

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

## FISCAL IMPACT REPORT

**SPONSOR** Trujillo/Szczepanski/Lara/Herrera/Sariñana
**LAST UPDATED** \_\_\_\_\_  
**ORIGINAL DATE** 3/7/23  
**SHORT TITLE** School Gifted Education Requirements
**BILL NUMBER** House Bill 483  
**ANALYST** Liu

### APPROPRIATION\* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
	\$1,000.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$24,010.2 - \$92,008.7	\$24,010.2 - \$92,008.7	\$48,020.4 - \$184,017.4	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

Relates to HB285

### Sources of Information

LFC Files

#### Responses Received From

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

## SUMMARY

### Synopsis of House Bill 483

House Bill 483 appropriates \$1 million from the general fund to PED for the purpose of assisting public schools with implementing universal screening for gifted education in FY23 and FY24. The bill further amends the Public School Code, requiring PED to develop rules pertaining to universal screening for gifted education, establish and publish standards for equity and excellence in gifted education based on National Association for Gifted Children (NAGC)

prekindergarten through 12<sup>th</sup> grade programming standards, evaluate the effectiveness and equity of each school district's gifted education program three times a year, track and periodically audit spending on gifted education, and include the demographic makeup of participation in gifted education and advanced performance in state accountability reporting. PED would also need to develop standards for teacher preparation based on NAGC standards.

The bill requires automatic identification of students for gifted education who obtain advanced performance levels on state achievement tests and prohibits a single test, criterion, or gatekeeping procedure from disqualifying a student from identification. The bill requires school districts to develop policies and procedures for universal screening, provide gifted identification and services, evaluate equity and effectiveness of gifted identification and services, create gifted education advisory committees, and adopt an academic acceleration and enrichment policy that includes a range of options for advanced learning. Determinations of gifted students would further consider evidence relating to artistry, leadership, and aptitude in specific academic areas.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## FISCAL IMPLICATIONS

The appropriation of \$1 million contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY24 revert to the general fund. PED projects a total cost of \$982.7 thousand to help school districts test all estimated 16.2 thousand third graders in the state with the following group-administered tests and coordinator training:

- Assessments of verbal, quantitative, and nonverbal reasoning ability using the Cognitive Abilities Test (CogAT);
- Assessments of creative thinking skills using the Torrance Test of Creative Thinking (TTCT) both Verbal and Figural; and
- Training two staff members from each school district or charter school in the practice of universal screening and identification with local norms using the Talent and Potential Assessment System (TAPAS).

PED notes costs of screening could be reduced to \$442.8 thousand by using existing achievement data to identify 4,860 potential gifted children and training coordinators of gifted education in universal screening with local norms. The cost of

- Administering the CogAT would be about \$170 thousand,
- Administering one of the two tests of creative thinking would be about \$50 thousand,
- Training coordinators of gifted education in universal screening with local norms would be \$112.8 thousand, and
- Employing 1 FTE at PED would be \$110 thousand.

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 under-identified or did not identify gifted students, mostly from Title I schools and non-White populations. Assuming between 6,211 students and 23.8 thousand students generate 0.7 program units (special education A/B-level factor) in the funding formula at the current unit value of \$5,522.50, the potential recurring fiscal impact to the SEG could be \$75.6 million.

New Mexico’s public school funding formula includes factors for students identified for special education services and ancillary school personnel. In FY23, schools generated \$604 million, or 18 percent of the formula, in SEG distributions for special education. Additionally, schools received about \$82.6 million from federal IDEA-B funds for K-12 special education services. Assuming over 16.2 thousand students in the state funding formula are classified as gifted students and generating special education A/B-level program units, the amount of SEG attributable to gifted students would be over \$62.6 million.

Part B of the federal Individuals with Disabilities Act (IDEA-B) regulations for special education funds include local and state maintenance of effort (MOE) provisions. The local MOE requirement obligates any school district or charter school (LEA) receiving IDEA-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-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 sub grant 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.

## SIGNIFICANT ISSUES

***House Memorial 33 Report.*** A 2022 PED study of gifted education found New Mexico schools disproportionately identified White and Asian students at rates higher than peers for gifted education. Similar disparities are evident in identification of English learners and students who are eligible for free and reduced-price lunch. The report recommended annual, universal screening at one grade level, such as third grade, to reduce implicit bias. A PED survey found 23.6 percent of district or charter school respondents offered no gifted programming and only 6.9 percent of respondents used accelerated instruction for gifted students.

PED notes provisions of this bill may align instruction more effectively for gifted programs by:

- Requiring NAGC programming standards for gifted education identification, educator standards, services, and evaluation;
- Requiring appropriate education for gifted and high-ability students, including special supports for disadvantaged and twice-exceptional students (students who are gifted and who also have an identified disability), with acceleration policies and procedures that include a range of options, such as skipping a grade, single-subject acceleration, early enrollment in high school and dual-credit college courses, credit for demonstrated mastery, school-wide enrichment, and other research-based interventions;

- Expanding the areas of evidence for gifted identification to include artistry, leadership, and aptitude in specific academic areas; and
- Tracking and auditing of expenses related to gifted education with provisions for a new budget code as part of the state equalization guarantee (SEG) distribution.

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 Section 22-13-6 NMSA 1978 whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/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.

## **PERFORMANCE IMPLICATIONS**

Proper identification of students for gifted education could increase the provision of appropriate enrichment and intervention services for gifted students. PED cites a 2014 study that found underachieving, economically disadvantaged, Black, and Hispanic students showed the most growth as a result of access to gifted education.

## **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.

ECECD notes policies and procedures vary among individual school districts, but most protocols do not include testing of students for gifted education until the conclusion of second grade. While a standardized and universal screening tool to identify gifted students aged 3 through 8 may not be developmentally appropriate, early childhood professionals in New Mexico prekindergarten programs and Head Start programs use several strategies to support all students achieving to their potential. These early childhood professionals screen each child with an approved developmental screening instrument that includes a social-emotional component within 45 calendar days of the child’s enrollment date. New Mexico prekindergarten program standards require programs use observational assessments in a continuous, dynamic process to inform instruction, improve teacher practices, and modify curricula for all children. All strategies support the growth and development of all children, including students who may demonstrate potential for gifted education. These screenings and assessments are shared with parents through biannual parent teacher conferences.

## **RELATIONSHIP**

This bill relates to House Bill 285, which creates and office of special education at PED.

## **TECHNICAL ISSUES**

PED notes the bill mostly references “school districts” and occasionally “charter schools” or “public schools.” It is unclear if the intent of changes to gifted education should apply to charter schools as well, as references to charters is inconsistent throughout the bill.

## **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. The school notes some of the additional requirements to ensure equity and to consider various types of giftedness serve to benefit a wider group of students.

Provisions of this bill would require PED to use the gifted education standards set forth by the 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.

SL/rl/ne