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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

Bill Number	<u>SB289/SECs/aSEC</u>	Sponsor	<u>SEC</u>
Tracking Number	<u>.219115.4</u>	Committee Referrals	<u>SEC/SFC</u>
Short Title	<u>Special Ed Division of Ed Dept.</u>		
Analyst	<u>Juliani</u>	Original Date	<u>3/4/2021</u>
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BILL SUMMARY

Synopsis of SEC Amendment

The Senate Education Committee amendment to the SEC substitute bill for SB289 (SB289/SECs/aSEC) adds language in Section 5 of the bill, describing the duties of the Special Education Division and assistant secretary for special education, that changes “students with disabilities” to “exceptional students,” ensuring inclusion of gifted students within these duties.

Synopsis of Original Bill

The Senate Education Committee substitute bill for Senate Bill 289 (SB289/SECs) creates a new Special Education Division and Assistant Secretary for Special Education within the Public Education Department (PED). SB289/SECs enacts a new section of law within the Public School Code known as the Special Education Act outlining the powers and duties of the new Special Education Division and assistant secretary position and creating a statewide autism spectrum registry. The bill defines dyslexia, exceptional student, gifted student, student assistance team, and student with disabilities.

FISCAL IMPACT

SB289/SECs/aSEC appropriates \$1 million from the general fund to PED for expenditures in FY22 to provide professional development for teachers, instructional support providers, school administrators, substitute teachers, school resource officers, school police, or security on working effectively with and meeting the needs of special education students. Any unexpended or unencumbered funds at the end of FY22 revert to the general fund.

The House Appropriations and Finance Committee substitute for House Bills 2 and 3 includes \$2.5 million for professional development for principals and over \$2.8 million for teacher professional development from recurring general fund revenue in FY22, that PED could use to provide this professional development. In addition, PED has another \$5.1 million for FY22 in recurring general fund revenue for indigenous, multicultural, multilingual, and special education initiatives, a portion of which the department could use for the professional development required by the bill.

SB289/SECs/aSEC requires the new Special Education Division to have an assistant secretary for special education. In current statute, only the Indian Education Division has an assistant secretary with a designated job code of a division director. The mid-point salary of a PED division director is \$98,696. Figuring benefits at 30 percent, the total cost to fund a division director position would be \$128,304. Currently, the Special Education Division is led by a division director. It is unclear if a change in title would lead to a change in salary.

SUBSTANTIVE ISSUES

Special Education in New Mexico. In the consolidated *Martinez-Yazzie* education sufficiency lawsuit, the 1st Judicial District Court ruled the state failed to provide quality programs targeted to meet the specific needs of at-risk students, defined as economically disadvantaged students, English learners, Native American students, and students with disabilities. In New Mexico, 16.6 percent, or 57,417 public school students, were identified as having learning disabilities in 2020, higher than the national rate of 13.8 percent. Persistent gaps exist in academic outcomes between students with disabilities and their peers throughout the state. In FY19, the most recent year of statewide standardized testing, 12 percent of students with disabilities scored proficient in reading and 8 percent in math, compared with 34 percent and 20 percent, respectively, of general education students.

PED Oversight and Other Supports. PED's Special Education Bureau provides fiscal oversight and support to assist school districts and charter schools in ensuring services are provided to students with disabilities. Much of this oversight involves technical assistance to help school districts and charter schools remain in fiscal and programmatic compliance in serving students with disabilities, support in providing behavioral intervention and mental health services, meeting personnel shortages, and building capacity to improve the delivery of student services. In 2020, PED hired a parent liaison, refined the alternative dispute process, established a parent training information center, and developed an autism portal on its website.

PED has noted the need for urgent action to better support students with disabilities, indicating, in particular, the necessity for more support from general education teachers, more timely student evaluations, more special education teachers, improved communication with parents, and a rejection of seclusion and restraint as behavior interventions. Nevertheless, problems persist in ensuring services for students with disabilities are reaching these students.

Concerns of Advocates and Parents. Advocates and parents have raised a series of concerns related to the services available to students with disabilities. Parents have described the state's special education system as adversarial, lacking accountability, and in need of greater collaboration. The advocacy group, Disability Rights New Mexico, noted a fundamental failure of teachers and school administrators to understand students' disabilities, citing a lack of training on how specific disabilities affect student learning. Parents have recounted their experiences trying to ensure their child receives appropriate services and encountering minimal oversight and roadblocks that prevent or delay delivery of these services as specified in the child's individualized education plan (IEP).

Advocates and parents have offered a range of solutions, including more robust professional development, a more proactive PED role in building an infrastructure at the state level to support teachers in understanding students' disabilities and providing appropriate strategies to serve students more effectively, employing more behavioral health professionals, eliminating the use of

restraint and seclusion and the use of law enforcement or school resource officers as means of behavior management, and providing more meaningful transition services to support students' post-secondary aspirations.

Special Education Division. SB289/SECs/aSEC amends Section 9-24-4 NMSA 1978 of the Public Education Department Act to create the Special Education Division within PED. The division would be charged with the following responsibilities:

- Provide assistance, including advice on the allocation of resources to schools, to improve services to meet the needs of students with disabilities, based on current best practices in special education;
- Seek funds to establish, develop, and implement culturally relevant and linguistically appropriate support services for students with disabilities, including the recruitment and retention of qualified special education teachers and instructional support providers and professional development for these teachers and providers;
- Audit school districts' implementation of the requirements of the federal Individuals with Disabilities Education Act (IDEA), including use of appropriate disciplinary measures and implementation of manifestation determination reviews;
- Perform in-person site visits and conduct performance reviews of special education programs at school districts and public schools to determine whether students with disabilities are receiving appropriate special education services;
- Provide technical assistance and recommendations to school districts to ensure students with disabilities are receiving special education services that are evidence- or research-based, are designed in collaboration with a student's parent, include student-centered goals, and monitor the academic and non-academic progress of students with disabilities; and
- Support school districts in developing culturally and linguistically appropriate curricula and culturally sustaining pedagogy for exceptional students.

Assistant Secretary for Special Education. SB289/SECs/aSEC enacts a new section of the Public School Code, Section 22-13E-3 NMSA 1978, known as the Special Education Act, creating the Assistant Secretary for Special Education position to oversee PED's Special Education Division. The duties of the Assistant Secretary for Special Education would include the following:

- Direct the activities of the special education division and advise the secretary of education on development of policy regarding the education of students with disabilities;
- Coordinate with the Higher Education Department (HED) for transition efforts for students with disabilities in public schools and work to expand appropriate special education for students in preschool through college;
- Coordinate with other divisions within PED to ensure that department administrators make implementation of special education a priority; and
- Provide adequate professional development for division staff to develop expertise in the requirements of IDEA and federal regulations promulgated in accordance with that act.

Statewide Autism Spectrum Registry. SB289/SECs/aSEC requires PED's new Special Education Division to work with school districts, charter schools, institutes of higher education, the Human Services Department, the Children, Youth and Families Department, the Early Childhood Education and Care Department, the Department of Health and other experts to develop and maintain a statewide autism spectrum registry so that appropriate stakeholders can identify and support children and students on the autism spectrum.

Studies indicate autism disorder registries are an important tool that communities can use to plan for services and inform researchers about the varying symptoms and needs of autistic children. Currently, the National Autism Registry is a voluntary registry relying on families self-registering their children. State-based registries, however, are designed to provide generalizable information for health planners and policymakers who need to effectively provide services. Mandated state-based registries can provide information about the variations across and within states, variations and patterns of the disorder, and potentially have the added benefit of providing those individuals with autism specific information and services. Currently eight states – Delaware, Indiana, New Hampshire, New Jersey, North Dakota, Rhode Island, Utah, and West Virginia – have statewide autism disorder registries and mandate the reporting of autism diagnoses.

Definitions. SB289/SECS/aSEC enacts a new section of the Public School Code, Section 22-13E-2 NMSA 1978, to include definitions related to the provision of special education services, including dyslexia, exceptional student, gifted student, student assistance team, and student with disabilities.

The bill defines dyslexia as “a specific learning disability that is neurobiological in origin and that is characterized by difficulty with accurate or fluent word recognition and by poor spelling and decoding abilities, which characteristics typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction and may result in problems in reading comprehension and reduced reading experience that may impede the growth of vocabulary and background knowledge.” This definition reflects statutory language amended in 2019 (Laws 2019, Chapter 256, Section 1) and is the commonly accepted definition provided by the International Dyslexia Association. While the IDEA does not define dyslexia, the act includes dyslexia as one of 13 types of specific learning disabilities through which a student can qualify for special education services.

SB289/SECS/aSEC defines gifted student as “a school-age person who is determined to be gifted pursuant to the identification, referral and evaluation process undertaken by a multidisciplinary team.” Section 22-13-6.1 NMSA 1978 requires PED to adopt standards for identifying gifted children. New Mexico administrative code, Section 6.31.2.12, describes a gifted child as “a child who scores two standard deviations above the mean on a properly administered intelligence measure paired with superior performance on tests involving a total subject area, creativity and divergent thinking, or problem solving and critical thinking.” School districts and charter schools are required to establish procedures for screening and referring potentially gifted students.

Gifted students receive services funded through the public school funding formula as part of the state’s special education appropriation. The state receives no federal funding to support gifted education, and gifted students are not covered by the federal IDEA, Part B, because, by definition, they are not considered students with disabilities. State statute includes gifted students under the broader category of special education. Section 22-13-6 NMSA 1978 defines special education as “the provision of services additional to, supplementary to, or different from those provided in the regular school program by a systematic modification and adaptation of instructional techniques, materials and equipment to meet the needs of exceptional children.”

Language within SB289/SECS/aSEC, describing the duties of the Special Education Division and assistant secretary for special education, includes “exceptional students,” ensuring the oversight of education for gifted students in these duties. Currently, gifted education is under the purview of PED’s director of Curriculum and Instruction Division. The bill defines exceptional student as “a

student with disabilities or a gifted student” and ensures the department’s new Special Education Division would oversee gifted education in the state.

The bill defines a student with disabilities as a person who (1) is at least 3 years old any time during the school year; (2) has not reached 22 years of age on the first day of the school year; and (3) is eligible to receive special education services through a public school pursuant to the federal Individuals with Disabilities Education Act and rules of the department. This definition aligns with the federal IDEA language.

ADMINISTRATIVE IMPLICATIONS

PED would need to promulgate rules for school districts and charter schools to follow in implementing the provisions of SB289/SECs/aSEC.

RELATED BILLS

HB130, School Gifted Education Requirements, which requires PED to adopt standards related to the child find mandate, universal screening, and equity in gifted education

HB222, Special Education Ombud Act, which establishes the Office of the State Special Education Ombud.

SB346, Special Ed Ombud Act, which establishes the Office of the State Special Education Ombud.

SOURCES OF INFORMATION

- LESC Files

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