

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 314

50th Legislature, 1st Session, 2011

Tracking Number: .183786.1

Short Title: Autism Education Plan Development

Sponsor(s): Senators Clinton D. Harden, Jr. and Mary Kay Papen

Analyst: Pamela Herman

Date: February 10, 2011

Bill Summary:

SB 314 amends the *Public School Code* to define the term “autism spectrum disorder” and to provide for the factors that shall be considered in conducting an evaluation or developing a special education program for a student with autism spectrum disorder (ASD).

Among its provisions, SB 314:

- defines “autism spectrum disorder” to include autistic disorder; Asperger’s disorder; pervasive developmental disorder not otherwise specified; Rett’s disorder; and childhood disintegrative disorder;
- enacts a new section of law to require that, when evaluating for special education services, or developing a special education program for, a student with ASD, the following shall be considered:
 - extended educational programs, the duration based on assessment of the student’s behavior, social skills, communication, academics, and self-help skills;
 - inclusion of active engagement in learning activities, minimal unstructured time, and flexibility in school routines that are adaptable to individual skill levels, such as field trips, substitute teachers, and in-school extracurricular activities;
 - in-home and community-based training that assists the student with acquiring social or behavioral skills;
 - positive behavior support strategies;
 - future planning for integrated living, work, community, and educational environments;
 - parent or family training and support, provided by qualified personnel with experience with students with autism spectrum disorder;
 - a suitable staff-to-student ratio appropriate to identified activities and necessary for social or behavioral progress, that encourages work toward the student’s independence;
 - communication interventions;
 - developing the student’s social skills provided across all educational settings;
 - professional educator and staff support to assure correct implementation of techniques and strategies described in the program; and

- teaching strategies based on peer-reviewed or research-based practices for students with autism spectrum disorder.

Fiscal Impact:

SB 314 does not contain an appropriation.

Fiscal Issues:

According to the Public Education Department (PED), depending on the school district, some of the strategies identified in SB 314 will have additional costs, although in some districts the strategies may already have been implemented and no new costs would be incurred.

- PED states that if the strategies become a statewide mandate, it would inevitably increase the costs to provide services to students with ASD since some strategies may not be appropriate for the student, yet the district would have to implement them. However, the language of SB 314 does not mandate the entire roster of services; it only requires that they be considered.
- PED indicates that resources for districts would come both from the district's State Equalization Guarantee (SEG) funds and from their federal *Individuals with Disabilities Education Act* (IDEA) funds. According to federal regulations, SEG funds must be considered first if the strategies are part of the student's individualized education program (IEP), and IDEA funds should be used only to supplement the program.

Technical Issues:

PED notes certain conflicts in the language in SB 314 with that in federal IDEA. To reconcile those conflicts, the sponsor may wish to consider amending to change the language on page 4, line 4 from "individual education plan" to "individualized education program."

Substantive Issues:

In 2010, the Legislature passed SJM 25, *Study Autism & School Services*, which requested PED to:

- conduct a study to determine how to provide best-practice services to all children with autism in public schools through the use of highly qualified New Mexico autism specialists in the development and implementation of the IEPs of all students with ASD statewide; and
- develop a written plan showing the steps PED will take to develop and implement appropriate systems of care for all students with ASD by working actively, collaboratively, and cooperatively with other state agencies groups and stakeholders, including the Department of Health; the Human Services Department; the Children, Youth and Families Department; the Autism Task Force; the New Mexico Developmental Disabilities Planning Council; the Behavioral Health Planning Council of New Mexico; the New Mexico Autism Society; the New Mexico State University Southern New Mexico Autism Project; and the Autism Program at the University of New Mexico Center for Development and Disability.

In November 2010, PED presented its report to the Legislative Education Study Committee (LESC) outlining a series of recommendations based on the work of the department in response to the memorial. In response to testimony to the committee at that time from the New Mexico Autism Society regarding problems with the process used to generate the report, the committee requested that PED meet with stakeholders and provide a further report to the committee in December.

In December 2010, the Secretary of Public Education provided a memorandum outlining points of consensus reached by the stakeholders:

- PED would issue a best-practice guidance for school districts, addressing items to consider when writing IEPs for students with ASD;
- PED requested more time to complete the study requested in SJM 25, until the end of school year 2010-2011;
- PED and the Department of Health would take specified steps necessary to improve and broaden the stakeholder survey process used for the initial report; and
- PED would reconvene its stakeholder group to review the data and information gathered and to update the recommendations made in the November 2010 report.

The LESC also received a letter from a representative of the stakeholder group stating that its recommendation was that New Mexico adopt the Texas “autism supplement,” now embodied in rule in that state.

According to PED, the considerations listed in SB 314 are similar to the 11 considerations originally developed in Texas and required to be considered when developing a student’s IEP.

Background:

- According to PED:
 - ASD is a neurodevelopmental disorder characterized by difficulties in communication, behavior, and social interactions, sometimes severe.
 - the Centers for Disease Control states that ASD currently affects one in 150 births nationwide;
 - New Mexico has the highest rate among states for students receiving special education services in the nation, but among the lowest identified with ASD; and
 - the number of students reported with ASD has increased each year among students ages five to 21 for the past five years, from a total of 590 in school year 2005-2006 (approximately 1.2 percent of all students with disabilities) to 1,364 in school year 2009-2010 (approximately 3.0 percent of all students with disabilities).
- The LESC has heard testimony, however, that those data do not include all students with ASD, due to under-identification or late identification of students with ASD.

- The LESC also heard testimony during the 2010 interim that:
 - some school districts in New Mexico, especially in rural areas, are not well-equipped, nor do they have adequately trained professional staff, to address the needs of growing numbers of students with ASD;
 - students with ASD can experience real and substantial gains with appropriate, and particularly with early, interventions and services targeted to their individual needs;
 - inadequate training of staff to deal with the behavior of students with ASD can result in inappropriate use of physical restraints as well as frequent calls to parents to take students out of school because of behavior problems, reducing the amount of time the students receive appropriate educational services; and
 - multi-disciplinary teams of professionals with expertise in identifying ASD and implementing individualized strategies can offer needed support to school districts in developing tailored individualized programs for students with ASD, training school staff, and developing an appropriate and flexible range of strategies for serving their students with ASD.

Related Bills:

SB 192 *Conform to Federal Disability Definitions*