

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: SB 145a

48th Legislature, 2nd Session, 2008

Short Title: Educational Due Process Reimbursement Caps

Sponsor(s): Senators Cynthia Nava, Mary Jane M. García, Leonard Lee Rawson, and Mary Kay Papen

Analyst: David Harrell

Date: January 31, 2008

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AS AMENDED

The Senate Education Committee amendment adds language requiring the New Mexico Public School Insurance Authority, before the beginning of each fiscal year, to determine the amount of money available for special education due process reimbursements; and to provide in the authority's general liability memorandum of coverage provisions for distributing that amount in reimbursements to school districts and charter schools. These provisions must include:

- the process by which school districts and charter schools submit claims for reimbursement by the end of the fiscal year; and
- the method for distributing funds pro rata if the available amount is insufficient to cover all claims.

Original Bill Summary:

SB 145 amends the *Public School Insurance Authority Act* to change the limit of a single due process reimbursement from \$300,000 to \$100,000. In addition, the bill makes a technical adjustment to clarify that the New Mexico Public School Insurance Authority (NMPSIA) shall collect premiums for due process reimbursement from only those school districts (all but Albuquerque Public Schools, or APS) that are members of the authority (see "Background," below).

Fiscal Impact:

\$1.5 million is appropriated from the General Fund to the State Equalization Guarantee (SEG) distribution for FY 09 to fund the cost of due process reimbursement insurance coverage. Any unexpended or unencumbered balance at the end of FY 09 shall not revert.

As amended by the House Education Committee, HB 3 currently contains an appropriation of \$1.5 million from the General Fund to the SEG "to cover costs associated with due process reimbursement insurance coverage, contingent on Senate Bill 145 or similar legislation . . . becoming law."

The NMPSIA analysis of SB 145 notes that, because the appropriation is to the SEG, which flows to all districts, APS will receive approximately 35 percent of the appropriation, leaving approximately \$975,000 for the other 88 districts (and all the charter schools in the state) that are members of NMPSIA. As a result, this analysis suggests, if claims from members exceed a total of \$975,000, NMPSIA “will have to deficit spend” to cover them. To address this problem, the NMPSIA analysis suggests adding language to grant NMPSIA the authority to determine each year the amount of available funds and, through a memorandum of coverage, provide for a pro rata distribution of those funds if funds are not sufficient to cover all claims.

Issues:

The federal *Individuals with Disabilities Education Improvement Act* (IDEA) and rules promulgated by PED provide a number of resources for parents of a special-needs child who disagree with provisions of the Individualized Education Program (IEP) or with some other determination of a school district related to special education services for the child. One of these resources is a request for a due process hearing. Currently (as amended in 2007), the *Public School Insurance Authority Act* provides coverage for expenses related to due process claims up to \$300,000 per single due process reimbursement, and it grants NMPSIA the authority to assess and collect premiums from its members. NMPSIA explains that, after reviewing school districts’ experiences and expenses with due process hearings, the authority concluded that a per-claim limit of \$100,000 would suffice; therefore, SB 145 makes that change.

These due process hearings have attracted considerable legislative interest for several years (see “Background,” below), particularly in terms of the length, complexity, and cost of the hearings and, until the 2007 legislation, the limited amount of insurance coverage provided to school districts on a voluntary basis by NMPSIA. During the 2005 interim, PED reported to the LESC the number of cases that had been filed since school year 1995-1996 and the expenses incurred. For the per-claim expenses of hearing officers alone, the costs to individual school districts ranged from a low of \$1,500 to a high of \$31,600. Total costs for one district, APS, in a single year reached \$270,000. Then during the 2006 interim, the LESC heard testimony from Tularosa Municipal Schools concerning the district’s costs associated with a due process hearing for one student in particular. During school year 2005-2006, these costs exceeded \$98,000, or 21.3 percent of the district’s IDEA budget for that year.

Background:

NMPSIA was established in 1986 with the passage of the *Public School Insurance Authority Act*, which also created the Public School Insurance Fund. The law requires the participation of virtually all school districts and all charter schools unless the NMPSIA Board of Directors grants a waiver based on the district’s or the school’s ability to meet the minimum benefits and financial standards set by the board. The one exception in the law is the exemption of any school district with more than 60,000 students, an exemption that currently applies only to APS.

The 2005 Legislature considered but did not pass two measures to address the issue of due process reimbursements. During the 2005 interim, the LESC included the issue in its workplan.

During the 2006 session, the LESC endorsed an unsuccessful memorial that would have requested a study (1) to determine the most cost-effective means of providing school districts with reimbursement coverage for the costs of due process hearings; and (2) to identify means of reducing the costs, frequency, and duration of the due process hearings themselves. With the issues still unresolved, the LESC placed the matter on its workplan for the 2006 interim.

During the 2006 interim, PED's testimony to the LESC highlighted some of the options available to resolve disputes before they reach the level of a due process hearing and noted the steps that PED has taken to address the issue: developing a manual to standardize the due process hearings and make them more efficient, providing ongoing training for hearing officers, and using data from the hearings in its professional development for special education teachers.

Finally, during the 2007 session, the legislation being amended by SB 145 was enacted to provide due process reimbursements in statute.

Related Bills:

None