

STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

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July 10, 2013

MEMORANDUM

TO: Legislative Education Study Committee

FR: LESC Fiscal Staff

RE: LFC LOCAL SPECIAL EDUCATION EVALUATION UPDATE

INTRODUCTION

Just after the conclusion of the 2013 legislative session, the Legislative Finance Committee (LFC) initiated a special education program evaluation of selected school districts and charter schools statewide with evaluation objectives to:

- follow up on previous LFC evaluations of special education;
- analyze special education funding mechanisms and spending patterns; and
- review performance and program outcomes, including efforts to improve quality of special education services.

Legislative Education Study Committee (LESC) staff have been attending periodic LFC program evaluation status update meetings. This staff report provides:

- a synopsis of information discussed during the progress update meetings; and
- background on special education funding regarding the maintenance of effort (MOE) issue: research and work completed by the LESC.

A SYNOPSIS OF INFORMATION DISCUSSED DURING THE PROGRESS UPDATE MEETINGS

April 16, 2013

LFC staff provided:

- Attachment 1, *Special Education Evaluation: Evaluation Objectives*, which outlines the three evaluation objectives; and
- Attachment 2, *Public Education Department: Special Education Evaluation Request for Information List*, which lists the items requested from the Public Education Department (PED) by LFC staff.

April 30, 2013

LFC staff provided Attachment 3, a survey that LFC staff planned to distribute to district-level administrators, including Student Assessment Team (SAT) Coordinators.

May 14, 2013

The meeting scheduled for May 14, 2013 was canceled due to conflicts with LFC's field work schedule. However, LFC staff provided an electronic document, Attachment 4, *Special Education Program Evaluation Status*, which outlines:

- the number of survey respondents;
- an updated schedule of field worksite visits and interviews; and
- a list of interview questions for administrators and teachers.

June 26, 2013

During this meeting, LFC staff:

- discussed additional information requested from PED, including FY 09 through FY 13 special education budgets and reports from selected districts and Regional Education Cooperatives; and
- provided Attachment 5, *Special Education Evaluation Preliminary Outline*, which includes four broad preliminary findings.

BACKGROUND ON SPECIAL EDUCATION FUNDING REGARDING THE MAINTENANCE OF EFFORT (MOE) ISSUE: RESEARCH AND WORK COMPLETED BY THE LESC

New Mexico annually receives grant awards from the federal *Individuals with Disabilities Education Act* (IDEA) to supplement state financial support for special education students. In accepting these federal grant awards, New Mexico agrees to adhere to certain guidelines and regulations. One requirement is that federal funds may only supplement and not supplant state support for special education services. Technically, this means that in order for New Mexico to

receive the full grant awards amount in the next fiscal year, the state must maintain equal or greater state financial support for special education in the current fiscal year.

According to recent waiver requests from PED to the US Department of Education (USDE), the state of New Mexico decreased funding for special education in FY 10 and FY 11 below levels established in FY 09. Federal law provides for the USDE Secretary of Education to grant waivers that allow a reduction in state funding for special education to not be penalized, but only if the state meets certain criteria. Specifically, the USDE Secretary of Education may grant a waiver if:

1. granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the state; or
2. the state is eligible to waive the requirement to supplement and not to supplant funds received because the state is able to provide clear and convincing evidence that all eligible children with disabilities throughout the state have a free appropriate public education (FAPE) available to them.

The waiver requests submitted by PED were requesting waivers under condition (1), above.

The initial decision from the USDE granted New Mexico a waiver for the reduction in state financial support in FY 10, but rejected a second waiver request for the reduction in state financial support in FY 11. PED has requested a hearing on the merits of the waiver requests and only upon conclusion of such a hearing will the USDE's decision be final.

The penalty for a failure to maintain equal or greater financial support for special education without receiving a waiver from the USDE is a reduction in a future grant award by the amount of the reduction in state support. The USDE's initial decision letter identified that in FY 11, New Mexico reduced its state funding to special education by about \$34.1 million. Further, the decision letter noted that while a waiver for FY 12 has not yet been requested, it appears to USDE that New Mexico failed to maintain equal or greater state support for special education by \$26.4 million.

During the 2013 legislative session, the Legislature, who was only informed by PED of the potential MOE shortfalls in January 2013, established several contingency appropriations to ensure that state financial support for special education in FY 13 and FY 14 returned to FY 09 levels. These appropriations were made through the *General Appropriation Act (GAA) of 2013* (Laws 2013, Ch. 227, partial veto) and *CS/HB 628, *Special Education Funding* (Laws 2013, Ch. 191).

The provisions of the *GAA of 2013* consist of both direct appropriations and transfers from other appropriations, which include:

- for FY 13, up to \$20.0 million appropriated from the Education Lockbox and driver's license fees to PED as a special appropriation;
- for FY 13, up to \$20.0 million transferred from the FY 13 state equalization guarantee (SEG) distribution to PED as a supplemental and deficiency appropriation;

- for FY 14, up to \$10.0 million appropriated from the General Fund to PED as a nonrecurring categorical appropriation; and
- for FY 14, up to \$16.0 million transferred from the FY 14 SEG distribution to PED.

*CS/HB 628, *Special Education Funding* (Laws 2013, Ch. 191) contains two additional and distinct sets of contingent provisions relating to meeting MOE:

- (1) for FY 13 and FY 14, *CS/HB 628 could appropriate up to an additional \$20.0 million and \$16.0 million, respectively, from the General Fund Operating Reserve; and
- (2) for FY 13 and FY 14, if funds were transferred from the SEG, *CS/HB 628 could appropriate up to \$20.0 million and \$16.0 million, respectively, from the operating reserve to replace any funds transferred out of the SEG.

A visual depiction of the contingent appropriations for meeting maintenance of effort requirements in FY 13 and FY 14 can be found in Attachment 6, *Chart 1. FY 13 and FY 14 Appropriations and Transfers Related to State-level Maintenance of Effort Requirements for Special Education*.

**Special Education Evaluation
Evaluation Objectives**

Objective 1: Follow-up on previous LFC evaluations of special education.

- How does spending on special education compare with changes in enrollment as well as general education spending trends?
- How have identification rates, particularly classification levels, changed?
- How much federal IDEA-B money is the state receiving?
- What percent of the state's special education funding is from IDEA-B?
- What are the regional educational cooperative's roles in providing direct services, technical assistance, and professional development.

Objective 2: Analyze special education funding mechanisms and spending patterns.

- How does New Mexico's approach to funding special education compare with other states?
- What are New Mexico's options for ensuring it maintains funding effort as defined in Part B of the Individuals with Disabilities Education Act (IDEA-B)?
- How have other states transitioned to a census-based funding model?
- What are the implications of a census-based model for maintenance of effort?
- How do special education expenditures compare with revenues generated through the weights assigned in the current funding formula?
- What role does Medicaid play in funding special education services?

Objective 3: Review performance and program outcomes, including efforts to improve quality of special education services.

- What are the different methods districts use to identify students for special education? Gifted?
- How do districts determine placement levels and particular service needs?
- How do districts determine ancillary/ related service staffing levels?
- How are districts implementing response to intervention and using student assistance teams to reduce special education referrals?
- What are the patterns of identification by district/ school (i.e. higher needs students migrating to urban areas, gifted only identification and level of service, etc.)
- How is the state monitoring district maintenance of effort as well as program quality?

Public Education Department
Special Education Evaluation
Request for Information List

Item No.	Item Description	Date Requested	Notes
1	IDEA Budget Applications, FY09 - FY13	4/3/2013	..\\E Obj. 2- Funding and Spending\E-2 State IDEA-B Applications
2	District Profile Reports, most recent five years (excel, or other spreadsheet format preferred over pdf files)	4/3/2013	We will start by reviewing the annual report and district profile reports and can request more detail, if necessary.
3	Final funded with gifted-only separated from other special education units, FY09 - FY13	4/3/2013	
4	Regional Education Cooperatives' operating budgets and actuals, most recent 3 years	4/3/2013	..\\D Obj. 1- 2003 Follow- up\REC Budgets
5	MOE exception letters, most recent two years; local IDEA application	4/19/2013	..\\C Permanent File\C-1 Agency Info\2013-2014 IDEA-B Local Application.docx
6	Puente para los Ninos award letters, most recent two years	4/4/2013	..\\E Obj. 2- Funding and Spending\E-3 High Cost Fund (Puente para los ninos)

Introduction

Thank you for taking the time to complete this questionnaire designed to help the Legislative Finance Committee better understand how special education works in New Mexico. Information from this survey will be presented to the LFC during Summer 2013.

If you work at a school level, please answer for your particular school; if you are a district-level administrator, please answer for your entire district. Your responses are anonymous and the entire process should take about 10 minutes.

If you have any questions or follow-up comments, please contact Michael Weinberg at michael.weinberg@nmlegis.gov and again, thank you for your participation.

Student Assessment Team (SAT)

1. Who serves on your SAT (check all that apply)?

- Student's Teacher
- Principal
- District Administrator
- Special Education Teacher
- Special Education Coordinator
- Speech and Language Pathologist
- Occupational Therapist
- School Counselor
- Other regular education teachers

Other (please specify)

2. How often does your SAT meet?

- Weekly
- Monthly
- Quarterly

Other (please specify)

3. How does a student get referred to the SAT (check all that apply)?

- Teacher referral
- Parent referral
- Child Find screening
- Results of formative assessments
- Discipline referrals

Other (please specify)

4. During the 2012-13 school year how many students did your SAT review for an initial referral?

5. During the 2012-13 school year, how many of those initial referrals required a second follow-up SAT meeting?

6. During the 2012-13 school year, how many of those initial referrals required a third (or more) follow-up SAT meeting?

IEP Teams

7. Of the total number of students your SAT reviewed, how many did you refer for a special education (non-gifted) evaluation?

8. Of those evaluated, how many qualified for special education (non-gifted) services?

9. Of the total number of students your SAT reviewed, how many did you refer for a gifted evaluation?

10. Of those evaluated, how many qualified for gifted services?

11. Who attends IEP meetings (check all that apply)?

- Regular educators
- Special education teachers
- Related services personnel
- School administrator
- District administrator
- Parents
- Students

Other (please specify)

12. During the creation or revision of an IEP, how are goals and objectives determined (check all that apply)?

- Special education teacher
- Special education teacher with IEP team input
- IEP team

Other (please specify)

13. During the creation or revision of an IEP, how is placement level (A, B, C, D) determined (check all that apply)?

- Comparisons with similar students
- Calculation of minutes of accommodations per week
- Number of services provided

Other (please specify)

14. During the creation or revision of an IEP, how is placement location (i.e. inclusion, pull-out, etc.) determined (check all that apply)?

- IEP team decision
- District policy
- Parent request
- Varies by services received

Other (please specify)

15. During the 2012-2013 school year how many special education students moved from one level to a lower level?

D-C

C-B

B-A

16. During the 2012-2013 school year how many students exited special education services?

**17. Of those who exited, what percentage had the following as their primary disability?
(total to = 100)**

Speech or Language
Impairments

Developmentally Delayed

Learning Disabilities

Emotional Disturbance

Multiple Disabilities

Hearing Impairments

Orthopedic Impairments

Visual Impairments

Autism

Traumatic Brain Injury

Special Education Services

18. Approximate breakdown of the percent of students receiving special education services (non-gifted) in the following settings (total to = 100):

	% of time spent in each setting
Full inclusion with special education teacher monitoring/consultation	<input type="text"/>
Co-teaching model	<input type="text"/>
Full inclusion with pull out for therapies or other services	<input type="text"/>
Self-contained with push-in participation in regular education	<input type="text"/>
Completely self-contained	<input type="text"/>

19. Approximate breakdown of the percent of students receiving gifted only services in the following settings (total to = 100):

	% of time spent in each setting
Full inclusion with special education teacher monitoring/consultation	<input type="text"/>
Co-teaching model	<input type="text"/>
Full inclusion with pull out for therapies or other services	<input type="text"/>
Self-contained with push-in participation in regular education	<input type="text"/>
Completely self-contained	<input type="text"/>

20. Approximate breakdown of special education staff time (total to = 100):

	% of time in each setting
Direct instruction	<input type="text"/>
Push-in classroom support	<input type="text"/>
IEP preparation	<input type="text"/>
IEP meetings	<input type="text"/>
Consultation/monitoring with regular education staff	<input type="text"/>
Training/ professional development	<input type="text"/>
Other paperwork	<input type="text"/>
Other	<input type="text"/>

Support

21. Please indicate the extent to which you agree with the following statements:

	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
The building administrator adequately supports the IEP process.	<input type="radio"/>				
The building administrator adequately participates in the IEP process.	<input type="radio"/>				
The building administrator provides resources to meet student's IEP-identified services.	<input type="radio"/>				
The district administration adequately supports the IEP process.	<input type="radio"/>				
The district administration adequately participates in the IEP process.	<input type="radio"/>				
The district administration provides resources to meet student's IEP-identified services.	<input type="radio"/>				
The SAT has an effective process for identifying students in need of tier-two interventions.	<input type="radio"/>				
The school/ district has adequate resources to provide tier-two interventions.	<input type="radio"/>				
The SAT has an effective process for identifying students in need of special education evaluations.	<input type="radio"/>				
The SAT has an effective process for identifying students in need of gifted evaluations.	<input type="radio"/>				
The school/ district has high quality collaboration between regular education and special education staff.	<input type="radio"/>				
The school/ district provides adequate planning time between regular education and special education staff.	<input type="radio"/>				
The school/ district provides adequate training regarding appropriate instruction to meet individual learning needs (i.e. small groups, accommodation strategies, etc.).	<input type="radio"/>				

Giftedness

22. How are students identified for gifted services?

- DISCOVER© - (Discovering Intellectual Strengths and Capabilities While Observing Varied Ethnic Responses)
- FTAP 2 - (Frasier Talent Assessment Profile 2 - Multistage Edition)
- NMPED approved alternative assessment

Other (please specify)

23. How do you determine a student's level of giftedness (A, B, C, D) (check all that apply)?

- Comparisons with similar students
- Calculation of minutes of accommodations per week
- Number of services provided

Other (please specify)

24. What resources are available for each level of giftedness (check all that apply)?

- Differentiated curriculum
- Methods and materials specific to gifted students
- Extending existing curriculum to provide enrichment activities
- Adding new content, process, or product expectation to existing curriculum
- Writing new units or courses that meet the needs of students who are gifted
- Curriculum that is sufficiently rigorous, challenging, and coherent
- Gifted-only classes/ courses

Other (please specify)

Demographics

25. Please identify your role

- Special Education Director
- Special Education Coordinator
- Principal
- Special Education Teacher
- Program Support
- Student Assistance Team Coordinator
- Regular Education Teacher
- Related Services/ Ancillary Personnel

Other (please specify)

26. Name of District

Other (please specify)

27. Name of School

Other (please specify)

Conclusion

Thank you, again, for your participation. If you have any questions or comments, please contact Michael Weinberg at michael.weinberg@nmlegis.gov. To learn more about the Legislative Finance Committee, please visit: <http://www.nmlegis.gov>

Guzman, Sarah

Subject: Special Education Program Evaluation Status
Location: LFC Conference Room

Start: Tue 5/14/2013 9:00 AM
End: Tue 5/14/2013 9:30 AM
Show Time As: Tentative

Recurrence: Weekly
Recurrence Pattern: every 2 weeks on Tuesday from 9:00 AM to 9:30 AM

Meeting Status: Not yet responded

Organizer: Weinberg, Michael
Required Attendees: Montoya, Bianca; Crespin-Trujillo, Valerie; 'Torres, Annjenette, PED'; Gudgel, Rachel; Sallee, Charles; Burciaga, Raul; 'Evan.blackstone@osa.state.nm.us'; Maestas, Frances R.; Lujan, Adreena; Ball, Sharon
Optional Attendees: Craig, David; Kleats, Ian; Guzman, Sarah; Murphy, Mark; 'Lisa Jennings'

I have to cancel tomorrow's meeting because I will be conducting field work in Albuquerque. Here, however, is a brief overview of the project's status:

1. Questionnaire: 346 responses; sent final reminder 5/9/13 and will close survey on 5/15/13
2. Field work: Visited Mission Achievement and Success Charter, Southwest Learning Centers, APS (Eldorado HS), and interviewed PED Sped Bureau staff
3. Upcoming Field work Calendar:
 - a. APS- Mitchell Elementary, Autism Center, and Finance staff, 5/14
 - b. Gallup/ Middle College High School Charter, 5/16
 - c. Central Consolidated, 5/21
 - d. Las Cruces, 5/22
 - e. Hobbs, 5/23
 - f. Tucumcari, 5/28
 - g. Rio Rancho, currently scheduling (5/30?)
 - h. Santa Fe, currently scheduling

Please let me know if you are interested in joining me for any of these site visits! Also, I am attaching a list of questions/ topics we have generally been covering, although the specifics have varied depending on issues at



B-4-4 Interview
 Questions for ...

each site.

4. Data request- Of the items requested, I have only received the REC budgets. I am hopeful that more information will be arriving shortly and have asked Annjenette to check of the status.
5. Issues- Here are a few potential findings that have come up in the initial field work:
 - a. Including related services when calculating service level
 - b. Gifted- caseload limits as well as estimating expenses when gifted students are fully included
 - c. Calculation of local MOE- can LEAs include benefit costs? How to account for a sped teacher w/ a full-inclusion class?
 - d. Due process hearings- length/ cost

Finally, I am going to move the update on 5/28 to the 29th to avoid a conflict with Tucumcari.

Please let me know if you have questions, comments, or are interested in joining me for field work.

Special Education Teachers, SAT coordinators, Building Principals, Regular Ed Teachers, etc.

1. Describe how the Student Assistance Team is used to identify students in need of evaluation for special education services.
2. How has Response to Intervention affected identification of students for special education?
3. What is working well with the SAT process? What are the opportunities for improvement?
4. Describe the IEP process.

How is eligibility determined?

How are goals and objectives determined?

How is placement level (A, B, C, D) determined? How is placement location determined?

How are students exited from services?

5. What is working well with special education? What are the opportunities for improvement?
6. What additional support would be most helpful (i.e. personnel, materials, training, etc.)?

Special Education Evaluation Preliminary Outline
June 26, 2013

THE STATE'S FUNDING FORMULA CREATES INCENTIVES FOR DISTRICTS TO GENERATE REVENUE THROUGH SPECIAL EDUCATION

Weighting based on student counts at three placement levels potentially encourages over-identification.

The SEG lacks downward pressure regarding related services staffing decisions and the state has not provided clarity around expected caseloads.

Census-based models minimize the link between funding and local decision-making over disability identification and placement.

POLICY OPTIONS FOR MAINTAINING EFFORT

Historical overview of New Mexico's maintenance of effort and waiver applications

Comparison to how other states with similar funding formulas maintain effort

Implications of various alternatives for maintaining effort in New Mexico, including through the existing formula, as a categorical appropriation, and through a census-based approach.

THE STATE HAS OPPORTUNITIES TO IMPROVE SPECIAL EDUCATION OUTCOMES AND SAVE MONEY BY PROLIFERATING BEST PRACTICES ACROSS DISTRICTS

Contractual services, a large cost-driver within special education, could be contained with adjustments to salary structures for related services personnel.

Revising the complaint resolution process will save district's both time and money.

Use of a statewide IEP system and electronic student assistance team documents could save the state money and simplify data collection.

**INCLUDING GIFTEDNESS WITHIN SPECIAL EDUCATION WASTES RESOURCES
MANAGING IEPs AND CREATES INCENTIVES TO QUALIFY STUDENTS WHOSE
ADDITIONAL REVENUE OFTEN EXCEEDS COSTS OF SERVICES**

Chart 1. FY 13 and FY 14 Appropriations and Transfers Related to State-level Maintenance of Effort Requirements for Special Education

		For FY 13			For FY 14		
		Occurs if...	Appropriates	Transfers	Occurs if...	Appropriates	Transfers
General Appropriation Act of 2013 (Laws 2013, Ch. 227)	Step 1)	<ul style="list-style-type: none"> • PED certifies that the program cost made available in FY 13 is not sufficient to meet MOE requirements; and • PED obtains Board of Finance approval to transfer and distribute funds.¹ 	\$20.0 million special appropriation <u>to PED</u> to ensure MOE requirements are met in FY 13. ² (Section 5. Special Appropriations)		<ul style="list-style-type: none"> • PED certifies that the program cost made available in FY 14 is not sufficient to meet MOE requirements; and • PED obtains Board of Finance approval to transfer and distribute funds.¹ 	\$10.0 million <u>to PED</u> for a categorical Supplemental Special Education Maintenance of Effort Distribution to ensure MOE requirements are met in FY 14. ² (Section 4, K. Public School Support)	
	Step 2)	<ul style="list-style-type: none"> • PED certifies that the program cost and the \$20.0 million special appropriation are not sufficient to meet MOE requirements; and • PED obtains Board of Finance approval to transfer and distribute funds.¹ 		Up to \$20.0 million transferred <u>to PED from the SEG</u> if program cost in the SEG and the special appropriation are not sufficient to meet MOE requirements in FY 13. ^{2,3&4} (Section 6. Supplemental and Deficiency Appropriations)	<ul style="list-style-type: none"> • PED certifies that the program cost and the \$10.0 million categorical Supplemental Special Education Maintenance of Effort Distribution are not sufficient to meet MOE requirements; and • PED obtains Board of Finance approval to transfer and distribute funds.¹ 		Up to \$16.0 million transferred <u>to the categorical Supplemental Special Education Maintenance of Effort Distribution from the SEG</u> if the program cost in the SEG and the categorical appropriation are not sufficient in FY 14. ^{2,3&4} (Section 4, K. Public School Support)

If the appropriations and transfers in the *General Appropriation Act (GAA) of 2012 and 2013* are **not** sufficient, then certain provisions of *CS/H 628 (Laws 2013, Ch. 191) may take effect.

		For FY 13		For FY 14	
		Occurs if...	Appropriates	Occurs if...	Appropriates
*CS/H 628 (Laws 2013, Ch. 191)	Step 3)	<ul style="list-style-type: none"> • after final settlement with the US Department of Education (USDE) the state is required to make up funding for state-level MOE; and • the appropriations for that purpose provided in the GAA of 2012 and 2013 are not sufficient. 	Up to \$20.0 million appropriated <u>to PED from the operating reserve</u> . ² (Section 1, A. Appropriations)	<ul style="list-style-type: none"> • after final settlement with the US Department of Education (USDE) the state is required to make up funding for state-level MOE; and • the appropriations for that purpose provided in the GAA of 2012 and 2013 are not sufficient. 	Up to \$16.0 million appropriated <u>to PED from the operating reserve</u> . ² (Section 1, A. Appropriations)

¹ Language to require review with the Legislative Finance Committee and Legislative Education Study Committee was line item vetoed.

² The PED shall not distribute or transfer more than is necessary to meet the MOE requirements for that fiscal year.

³ If transfers from the SEG are necessary, the FY 13 and or FY 14 FINAL unit value shall be reset accordingly.

⁴ If the state transferred money from the SEG to meet MOE requirements and the US Department of Education rejects that transfer, the amount transferred from the SEG in FY 13 and FY 14 shall be appropriated from the operating reserve to the SEG distribution and the secretary shall adjust the final unit value in accordance with the amount transferred.