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## FISCAL IMPACT REPORT

**SPONSOR** Trujillo **ORIGINAL DATE** 01/31/21  
**LAST UPDATED** 02/25/21 **HB** 130  
**SHORT TITLE** School Gifted Education Requirements **SB** \_\_\_\_\_  
**ANALYST** Liu

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$0.0 - \$19,724.4	\$0.0 - \$75,585.4	\$0.0 - \$95,309.8	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 213

### SOURCES OF INFORMATION

LFC Files

Legislative Education Study Committee (LESC) Files

### Responses Received From

New Mexico School for the Blind and Visually Impaired (NMSBVI)

Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

House Bill 130 amends the Public School Code to impose new requirements for school districts offering gifted education. The bill requires PED to adopt standards for

- Child find procedures,
- Universal screening,
- Educational benchmarks published by the the National Association for Gifted Children,
- Evaluating the effectiveness each district’s gifted education program,
- Evaluating the equity of identification at each school district and charter school,
- Tracking expenditures for gifted education,
- State accountability reporting on participation in gifted education.

The bill prohibits schools from using a single test, criterion, or gatekeeping procedure from disallowing a student from identification for gifted education. Schools districts must also develop child find procedures, implement universal screening, conduct evaluations of the equity and effectiveness of gifted identification and services, and report on evaluations to the district’s gifted education advisory committee.

The bill expands the criteria for determining a student's gifted status to include artistry, leadership, and aptitude in specific academic areas. School districts offering services must consider the potential need for social work services, transportation costs, and occupational therapy services in alignment with federal law. The bill further requires schools to allow gifted students (as decided by the individualized education program team) or advanced students (as decided by the student assistance team or district gifted education coordinator) to participate in acceleration or enrichment options, such as skipping grades, advancing subject levels, enrolling in dual-credit courses, obtaining credit for mastered subjects, and other research-based interventions. The bill also defines twice-exceptional students.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

### **FISCAL IMPLICATIONS**

The bill does not make an appropriation, while the expansion of eligibility for gifted education could increase the number of special education program units generated in the public school funding formula. Absent an appropriation to offset the increase in new program units, the formula would redistribute formula-based state equalization guarantee dollars from schools with fewer gifted students to schools with more gifted students and lower the unit value, or dollars per program unit.

A 2019 Purdue University study on gifted education found New Mexico identified 16.2 thousand gifted students in 2016. The study found approximately 14 percent of students in New Mexico attended schools with no gifted education, higher income (non-Title I) schools identified twice as many gifted students as lower income (Title I) schools, and Native American, Black, and Hispanic students were consistently underrepresented in gifted education programs. The study also estimated between 6,211 students and 23.8 thousand students could be identified from schools that underidentified or did not identify gifted students, mostly from Title I schools and non-white populations. Assuming up to 23.8 thousand new students generate 0.7 program units (special education A/B-level factor) in the funding formula at the current unit value of \$4,536.75, the potential recurring fiscal impact to the SEG could be \$75.6 million. This analysis assumes identification of gifted students will gradually increase, with up to 6,211 new students identified in FY22 at a cost up to \$19.7 million.

Part B of the federal Individuals with Disabilities Education Act (IDEA), which governs special education, includes a maintenance of effort (MOE) provision that requires states to maintain funding at the same level as the prior year. Locally, schools must maintain special education spending at the same level, with limited exceptions.

### **SIGNIFICANT ISSUES**

New Mexico's public school funding formula includes factors for students identified for special education services and ancillary school personnel. In FY21, schools generated \$517.1 million, or 17 percent of the formula, in SEG distributions for special education. Additionally, schools receive about \$52 million from federal IDEA Part B funds for special education services. According to PED, about 12.6 thousand students were classified as gifted students and generating special education program units in FY21 (664 are twice exceptional). At the A/B-level factor, these students are generating \$40 million.

Federal IDEA Part B regulations for special education funds include local and state MOE provisions. The local MOE requirement obligates any local educational agency (LEA) receiving IDEA Part B funds to budget and spend at least the same amount of local – or state and local – funds for the education of children with disabilities on a year-to-year basis. The required MOE levels for budgeting and spending are referred to, respectively, as the “eligibility standard” and the “compliance standard.” An LEA is not eligible to receive IDEA Part B funds until it has met the MOE eligibility (i.e., budget) standard. If an LEA fails to meet its MOE compliance (i.e., expenditure) standard, PED must repay the U.S. Department of Education. The state’s repayment obligation – which must be met using nonfederal funds or funds for which accountability to the federal government is not required – is either the difference between what the LEA actually spent and what it should have spent to meet the MOE requirement, or the amount of the LEA’s Part B subgrant for that fiscal year, whichever is lower. PED can require the LEA to reimburse the department for this amount or can opt to cover the penalty itself.

Subsection E of 6.29.1.9 NMAC requires public schools to universally screen all enrolled students in the areas of general health and well-being, language proficiency status, and academic levels of proficiency. If universal screening, a referral from a parent, a school staff member, or other information suggest a student needs educational support for learning, the student must be referred to the student assistance team (SAT) for consideration of interventions, including potential placement into gifted education. If a student is identified for gifted education, an individualized education program (IEP) is developed by an IEP team.

Although state rules for developing an appropriate IEP for students identified as gifted contain many of the same required federal IDEA elements, some of the IDEA’s substantive requirements are specifically exempted by state special education rule. Since giftedness (only and not in the presence of another disability under the IDEA) is not a disability category recognized under the IDEA, gifted students are not entitled to

- Federal rights for a free and appropriate education;
- Federal requirements for child find;
- Reevaluation timelines;
- Certain educational services at state-supported schools, private schools, correction and detention centers, or home schools; and
- Transition planning.

As used in 6.31.2.12 NMAC, “gifted child” means a school-age person as defined in Subsection D of Sec. 22-13-6 NMSA 1978 whose intellectual ability paired with subject matter aptitude or achievement, creativity or divergent thinking, or problem-solving or critical thinking meets the eligibility criteria in 6.31.2.12 NMAC and for whom a properly constituted IEP team determines that special education services are required to meet the child’s educational needs. Provisions of this bill would expand criteria for identification, define enrichment options, and expand accommodations available to gifted students.

According to LESC, only Maryland, Kentucky, and New Hampshire enroll more than 10 percent of their state’s black and Hispanic students in gifted programs, and in 22 states, the figure is less than 5 percent. Research indicates ensuring the availability of rigorous coursework and gifted education programs and services at every grade level, combined with equitable identification procedures, would raise the participation of underrepresented students in gifted education programs and help students increase their achievement and maximize their potential.

## **PERFORMANCE IMPLICATIONS**

Proper identification of students for gifted education could increase the provision of appropriate enrichment and intervention services for gifted students. Because some gifted students exceed grade-level expectations, growth in academic performance indicators may not be accurately captured within the existing accountability system. As such, overall statewide academic performance may only marginally improve.

## **ADMINISTRATIVE IMPLICATIONS**

Provisions of this bill would require PED and schools to create new reporting and evaluation procedures for gifted education. Additionally, the expansion of criteria and review of equity in gifted student identification will likely increase the number of students becoming eligible for gifted education services. As such, schools will need to expand programs and provide appropriate personnel to serve these gifted students.

The bill would require the PED to triannually evaluate the effectiveness of each school district's gifted education programming and annually evaluate the equity of identification statewide in each school district and charter school. PED notes the bill does not specify what metrics the department would use to evaluate programming nor does it define equity as it relates to gifted education identification. Lastly, it would require the department to include equity of racial, ethnic, socioeconomic, language, and disability group participation of gifted education and advanced performance in state accountability reporting.

According to LESC, PED has faced challenges related to ensuring the accuracy of school districts' reported special education spending figures. For much of FY21, PED has been in the process of converting to an online calculator that will display enhanced data from all school districts on special education spending for the last three years in an effort to add greater transparency and to ensure accuracy of the reported dollar amounts. The department's goal was to have this ready to launch by fall 2020. However, as of mid-January 2021, PED staff was still uploading the fiscal data and information onto the online platform and anticipated having the data available on its website in the weeks after the completing the upload. PED noted this online calculator was still a work in progress with no known public release date yet.

## **RELATIONSHIP**

This bill relates to House Bill 213, which requires school districts to maintain a special education services fund.

## **OTHER SUBSTANTIVE ISSUES**

NMSBVI works in tandem with school districts and charter schools to identify students who are gifted. NMSBVI provides a variety of individualized options for those students, including dual-credit courses, accelerated learning, and enrichment opportunities for individual students.

Provisions of this bill would require PED to use the gifted education standards set forth by the National Association for Gifted Children (NAGC). The NAGC has published six standards for prekindergarten through 12<sup>th</sup> grade that cover the areas of (1) learning and development, (2) assessment, (3) curriculum and instruction, (4) learning environments, (5) programming, and (6)

professional learning. PED notes there are no federally mandated standards for gifted education and the department already includes NAGC standards in its guidance manual for gifted education.

SL/al/rl