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SENATE BILL 192

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Lynda M. Lovejoy and Mimi Stewart

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO SPECIAL EDUCATION; CONFORMING DEFINITIONS AND OTHER PROVISIONS TO THE FEDERAL INDIVIDUALS WITH DISABILITIES EDUCATION ACT; DISTINGUISHING STUDENTS WITH DISABILITIES AND GIFTED STUDENTS IN DEFINITIONS AND OTHER PROVISIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-1-2 NMSA 1978 (being Laws 2003, Chapter 153, Section 3, as amended) is amended to read:

"22-1-2. DEFINITIONS.--As used in the Public School Code:

A. "academic proficiency" means mastery of the subject-matter knowledge and skills specified in state academic content and performance standards for a student's grade level;

B. "adequate yearly progress" means the measure adopted by the department based on federal requirements to assess the progress that a public school or school district or

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1 the state makes toward improving student achievement;

2 C. "commission" means the public education
3 commission;

4 D. "department" means the public education
5 department;

6 E. "dyslexia" means a condition of neurological
7 origin that is characterized by difficulty with accurate or
8 fluent word recognition and by poor spelling and decoding
9 abilities, which characteristics typically result from a
10 deficit in the phonological component of language that is often
11 unexpected in relation to other cognitive abilities and the
12 provision of effective classroom instruction and may result in
13 problems in reading comprehension and reduced reading
14 experience that may impede the growth of vocabulary and
15 background knowledge;

16 F. "gifted student" means a student who
17 demonstrates intellectual ability paired with subject matter
18 aptitude and achievement, creativity and divergent thinking or
19 problem solving and critical thinking such that a properly
20 constituted individualized education program team determines
21 that the student needs specially designed instruction to meet
22 the student's unique needs;

23 [~~E-~~] G. "home school" means the operation by the
24 parent of a school-age person of a home study program of
25 instruction that provides a basic academic educational program,

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1 including reading, language arts, mathematics, social studies
2 and science;

3 ~~[F-]~~ H. "instructional support provider" means a
4 person who is employed to support the instructional program of
5 a school district, including educational assistant, school
6 counselor, social worker, school nurse, speech-language
7 pathologist, psychologist, physical therapist, occupational
8 therapist, recreational therapist, marriage and family
9 therapist, interpreter for the deaf and diagnostician;

10 ~~[G-]~~ I. "licensed school employee" means teachers,
11 school administrators and instructional support providers;

12 ~~[H-]~~ J. "local school board" means the policy-
13 setting body of a school district;

14 ~~[I-]~~ K. "local superintendent" means the chief
15 executive officer of a school district;

16 ~~[J-]~~ L. "parent" includes a guardian or other
17 person having custody and control of a school-age person;

18 ~~[K-]~~ M. "private school" means a school, other than
19 a home school, that offers on-site programs of instruction and
20 that is not under the control, supervision or management of a
21 local school board;

22 ~~[L-]~~ N. "public school" means that part of a school
23 district that is a single attendance center in which
24 instruction is offered by one or more teachers and is
25 discernible as a building or group of buildings generally

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1 recognized as either an elementary, middle, junior high or high
2 school or any combination of those and includes a charter
3 school;

4 O. "response to intervention" means a multitiered
5 intervention model that uses a set of increasingly intensive
6 academic or behavioral supports matched to student need as a
7 framework for making educational programming and eligibility
8 decisions;

9 ~~[M-]~~ P. "school" means a supervised program of
10 instruction designed to educate a student in a particular
11 place, manner and subject area;

12 ~~[N-]~~ Q. "school administrator" means a person
13 licensed to administer in a school district and includes school
14 principals and central district administrators;

15 ~~[O-]~~ R. "school-age person" means a person who is
16 at least five years of age prior to 12:01 a.m. on September 1
17 of the school year and who has not received a high school
18 diploma or its equivalent. A maximum age of twenty-one shall
19 be used for a person who is classified as special education
20 membership as defined in Section 22-8-21 NMSA 1978 or as a
21 resident of a state institution;

22 ~~[P-]~~ S. "school building" means a public school, an
23 administration building and related school structures or
24 facilities, including teacher housing, that is owned, acquired
25 or constructed by the school district as necessary to carry out

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1 the functions of the school district;

2 [Q-] T. "school bus private owner" means a person,
3 other than a school district, the department, the state or any
4 other political subdivision of the state, that owns a school
5 bus;

6 [R-] U. "school district" means an area of land
7 established as a political subdivision of the state for the
8 administration of public schools and segregated geographically
9 for taxation and bonding purposes;

10 [S-] V. "school employee" includes licensed and
11 nonlicensed employees of a school district;

12 [T-] W. "school principal" means the chief
13 instructional leader and administrative head of a public
14 school;

15 [U-] X. "school year" means the total number of
16 contract days offered by public schools in a school district
17 during a period of twelve consecutive months;

18 [V-] Y. "secretary" means the secretary of public
19 education;

20 Z. "special education" means specially designed
21 instruction to meet the unique needs of students with
22 disabilities, including instruction in physical education and
23 instruction conducted in the classroom, in the home, in
24 hospitals and institutions and in other settings and may
25 include speech-language pathology services and services for

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1 students with developmental delay as provided by rule of the
2 department;

3 [W-] AA. "state agency" or "state institution"
4 means the New Mexico military institute, New Mexico school for
5 the blind and visually impaired, New Mexico school for the
6 deaf, New Mexico boys' school, girls' welfare home, New Mexico
7 youth diagnostic and development center, Sequoyah adolescent
8 treatment center, Carrie Tingley crippled children's hospital,
9 New Mexico behavioral health institute at Las Vegas and any
10 other state agency responsible for educating resident children;

11 [~~X-~~] BB. "state educational institution" means an
12 institution enumerated in Article 12, Section 11 of the
13 constitution of New Mexico;

14 CC. "student" means a public school student who:

- 15 (1) has not graduated from high school;
- 16 (2) is regularly enrolled in one-half or more
17 of the minimum course requirements approved by the department
18 for public school students; and

- 19 (3) in terms of age:
 - 20 (a) is at least five years of age prior
21 to 12:01 a.m. on September 1 of the school year;

- 22 (b) is a least three years of age at any
23 time during the school year and is receiving special education
24 services pursuant to rules of the department; or

- 25 (c) has not reached the student's

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1 twenty-second birthday on the first day of the school year and
2 is receiving special education services pursuant to rules of
3 the department;

4 DD. "student assistance team" means a school-based
5 group whose purpose, based on procedures and guidelines
6 established by the department, is to provide additional
7 educational support to those students who are experiencing
8 difficulties that are preventing them from benefiting from
9 general instruction;

10 EE. "students with developmental delay" means those
11 students ages three through nine who are classified pursuant to
12 department rule as developmentally delayed in at least one of
13 the following five areas:

14 (1) communication development;

15 (2) cognitive development;

16 (3) physical development;

17 (4) social or emotional development; or

18 (5) adaptive development;

19 FF. "students with disabilities" means those
20 students who are evaluated pursuant to department rule as
21 having intellectual disability; hearing impairment; deafness;
22 speech or language impairment; visual impairment, including
23 blindness; serious emotional disturbance; orthopedic
24 impairment; autism; traumatic brain injury; other health
25 impairment; a specific learning disability, including dyslexia;

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1 or deaf-blindness or other multiple disabilities, and who, by
2 reason of their disabilities, require special education and
3 related services;

4 [Y.] GG. "substitute teacher" means a person who
5 holds a certificate to substitute for a teacher in the
6 classroom;

7 [Z.] HH. "teacher" means a person who holds a level
8 one, two or three-A license and whose primary duty is classroom
9 instruction or the supervision, below the school principal
10 level, of an instructional program or whose duties include
11 curriculum development, peer intervention, peer coaching or
12 mentoring or serving as a resource teacher for other teachers;

13 [~~AA.~~] II. "certified school instructor" means a
14 teacher or instructional support provider; and

15 [~~BB.~~] JJ. "certified school employee" or "certified
16 school personnel" means a licensed school employee."

17 **SECTION 2.** Section 22-8-21 NMSA 1978 (being Laws 1974,
18 Chapter 8, Section 11, as amended) is amended to read:

19 "22-8-21. SPECIAL AND GIFTED EDUCATION PROGRAM UNITS.--

20 A. For the purpose of the Public School Finance
21 Act, special and gifted education programs for [~~exceptional~~
22 ~~children~~] students with disabilities and gifted students are
23 those approved by the department and classified as follows:

24 (1) class A programs, in which [~~department-~~
25 ~~certified individuals~~] department-licensed persons provide

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1 services to ~~[children]~~ students whose individualized education
2 programs require a minimal amount of special or gifted
3 education and in which the ratio of students to professionals
4 is regulated by the ~~[state board]~~ department;

5 (2) class B programs, in which ~~[department-~~
6 ~~certified individuals]~~ department-licensed persons provide
7 services to ~~[children]~~ students whose individualized education
8 programs require a moderate amount of special or gifted
9 education and in which the ratio of students to professionals
10 is regulated by the ~~[state board]~~ department;

11 (3) class C programs, in which ~~[department-~~
12 ~~certified individuals]~~ department-licensed persons provide
13 services to ~~[children]~~ students whose individualized education
14 programs require an extensive amount of special or gifted
15 education and in which the ratio of students to professionals
16 is regulated by the ~~[state board]~~ department;

17 (4) class D programs, in which ~~[department-~~
18 ~~certified individuals]~~ department-licensed persons provide
19 services to ~~[children]~~ students whose individualized education
20 programs require a maximum amount of special or gifted
21 education and in which the ratio of students to professionals
22 is regulated by the ~~[state board. Students in class D programs~~
23 ~~may be enrolled in private, nonsectarian, nonprofit educational~~
24 ~~training centers in accordance with the provisions of Section~~
25 ~~22-13-8 NMSA 1978]~~ department; and

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1 (5) programs for [~~developmentally~~] disabled
2 three- and four-year-old children [~~meeting~~] that meet standards
3 approved by the [~~state board~~] department.

4 B. All students assigned to the programs for
5 [~~exceptional children~~] students with disabilities and gifted
6 students classified in Subsection A of this section shall have
7 been so assigned as a result of diagnosis and evaluation
8 performed in accordance with the standards of the department
9 before the students may be counted in the determination of
10 special education program units as provided in Subsection C of
11 this section.

12 C. The number of special education program units is
13 the sum of the following:

14 (1) the MEM in approved class A and B programs
15 as defined in Subsection A of this section multiplied by the
16 cost differential factor .7;

17 (2) the MEM in approved class C programs as
18 defined in Subsection A of this section multiplied by the cost
19 differential factor 1.0;

20 (3) the MEM in approved class D programs as
21 defined in Subsection A of this section multiplied by the cost
22 differential factor 2.0;

23 (4) the MEM for [~~developmentally~~] disabled
24 three- and four-year-old children [~~as defined in Subsection A~~
25 ~~of this section~~] that meet standards approved by the department

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1 multiplied by the cost differential factor 2.0; provided that
2 no [~~developmentally~~] disabled three- or four-year-old student
3 shall be counted for additional ancillary service units; and

4 (5) for related services ancillary to
5 providing special education, the number of full-time-equivalent
6 [~~certified or~~] licensed ancillary service and diagnostic
7 service personnel multiplied by the cost differential factor
8 25.0.

9 D. For the purpose of calculating membership in
10 class C and class D programs, students shall be counted in
11 actual grade placement or according to chronological age if not
12 in actual grade placement."

13 SECTION 3. Section 22-13-5 NMSA 1978 (being Laws 1972,
14 Chapter 95, Section 1, as amended) is amended to read:

15 "22-13-5. SPECIAL EDUCATION.--

16 A. School districts and charter schools shall
17 provide special education and related services appropriate to
18 meet the needs of all [~~children requiring special education and~~
19 ~~related services. Regulations~~] students with disabilities.
20 Rules and standards shall be developed and established by the
21 [~~state board~~] department for the provision of special education
22 in the schools and classes of the public school system in the
23 state and in all institutions wholly or partly supported by the
24 state. The [~~state board~~] department shall monitor and enforce
25 the [~~regulations~~] rules and standards. School districts and

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1 charter schools shall also provide services for three-year-old
2 and four-year-old preschool children with disabilities, unless
3 the parent or guardian chooses not to enroll [~~his~~] the child.
4 If a child receiving services in the department of health's
5 family, infant, toddler program has [~~his~~] a third birthday
6 during the school year, the child's parents [~~shall~~] have the
7 option of having the child complete the school year in the
8 family, infant, toddler program or enrolling the child in the
9 public school's preschool program. A child with a disability
10 who enrolls in the public school's preschool program and who
11 has [~~his~~] a third birthday during [~~a~~] the school year may
12 receive special education and related services from the
13 beginning of that school year. Services for students age three
14 through twenty-one may include, but are not limited to,
15 evaluating particular needs, providing learning experiences
16 that develop cognitive and social skills, arranging for or
17 providing related services as defined by the [~~state board~~]
18 department and providing parent education. The services may be
19 provided by [~~certified~~] licensed school [~~personnel~~] employees
20 or contracted for with other community agencies and shall be
21 provided in age-appropriate, integrated settings, including
22 home, daycare centers, head start programs, schools or
23 community-based settings.

24 B. A school district or charter school may provide
25 special education and related services to students with

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1 developmental delay; provided that, if it does, it must use
2 appropriate diagnostic instruments and procedures to ensure
3 that the student qualifies as a student with developmental
4 delay."

5 SECTION 4. Section 22-13-6.1 NMSA 1978 (being Laws 1994,
6 Chapter 25, Section 2, as amended) is amended to read:

7 "22-13-6.1. GIFTED [~~CHILDREN~~] STUDENTS--DETERMINATION.--

8 A. The department shall adopt standards pertaining
9 to the determination of who is a gifted [~~child~~] student and
10 shall publish those standards as part of the educational
11 standards for New Mexico schools.

12 B. In adopting standards to determine who is a
13 gifted [~~child~~] student, the department shall provide for the
14 evaluation of selected [~~school-age children~~] students by
15 [~~multidisciplinary~~] school district or charter school
16 eligibility teams [~~from each child's school district~~]. That
17 team shall be vested with the authority to designate a [~~child~~]
18 student as gifted. The team shall consider information
19 regarding a [~~child's~~] student's cultural and linguistic
20 background and socioeconomic background in the identification,
21 referral and evaluation process. The team also shall consider
22 any disabling condition in the identification, referral and
23 evaluation process.

24 C. Each school district or charter school offering
25 a gifted education program shall create one or more advisory

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1 committees of parents, community members, students and school
2 staff members. The school district or charter school may
3 create as many advisory committees as there are high schools in
4 the district or may create a single districtwide advisory
5 committee. The membership of each advisory committee shall
6 reflect the cultural diversity of the enrollment of the school
7 district or the schools the committee advises. The advisory
8 committee shall regularly review the goals and priorities of
9 the gifted program, including the operational plans for student
10 identification, evaluation, placement and service delivery and
11 shall demonstrate support for the gifted program.

12 D. In determining whether a ~~[child]~~ student is
13 gifted, the ~~[multidisciplinary]~~ evaluation team shall consider
14 ~~[diagnostic or other]~~ evidence of the ~~[child's]~~ student's:

- 15 (1) creativity or divergent-thinking ability;
16 (2) critical-thinking or problem-solving
17 ability;
18 (3) intelligence; and
19 (4) achievement.

20 E. Nothing in this section shall preclude a
21 school district or charter school from offering additional
22 gifted programs for students who do not meet the eligibility
23 criteria for a gifted student, but the state shall only
24 provide state funds for department-approved gifted programs
25 for gifted students."

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1 SECTION 5. Section 22-13-7 NMSA 1978 (being Laws 1972,
2 Chapter 95, Section 3, as amended) is amended to read:

3 "22-13-7. SPECIAL EDUCATION--RESPONSIBILITY.--

4 A. The ~~[state board]~~ department shall make, adopt
5 and keep current a state plan for special education policy,
6 programs and standards.

7 B. The department ~~[of education with the approval~~
8 ~~of the state board]~~ shall set standards for ~~[diagnosis]~~
9 evaluation and screening of and educational offerings for
10 ~~[exceptional children]~~ students with disabilities in public
11 schools, in private, nonsectarian, nonprofit training
12 centers, in residential treatment centers and in state
13 institutions under the authority of the secretary of health.

14 ~~[G. The state board shall establish and maintain~~
15 ~~a program of evaluation of the implementation and impact of~~
16 ~~all programs for exceptional children in the public schools.~~
17 ~~This program shall be operated with the cooperation of local~~
18 ~~school districts. Portions of the program may be~~
19 ~~subcontracted, and periodic reports regarding the efficacy of~~
20 ~~programs for exceptional children shall be made to the~~
21 ~~legislative education study committee.]~~

22 C. The department shall monitor the provisions of
23 special education in school districts, state-chartered
24 schools and state agencies and shall report annually to the
25 public on their performance. The state's monitoring

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1 activities shall use quantifiable and qualitative indicators
2 to measure performance and shall focus on improving
3 educational results and functional outcomes for special
4 education students and ensuring that school districts, state-
5 chartered charter schools and state agencies meet the
6 requirements of the state performance plan.

7 D. The department [~~of education~~] shall
8 [~~coordinate~~] monitor programming related to the transition of
9 [~~persons~~] students with disabilities from secondary [~~and~~] to
10 post-secondary education [~~programs to~~] and employment or
11 vocational placement."

12 SECTION 6. Section 22-16-4 NMSA 1978 (being Laws 1967,
13 Chapter 16, Section 222, as amended) is amended to read:

14 "22-16-4. SCHOOL BUS ROUTES--LIMITATIONS--EXCEPTIONS--
15 MINIMUM REQUIREMENTS.--

16 A. Bus routes shall be established by the local
17 school district.

18 B. Except as provided in Subsections C and D of
19 this section, no school bus route shall be maintained for
20 distances less than:

21 (1) one mile one way for students in grades
22 kindergarten through six;

23 (2) one and one-half miles one way for
24 students in grades seven through nine; and

25 (3) two miles one way for students in grades

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1 ten through twelve.

2 C. In school districts having hazardous walking
3 conditions as determined by the local school board and
4 confirmed by the state transportation director, students of
5 any grade may be transported a lesser distance than that
6 provided in Subsection B of this section. General standards
7 for determining hazardous walking conditions shall be
8 established by the state transportation division of the
9 department [~~of education~~] with the approval of the [~~state~~
10 ~~board~~] secretary, but the standards shall be flexibly and not
11 rigidly applied by the local school board and the state
12 transportation director to prevent accidents and help ensure
13 student safety.

14 D. [~~Exceptional children~~] Students with
15 disabilities whose [~~handicaps~~] disabilities require
16 transportation and three- and four-year-old children who meet
17 the [~~state board approved~~] department-approved criteria and
18 definition of [~~developmentally~~] disabled may be transported a
19 lesser distance than that provided in Subsection B of this
20 section."

21 SECTION 7. REPEAL.--Section 22-13-6 NMSA 1978 (being
22 Laws 1972, Chapter 95, Section 2, as amended) is repealed.