

STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

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May 25, 2011

MEMORANDUM

TO: Legislative Education Study Committee

FR: David Harrell

**RE: STAFF BRIEF: SENATE EXECUTIVE MESSAGE NO. 54, REGARDING PED
CODIFYING 11 AREAS OUTLINED IN SB 314, AUTISM EDUCATION PLAN
DEVELOPMENT**

During the 2011 session, the Legislature passed Senate Bill 314, *Autism Education Plan Development* (attached); however, the Governor vetoed the bill. Had it been signed into law, the bill would have amended the *Public School Code* to require the use of certain information when schools evaluate a student with autism spectrum disorder or develop an education plan for such a student.

In her veto message (attached), the Governor stated that the bill could jeopardize New Mexico's eligibility for federal funds because it includes a definition of the term *autism spectrum disorder* that differs from the definition employed by the federal *Individuals with Disability Education Act* and the related federal regulations.

Nonetheless, also in the veto message the Governor expressed her commitment to require through agency rule, by July 2011, that school districts and charter schools "use the information (11 areas) outlined in SB 314 when developing an education plan or evaluating a student with autism spectrum disorder." These areas, the Governor said, "represent best practices when it comes to meeting the educational needs of students with autism." According to correspondence with staff of the Legislative Education Study Committee, PED has begun to fulfill that commitment.

On May 17, PED reports, the department sent a notice of the proposed rulemaking to the *New Mexico Register*, with the intention of presenting a draft rule on May 31, which would mark the beginning of the required 30-day comment period. The goal of the department, according to this correspondence, is to have the rule in place by the end of July 2011.



RECEIVED

2011 APR -8 AM 8:51

OFFICE OF
SECRETARY OF STATE

State of New Mexico

Susana Martinez
Governor

April 8, 2011

SENATE EXECUTIVE MESSAGE NO. 54

The Honorable Timothy Z. Jennings, President Pro Tempore
And Members of the New Mexico State Senate
State Capitol Building
Santa Fe, New Mexico 87501

Dear President Pro Tempore Jennings and Members of the Senate:

Pursuant to the Constitution of the State of New Mexico, Article IV, Section 22, I hereby VETO and am returning SENATE BILL 314, enacted by the Fiftieth Legislature, First Session, 2011.

In addition to requiring schools districts and state-chartered schools to use certain information (11 areas) when developing an education plan or evaluating a student with autism spectrum disorder, SB 314 changes the definition of "autism spectrum disorder" in Section 22-13-6 NMSA 1978.

I am committed to ensuring that all New Mexico students have full access to an education that meets their individual needs and allows them to experience academic success. As such, I am committing today to codify in rule that school districts and state-chartered schools use the information (11 areas) outlined in SB 314 when developing an education plan or evaluating a student with autism spectrum disorder. These 11 areas represent best practices when it comes to meeting the educational needs of students with autism. I have asked the Public Education Department to work swiftly to codify this rule by July 2011.

I applaud Senator Harden and Senator Papen's commitment to students with autism and look forward to working with them to ensure that the needs of students with autism are met. In the next session, I will work collaboratively to develop legislation that: 1) ensures our definition for autism spectrum disorder aligns with the federal definition; and 2) ensures our definition is broad enough to ensure that students with autism are diagnosed properly and receive the education services they need to be successful in school.

On an annual basis, the Public Education Department must provide assurances to the U.S. Department of Education that our definitions for special education and the 13 categories of disability – including autism – identified under the Individuals with Disabilities Education Act (IDEA) align to the federal definitions in order to receive our annual allocation of approximately \$90 million. The definition in the implementing regulations of the IDEA defines “autism” as follows: “*Autism* means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.” This is the definition currently used by the Public Education Department.

The definition of autism provided in SB 314 is from the Diagnostic and Statistical Manual of Mental Health Disorders, Fourth Edition (“DSM-IV”), which provides that the condition known as “autism spectrum disorder” must meet specific diagnostic criteria. The definition in the bill states as follows: “‘autism spectrum disorder’ means a condition that meets the diagnostic criteria for the pervasive developmental disorders published in the Diagnostic and Statistical Manual of Mental Disorders, fourth edition, text revision, also known as DSM-IV-TR, published by the American psychiatric association, including autistic disorder; Asperger’s disorder; pervasive development disorder not otherwise specified; Rett’s disorder; and childhood disintegrative disorder.”

If New Mexico changes its definition of autism spectrum disorder, it would no longer be able to show alignment with the federal definition. Further, a medical diagnosis of autism alone will not in itself qualify a student for special education and related services. The United States Department of Education has indicated that the definition in SB 314 could result in conditions placed on New Mexico’s IDEA Part B funding. As a result, SB 314 raises compliance issues for New Mexico.

Respectfully yours,



Susana Martinez
Governor

SENATE EXECUTIVE MESSAGE NO. 54
The Honorable Timothy Z. Jennings
April 8, 2011
Page 3

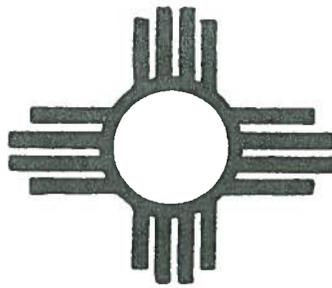
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Time: 8:51 a.m. p.m.
Date: April 8 2011

By Billy Ua
Secretary of State

Time: _____ a.m. p.m.
Date: _____ 2011

By _____
Chief Clerk of the Senate



The Legislature
of the
State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER _____

SENATE BILL 314

Introduced by

SENATOR CLINTON D. HARDEN, JR.
SENATOR MARY KAY PAPER



VETOED

1 AN ACT
2 RELATING TO SPECIAL EDUCATION; REQUIRING THE USE OF CERTAIN
3 INFORMATION WHEN DEVELOPING AN EDUCATION PLAN FOR OR
4 EVALUATING A STUDENT WITH AUTISM SPECTRUM DISORDER.
5

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

7 SECTION 1. Section 22-13-6 NMSA 1978 (being Laws 1972,
8 Chapter 95, Section 2, as amended) is amended to read:

9 "22-13-6. SPECIAL EDUCATION--DEFINITIONS.--As used in
10 the Public School Code:

11 A. "special education" means the provision of
12 services additional to, supplementary to or different from
13 those provided in the regular school program by a systematic
14 modification and adaptation of instructional techniques,
15 materials and equipment to meet the needs of exceptional
16 children;

17 B. "exceptional children" means school-age persons
18 whose abilities render regular services of the public school
19 to be inconsistent with their educational needs;

20 C. "children with disabilities" means those
21 children who are classified as developmentally disabled
22 according to the Developmental Disabilities Act;

23 D. "gifted child" means a school-age person who is
24 determined to be gifted pursuant to Section 22-13-6.1 NMSA
25 1978 and standards adopted by the department pursuant to that

1 section. Nothing in this section shall preclude a school
2 district or charter school from offering additional gifted
3 programs for students who fail to meet the eligibility
4 criteria; however, the state shall only provide state funds
5 for department-approved gifted programs for those students
6 who meet the established criteria;

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

17 F. "response to intervention" means a multitiered
18 intervention model that uses a set of increasingly intensive
19 academic or behavioral supports, matched to student need, as
20 a framework for making educational programming and
21 eligibility decisions;

22 G. "student assistance team" means a school-based
23 group whose purpose, based on procedures and guidelines
24 established by the department, is to provide additional
25 educational support to students who are experiencing

1 difficulties that are preventing them from benefitting from
2 general instruction; and

3 H. "autism spectrum disorder" means a condition
4 that meets the diagnostic criteria for the pervasive
5 developmental disorders published in the Diagnostic and
6 Statistical Manual of Mental Disorders, fourth edition, text
7 revision, also known as DSM-IV-TR, published by the American
8 psychiatric association, including autistic disorder;
9 Asperger's disorder; pervasive development disorder not
10 otherwise specified; Rett's disorder; and childhood
11 disintegrative disorder."

12 SECTION 2. A new section of Chapter 22, Article 13 NMSA
13 1978 is enacted to read:

14 "AUTISM SPECTRUM DISORDER--SPECIAL EDUCATION
15 EVALUATION--DEVELOPMENT OF SPECIAL EDUCATION PROGRAM.--A
16 school district or charter school that is evaluating a
17 student with autism spectrum disorder for special education
18 services or developing a special education program for a
19 student with autism spectrum disorder, including the
20 individual education plan required under the Individuals with
21 Disabilities Education Act of 2004, shall consider the
22 following in conducting the evaluation or developing the
23 program:

24 A. extended educational programming, including
25 extended day or extended school year services, that considers

1 the duration of the program based on assessment of the
2 student's behavior, social skills, communication, academics
3 and self-help skills;

4 B. the inclusion of active engagement in learning
5 activities and minimal unstructured time, including lunch,
6 snack time and recess, in the student's daily schedule and
7 providing flexibility within school routines that are
8 adaptable to individual skill levels, including assisting
9 with schedule changes for changes in school scheduled
10 activities, such as field trips, substitute teachers and
11 other in-school extracurricular activities;

12 C. in-home and community-based training, or viable
13 alternatives to such training, that assist the student with
14 the acquisition of social or behavioral skills, including
15 strategies that facilitate maintenance and generalization of
16 such skills from home to school, school to home, home to
17 community and school to community;

18 D. positive behavior support strategies based on
19 behavioral information, including:

20 (1) antecedent manipulation, replacement
21 behaviors, reinforcement strategies and data-based decisions;
22 and

23 (2) a behavioral intervention plan developed
24 from a functional behavioral assessment that uses current
25 data related to target behaviors and addresses behavioral

1 programming across home, school and community settings;

2 E. futures planning for integrated living, work,
3 community and educational environments that considers the
4 skills necessary to function in current and post-secondary
5 environments;

6 F. parent or family training and support, provided
7 by qualified personnel with experience with students with
8 autism spectrum disorder, that includes:

9 (1) training in providing a family with the
10 skills necessary for a student with autism spectrum disorder
11 to succeed in the home and community setting;

12 (2) information regarding parent and family
13 resources, such as support groups, workshops, videos,
14 conferences and materials designed to increase parent and
15 family knowledge of specific teaching and management
16 techniques related to the student's curriculum; and

17 (3) training on the facilitation of parental
18 and family involvement in working with the student at home
19 and includes strategies for behavior management and
20 developing structured home environments or communication
21 training so that parents and family are active participants
22 in promoting the continuity of interventions across all
23 settings;

24 G. a suitable staff-to-student ratio appropriate
25 to identified activities and necessary for achievement of

1 social or behavioral progress based on the student's
2 developmental and learning level and that encourages work
3 toward the student's individual independence as determined
4 by:

5 (1) adaptive behavior evaluation results;

6 (2) behavioral accommodation needs across
7 all settings; and

8 (3) transitions within the school day;

9 H. communication interventions, including language
10 forms and functions that enhance effective communication
11 across all settings, such as augmentative, incidental and
12 naturalistic teaching;

13 I. developing the student's social skills based on
14 social skills assessment curriculum and provided across all
15 educational settings, such as trained peer facilitators,
16 video modeling, social stories and role playing;

17 J. professional educator and staff support, such
18 as training provided to personnel who work with the student
19 to assure the correct implementation of techniques and
20 strategies described in the special education program; and

21 K. teaching strategies based on peer-reviewed or
22 research-based practices for students with autism spectrum
23 disorder, such as those associated with discrete trial
24 training, visual support, applied behavior analysis,
25 structured learning, augmentative communication or social

skills training."

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COMMUNITY DEVELOPMENT
COURT REPORTER
2012

s/John A. Sanchez
John A. Sanchez, President
Senate

s/Lenore M. Naranjo
Lenore M. Naranjo, Chief Clerk
Senate

s/Ben Lujan
Ben Lujan, Speaker
House of Representatives

s/Stephen R. Arias
Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this _____ day of _____, 2011

s/Governor Susana Martinez
Governor Susana Martinez
State of New Mexico