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SENATE BILL 612

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO PUBLIC EDUCATION; CREATING A DIVISION IN THE PUBLIC  
EDUCATION DEPARTMENT TO FOCUS ON SPECIAL EDUCATION; PROVIDING  
POWERS AND DUTIES; REQUIRING ACCOUNTABILITY; PROVIDING SALARY  
DIFFERENTIALS FOR CERTAIN SPECIAL EDUCATION TEACHERS;  
INCREASING THE SPECIAL EDUCATION COST DIFFERENTIAL FACTORS;  
AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE  
NMSA 1978.

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

**SECTION 1.** Section 9-24-4 NMSA 1978 (being Laws 2004,  
Chapter 27, Section 4, as amended) is amended to read:

"9-24-4. DEPARTMENT CREATED.--

A. The "public education department" is created in  
the executive branch. The department is a cabinet department  
and includes the following divisions:

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- 1 (1) the administrative services division;  
2 (2) the assessment and accountability  
3 division;  
4 (3) the charter schools division;  
5 (4) the educator quality division;  
6 (5) the Indian education division;  
7 (6) the information technology division;  
8 (7) the instructional support and vocational  
9 education division;  
10 (8) the program support and student  
11 transportation division;  
12 (9) the quality assurance and systems  
13 integration division;  
14 (10) the rural education division; ~~and~~  
15 (11) the special education division; and  
16 ~~(11)~~ (12) the vocational rehabilitation  
17 division.

18 B. The secretary may organize the department and  
19 divisions of the department and may transfer or merge functions  
20 between divisions and bureaus in the interest of efficiency and  
21 economy."

22 SECTION 2. Section 22-1-2 NMSA 1978 (being Laws 2003,  
23 Chapter 153, Section 3, as amended by Laws 2015, Chapter 58,  
24 Section 2 and by Laws 2015, Chapter 108, Section 1) is amended  
25 to read:

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

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

5 B. "charter school" means a school authorized by a  
6 chartering authority to operate as a public school;

7 C. "commission" means the public education  
8 commission;

9 D. "department" means the public education  
10 department;

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

21 F. "exceptional students" means students whose  
22 abilities render regular services of the public school to be  
23 inconsistent with the students' educational needs;

24 G. "gifted student" means a school-age person who  
25 is determined to be gifted pursuant to Section 7 of this 2019

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1 act and standards adopted by the department pursuant to that  
2 section;

3 ~~[E-]~~ H. "home school" means the operation by the  
4 parent of a school-age person of a home study program of  
5 instruction that provides a basic academic educational program,  
6 including reading, language arts, mathematics, social studies  
7 and science;

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

15 ~~[G-]~~ J. "licensed school employee" means teachers,  
16 school administrators and instructional support providers;

17 ~~[H-]~~ K. "local school board" means the policy-  
18 setting body of a school district;

19 ~~[I-]~~ L. "local superintendent" means the chief  
20 executive officer of a school district;

21 ~~[J-]~~ M. "parent" includes a guardian or other  
22 person having custody and control of a school-age person;

23 ~~[K-]~~ N. "private school" means a school, other than  
24 a home school, that offers on-site programs of instruction and  
25 that is not under the control, supervision or management of a

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1 local school board;

2 ~~[H-]~~ O. "public school" means that part of a school  
3 district that is a single attendance center in which  
4 instruction is offered by one or more teachers and is  
5 discernible as a building or group of buildings generally  
6 recognized as either an elementary, middle, junior high or high  
7 school or any combination of those and includes a charter  
8 school;

9 P. "response to intervention" means a multitiered  
10 intervention model that uses a set of increasingly intensive  
11 academic or behavioral supports, matched to student need, as a  
12 framework for making educational programming and eligibility  
13 decisions;

14 ~~[M-]~~ Q. "school" means a supervised program of  
15 instruction designed to educate a student in a particular  
16 place, manner and subject area;

17 ~~[N-]~~ R. "school administrator" means a person  
18 licensed to administer in a school district and includes school  
19 principals, central district administrators and charter school  
20 head administrators;

21 ~~[O-]~~ S. "school-age person" means a person who is  
22 at least five years of age prior to 12:01 a.m. on September 1  
23 of the school year and who has not received a high school  
24 diploma or its equivalent. A maximum age of twenty-one shall  
25 be used for a person who is classified as special education

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1 membership as defined in Section 22-8-21 NMSA 1978 or as a  
2 resident of a state institution;

3 ~~[P.]~~ T. "school building" means a public school, an  
4 administration building and related school structures or  
5 facilities, including teacher housing, that is owned, acquired  
6 or constructed by the school district as necessary to carry out  
7 the functions of the school district;

8 ~~[Q.]~~ U. "school bus private owner" means a person,  
9 other than a school district, the department, the state or any  
10 other political subdivision of the state, that owns a school  
11 bus;

12 ~~[R.]~~ V. "school district" means an area of land  
13 established as a political subdivision of the state for the  
14 administration of public schools and segregated geographically  
15 for taxation and bonding purposes;

16 ~~[S.]~~ W. "school employee" includes licensed and  
17 nonlicensed employees of a school district;

18 ~~[T.]~~ X. "school principal" means the chief  
19 instructional leader and administrative head of a public  
20 school;

21 ~~[U.]~~ Y. "school year" means the total number of  
22 contract days offered by public schools in a school district  
23 during a period of twelve consecutive months;

24 ~~[V.]~~ Z. "secretary" means the secretary of public  
25 education;

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1           AA. "special education" means the provision of  
2 services additional to, supplementary to or different from  
3 those provided in the regular school program by a systematic  
4 modification and adaptation of instructional techniques,  
5 materials and equipment to meet the needs of special education  
6 students;

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

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

18           DD. "student assistance team" means a school-based  
19 group whose purpose, based on procedures and guidelines  
20 established by the department, is to provide additional  
21 educational support to students who are experiencing  
22 difficulties that are preventing the students from benefiting  
23 from general instruction;

24           EE. "students with disabilities" means those  
25 students who are classified as developmentally disabled

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1 according to the Developmental Disabilities Act;

2 [Y.] FF. "substitute teacher" means a person who  
3 holds a certificate to substitute for a teacher in the  
4 classroom;

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

11 [AA.] HH. "certified school instructor" means a  
12 teacher or instructional support provider; and

13 [BB.] II. "certified school employee" or "certified  
14 school personnel" means a licensed school employee."

15 **SECTION 3.** Section 22-8-21 NMSA 1978 (being Laws 1974,  
16 Chapter 8, Section 11, as amended) is amended to read:

17 "22-8-21. SPECIAL EDUCATION PROGRAM UNITS.--

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

22 (1) class A programs, in which [~~department-~~  
23 ~~certified individuals~~] licensed teachers and instructional  
24 support providers provide services to [~~children~~] students whose  
25 individualized education programs require a minimal amount of

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1 special education and in which the ratio of students to  
2 professionals is regulated by the [~~state board~~] department;

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

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

15 (4) class D programs, in which [~~department-~~  
16 ~~certified individuals~~] licensed teachers and instructional  
17 support providers provide services to [~~children~~] students whose  
18 individualized education programs require a maximum amount of  
19 special education and in which the ratio of students to  
20 professionals is regulated by the [~~state board~~] department.

21 Students in class D programs may be enrolled in private,  
22 nonsectarian, nonprofit educational training centers in  
23 accordance with the provisions of [~~Section 22-13-8 NMSA 1978~~]  
24 the Special Education Act; and

25 (5) programs for developmentally disabled

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1 three- and four-year-old children meeting standards approved by  
2 the [~~state board~~] department.

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

10 C. The number of special education program units is  
11 the sum of the following:

12 (1) the MEM in approved class A and B programs  
13 as defined in Subsection A of this section multiplied by the  
14 cost differential factor [~~.7~~] 1.03;

15 (2) the MEM in approved class C programs as  
16 defined in Subsection A of this section multiplied by the cost  
17 differential factor [~~1.0~~] 1.33;

18 (3) the MEM in approved class D programs as  
19 defined in Subsection A of this section multiplied by the cost  
20 differential factor [~~2.0~~] 2.33;

21 (4) the MEM for developmentally disabled  
22 three- and four-year-old children as defined in Subsection A of  
23 this section multiplied by the cost differential factor [~~2.0~~]  
24 2.33; provided that no developmentally disabled three- or four-  
25 year-old [~~student~~] child shall be counted for additional

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1 ancillary service units; and

2 (5) for [~~related services ancillary to~~  
3 ~~providing special education~~] instructional support providers,  
4 the number of full-time-equivalent [~~certified or~~] licensed  
5 [~~ancillary service and diagnostic service personnel~~]  
6 instructional support providers multiplied by the cost  
7 differential factor [~~25.0~~] 25.33.

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

12 SECTION 4. A new section of the Public School Code is  
13 enacted to read:

14 "[NEW MATERIAL] SHORT TITLE.--Sections 4 through 10 of  
15 this act may be cited as the "Special Education Act"."

16 SECTION 5. A new section of the Public School Code is  
17 enacted to read:

18 "[NEW MATERIAL] SPECIAL EDUCATION--DEFINITIONS.--As used  
19 in the Special Education Act:

20 A. "assistant secretary" means the assistant  
21 secretary of special education; and

22 B. "division" means the special education  
23 division."

24 SECTION 6. Section 22-13-5 NMSA 1978 (being Laws 1972,  
25 Chapter 95, Section 1, as amended) is recompiled in the Special

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1 Education Act and is amended to read:

2 "SPECIAL EDUCATION.--School districts and charter schools  
3 shall provide special education and related services  
4 appropriate to meet the needs of students requiring special  
5 education and related services. Rules and standards shall be  
6 developed and established by the department for the provision  
7 of special education in the public schools and classes of the  
8 public school system in the state and in all institutions  
9 wholly or partly supported by the state. The department shall  
10 monitor and enforce the rules and standards. School districts  
11 and charter schools shall also provide services for three-year-  
12 old and four-year-old preschool children with disabilities,  
13 unless the parent or guardian chooses not to enroll the child.  
14 Services for students age three through twenty-one may include  
15 [~~but are not limited to~~] evaluating particular needs, providing  
16 learning experiences that develop cognitive and social skills,  
17 arranging for or providing related services as defined by the  
18 department and providing parent education. The services may be  
19 provided by licensed school employees or contracted for with  
20 other community agencies and shall be provided in age-  
21 appropriate, integrated settings, including home, daycare  
22 centers, head start programs, schools or community-based  
23 settings."

24 SECTION 7. Section 22-13-6.1 NMSA 1978 (being Laws 1994,  
25 Chapter 25, Section 2, as amended) is recompiled in the Special  
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1 Education Act and is amended to read:

2 "GIFTED [~~CHILDREN~~] STUDENTS--DETERMINATION.--

3 A. The department shall adopt standards pertaining  
4 to the determination of who is a gifted [~~child~~] student and  
5 shall publish those standards as part of the educational  
6 standards for New Mexico schools.

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

18 C. Each school district or charter school offering  
19 a gifted education program shall create one or more advisory  
20 committees of parents, community members, students and school  
21 staff members. The school district may create as many advisory  
22 committees as there are high schools in the school district or  
23 may create a single districtwide or charter school advisory  
24 committee. The membership of each advisory committee shall  
25 reflect the cultural diversity of the enrollment of the school

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1 district or charter school and the public schools the committee  
2 advises. The advisory committee shall regularly review the  
3 goals and priorities of the gifted program, including the  
4 operational plans for student identification, evaluation,  
5 placement and service delivery and shall demonstrate support  
6 for the gifted program.

7 D. In determining whether a [~~child~~] student is  
8 gifted, the multidisciplinary team shall consider diagnostic or  
9 other evidence of the [~~child's~~] student's:

- 10 (1) creativity or divergent-thinking ability;  
11 (2) critical-thinking or problem-solving  
12 ability;  
13 (3) intelligence; and  
14 (4) achievement.

15 E. Nothing in this section shall preclude a  
16 school district or charter school from offering additional  
17 gifted programs for students who fail to meet the eligibility  
18 criteria; however, the state shall only provide state funds  
19 for department-approved gifted programs for those students  
20 who meet the established criteria."

21 **SECTION 8.** Section 22-13-7 NMSA 1978 (being Laws 1972,  
22 Chapter 95, Section 3, as amended) is recompiled in the  
23 Special Education Act and is amended to read:

24 "SPECIAL EDUCATION--RESPONSIBILITY.--

25 A. The [~~state board~~] division shall make, adopt

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1 and keep current a state plan for special education policy,  
2 programs and standards.

3 B. The department [~~of education with the approval~~  
4 ~~of the state board~~] shall set standards for diagnosis and  
5 screening of and educational offerings for exceptional  
6 [~~children~~] students in public schools, in private,  
7 nonsectarian, nonprofit training centers and in state  
8 institutions under the authority of the secretary of health.

9 C. The [~~state board~~] division shall establish and  
10 maintain a program of evaluation of the implementation and  
11 impact of all programs for exceptional [~~children~~] students in  
12 the public schools. This program shall be operated with the  
13 cooperation of [~~local~~] school districts or charter schools.  
14 Portions of the program may be subcontracted, and periodic  
15 reports regarding the efficacy of programs for exceptional  
16 [~~children~~] students shall be made to the legislative  
17 education study committee.

18 D. The department [~~of education~~] shall coordinate  
19 programming related to the transition of persons with  
20 disabilities from secondary and post-secondary education  
21 programs to employment or vocational placement."

22 SECTION 9. A new section of the Public School Code is  
23 enacted to read:

24 "[NEW MATERIAL] SPECIAL EDUCATION DIVISION--ASSISTANT  
25 SECRETARY FOR SPECIAL EDUCATION--POWERS AND DUTIES.--

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1           A. The "special education division" is created in  
2 the department. The secretary shall appoint an "assistant  
3 secretary for special education" who shall:

4                   (1) direct the activities of the division  
5 and advise the secretary on development of policy regarding  
6 the education of special education students;

7                   (2) coordinate transition efforts for  
8 special education students in public schools with the higher  
9 education department and work to expand appropriate special  
10 education for students in preschool through college;

11                   (3) coordinate with appropriate  
12 administrators and divisions to ensure that department  
13 administrators make implementation of special education a  
14 priority; and

15                   (4) provide adequate professional  
16 development for division staff to develop expertise in the  
17 requirements of the federal Individuals with Disabilities  
18 Education Act and federal regulations promulgated in  
19 accordance with that act.

20           B. The division shall:

21                   (1) provide assistance, including advice on  
22 allocation of resources to school districts and charter  
23 schools to improve services to meet the educational and other  
24 needs of special education students, based on current  
25 published best practices in special education;

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1 (2) seek funds to establish, develop and  
2 implement culturally relevant support services for special  
3 education students, including:

4 (a) recruitment and retention of  
5 highly qualified special education teachers and instructional  
6 support providers who provide special education ancillary  
7 services; and

8 (b) teacher and instructional support  
9 provider preparation, induction and professional development;

10 (3) monitor special education programs in  
11 school districts and charter schools to determine if families  
12 and students are receiving adequate services, including:

13 (a) research-based special education  
14 services appropriate for individual student needs;

15 (b) best practices for special  
16 education staff and families to design appropriate services,  
17 including: 1) assessments; 2) individualized education  
18 plans; 3) student-centered goals, interventions and plans; 4)  
19 appropriate interventions; 5) transition plans; 6)  
20 reevaluation every three years; and 7) student exit plans  
21 from special education; and

22 (c) focus monitoring based on school  
23 and student data that includes family and community members  
24 and leads to yearly monitored plans;

25 (4) provide school districts and charter

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1 schools with support for the development of culturally rooted  
2 and culturally sustaining curriculum and pedagogy for all  
3 students of all ability levels in collaboration with  
4 community members and the use of restorative justice as a  
5 form of discipline;

6 (5) encourage the use of health education,  
7 the arts, physical education and extended learning programs  
8 as avenues for developing special education students'  
9 multiple literacies and capacities for learning through  
10 exploration, play and enrichment based on each student's  
11 interests;

12 (6) help school districts and charter  
13 schools find placement and treatment options for students  
14 with severe behavior needs who are at risk of harming  
15 themselves or others, which may be on- or off-site as long as  
16 the alternative educational setting provides services for  
17 psychological, social and emotional development and  
18 education;

19 (7) assist school districts and charter  
20 schools with developing transition plans, including from high  
21 school to post-secondary education plans;

22 (8) monitor curriculum and services provided  
23 to students in alternative settings due to suspension and  
24 ensure the educational services fully comply with  
25 constitutional and statutory requirements for services to

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1 special education students;

2 (9) monitor the number of special education  
3 students and their home schools, where school discipline and  
4 lack of adequate service lead to prison;

5 (10) monitor public schools' processes for  
6 developing and implementing individualized education plans;

7 (11) monitor the manifestation process and  
8 eliminate the practice that coerces students with  
9 disabilities and families into waiving rights to disciplinary  
10 process for behavior and then moves those students to schools  
11 where their disability needs are not met; and

12 (12) advocate for special education  
13 resources in school districts and charter schools, including:

14 (a) school counselors at each public  
15 school to support special education students' mental, social  
16 and emotional well-being;

17 (b) full funding for student  
18 assistance teams; and

19 (c) provision of professional  
20 development for student assistance team members.

21 C. The department shall work with school  
22 districts and charter schools, the university of New Mexico,  
23 the human services department, the children, youth and  
24 families department, the department of health and other  
25 experts to develop and maintain a statewide autism spectrum

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1 registry so that appropriate stakeholders can identify and  
2 support children and students on the autism spectrum."

3 SECTION 10. A new section of the Public School Code is  
4 enacted to read:

5 "[NEW MATERIAL] SPECIAL EDUCATION TEACHERS--SALARY  
6 DIFFERENTIAL.--

7 A. Special education teachers who are licensed to  
8 teach students in the most challenging categories and levels  
9 of disability shall receive a salary differential for:

10 (1) holding a specialized certificate or  
11 advanced degree in the specific disability area the special  
12 education teachers teach or completing a number of  
13 professional development hours determined by rule of the  
14 department of high-level training in the teachers' areas of  
15 specialization;

16 (2) mentoring other special education  
17 teachers;

18 (3) collaboration with teachers and  
19 instructional support providers in designing specialized  
20 intervention and assessment plans; and

21 (4) providing public school or school-  
22 district-level professional development for other special  
23 education or general education teachers, instructional  
24 support staff and other school employees.

25 B. The division shall develop a state framework

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1 similar to the national board for professional teaching  
2 standards that leads to state certification for special  
3 education teachers. Once the framework and standards are in  
4 place, special education teachers with a state certificate  
5 shall be counted in the teaching and experience index the  
6 same as national board-certified teachers and shall receive  
7 the salary differential provided to national board-certified  
8 teachers pursuant to Section 22-8-23.4 NMSA 1978."

9 SECTION 11. TEMPORARY PROVISION--RECOMPILATION.--  
10 Section 22-13-8 NMSA 1978 (being Laws 2009, Chapter 162,  
11 Section 1) is recompiled in the Special Education Act.

12 SECTION 12. REPEAL.--Section 22-13-6 NMSA 1978 (being  
13 Laws 1972, Chapter 95, Section 2, as amended) is repealed.