was an education administrator position.
 Source: LFC staff analysis of PED and state personnel office organizational listing reports.

In 2023, the governor turned PED’s special education division into an Office of Special Education with an executive order. During the 2023 legislative session, legislation was introduced to turn PED’s special education division into an Office of Special Education. However, the legislation (House Bill 285) was not enacted. The governor later issued Executive Order 2023-062 in May 2023, which elevated PED’s existing special education division into an Office of Special Education at PED whose director reports directly to the PED cabinet secretary. The Office of Special Education, like the previous special education division, is broadly responsible for ensuring the state’s compliance with federal and state special education laws, setting statewide goals, monitoring funds, and providing technical assistance to public schools. However, the executive order charges the Office of Special Education with developing and annually updating a statewide plan to improve special education outcomes in the state and proactively providing technical assistance to schools and stakeholders. The Office of Special Education has positions for a director, deputy director, a dedicated data supervisor, IDEA coordinators, parental coordinators, and curriculum and standards support staff. The LFC fiscal impact report (FIR) for House Bill 285 estimated an additional five FTE would be needed for an Office of Special Education to provide additional support and oversight.

Figure 1. Percent of Total Stakeholder Participation in LESC Special Education Listening Sessions



Source: LESC

Legislative Education Study Committee (LESC) listening sessions identified continued stakeholder concerns with special education outcomes, funding, staffing, and implementation. LESC conducted nine listening sessions between June and August 2023, in person and online, which engaged over 400 unique special education stakeholders. School district staff, advocates, and parents and community members comprised 31 percent, 26 percent, and 17 percent of total stakeholder participation in the listening sessions, respectively. The purpose of the LESC listening sessions was to collect stakeholder perspectives, concerns, and suggestions regarding special education in the state. LESC staff conducted qualitative analysis of the session transcripts and 73 emailed comments. According to LESC, stakeholders spoke highly of local school leadership and the commitment of staff and individual teachers. Stakeholders were largely positive about the expansion of structured literacy techniques to help students with dyslexia or difficulties developing foundational reading skills. Stakeholders critiqued the state’s special education system for a lack of teacher supports and staffing, inadequate services for developing individualized education plans, and insufficient behavioral supports for students including an over-reliance on student removals, restraints, and seclusion.

Special Education Enrollment and Funding Grew While Performance Stagnated

Special education enrollment has grown, particularly in the number of students with dyslexia and other specific learning disabilities who often need less intensive interventions than students with other disabilities. State funding for special education has grown as well. State per-pupil funding for special education increased by 60 percent, or \$3,948 per student, since FY13 (21 percent and \$1,794 per student adjusted for inflation) while reading and math proficiencies for students with disabilities have stagnated. The U.S. Department of Education (USDE) has identified New Mexico as being in the bottom third of states on special education proficiency outcomes. This situation indicates the need for an increased focus on special education implementation and practices to improve outcomes.

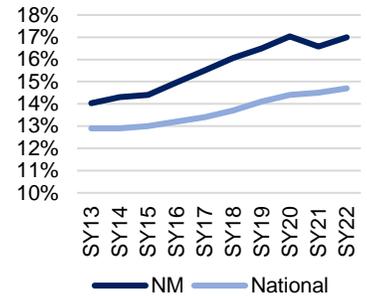
Students needing less intensive special education interventions increased in New Mexico, while students needing more intensive special education decreased.

New Mexico's special education population has grown over the past decade. Since FY13, special education enrollment grew by 10 percent (or 6,401 students) while total student enrolled decreased by 8 percent (or 25.8 thousand students). However, this growth has not been consistent across all special education needs and diagnoses. The number of students with specific learning disabilities (such as dyslexia) who need less intensive interventions largely has driven the state's growth in special education, though the state has also seen growth in other diagnoses such as autism.¹

New Mexico's percent of students with disabilities has grown and ranks 13th highest in the nation. New Mexico's percent of students with a disability, excluding gifted students, has increased over the past decade from 13 percent in FY13 to 17 percent in FY23. Nationwide, identification rates increased from 13 percent to 15 percent over the same timeframe. In FY22, states varied in their percent of students with disabilities ranging from 12 percent in Texas to 21 percent in New York.

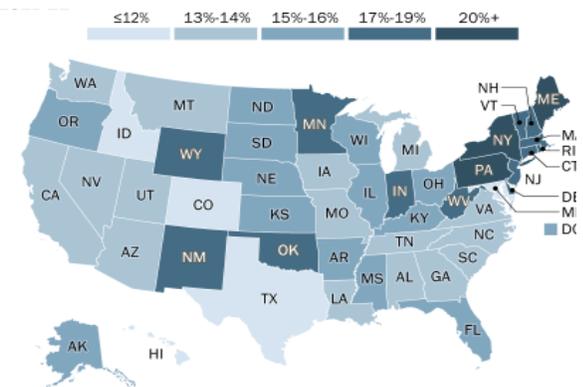
School districts and charter schools vary widely their rates of students with disabilities or giftedness. In FY23, roughly 68.7 thousand students (20 percent of all students) received special education in the state either because of a disability (57 thousand students or 17 percent), giftedness (11 thousand students or 3 percent of all students), or both (737 students). However,

Chart 2. Percent of Students with Disabilities, SY13-SY22



Source: LFC analysis of PED and USDE data.

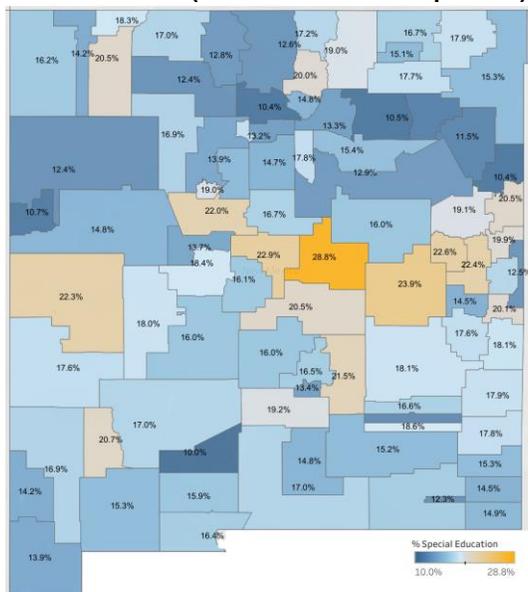
Figure 2: Percentage of students ages 3-21 served under federal IDEA funding by state, FY22



Source: Pew Research Center Analysis of NCES data.

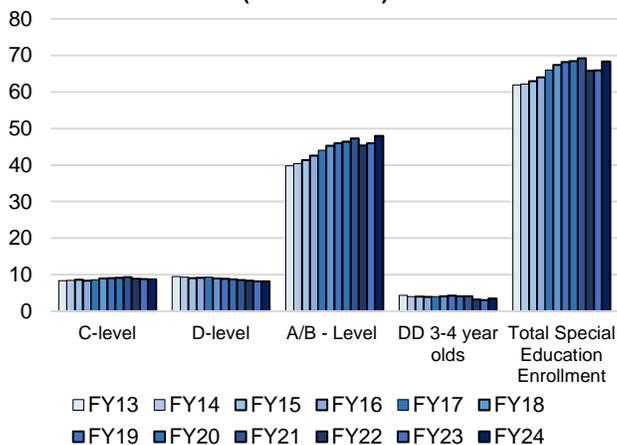
¹ According to the federal Individuals with Disabilities Education Act (IDEA), a specific learning disability is defined as a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. However, a specific learning disability does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, intellectual disabilities, or emotional disturbance.

Figure 3. Percent of Students with a Disability by District in SY23 (Statewide Total = 17 percent)



Source: LFC analysis of PED student data.

Chart 3. Special Education Enrollment by Classification from FY12 to FY24 (in thousands)



Source: LFC analysis of PED funding formula data

identification by district varied from 10 percent (Hatch) to 29 percent (Vaughn). In general, smaller districts tended to show wider variation in identification rates than larger urban districts. Similar to the findings of the 2013 program evaluation, high-poverty districts had some of the lowest identification rates, which could indicate a lack of proper identification resources or practices. Statewide, around 3 percent of students were identified as gifted in SY23. A total of 21 districts in rural or high-poverty areas did not identify a single gifted student in SY23. By contrast, roughly 10 percent of students in Los Alamos were identified as gifted. A 2017 study found that low-income students, especially in low-income schools, are generally less likely to be identified for gifted services.ⁱ

Students with disabilities in New Mexico needing minimal or moderate interventions have increased, while students requiring maximum interventions have declined. Students receiving special education are categorized based on how much time they receive special education services. The number of students requiring minimal (A-level) and moderate (B-level) special education has increased by 21 percent (or 8,172 students) since FY13. At the same time, the number of students needing maximum or full-day (D-level) special education decreased by 13 percent (or 1,268 students). The number of students requiring moderate (C-level) special education has stayed relatively stable. New Mexico’s decline in D-level students over the past 10 years aligns with national trends.

Specific learning disabilities (such as dyslexia) are the most common type of disability in New Mexico and have increased over the past decade. Over the last decade, the five most common types of disabilities among students in NM have been specific learning disability, speech-language impairment, other health impairment, autism, and developmental delay. Specific learning disabilities are learning disorders in reading (dyslexia), math (dyscalculia), writing (dysgraphia), or other methods of processing information. The number of students with specific learning disabilities grew in New Mexico by 37 percent over the past decade. (See Appendix C for more on identification patterns.)

All public schools are now required to screen first graders for signs of dyslexia and provide appropriate reading supports

In 2019, the Legislature required public schools to screen all first graders for signs of dyslexia and receive appropriate evidence-based reading interventions based on the dyslexia screening. LFC staff requested but did not receive statewide data from PED on the percentage of first graders screened as being at-risk for dyslexia.

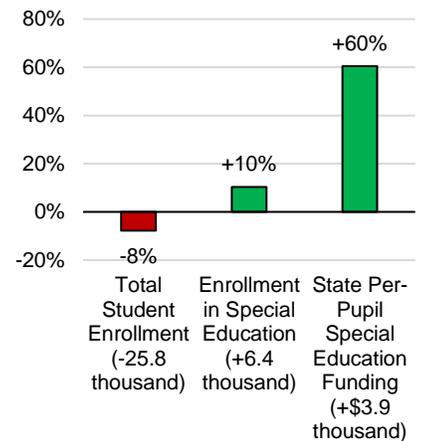
While special education funding has grown, special education proficiencies have stagnated and outcomes remain low.

As special education enrollment has grown, state funding for special education has grown as well. As overall public education funding grew by 71 percent (or \$1.7 billion), state per-pupil funding for special education increased by 60 percent, or \$3,948 per student, since FY13 (21 percent and \$1,794 per student adjusted for inflation) while reading and math proficiencies for students with disabilities have stagnated. The U.S. Department of Education has identified New Mexico as being in the bottom third of states on special education proficiency outcomes. New Mexico’s high school graduation rates are below national averages for students with disabilities. The state could have met the national average high school graduation rate for students with disabilities with an additional 153 graduates statewide.

State per-pupil funding for special education increased by 60 percent since FY13 while proficiencies have stagnated. State funding for special education has grown by \$311 million (or 77 percent) from \$404 million in FY13 to \$716 million in FY24. Over this timeframe, funded enrollment in special education grew by 10 percent (6,401 students) to 68.3 thousand students in FY24. At the same time, per-pupil state funding increased by 60 percent (or \$3,948 per special education student) from \$6,526 for each special education student in FY13 to \$10,474 per special education student in FY24. This increased state investment into special education has not translated into improved outcomes for students receiving special education in New Mexico. In 2022 (the latest data available), only 3 percent of fourth-graders in special education scored proficiently in reading on the National Assessment of Educational Progress (NAEP) exam which are lower outcomes than in FY13. From FY13 through FY23, New Mexico reading proficiency rates for students in special education on the NAEP assessment have not exceeded 7 percent.

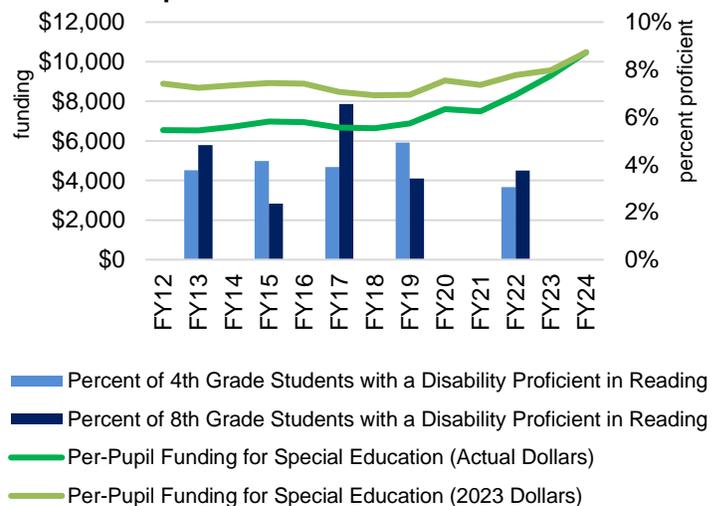
The Covid-19 pandemic contributed to statewide learning loss with particular impacts for students with disabilities. Previous LFC reports about learning loss in New Mexico from the Covid-19 pandemic indicate it will take multiple years of extended learning time to compensate for the class time lost due to missed school and the lower efficacy of remote instruction. National studies have also found that the pandemic disproportionately impacted students with disabilities, who typically rely on schools to receive in-person therapeutic services and individualized instruction.

Chart 4. Change in Students and Funding, FY13-FY24



Source: LFC analysis of PED funding formula data.

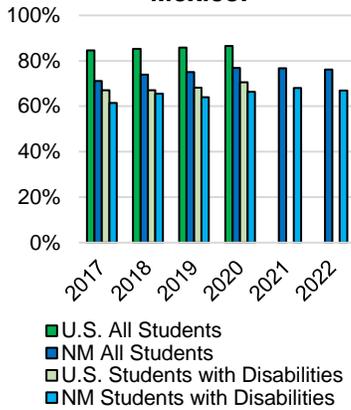
Chart 5. Reading Proficiency on NAEP exam and Per-Pupil State Funding for Students in Special Education in New Mexico



Source: LFC staff analysis of NAEP and PED funding formula data.

The U.S. Department of Education (USDE) identified New Mexico as being in the bottom third of states on special education proficiency outcomes. PED reports the state’s performance across a variety of indicators to USDE as part of its IDEA annual performance report. Since 2014, USDE has used a methodology, called results-driven accountability (RDA), which awards points to states based on measures of student outcomes and compliance. For the 2023 annual performance report (based on federal fiscal year 2021 data), New Mexico earned 67.5 percent of total possible points, 85 percent of possible points for compliance, and 50 percent of possible points for student outcomes. New Mexico’s low student outcomes are a major reason why the USDE has consistently designated New Mexico as “needing assistance” to meet the requirements of IDEA. USDE ranks states by the performance of fourth- and eighth-grade students in special education on the National Assessment of Educational Performance (NAEP). Across all four categories of fourth-grade reading, fourth-grade math, eighth-grade reading, and eighth-grade math, New Mexico was awarded zero points, meaning that the state was in the bottom third of states for these proficiency ratings. In 2023, USDE determined that 23 states and territories were meeting the requirements for IDEA Part B, 35 states and territories were flagged as needing assistance, and 1 territory required intervention. In 2023, USDE determined New Mexico again “needs assistance” to meet the requirements of IDEA.

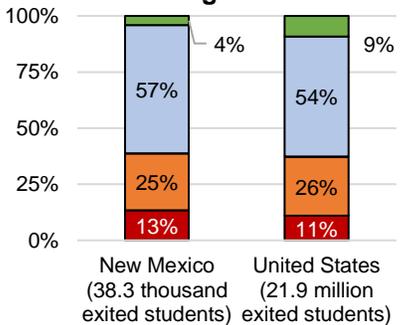
Chart 6. Students With Disabilities Have Lower 4-Year High School Graduation Rates Nationally and in New Mexico.



Note: National data for 2021 and 2022 is unavailable.

Source: LFC analysis of PED and USDE data.

Chart 7. Reasons for Students Exiting from Special Education, SY13 through SY21



Source: LFC analysis of USDE and PED data.

New Mexico could have met the national average graduation rate for students with disabilities with an additional 153 graduates statewide. In 2022, New Mexico had a four-year high school graduation rate of 76 percent statewide while students with disabilities in the state had a high school graduation rate of 67 percent. This pattern is similar at the national level where students with disabilities consistently have high school graduation rates at least 15 points below the national average for all students. New Mexico could have met the national average graduation rate for students with disabilities with an additional 153 graduates. High school graduation rates vary for students with different disability types. For example, in 2021, New Mexico students with a specific learning disability (such as dyslexia) had a graduation rate of 71 percent whereas a students with an emotional disturbance disability (such as schizophrenia or bipolar disorder) had a graduation rate of 48 percent. Based on data from the USDE, New Mexico’s graduation rates for all students and students with disabilities fall well below the national averages for all students or students with disabilities.

Most students in special education at the start of high school remain in special education until they leave high school. Less than 10 percent of students nationally and less than 5 percent of students in New Mexico who left special education nationally from SY13 through SY21 were transferred from special education to general education. According to federal IDEA-B data, the majority of students who exit special education from ages 14 through 21 do so because they earn either a high school diploma, certificate of completion, high school equivalent exam, or other alternative degree.

Despite Ample Available Resources, Districts are Underspending Funds to Support Special Education

Public schools are underspending or carrying over millions of dollars in state and federal funding for special education. Public schools have roughly 1,300 teachers with special education licenses teaching general education classrooms while there are hundreds of special education vacancies. Smaller stipends have limited effectiveness at increasing special education staffing, but research indicates a \$10 thousand stipend would be effective. It would cost \$20.4 million to provide a \$10 thousand stipend to teachers serving students with extensive to maximum (C- and D-level) special education needs.

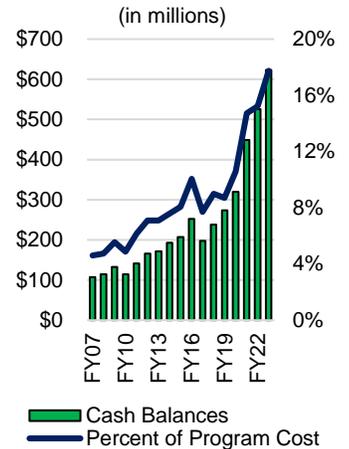
Public schools are underspending or carrying over millions of dollars in state and federal funding for special education.

Public schools have more money than ever available to serve the needs for students in special education, but spending data indicates that schools are using available funding to grow their cash balances. Public schools' cash balances have more than tripled since FY18 and recently exceeded \$623 million statewide, the highest amount recorded. Public schools also underspent special education funding allocations from the state public education funding formula by an average of \$105 million since FY18. School districts and charter schools have carried over an average of \$29 million in IDEA-B special education funding over the last five fiscal years. Despite a streamlined application process, PED's high-cost fund for special education remains highly underutilized.

Public schools underspent special education funding allocations from the state funding formula by an average of \$105 million since FY18. The state public school funding formula has components which allocate funding to school districts based on special education enrollment and level of interventions needed. After receiving this state funding, districts have local flexibility over how to budget and spend these operational dollars. LFC staff compared the statewide funding allocations for special education with actual spending data over the past six fiscal years (See Appendix E). Based on these data, state funding allocations for special education operations and local spending on special education have both consistently increased over the past six fiscal years. Over this timeframe, state funding allocations for special education (averaging \$520 million) have exceeded statewide local spending on special education (averaging \$415 million) by an average of \$105 million.

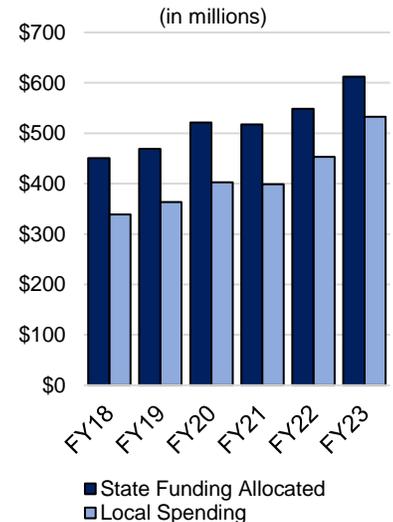
Recent increases in local special education spending have primarily been directed to compensation increases rather than hiring more special education teachers. Local spending on special education has consistently increased over the past year with the largest increase, a \$79 million (or 17 percent) increase, occurring between FY22 and FY23. Legislation passed during the 2022 regular legislative session increased compensation for public school personnel. The General Appropriation Act of 2022 included \$381.6 million to increase staff base salaries by 7 percent, raise minimum salary levels by \$10 thousand, raise the minimum wage for school employees, and increase the employer retirement contribution rate by 2 percent. Accordingly, the majority of the increase in state spending on special education salaries came from compensation increases rather than additional special education teachers.

Chart 8. Statewide Public School Year-End Cash Balances Grew 482 Percent Since FY07



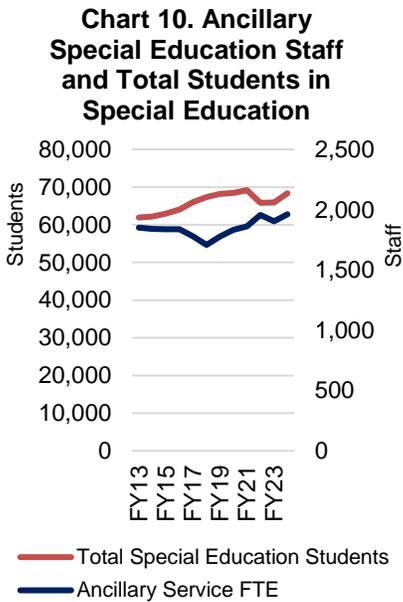
Source: LFC analysis of PED data.

Chart 9. State Funding Formula Dollars Allocated and Spent on Special Education, FY18-FY23



Note: LFC staff identified operational spending on special education in PED's financial actuals data through PED fund code 11000 (operational fund) and program code 2000 (special education programs).

Source: LFC staff analysis of PED funding formula and financial actuals data.



In FY23, there were 93 more teachers with special education licenses working in special education as compared to the previous school year. Local spending on special education for the current fiscal year (FY24) might decline since the most recent New Mexico teacher vacancy reports indicated a 39 percent increase in teacher vacancies from September 2022 (FY23) to September 2023 (FY24).

State rules do not define student-to-staff caseload ratios for most ancillary and related service providers for students in special education. The state public education funding formula provides an additional \$156 thousand to districts and charter schools for each special education ancillary and related service provider (such as a diagnostician, speech therapist, social worker, or physical therapist). 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. From FY13 to FY24, the number of ancillary service FTE statewide increased by 6 percent (or 112 FTE). State law and PED rules do not specify student-to-staff caseloads requirements for ancillary staff except speech pathologists (60 students per FTE; Section 6.29.1.9 NMAC).

Table 5. New Mexico Special Education High-Cost Fund Awards, FY23

District or Charter	Amount Awarded
Alice King Community School (APS)	\$99,181
Albuquerque Sign Language Academy	\$265,242
Hondo	\$62,341
Maxwell	\$36,095
Pecos	\$20,955
Total Awarded	\$483,813
Total Available in FY23	\$1,166,613
Ending FY23 Balance	\$682,800

Source: LFC analysis of PED data.

School districts and charter schools have carried over an average of \$29 million in unspent IDEA-B special education funding over the last five fiscal years due to administrative processes and federal timelines. The Individuals with Disabilities Education Act (IDEA) provides federal funding to states to help support the education of children with disabilities. IDEA-B grants, which comprise the vast majority of IDEA dollars, assist states in providing a free appropriate public education for children with disabilities ages 3 through 21. Over the last five fiscal years, statewide carryover of IDEA-B funding has averaged approximately \$29.3 million, accounting for around 28 percent of the state’s allocation. Schools have flexibility in spending federal grant funds and some responsibility for carryover rests at the local level with schools and districts. However, prior LFC reports have also indicated that high carryover can be indicative of administrative delays at PED in providing award letters, carryover certifications, and reimbursements. Some carryover of IDEA funds is also attributable to the timing differences between the state fiscal year and the federal fiscal year. New Mexico schools spend the majority of IDEA funds on instruction, instructional support services, and student services.

Despite a streamlined application process, PED’s high-cost fund for special education remains underutilized. Federal law allows states to set aside some IDEA dollars into a standalone fund for particularly high-cost students. PED operates a high-cost fund called Puente para los Niños which school districts and charter schools can apply to PED for funding to serve individual students needing high-cost services. Although PED has recently made the high-cost fund more accessible through staff training and reduced requirements, the fund is still routinely underutilized. For example, PED set aside \$1.2 million in the high-cost fund in FY23, but only \$484 thousand (41 percent) was awarded based on local applications and \$682 thousand (59 percent) was unawarded for high-cost students with disabilities and reallocated back to all districts and charter schools based on district population and poverty. Because unawarded dollars from the high-cost fund are reallocated to all districts and charters, PED has to sometimes reallocate small amounts back to charters and districts. For example, in FY19, over 50 districts and charters received less than \$500 in reallocations from the FY18 high-cost fund balance.

Public schools have 1,300 teachers with special education licenses teaching general education while there are hundreds of special education vacancies.

New Mexico has a shortage of teachers working in special education. LFC staff analysis indicates the state needs an additional 255 special education teachers to meet required teacher caseloads. Special education teacher vacancies are the largest category of total teacher vacancies statewide, making up 36 percent of total teacher vacancies. At the same time, there are roughly 1,300 active teachers with special education licenses who teach general education classes. The lack of teachers working in special education limits the capacity of public schools to provide special education, particularly for students with intensive needs. Case studies in New Mexico, other states, and research cited below indicate a \$10 thousand stipend is effective at improving recruitment and retention of special education teachers. LFC staff estimate it would cost \$20.4 million to provide a \$10 thousand stipend to teachers educating students with extensive or maximum special education needs.

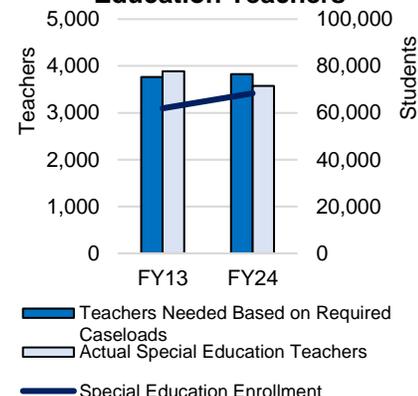
Special education teacher shortages are less about a lack of licenced teachers than an inability to attract teachers with multiple licenses to teach special education.

New Mexico needs an additional 255 special education teachers statewide to meet required student-to-teacher caseload ratios for students in special education. PED regulations specify maximum caseloads for special education teachers serving A-level students (35 students per teacher), B-level students (24 students per teacher), C-level students (15 students per teacher), and D-level students (8 students per teacher) (Section 6.29.1.9.I NMAC). Based on these ratios and special education enrollment reported in the FY24 funding formula, New Mexico needs 3,828 special education teachers statewide. In FY23 (latest data available), the state had 3,573 special education teachers indicating a need for an additional 260 special education teachers. New Mexico State University estimates vacancies for special education accounts for 36 percent of the total teacher vacancies statewide with 268 special education teacher vacancies as of September 2023.

There are roughly 1,300 more special education-licensed teachers in the state than are currently teaching in special education. Over the previous three school years, the number of teachers with licenses to teach special education in New Mexico has surpassed the number of licensed teachers teaching in special education at least part time by 1,264. By comparison, the average number of teacher vacancy rate in special education over these three years amounted to 213 unfilled positions.

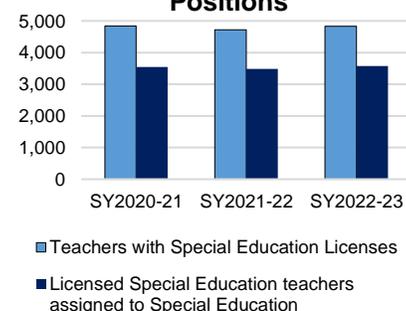
Smaller stipends have limited effectiveness at increasing special education staffing, but research indicates a \$10 thousand stipend would be effective. Observations from other states indicate teacher stipends are effective at improving recruitment and retention of teachers in hard-to-staff geographic areas, schools, or subjects. However, smaller stipends have not been enough to attract teachers to work in special education. For example, a \$1,800 annual stipend in North Carolina helped retain math and science teachers but had no effect on special education teachers.ⁱⁱ Research indicates a \$10 thousand annual stipend for special education teachers in Hawaii had “an immediate, significant, and meaningful impact” on filling vacant special

Chart 11. Required Student-to-Teacher Ratios Indicate the State Needs 255 Additional Special Education Teachers



Source: LFC analysis of PED data.

Chart 12. The Number of Teachers with Special Education Licenses Exceeds Teachers Assigned to Special Education Positions



Source: LFC analysis of PED teacher data.

education positions with licensed teachers.ⁱⁱⁱ Ultimately, the stipends reduced the proportion of special education positions that were vacant or filled by an unlicensed teacher by 35 percent or 4.0 percentage points.^{iv} Although the stipends in Hawaii did not increase retention of existing special education teachers, the Covid-19 pandemic likely impacted the retention impacts of the stipends while other research indicates compensation increases improve special education teacher retention. A bonus program in Florida in the 1990s and 2000s which awarded the equivalent of 5.7 percent of average teachers' salaries was successful in decreasing special education teacher attrition by 10 percent to 12 percent.^v

Case Study: Santa Fe Public Schools was able to cancel plans for a contract company to teach intensive special education classes by enacting a \$10-\$20 thousand stipend for existing staff instead.

On June 22, 2023, the school board of Santa Fe Public Schools approved a contract for \$1.5 million with Specialized Education of Colorado Incorporated, a private company, to provide special education to 32 students in four classes with intensive behavioral needs for SY24. During the school board meeting, district officials cited special education staff turnover and shortages within special education as reasons for pursuing the contract. However, the district was able to cancel plans for a private contractor to staff intensive special education classrooms by enacting annual stipends of \$10 thousand, \$15 thousand, and \$20 thousand for educational assistants, social workers, and teachers, respectively, for existing staff to work in the classrooms instead. This case study provides evidence annual stipends and increased compensation can help attract staff to work in intensive special education classrooms.

Several studies suggest it is even more difficult to recruit and retain special education teachers who work with students with severe disabilities or emotional behavioral disorders.^{vi} For example, at the start of the SY22, 80 percent of Detroit's overall teacher vacancy were "Exceptional Special Education" positions, or those serving students with autism or emotional, cognitive, or hearing impairments. As a result, Detroit Public Schools began offering \$15,000 annual stipends to teachers in Exceptional Special Education classrooms.

It would cost \$20.4 million to provide a \$10,000 stipend to teachers serving students with extensive to maximum special education needs.

Given there are roughly 1,300 teachers with special education licenses in the state not teaching in special education, this report recommends a targeted \$10 thousand annual stipend for teachers working with students age 3 through age 21 in C-level and D-level placements, who require extensive or maximum amounts of special education. According to preliminary FY24 funding formula data, there are approximately 20 thousand students requiring extensive or maximum amounts of special education. Based on the maximum caseloads defined in PED regulations for C-level and D-level students (Section 6.29.1.9 NMAC), LFC staff estimate there are approximately 1,600 teaching positions supporting C-level and D-level students in the state. If each of these teachers were awarded a \$10 thousand annual bonus, this would cost the state \$20.4 million and would raise the average special education teacher's salary by 16 percent. By providing special education teachers of C-level and D-level students with annual stipends, the Legislature and school districts can target funding to the teachers supporting students with the most intensive special education needs.

PED Needs to Strengthen Oversight of Student Discipline

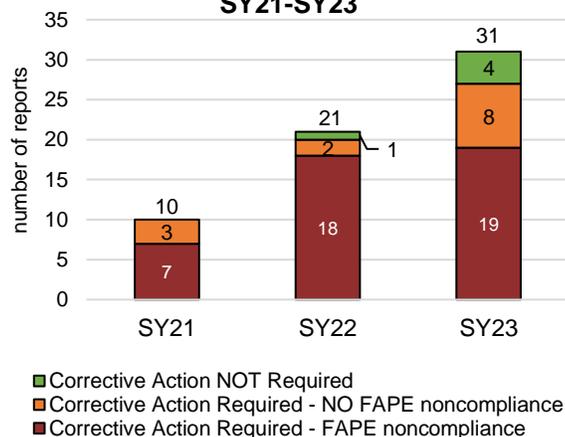
Federal law requires PED to maintain a general supervision system to ensure that districts and charters are meeting state performance targets, providing appropriate special education, and reporting valid and complete data. PED is also charged with overseeing the policies, procedures, and fiscal management of local special education programs. Ninety-two percent of PED investigations resulting in complaint resolution reports over the past three years identified noncompliance with special education requirements which needed local corrective action. Most complaints from families of students with disabilities relate to local IEP processes, but PED has not yet required a standardized IEP statewide as recommended in the 2013 LFC evaluation. Some PED investigations have also found inadequate special education services because of chronic understaffing and staff shortages in special education programs. New Mexico public schools place students with disabilities on “informal removals” at a relatively high rate which can lead to the denial of a free appropriate public education.

Ninety-two percent of PED complaint reports identified noncompliance with special education requirements and necessitated local corrective action.

If a family believes a school is not adhering to special education requirements, they can submit a formal complaint to PED for the department to investigate. When PED completes an investigation, PED finalizes a “complaint resolution report” which summarizes their findings, determines whether requirements to provide a “free appropriate public education” (FAPE) were followed, and prescribes corrective actions if needed. Out of PED’s 62 reports on special education complaints over the past three years, 57 investigations (or 92 percent) identified noncompliance with special education requirements and necessitated local corrective action. Over the past three years of available data, the number of special education complaints requiring corrective action has increased by 170 percent (or 17 complaints) from 10 complaints in FY21 to 27 complaints. Complaints during SY21 were likely low due to Covid-19 conditions. While the overall number of corrective actions grew between SY22 and SY23, the number of FAPE violations remained consistent. A FAPE violation generally indicates a more serious issue with implementing special education requirements and necessitates a more extensive corrective action plan.

PED has not yet mandated standardized individualized education plans (IEPs) for students in special education, despite a previous LFC recommendation, likely leading to inconsistent implementation and services. The 2013 LFC program evaluation recommended PED mandate a statewide IEP system to improve consistency across the state and reduce costs. Although PED provides guidance on IEP development and has created a template for districts to use, PED has not yet required a standardized IEP statewide as of October 2023. Out of the 57 investigations requiring local

Chart 13. Most Special Education Compliant Resolution Reports Issued by PED Require Corrective Action from Districts and Charters, SY21-SY23



Note: FAPE means a Free Appropriate Public Education (FAPE).
Source: LFC review of PED complaint resolution reports.

corrective action, 68 percent found noncompliance with properly administering IEPs for students in special education. The second most commonly identified issue (35 percent) was the inadequate involvement or notification of parents regarding their child’s evaluation, placement, or progress in special education. IEP implementation complaints derived from a variety of causes. Examples include inadequate communication between district staff and teachers, a district neglecting to investigate the cause of a student’s truancy, inadequate consideration of a student’s evolving behavioral needs, and the failure to transfer an IEP from one school district to another while maintaining comparable services for the student.

PED investigations have also identified more serious or systemic issues related to local special education implementation because of a lack of teachers working in special education. Santa Fe Public Schools and Hagerman Municipal Schools both received citations from PED for not adequately providing an appropriate public education to students with disabilities because of chronic under-staffing of their special education programs.

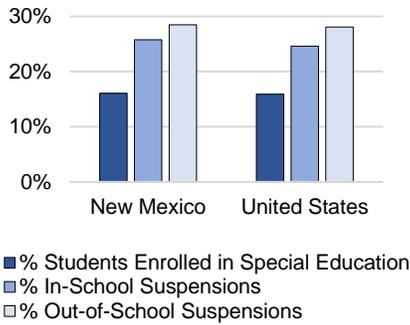
Relatively high discipline rates, incomplete reporting, and informal removals signal the need for strengthened oversight over the discipline of students with disabilities.

New Mexico students with disabilities are more likely to face suspension and other forms of disciplinary removal as compared to peers in general education, which is similar to national trends. Nationwide in SY18 (latest data available), students with disabilities constituted 16 percent of public school enrollment but accounted for 25 percent of in-school suspensions and 28 percent of out-of-school suspensions. For New Mexico, students with a disability were 16 percent of total enrollment but accounted for 26 percent of in-school suspensions and 29 percent of out-of-school suspensions.

Hispanic and Black students with disabilities in New Mexico were disciplined at relatively high rates compared both to peers in general education or from other racial and ethnic backgrounds. While Hispanic students with disabilities comprised an average of 11 percent of total New Mexico students, this group accounted for 21 percent of all disciplinary removals. Likewise, Black students with disabilities constituted 0.3 percent of total students during this period, but received 1.6 percent of disciplinary removals. Native American and white students with disabilities were disciplined proportionally more frequently than their peers in general education. LFC staff analysis of recent state-reported IDEA-B discipline data indicate New Mexico’s English learner (EL) students with disabilities are not disciplined at disproportionate rates compared to other non-EL students with disabilities.

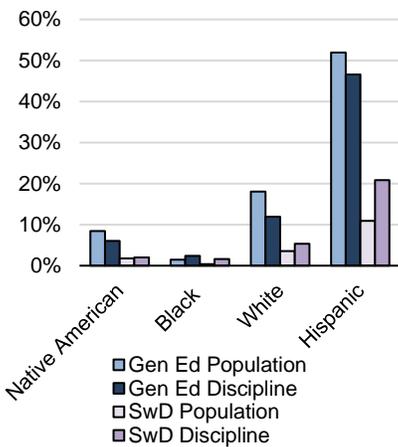
Districts are not fully reporting disciplinary responses for students with disabilities despite PED guidance. In SY22, PED mandated that districts and charter schools report on their responses to disciplinary incidents. Districts and charter schools could no longer report responses to disciplinary incidents as “Other/Unknown” if the student receiving disciplinary action was identified as having a disability. However, in SY22 disciplinary data, which included 5,822 total infractions among students with disabilities, LFC staff found 392 instances (or 7 percent) where districts and charters reported their response to a disciplinary incident as unknown or blank.

Chart 14. Students With Disabilities are More Likely to Face Disciplinary Suspensions, SY18



Source: LFC analysis of PED and USDE Office of Civil Rights data

Chart 15. New Mexico Student Demographics and Percentage of Total Disciplinary Responses



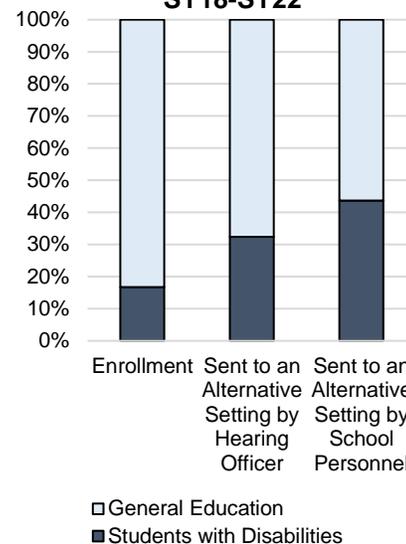
Source: LFC analysis of PED data

New Mexico students with disabilities are “informally removed” from school at a relatively high rate, which is contrary to federal guidelines.

LESC special education stakeholder listening sessions identified a concern over the widespread use of “informal removals,” where students with disabilities are placed in an online learning environment or offsite away from their general education peers because the school is not able to meet their needs in a conventional classroom setting. From SY18 to SY22, students with disabilities accounted for 32 percent of instances where a student was sent to an alternative setting by a hearing officer and 44 percent where that alternative setting was mandated by school personnel. However, this data is not exhaustive and in 2023, USDE reported that nationwide, informal removals are being used to “fly under the radar” of standard disciplinary practices and IDEA procedures. USDE added clarifying language to its IDEA documentation in 2022.

In New Mexico, seven PED complaint investigations over the past three years required corrective action regarding the way removals were being documented by school personnel. For instance, in SY22, PED mandated Albuquerque Public Schools address the issues at one high school by designating a staff member to oversee the removals procedure, training staff on disciplinary removals, and submitting to an audit of student files by PED. The most significant issue with informal removals is whether or not they are counted towards the “10 day rule.” When a student is suspended for more than 10 days in a school year, IDEA requires school personnel to reassess the student’s IEP and potentially provide additional services.

Chart 16. Percentage Enrollment versus Informal Removals, SY18-SY22



Source: LFC analysis of PED data.

**The Special Education Ombud
Mostly Responds to Cases Involving Behavior and Discipline**

More than half of staff time at the Office of the Special Education Ombud involves cases relating to student behavioral and disciplinary issues. According to the Office of the Special Education Ombud’s 2022 annual report, one third of the office’s cases and more than half of Ombud staff time involve cases related to behavioral challenges and disciplinary responses. The office recommended behavioral supports training for teachers, administrators, and support staff to help better identify and respond to special education behavioral needs.

Appendix A. Progress on Recommendations from 2013 LFC Program Evaluation

Finding

New Mexico’s public school funding formula creates financial incentives that contradict modern special education policy.

Recommendation	Status			Comments
	No Action	Progressing	Complete	
<p>The Legislature should revise the funding formula to:</p> <ul style="list-style-type: none"> ▪ use a census-based, single-weight approach to fund special education for school districts with more than 500 students; ▪ use a student count, single-weight approach to fund special education for charter schools and school districts with less than 500 students; and ▪ phase-in the increases and decreases in funding to provide soft landings for school districts and charter schools. 				<p>The SEG public education funding formula has retained the same per-pupil approach to funding special education. At the time of the original program evaluation, census funding was showing promising outcomes as a way to streamline funding and discourage over-identification. However, new research indicates census based funding for special education has limited impacts unless strictly implemented, which carries risks for under-identifying, underfunding, and legal noncompliance (see Appendix G).</p>
<p>The Legislature should create a fund for school districts or charter schools serving high proportions of high-cost students with disabilities.</p>				<p>New Mexico still maintains its per-child fund, Puente para los Niños, but has yet to create a separate fund for districts or charters serving high proportions of high-cost students with disabilities.</p>

Finding

The State can meet its Federal Maintenance of Effort Requirements within the current formula and funding level.

Recommendation	Status			Comments
	No Action	Progressing	Complete	
The Legislature should monitor the USDE's ruling on the PED's appeal, and based on that outcome, identify a method for maintaining effort that meets federal criteria while preserving the state's public school funding formula.				Following the 2015 special audit from the Office of the State Auditor, PED has implemented new rules for monitoring both statewide and local-level maintenance of effort.
The PED should pursue FAPE waivers for FY11, FY12, and FY13 as well as subsequent years when the total number of special education units is less than the FY09 benchmark of 106 thousand units.				The U.S. Department of Education (USDE) determined PED had maintenance of effort (MOE) shortfalls in FY10, FY11, and FY12 totaling \$110.8 million. PED received a MOE waiver for FY10, which reduced the MOE liability to \$63.5 million. PED pursued and did not receive a MOE waiver for FY11. PED did not pursue a waiver for FY12. In 2013, the USDE wrote it did not intend to reduce the state's IDEA-B award for FY13. PED's FY22 financial audit still notes the potential risk for a one-time reduction of federal funding ranging from \$0 to \$63.5 million based on federal action. The USDE has not taken further action on the matter since 2013. Current state funding for special education is above the FY09 level of \$462 million.

Finding

New Mexico’s approach to identifying, serving, and funding gifted services is costly and inefficient.

Recommendation	Status			Comments
	No Action	Progressing	Complete	
The Legislature should revise statute to separate giftedness from special education.				Gifted education has been separated from special education in rule (see NMAC 6.31.2.12) but remains part of the special education funding formula. In addition to New Mexico, only Alaska, Arizona, Idaho, Tennessee include giftedness within special education funding.
The Legislature should revise statute to a census-based, single-weight approach for funding gifted units that more accurately reflects costs.				New Mexico gifted students requiring additional services generate additional state formula funding. The 2013 evaluation presented evidence that New Mexico gifted programs are generally over funded and recommended a flat census-based formula based on a gifted census rate of 5 percent and a unit differential of 0.5 to better align likely costs with revenues. LFC staff also recommended eliminating the IEP requirement for gifted students to reduce unnecessary administrative burdens.

Finding

The PED can improve special education outcomes and save money by proliferating best practices across the state.

Recommendation	Status			Comments
	No Action	Progressing	Complete	
The PED should revise the dispute resolution administrative code so school districts are not solely responsible for the entire cost of due process hearings for which they are not found liable.				According to 6.31.2.22 NMAC, the districts are still responsible for covering the administrative costs associated with the hearing. PED notes that the state may utilize IDEA funds for the purpose of paying for due process hearing costs, but not attorney fees of the districts or charter schools resulting from due process hearing proceedings. In very limited circumstances, a parent may be required to pay a district's or charter's attorney fees. Under no circumstances can a parent be required to pay hearing costs. See 34 CFR 300.517.
The PED should create administrative rule or set guidelines by which the time dedicated to a due process hearing is limited in an effort to contain school district and charter expenses.				PED has not created administrative rules or guidelines to shorten the hearing process. Guidance provided to parents on PED's website comes from a 2014 brochure that advises, "Hearings sometimes take place over several days."
The PED should clearly promote alternatives to the due process hearing through educational materials on the PED website, at school locations, and through special education advocacy groups.				The "Dispute Resolution" section on PED's special education website clearly outlines alternatives to due process. Additionally, the vast majority of due process requests in the past five years have been settled through mediation. PED has recently begun offering facilitated IEP meetings before state complaint and due process hearings requests are filed. Previously, mediation was only available before a complaint is filed. In addition, PED has expanded the scope of the parent liaison position to avoid the need for dispute resolution by permitting the parent liaison to intervene with districts or charters when appropriate. PED should consider including a link to the Developmental Disabilities Planning Council's Office of the Special Education Ombud on their Dispute Resolution site.
The PED should implement statewide special education systems, such as IEP software, to reduce costs and improve consistency.				PED has not yet mandated a new statewide IEP system. PED officials report that the department plans on implementing a new statewide IEP system, but PED has not provided written documentation of these plans.
The PED should provide additional opportunities to proliferate successful practices, such as use of student data to drive decision-making, across schools.				PED has improved accessibility of student outcomes data by district and has convened several conferences to proliferate best practices for special education in the state. IDEA indicators still show New Mexico struggling to adequately make student outcomes at school districts and charter schools publicly accessible

Appendix B. Variation in Identification by District

Table 6. Districts & charters with the highest percent of students in special education excluding gifted, SY22-23

District/Charter (Charters highlighted in blue)	Total A-D Special Ed Mem	Total K-12 Mem	% Special Ed
Albuquerque Sign Language Academy	72	126	57.1%
Red River Valley Charter School	31	87	35.6%
Amy Biehl Charter High School	71	222	32.0%
Media Arts Collaborative Charter	56	179	31.3%
Vista Grande High School	23	77	29.9%
The Great Academy	37	127	29.1%
Vaughn	15	52	28.8%
Tierra Adentro	67	243	27.6%
School of Dreams Academy	177	667	26.5%
Las Montanas Charter	41	162	25.3%
Southwest Secondary Learning Center	36	147	24.5%
South Valley Prep	46	188	24.5%
Southwest Preparatory Learn Center	36	149	24.2%
Fort Sumner	69	289	23.9%
Roots and Wings Academy	15	64	23.4%
Estancia	135	590	22.9%
Solaire Collegiate Charter School	59	259	22.8%
House	14	62	22.6%
Melrose	72	322	22.4%
Quemado	40	179	22.3%
Albuquerque	17647	80387	22.0%

Source: SY2022-23 Student Demographics

Table 7. Districts with Greater than 500 Students with the Lowest Special Education Identification Rates Excluding Gifted, SY22-23

Districts	Total A-D Special Ed Mem	Total K-12 Mem	% Special Ed
Hatch	120	1196	10.0%
Espanola	516	4944	10.4%
Zuni	144	1349	10.7%
Loving	87	708	12.3%
Gallup	2233	18075	12.4%
Texico	71	568	12.5%
West Las Vegas	215	1667	12.9%
Pojoaque	217	1642	13.2%
Ruidoso	254	1898	13.4%
Los Lunas	1233	8969	13.7%

Source: SY2022-23 Student Demographics

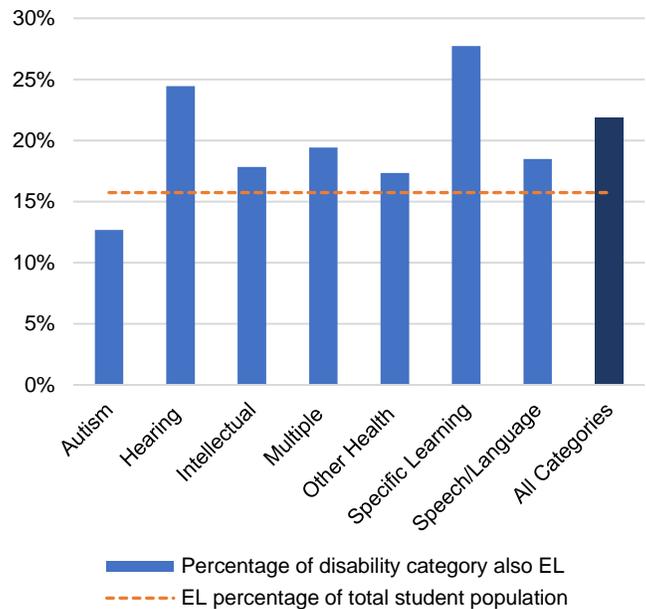
Appendix C. Additional Identification Information

LFC staff examined demographic trends within special education concerning disability diagnosis, English Learner status (EL), gender, and ethnicity. Analysis revealed potential over-identification of English Learners and potential under-diagnosis of students of color with autism.

New Mexico English Learners are more likely to be diagnosed with certain disabilities and less likely to be identified as gifted. In SY20 and SY21, EL students comprised 16 percent of the overall public school population in New Mexico but accounted for 22 percent of students with disabilities. EL students accounted for 28 percent of students with specific learning disabilities. Consistent with the findings below, they were less likely to be diagnosed with autism. EL students are much less likely to be identified as gifted compared to the total population (0.5 percent versus 4.3 percent statewide in FY20 and FY21). In the *Martinez-Yazzie* lawsuit, the court found that “chronic shortages” of special education staff and bilingual staff could lead to the misidentification of EL students. The court attributed the misidentification of EL students to a lack of specialized knowledge, professional development, and technical guidance.

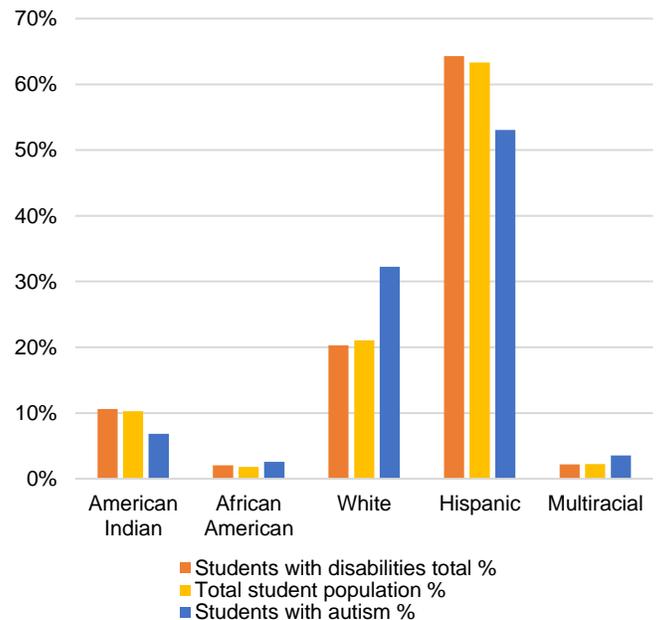
White students in New Mexico are disproportionately represented among autism diagnoses. New Mexico’s overall student disability identification rates disaggregated by race closely track the state’s total student demographics. This is true even for the two highest-incidence categories, specific learning disabilities and speech and language impairments, which studies have shown tend to be over-diagnosed among students of color since these disabilities lack clear biological causes and diagnosis can be subjective and biased.^{vii} The one disability category where New Mexico diagnosis rates diverge significantly from overall demographic representation is autism. In this case, white students account for only 21 percent of students but make up 32 percent of autism cases. This statistic aligns with national research findings that although autism is equally prevalent among various racial groups, it tends to be diagnosed most frequently among white students and those of higher socio-economic status.^{viii}

Chart 17. Percent of New Mexico Students with Disabilities by Category who are also English Learners, SY21



Source: LFC analysis of PED data

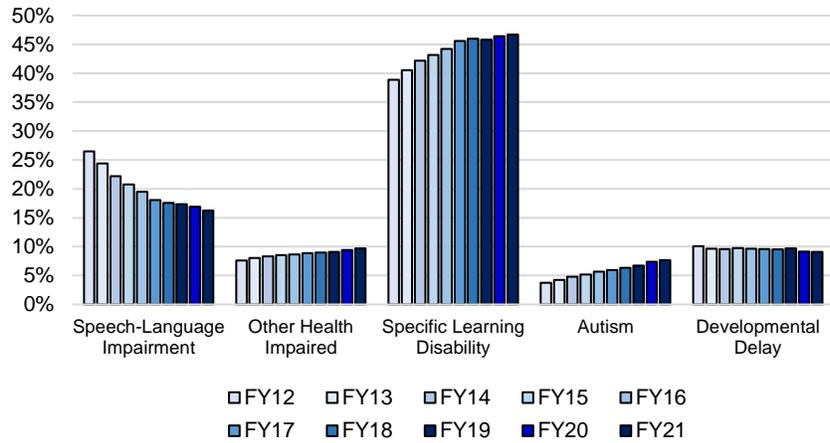
Chart 18. Percentage of New Mexico students with autism compared to overall demographics, SY21



Source: LFC analysis of PED data

In New Mexico, diagnoses of specific learning disabilities have increased both as an absolute number and as a percent of total disabilities. In SY21, over 53 thousand students in New Mexico were diagnosed with a disability. Over the last decade, the five most common types of disabilities among students in NM have been specific learning disability, speech-language impairment, other health impairment, autism, and developmental delay. As a proportion of overall diagnoses, speech-language impairments have declined sharply while autism, specific learning disabilities, and other health impairments have increased. Specific learning disability diagnoses grew in New Mexico by 37 percent over the past decade.

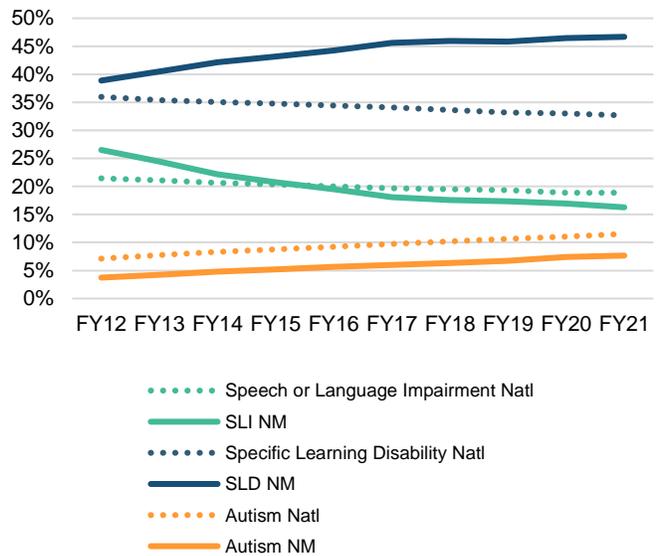
Chart 19. Five Most Common Disability Types in New Mexico as a Percent of Total Students in Special Educations, SY12-SY21



Source: LFC analysis of PED data

New Mexico's identification trends for the two most common student disabilities diverge significantly from national averages. Over the past decade, the percent of total students who have a specific learning disability diagnosis decreased nationally by 3 percent. While the total count of students with a specific learning disability has increased over this period, other types of diagnoses are rising at a much faster rate. For instance, the total number of identified students with autism in the United States nearly doubled between 2012 and 2022. Meanwhile, the share of students diagnosed with specific learning disabilities increased in New Mexico by 8 percent during the same period. Additionally, while national rates of speech or language impairments have decreased slightly nationwide, in New Mexico this decrease has been much more pronounced. While this divergence from nationwide trends might be due to actual demographic differences, it raises the question of whether New Mexico's disability screenings and diagnostic tools are under-identifying or over-identifying certain types of disabilities. Recent research has shown that minority student disability diagnoses are correlated with the demographic makeup of their schools.^{ix} Additionally, autism screening tends to under-identify students of color and those from low-income families.^x In a minority-majority state where 70 percent of students are at-risk, these factors may at least partially explain the state's divergence from national student disability identification trends.

Chart 20. Common Diagnoses as a Percent of Total Students with Disabilities in New Mexico and the U.S.



Source: LFC analysis of PED and NCES data.

Appendix D. IDEA Performance Indicators

Table 8. Performance Indicators, Federal FY21

Special Education Performance Indicator	Target	Actual
<u>Graduation Rate</u> : The percent of special education students with IEPs (excluding gifted students) who graduate in the standard 4 years.	73.83%	90.98%**
<u>Dropout Rate</u> : Percent of special education students with IEPs (excluding gifted students) dropping out of high school.	22.75%	7.21%
Math Proficiency Rates : The percentage of special education students with IEPs (excluding gifted students) scoring at or above proficient on the state math I-MSSA relative to their grade level.		
<u>Math Proficiency Rate, Grade 4</u> :	N/A*	6%
<u>Math Proficiency Rate, Grade 8</u>	N/A*	2.84%
<u>Math Proficiency Rate, Grade HS</u>	N/A*	1.93%
Reading Proficiency Rates : The percentage of special education students with IEPs (excluding gifted students) scoring at or above proficient on the state reading I-MSSA.		
<u>Reading Proficiency Rate, Grade 4</u> :	N/A*	8.41%
<u>Reading Proficiency Rate, Grade 8</u>	N/A*	7.06%
<u>Reading Proficiency Rate, Grade HS</u>	N/A*	6.32%
Math Participation Rate : The participation rate for special education students with IEPs (excluding gifted students) on the state math I-MSSA.		
<u>Math Participation Rate, Grade 4</u>	95%	92.59%
<u>Math Participation Rate, Grade 8</u>	95%	89.16%
<u>Math Participation Rate, Grade HS</u>	95%	75.48%
Reading Participation Rate : The participation rate for special education students with IEPs (excluding gifted students) on the state reading I-MSSA.		
<u>Reading Participation Rate, Grade 4</u> :	95%	92.47%
<u>Reading Participation Rate, Grade 8</u>	95%	89.38%
<u>Reading Participation Rate, Grade HS</u>	95%	75.45%
Education Environments		
A. Number of children with IEPs aged 5 (kindergarten) through 21 inside the regular class 80% or more of the day	51.68%	52.43%
B. Number of children with IEPs aged 5 (kindergarten) through 21 inside the regular class less than 40% of the day	16.08%	16.03%
C. Number of children with IEPs aged 5 (kindergarten) through 21 inside separate schools, residential facilities, or homebound/hospital placements [c1+c2+c3]	0.38%	0.74%
Postsecondary Outcomes		
A. Enrolled in higher education (1)	30.78%	31.95%
B. Enrolled in higher education or competitively employed within one year of leaving high school (1 +2)	80%	75.11%
C. Enrolled in higher education, or in some other postsecondary education or training program; or competitively employed or in some other employment (1+2+3+4)	77.41%	82.57%

Source: PED SPP Federal Annual Performance Audit

* Targets are set based on the previous year's performance. For proficiency rates, the state was allowed to reset its performance targets in FY2021 as the state had just migrated to a new testing platform and due to the pandemic-related testing gap in FY2020.

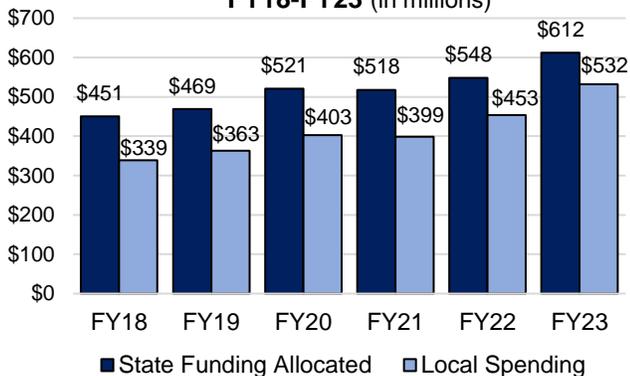
** This graduation rate data is not the same as the four high school graduation rates reported by PED for 2021 and 2022 which were 68 percent and 67 percent respectively.

Appendix E. Revenue and Spending Methodology

To compare state funding allocations for special education with local spending on special education, LFC staff used the following methodology:

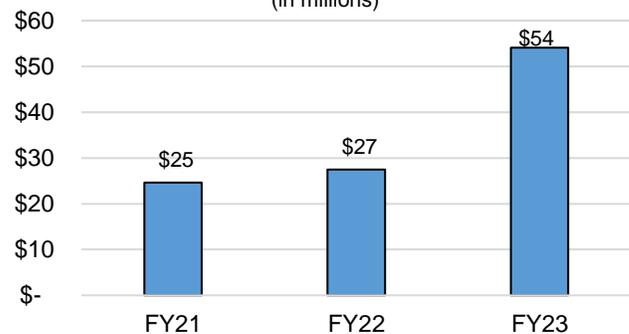
1. **State Equalization Guarantee (SEG) Funding Formula Allocations for Special Education:** LFC staff compiled data for state funding allocations for special education from PED's final SEG funding formula spreadsheets for multiple fiscal years. The total number of special education units for each district and charter were added together and multiplied by the appropriate unit dollar value for each fiscal year.
 - a. For example, in FY23, District X generated 1,102.55 special education units in the SEG formula and the unit value the fiscal year was \$5,522.50. Thus, the special education SEG allocation for the district for special education in FY23 amounted to \$6.1 million.
2. **School District and Charter School Spending on Special Education:** LFC staff compiled data for school district and charter school operational spending (PED fund code 11000) on special education through PED's Operating Budget Management System (OBMS). LFC staff compiled financial actuals data for special education programs (PED program code 2000). According to PED's manual of accounting procedures supplement #3, amounts spent on special education programs (program code 2000) from the operational fund "should facilitate comparisons to units and amounts generated for special education under the public school funding formula" (p.62)
 - a. For example, in FY23 District X reported spending \$3.8 million on special education programs (code 2000)
3. **Comparing District Special Education Allocations and Spending:** For each district and charter, LFC staff divided expenditures by allocations to arrive at the percentage of special education operational funds expended that fiscal year.
 - a. Dividing District X's \$3.8 million in expenditures by its \$6.1 million in revenues reveals that the district spent 62 percent of its special education revenues from the state equalization guarantee public education funding formula on special education programs in FY23.
4. **Statewide calculation:** All districts and charters were added together to arrive at statewide revenue and spending totals for each fiscal year.

Chart 21. State Funding Formula Dollars Allocated and Spent on Special Education, FY18-FY23 (in millions)



Source: LFC staff analysis of PED funding formula and OBMS data.

Chart 22. Statewide Dollars for At-Risk Students Spent on Special Education (in millions)



Source: LFC analysis of PED OBMS data.

Note: Starting in FY21, PED has allowed districts to report some of their expenditures on special education as coming out their at-risk funds from the state funding formula. Statewide in FY23, districts reported spending \$54 million of at-risk funds towards special education programming. However, only about 50 percent of districts had adopted these codes and their use is highly variable. To simplify the analysis and eliminate ambiguity around these new codes, this report compares SEG special education revenue directly to correlated special education expenditures.

Appendix F. FY22 and FY23 Detailed Special Education Spending

Public School Operational Spending on Special Education in FY22 and FY23 by Expense Type

Expense Category	FY22	FY23	Change from FY22 to FY23	Percent Change
Salaries Expense	\$ 323,469,452	\$ 340,639,580	\$17,170,128	5%
Educational Retirement	\$ 24,865,064	\$ 59,382,282	\$34,517,218	139%
Health and Medical Premiums	\$ 16,791,184	\$ 32,524,464	\$15,733,280	94%
FICA Payments	\$ 9,460,000	\$ 20,104,929	\$10,644,929	113%
Speech Therapists - Contracted	\$ 20,850,353	\$ 18,989,385	(\$1,860,968)	-9%
Special Ed Assistants (Non-Instructional) - Contracted	\$ 9,953,085	\$ 8,521,402	(\$1,431,682)	-14%
Occupational Therapists - Contracted	\$ 9,770,573	\$ 7,535,837	(\$2,234,737)	-23%
Additional Compensation	\$ 5,513,870	\$ 7,191,386	\$1,677,515	30%
ERA - Retiree Health	\$ 3,282,259	\$ 6,940,439	\$3,658,180	111%
Medicare Payments	\$ 2,217,216	\$ 4,715,500	\$2,498,284	113%
Specialists - Contracted	\$ 4,342,345	\$ 4,459,436	\$117,092	3%
Diagnostics - Contracted	\$ 3,682,994	\$ 4,121,490	\$438,496	12%
Psychologists/Counselors - Contracted	\$ 4,115,260	\$ 3,829,002	(\$286,258)	-7%
Therapists - Contracted	\$ 3,863,714	\$ 3,742,389	(\$121,325)	-3%
Dental	\$ 1,231,297	\$ 1,853,217	\$621,920	51%
Other Contract Services	\$ 4,031,065	\$ 1,689,710	(\$2,341,355)	-58%
Workers Compensation Premium	\$ 247,466	\$ 1,461,536	\$1,214,070	491%
Other Services	\$ 1,378,864	\$ 824,247	(\$554,618)	-40%
Workers Compensation (Self Insured)	\$ 807,574	\$ 791,830	(\$15,744)	-2%
Life	\$ 288,367	\$ 442,818	\$154,451	54%
Audiologists - Contracted	\$ 385,802	\$ 424,282	\$38,480	10%
General Supplies and Materials	\$ 544,467	\$ 423,874	(\$120,593)	-22%
Disability	\$ 101,998	\$ 365,355	\$263,357	258%
Vision	\$ 179,056	\$ 284,296	\$105,240	59%
Professional Development	\$ 152,277	\$ 242,388	\$90,112	59%
Software	\$ 140,233	\$ 197,006	\$56,773	40%
Other Charges	\$ 264,875	\$ 152,311	(\$112,564)	-42%
Interpreters - Contracted	\$ 451,369	\$ 150,796	(\$300,573)	-67%
Unemployment Compensation	\$ 56,323	\$ 102,351	\$46,027	82%
Supply Assets (\$5,000 or less)	\$ 192,144	\$ 102,155	(\$89,989)	-47%
Workers Compensation Employer's Fee	\$ 35,750	\$ 64,172	\$28,422	80%
Student Travel	\$ 570,215	\$ 49,040	(\$521,175)	-91%
Instructional Materials - Operational	\$ -	\$ 32,877	\$32,877	-
Employee Travel - Non-Teachers	\$ 40,846	\$ 29,798	(\$11,048)	-27%
Other Instructional Materials	\$ 51,789	\$ 23,661	(\$28,128)	-54%
Overtime Expense	\$ 13,411	\$ 19,264	\$5,853	44%
Maintenance & Repair - Furniture/Fixtures/Equipment	\$ 14,408	\$ 14,880	\$472	3%
Contracts - Inter-agency/REC	\$ -	\$ 10,269	\$10,269	-
Contracts - Interagency	\$ 16,836	\$ 8,630	(\$8,206)	-49%
Fixed Assets (more than \$5,000)	\$ 49,144	\$ 6,245	(\$42,899)	-87%
Employee Travel - Teachers	\$ 9,135	\$ 5,100	(\$4,035)	-44%
Rental - Computers and Related Equipment	\$ 4,188	\$ 2,414	(\$1,774)	-42%
Rental - Equipment and Vehicles	\$ -	\$ 2,234	\$2,234	-
Other Classroom Materials - Operational	\$ -	\$ 1,933	\$1,933	-
Tuition For Concurrent Enrollment	\$ 900	\$ -	(\$900)	-100%
Other Travel - Non-Employees	\$ 1,118	\$ 836	(\$282)	-25%
Employee Assistance Programs	\$ -	\$ 746	\$746	-
Workers Compensation Employee Fees	\$ -	\$ 606	\$606	-
Total	\$ 453,438,285	\$ 532,478,398	\$79,040,112	17%

Note: These data reflect actual spending amounts districts and charters reported to PED as being spent from their operational fund (fund code 11000) on special education programs (program code 2000). According to PED's manual of accounting procedures supplement #3, amounts spent on special education programs (program code 2000) from the operational fund "should facilitate comparisons to units and amounts generated for special education under the public school funding formula" (p.62).

Source: LFC staff analysis of PED Operating Budget Management System (OBMS) data.

Appendix G. New Research on Census-Based Funding

New research indicates census-based funding for special education has limited impacts unless strictly implemented, which carries risks for under-identifying, underfunding, and legal noncompliance.

In 2013, LFC recommended adopting a census-based approach to funding special education within the state public education funding formula for school districts with over 500 students. This recommendation came in response to a 2011 joint LFC-LESC evaluation of the state public education funding formula and a 2008 study by the American Institute of Research. These studies suggested New Mexico’s weighted-per-pupil approach to funding special education could lead to over-identifying students with disabilities, excessive high-cost placements, and inflated staffing numbers. Weighted models were found to encourage over-identification, as evidenced by a Texas study showing that funding fluctuations in their weighted formula contributed to increased disability identification rates.^{xi} By contrast, the adoption of a strict census approach to funding special education correlated in one study with an average 10 percent decrease in special education identification rates.^{xiii} Accordingly, nine states transitioned to a census-based funding model between 1993 and 2000 to control costs and reduce incentives for over-identification. However, subsequent research has revealed limitations of a strict census-based approach. As of today, no state solely uses a census-based approach to fund all of special education.

Most states that employ a census model use a hybrid approach, which research shows has limited impacts on special education identification rates. The same study cited above that found a strict census-based approach to be demonstrably effective in reducing disability rates, especially among milder and more subjectively diagnosed disability categories, found no significant effect on disability rates when a “partial” or “hybrid” census-based approach was taken. Additionally, the effects of fiscal incentives on disability rates have been consistently shown to be strongest in smaller districts.^{xiii} This means that even if a strict census-based formula were to be implemented, the identification rate effects on bigger, more expensive districts like APS would likely be less pronounced. Currently, no state employs a strict census-based approach to fund all of special education. Instead, states using a census-based approach use this approach in combination with other funding approaches, such as high-cost services funding, reimbursement systems, or student weights. A 2013 research review by the same authors of the above study noted that a strict census-based approach to funding special education does not take into account the factors that drive cost variation across a given state, and that as a cost-containment method, is a very “blunt approach.”

In Texas, census-based funding successfully reduced cost but negatively impacted equitable access and student outcomes. In 2004, Texas enacted a census-based formula by setting a target for students in special education at 8.5 percent and penalizing districts exceeding this enrollment. The policy became the subject of a 2016 *Houston Chronicle* investigation reporting that Texas students statewide were being systematically denied special education evaluations or placed into less comprehensive support programs.^{xiv} As a result of this cap, Texas was serving 225,000 fewer students in special education annually across the state. USDE cited Texas for failing to provide appropriate special education services in 2018 and the policy was revoked. In 2021, the *American Economic Journal* reported that this decrease in comprehensive services correlated with significant declines in educational attainment.

California’s special education costs and identification rates have increased even with a census-based approach to funding special education. California has used a census-based approach to determine special education funding since 1997-98 and is currently the closest state to a strict census-based approach to funding special education—distributing 84 percent of its state funding through a census-based formula. However, since the implementation of this formula, California has seen growth in special education rates outpacing national trends, even as the state’s overall enrollment has declined. A 2020 WestEd report found that over time, implementation of this census system “did not translate to either long-term stabilization of identification rates or long-term containment of special education costs.”^{xv} While the report did not recommend a total overhaul of the census system, it did call for additional allocations to be differentiated based on student needs in order to compensate for inequities in the current funding formula.

A census-based approach to funding special education typically requires local property tax revenue to cover spending beyond federal and state disbursements. By definition, a census-based model employs a hard or soft cap of federal and state spending on special education. Researchers explain that “under a census-based model, school districts use state and federal aid to pay for the additional costs of serving students with disabilities (relative to other students) until those funds are exhausted. They then pay fully for any remaining additional costs using general purpose or locally sourced funds.”^{xvi} Across the 11 states currently using a hybrid census formula and reporting data for FY20, the average portion of public school revenues derived from property tax was 33 percent. In the same year, only 14 percent of New Mexico’s revenue came from property tax. In Alabama, the hybrid-census state whose funding breakdown most closely resembles New Mexico (16 percent property tax revenue rate), special education funding is calculated using by weighting a 5 percent of total student enrollment at a 1.5 multiplier and then covering the rest out of a “Catastrophic Trust Fund.” This example shows how a low property tax rate necessitates significant alterations to a census formula to account for statewide variation in identification rates. These alterations would be necessary in New Mexico, where Albuquerque Public Schools (APS), which serve approximately one quarter of the state’s students, has also become a hub for special education. Under a census-based system, larger districts such as APS would experience the greatest financial penalty. In other states, shortfalls like this could be made up through property tax increases. In New Mexico, which relies much more heavily on state and federal funding, this is not the case.

Appendix H. References

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