

LESC bill analyses are available on the New Mexico Legislature website (www.nmlegis.gov). Bill analyses are prepared by LESC staff for standing education committees of the New Mexico Legislature. LESC does not assume any responsibility for the accuracy of these reports if they are used for other purposes.

LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
56th Legislature, 1st Session, 2023

Bill Number	<u>HB285/HECS</u>	Sponsor	<u>HEC</u>
Tracking Number	<u>.225504.5</u>	Committee Referrals	<u>HEC/HGEIC</u>
Short Title	<u>Office of Special Education</u>		
Analyst	<u>Andrews</u>	Original Date	<u>3/7/2023</u>
		Last Updated	<u></u>

BILL SUMMARY

Synopsis of Bill

The House Education Committee Substitute for House Bill 285 (HB285/HECS) creates and amends several sections of law related to special education in New Mexico schools. Notably, the bill creates the Office of Special Education in the Public Education Department (PED) and mandates the office as the only division of PED that cannot be transferred or merged “in the interest of efficiency and economy.” HB285/HECS creates the Special Education Act in the Public School Code and creates the director of the Office of Special Education as an exempt position, allowing the director to appoint staff to assist in carrying out the powers and duties of the office. The Office of Special Education will assume the duties of the current Special Education Division within PED once the director is hired. The Office of Special Education would implement the provisions of the Special Education Act and other laws that relate to the special education of public school students and three- and four-year-old children who have disabilities. HB285/HECS enumerates the powers and duties of the Office of Special Education in over twenty subsections of law (see **Substantive Issues**).

HB285/HECS transfers the Part B, 619 coordinator from PED to the Early Childhood Education and Care Department (ECECD) by July 1, 2024, through a formal agreement that will identify the administrative roles, responsibilities and funding for the Office of Special Education and ECECD, which includes data, legal support, and reporting. The bill requires PED to consult with ECECD regarding special education matters.

HB285/HECS provides both technical and substantive cleanup of the Public School Code related to special education, including changes to comply with the federal Individuals with Disabilities Education Improvement Act of 2004 (IDEA), amends the submission requirements of annual educational plans by local education agencies (LEAs), and provides several definitions – including “multi-layered systems of supports” — and responsibilities.

The effective date is July 1, 2023.

FISCAL IMPACT

This bill does not contain an appropriation.

The House Appropriations and Finance Committee Substitute for House Bills 2 and 3 (HB2/HAFCS) includes \$2 million from the public education reform fund in FY24 for special education training and credentials.

In FY23, the Legislature appropriated \$604 million for special education programs and services through the state equalization guarantee. Those funds are based on student needs as specified in their individualized education plan (IEP), along with the number of full-time-equivalent certified or licensed staff providing diagnostic services or speech therapy and other ancillary services. Additionally, the federal IDEA distributes grant funding for states to provide special education and related services for students between the ages of 3 and 21 who have been identified as having a disability. In FY23, those grant programs will distribute \$103 million to public schools in New Mexico.

SUBSTANTIVE ISSUES

Transitioning to the Office of Special Education. HB285/HECS provides for a transition from PED's current Special Education Division to the Office of Special Education, which would be responsible for carrying out the provisions of the proposed Special Education Act and other laws that relate to special education of public school students, or three and four-year-old children with disabilities. The bill requires PED and the Office of Special Education to identify appropriate salary differential levels, time allocations, and other supports for licensed school employees and other school personnel who educate or provide instructional support to students with disabilities in consultation with educators and school districts by July 1, 2024.

The bill specifies the duties of the Office of Special Education, including but not limited to:

- Enforcing federal and state special education law, including IDEA, in coordination with other units of the PED;
- Developing state special education rules, in consultation with other units of PED;
- Developing policies and technical guidance on special education for public schools, parents, and students;
- Coordinating with other units of PED to identify and address the needs of and impacts on students with disabilities in all educational activities, programs, and policies;
- Coordinating with school districts and other state agencies, including children and youth in custody of the Children, Youth, and Families Department (CYFD), and public institutions of higher education (IHEs) to prioritize and expand appropriate special education services to New Mexico residents from birth to career, and ensure students with disabilities receive free and appropriate public education (FAPE);
- Coordinating with school districts to track, develop, and provide professional development programs and materials for licensed school employees, special education assistants, and other instructional support providers;
- Coordinating with public IHEs on the education and training of licensed school employees in teaching or providing instructional support to students with disabilities;
- Providing technical assistance in the implementation of special education programs in public schools and other settings, including identifying systems and policies that maximize provision of special education services;

- Ensuring diagnoses, screenings, and educational evaluations of students for special education services are completed comprehensively;
- Working with other divisions of PED to ensure school districts implement culturally and linguistically relevant services, curricula, and pedagogy to support students with disabilities;
- Conducting activities to promote the recruitment and retention of qualified special education teachers and personnel;
- Analyzing the recommendations of the Office of the State Special Education Ombud and taking appropriate action as needed;
- Auditing implementation of IDEA and state law in school districts and public schools, including conducting performance reviews, performing site visits, and taking corrective action, including providing assistance and support, if a school district is out of compliance;
- Collaborating with other units of PED to track, develop, and provide targeted annual training to all school boards, governing bodies of charter schools, superintendents, school administrators, teachers, instructional support providers, other school employees, school resource officers, and school security officers that address the requirements of federal and state special education law; disabilities-specific policies, practices, and interventions; de-escalation practices and techniques; positive behavioral supports; inclusion and integration; formulation and implementation of effective IEPs; and effective engagement and communication with students, parents, and educational decision makers;
- Ensuring the transition of IEPs prepare three- and four-year-olds with disabilities to transition to public school, special education students to transition within the public school system, and special education students to transition to IHEs or the workforce;
- Ensuring public schools comply with federal and state special education law by soliciting input from special education stakeholders and reviewing publically available information regarding special education services and programs;
- Ensuring students with disabilities receive appropriate services as required by federal and state law; and
- Monitoring special education compensation trends in other states and make compensation recommendations to the PED and the Legislature.

The bill requires PED to:

- Coordinate with the Office of Special Education to develop, adopt, promulgate and update an annual state plan for policy, programs and standards to improve special education outcomes for students;
- Submit a report on the status of special education to the secretary, the governor and the Legislative Education Study Committee (LESC) by November 30 of each year;
- Evaluate the state's compliance with IDEA and state law pertaining to special education;
- Monitor spending of state and federal funds for special education programs for students with disabilities, including state equalization guarantee distributions and Medicaid, and take actions to ensure appropriate spending, as needed;
- Coordinate with the Office of Special Education to promulgate rules regarding performance reviews, site visits, corrective action, technical assistance, and other provisions, as determined by PED and the office; and
- Consult with ECECD regarding special education matters.

Special Education in New Mexico. Approximately 16.5 percent—or just over 50 thousand—students in New Mexico required special education services during the current school year. Nationally, 14.5 percent of all public school students received special education services in the 2020–2021 school year, meaning New Mexico has a greater share of students receiving special education services than the national average. Special education qualifying disability categories are outlined in both federal law and state administrative rule. Students who qualify are legally entitled to special education services. Federally defined categories include: autism, deaf blindness, developmental delay, emotional disturbance, hearing impairment/deafness, intellectual disability, multiple disabilities, orthopedic impairment, other health impaired, specific learning disability, speech-language impairment, traumatic brain injury, and visual impairment.

Outcomes for Special Education Students. Historically, educational outcomes for special education students have been consistently below their non-special education peers. LESC analysis of PED data shows in the 2021-2022 school year, the achievement gap between special education and their non-special education peers persisted across subjects:

- In English language arts, the achievement gap between special education students and their non-special education peers was 30.2 percent;
- In math, the achievement gap between special education students and their non-special education peers was 21.3 percent; and
- In science, the achievement gap between special education students and their non-special education peers was 27.8 percent.

PED notes, few special education students in New Mexico are proficient in key academic areas – just 15 percent of special education students were proficient in early literacy, 9 percent were proficient in language arts and science, and only 6 percent were proficient in math. PED also notes that nearly a third did not graduate from high school on time in 2021. According to PED, improving these outcomes is a key goal of this legislation.

PED Oversight and Other Supports. PED’s current Special Education Division has 24 FTEs, including a State Director of Special Education, a State Deputy Director of Special Education, a Special Education Fiscal Supervisor. Other staff include general counsel and personnel tasked with roles and responsibilities that support students and families who require special education services.

The Special Education Division 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. 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 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' postsecondary aspirations.

Federal Special Education Laws. There are two federal laws that ensure a right to an education for children with disabilities—Section 504 of the Rehabilitation Act of 1973 (commonly known as Section 504)—and IDEA. Section 504, a civil rights law, protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance. It also requires schools to provide FAPE to each qualified student, regardless of the nature or severity of the disabilities. IDEA also covers every student in the United States who receives special education services. This federal law spells out what states must do to meet the specific needs of each student with a disability by requiring schools to develop an IEP for each student. In essence, IDEA is a law that ensures a FAPE for all children with disabilities by requiring individualized services, which may also include specialized instruction, therapies, and services. IDEA also governs how states and public agencies must provide special education, intervention services, and any other related services to all students.

ADMINISTRATIVE IMPLICATIONS

The New Mexico School for the Blind and Visually Impaired (NMSBVI) notes they are concerned about possible unanticipated consequences of this bill, and any other unforeseen consequences related to the special schools. According to NMSBVI, as a state special school, they work well with the current Special Education Division at PED. NMSBVI notes they support many of the initiatives in this bill including looking at special education compensation trends, partnering with agencies, and ensuring proper fund expenditures.

The New Mexico School for the Deaf (NMSD) indicates they are supportive of many of the concepts presented in HB285/HECS including, but not limited to, a proposal of the salary differential for special education teachers, the study of program costs, and data collection studies. NMSD notes a need for increased oversight to ensure that state special education funding goes directly to support special education students, and this could be calculated under a system similar to the excess cost system that is utilized by the federal government. According to NMSD, it is unclear why this could not happen under the current Special Education Division that has a PED cabinet secretary appointed by the governor.

According to ECECD, HB285/HECS requires stronger interagency collaboration, which could improve outcomes for children birth through 21. ECECD notes transferring the preschool special education 619 coordinator to ECECD—the agency that is responsible for the administration of New Mexico prekindergarten—will further strengthen and enhance the delivery of inclusive services for children with special needs and their families. ECECD reports that while HB285/HECS does not provide for an appropriation concerning these duties, ECECD maintains

the undertaking of such duties is inherent to its mission and welcomes the responsibility. ECECD asserts HB285/HECS would increase effective, timely, and data-driven services for children in special education by publicizing data on student achievement, school district transition plans for students, and all incidents of student restraint and seclusion.

According to PED, elevating the Special Education Division to an Office of Special Education attached to PED would strengthen and streamline state administration of special education from cradle to career, expand transparency, ensure effective and timely delivery of services and evaluations for children and families, and provide educator training specific to special education by:

- Increasing effective, timely and data-driven services for children in special education by publicizing data on student achievement, school district transition plans for students, and all incidents of student restraint and seclusion;
- Providing training and professional development for special education educators on required student protections; the implementation of IEPs; engagement and communication with parents, students, and educational decision-makers; de-escalation practices, positive behavior supports, and other related interventions; and structured literacy;
- Initiating an educator-informed process, in coordination with the Legislature, to identify differential salaries for special educators and other supports for the special education workforce; and
- Supporting schools and school district implementation of federal and state special education laws through technical assistance and accountable policies and practices.

OTHER SIGNIFICANT ISSUES

Martinez-Yazzie. In 2019, the 1st Judicial Court issued a final judgement and order in the consolidated *Martinez-Yazzie* education sufficiency lawsuit, finding New Mexico’s public education system failed to provide a constitutionally sufficient and adequate education for at-risk students, defined as English language learners, Native American students, students with disabilities, and students from low-income families. The court pointed to low high school graduation rates, low student test proficiencies, and high college remediation rates as indicators of how the state is not meeting its constitutional obligation to ensure all students are college, career, and civics ready. The court’s findings suggested overall public school funding levels, financing methods, and PED oversight were deficient. As such, the court enjoined the state to provide sufficient resources, including instructional materials, properly trained staff, and curricular offerings, necessary for providing the opportunity for a sufficient education for all at-risk students. Additionally, the court noted the state would need a system of accountability to measure whether the programs and services provided the opportunity for a sound basic education and to assure that local school districts spent funds provided in a way that efficiently and effectively met the needs of at-risk students. However, the court stopped short of prescribing specific remedies and deferred decisions on how to achieve education sufficiency to the legislative and executive branch instead.

Special Education Transformation Team. According to PED, in the summer of 2020, in the wake of the consolidated *Martinez-Yazzie* education sufficiency lawsuit, Representative Liz Thomson and the governor formed the Special Education Transformation Team, led by PED and New Mexico Developmental Disabilities Council DDC, to study and set priorities for special education in New Mexico. PED notes that through the work of the Transformation Team, the

Special Education Ombud was established in 2021 to advocate alongside students with disabilities and their families, and to identify trends and issues in special education.

RELATED BILLS

Related to HB483, School Gifted Education Requirements, which imposes requirements on school districts offering gifted education.

Related to SB387, School Student Restraint or Isolation, which amends the Public School Code to require less restrictive interventions on a student before the use of restraint or seclusion and requires that restraint or seclusion is used only by teachers who are trained in less restrictive interventions.

SOURCES OF INFORMATION

- LESC Files
- New Mexico School for the Blind and Visually Impaired (NMSBVI)
- Early Childhood Education and Care Department (ECECD)
- New Mexico School for the Deaf (NMSD)
- Public Education Department (PED)

MCA/gpw/cf/mb