

STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

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August 23, 2010

MEMORANDUM

TO: Legislative Education Study Committee

FR: Pamela Herman, J. D.

RE: STAFF REPORT: SPECIAL EDUCATION ISSUES: ALIGNMENT OF STATE LAW WITH FEDERAL LAW

In 1967, eight years before there was federal legislation governing the education of individuals with disabilities, the New Mexico Legislature included a section in the *Public School Code* providing for the education of disabled students. For some time, however, and particularly since the reauthorization of the federal *Individuals with Disabilities Act of 2004* (IDEA) by Congress in 2004, the language of the federal and state laws has not been perfectly aligned.

The New Mexico Public Education Department (PED) and local school districts receive more than \$90.0 million annually in IDEA funds to provide special education services to students with disabilities, but among the conditions for doing so, PED is required, among other duties, to:

- create a state special education plan consistent with IDEA that will ensure that individuals from ages 3 to 21 evaluated as being students with disabilities under IDEA receive a free and appropriate public education that will prepare them for further education, employment, and independent living;
- approve and monitor local school district special education plans, and the special education and related services districts and charter schools provide; and
- ensure that all individuals in the state evaluated as being students with disabilities receive special education and related services in the least restrictive environment.

In 2007, therefore, after the US Department of Education (USDE) promulgated new federal regulations pursuant to the reauthorized IDEA, PED set forth new rules aligned with the federal regulations. However, pre-existing state special education law remained unchanged even where changes in the pre-emptive language of federal law rendered certain language in state law obsolete. As a result, PED rule currently is not fully aligned with state law, although the agency's rule-making power, strictly speaking, is limited to that delegated to it by the state Legislature.

During the 2010 interim, the Legislative Education Study Committee (LESC) requested staff of the LESL, the Legislative Council Service (LCS), and PED to form a small work group to study differences between state special education law, state agency rule, and federal law and rule to determine whether they could be aligned by a "clean-up" bill. The members of the work group included:

- Jonelle Maison, Senior Bill Drafter II, LCS;
- Pamela Herman, Senior Research Analyst II, LESL;
- Denise Koscielniak, Program Director, Special Education Bureau, PED; and
- Albert Gonzales, Assistant General Counsel, Office of General PED.

The group determined that, for the most part, the differences were not matters of substantive law but rather of outdated language in state statute. The group also made suggestions for reorganizing some sections of the *Public School Code* as part of the clean up.

The Proposed Changes to State Law

A copy of a discussion draft bill was developed by the work group is attached (see Attachment 1). It includes the following changes:

- *In general:*
 - references to the "State Board" of Education would be changed to the "Department" or the "Secretary" throughout; and
 - references to "children" or "child" would be changed to "students" or "student," where appropriate.
- *Definitions:*
 - Section 1, pages 1-8, proposes to move all definitions pertinent to special education to Section 22-1-2, the general definitions section of the *Public School Code*, including:
 - "dyslexia," page 2;
 - "gifted student," page 2;
 - "response to intervention," page 4;
 - "special education," page 5;
 - "student," page 6;
 - "student assistance team," page 7; and
 - "student with disabilities," page 7; and

- “exceptional children,” an obsolete term, would be eliminated from the definitions.
- *Public school finance:*
 - Section 2 on pages 8-11 proposes to amend Section 22-8-21 of the *Public School Finance Act*, which addresses funding for special education and gifted programs units, by:
 - inserting language throughout the section that refers to “special and gifted education programs” or “students with disabilities and gifted students” in place of references to “exceptional students”;
 - inserting throughout the phrase “department-licensed persons” to replace the phrase “department-certified persons”;
 - on page 9, lines 12-15, striking the sentence indicating that “students in class D programs may be enrolled in private . . . educational training centers in accordance with provisions of Section 22-13-8.”¹ Pursuant to federal and state law, placement in a Residential Treatment Center (RTC) is governed by the recommendations of an individualized education program team (IEP); and
 - striking language, inconsistent with IDEA, that refers to developmentally disabled three- and four-year-old children.
- *Special education:*
 - Section 3 on pages 11-12 proposes to clean up Section 22-13-5 which requires the department to establish standards and monitor, and school districts and charter schools to provide, special education and related services appropriate to meet the needs of all students with disabilities. For purposes of clarity, the language in this section has been modified in a few places.
- *Gifted education:*
 - Section 4 on pages 12-14 proposes to clean up Section 22-13-6.1 related to gifted education, by:
 - amending the language in current law to include charter schools, and to change “multidisciplinary” teams to “eligibility” or “evaluation” teams; and
 - on page 14, lines 4-9, adding a subsection that was previously included in the definition of “gifted student” stating that “nothing in this section shall preclude a school district or charter school from offering additional gifted programs for students who do not meet the eligibility criteria for a gifted student, but the state shall only provide state funds for department-approved gifted programs for gifted students.” The definition of “gifted student” would be moved to Article 1 with the other definitions in the *Public School Code* (see page 2 above), but the provision in question is substantive law and should be retained in Section 22-13-6.1.

¹ This section of the *Public School Code* governs placement of qualified students and school-age persons in private residential treatment or training centers.

- *Public Education Department responsibility to monitor special education:*
 - Section 5 on pages 14-15 proposes to clean up Section 22-13-7, which addresses in very broad terms the department’s responsibilities for oversight of special education, by:
 - on page 14, lines 16 and 17, deleting a reference to approval of the State Board of Education because the State Board no longer exists;
 - on page 14, lines 17 and 18, inserting the term “evaluation” for “diagnosis,” which is no longer appropriate;
 - on page 14, line 21, including the phrase “residential treatment centers” after “private, nonsectarian, nonprofit training centers,” to track with Section 22-13-8, a new section added in 2009 that deals with placements in those two types of facilities and that does not distinguish between them;
 - on page 15, lines 6-9, inserting a new subsection C requiring PED to monitor the provision of special education in school districts and report annually to the public on the performance of each school district; and deleting existing subsection C on pages 14, lines 23-25, and page 15, lines 15, lines 1-5, which:
 - ✓ requires PED to establish and maintain a program of evaluation of the implementation and impact of programs for exceptional children in public schools;
 - ✓ permits PED to subcontract portions of the evaluation; and
 - ✓ requires PED to make periodic reports regarding the efficacy of programs for exceptional children to the LESC.

- *Transportation:*
 - Section 6 on pages 15 and 16 proposes to make the same routine language changes in Section 22-16-4, which governs student transportation, including transportation of students with disabilities, which have been proposed throughout the bill.

- *Repeal of definitions proposes to be moved to the Section 22-1-2, the definitions section of the Public School Code:*
 - Section 7 on page 16 proposes to repeal Section 22-13-6, which contains definitions for terms that would be moved to Section 22-1-2, the definitions section of the *Public School Code*. These include:
 - “dyslexia”;
 - “gifted student”;
 - “response to intervention”;
 - “special education”;
 - “student”;
 - “student assistance team”; and
 - “students with disabilities.”

Stakeholder Input

On August 5, 2010, a copy of the draft bill was forwarded to a group of persons and groups with an interest in special education with a request for input and comment. However, staff received no comments from the stakeholders (see Attachment 2: Special Education Stakeholders).

Policy Option: Developmental Delay

The discussion draft bill currently only addresses clean-up language and does not propose any changes to substantive law.

However, the work group that developed the bill identified a substantive issue that the LESC may wish to believe merits its attention and that is the issue of children aged 3 through 9 who are evaluated as being developmentally delayed and who, because of that condition, need special education services.

According to the terms of IDEA and the rules promulgated by the USDE under the act:

- The term “child with a disability” for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the state and the local educational agency, include a child:
 - experiencing developmental delays, as defined by the state and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and
 - who, by reason thereof, needs special education and related services.
- A state that adopts a definition of “developmental delay” under the above provision determines whether the term applies to children aged 3 through 9, or to a subset of that age range.
- The state may not require a local school district to adopt and use the term “developmental delay” as a basis for providing special education services to any student within its jurisdiction.
- If a school district uses the term “developmental delay,” the district must conform to both the state’s definition of that term and to the age range that has been adopted by the state.
- If the state does not adopt the term “developmental delay,” a local school district may not independently use the term as a basis for establishing a child’s eligibility for special education services.

State law does not define “developmental delay” nor mention the term.

However, PED agency rule 6.31.2.7.B.(c) defines “Developmentally delayed” to mean:

- a child aged 3 through 9 or who will turn 3 at any time during the school year:
 - with documented delays in development which are at least two standard deviations below the mean on a standardized test instrument or 30 percent below chronological age; and
 - who in the professional judgment of the Individualized Education Program team and one or more qualified evaluators needs special education and related services in at least one of the following five areas: communication development, cognitive development, physical development, social or emotional development or adaptive development;
 - local education agencies must use appropriate diagnostic instruments and procedures to ensure that the child qualifies as a child with a developmental delay in accordance with the definition in this paragraph.

PED rule 6.31.2.10.F.(2) provides for the optional use of the developmentally delayed classification for children aged 3 through 9. Under the terms of this rule:

- a school district may offer special education services to students who are developmentally delayed, but the classification can only be used as a basis for providing services to children who do not qualify for special education under any other disability category; and
- those children must be reevaluated during the school year in which they turn 9 and will no longer be eligible after their next birthdays; if they do not qualify under any other category, at age 10 they lose their eligibility for special education.

According to PED:

- all local school districts currently offer special education and related services to developmentally delayed students between the ages of 3 and 9;
- students with developmental delays account for more than half of students receiving special education services in the state.

Congress has made inclusion of this large category of students discretionary at first the state and then the local levels. It is the position of Council Service and LESC staff that because of broad fiscal and policy implications, the decision to authorize school districts to adopt the term “developmentally delayed” as a basis for providing special education services to such a large number of 3 through 9 year-olds should be a legislative one. It is the position of PED staff, on the other hand, that the Legislature’s broad delegation of responsibility to the department to develop and establish regulations and standards for special education and related services includes the power to authorize provision of services to developmentally delayed students, even if it means expanding the size of the population served by such a larger number.

The committee may wish to consider whether it would wish to settle the question by authorizing local school districts to use the term “developmentally delayed” as a basis for providing special education and related services in statute. It should be noted that if the LESC recommends that the bill include language permitting school districts to do so, and the bill passes, the status quo would remain unchanged and there would be no fiscal impact to the state.

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BILL

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

DISCUSSION DRAFT

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO SPECIAL EDUCATION; CONFORMING DEFINITIONS AND OTHER PROVISIONS TO THE FEDERAL INDIVIDUALS WITH DISABILITIES EDUCATION ACT; DISTINGUISHING STUDENTS WITH DISABILITIES AND GIFTED STUDENTS IN DEFINITIONS AND OTHER PROVISIONS.

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

SECTION 1. Section 22-1-2 NMSA 1978 (being Laws 2003, Chapter 153, Section 3, as amended) is amended to read:

"22-1-2. DEFINITIONS.--As used in the Public School Code:

A. "academic proficiency" means mastery of the subject-matter knowledge and skills specified in state academic content and performance standards for a student's grade level;

B. "adequate yearly progress" means the measure adopted by the department based on federal requirements to assess the progress that a public school or school district or

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1 the state makes toward improving student achievement;

2 C. "commission" means the public education
3 commission;

4 D. "department" means the public education
5 department;

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

16 F. "gifted student" means a student who
17 demonstrates intellectual ability paired with subject matter
18 aptitude and achievement, creativity and divergent thinking or
19 problem solving and critical thinking such that a properly
20 constituted individualized education program team determines
21 that the student needs specially designed instruction to meet
22 the student's unique needs;

23 [~~E-~~] G. "home school" means the operation by the
24 parent of a school-age person of a home study program of
25 instruction that provides a basic academic educational program,

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1 including reading, language arts, mathematics, social studies
2 and science;

3 ~~[F.]~~ H. "instructional support provider" means a
4 person who is employed to support the instructional program of
5 a school district, including educational assistant, school
6 counselor, social worker, school nurse, speech-language
7 pathologist, psychologist, physical therapist, occupational
8 therapist, recreational therapist, marriage and family
9 therapist, interpreter for the deaf and diagnostician;

10 ~~[G.]~~ I. "licensed school employee" means teachers,
11 school administrators and instructional support providers;

12 ~~[H.]~~ J. "local school board" means the policy-
13 setting body of a school district;

14 ~~[I.]~~ K. "local superintendent" means the chief
15 executive officer of a school district;

16 ~~[J.]~~ L. "parent" includes a guardian or other
17 person having custody and control of a school-age person;

18 ~~[K.]~~ M. "private school" means a school, other than
19 a home school, that offers on-site programs of instruction and
20 that is not under the control, supervision or management of a
21 local school board;

22 ~~[L.]~~ N. "public school" means that part of a school
23 district that is a single attendance center in which
24 instruction is offered by one or more teachers and is
25 discernible as a building or group of buildings generally

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1 recognized as either an elementary, middle, junior high or high
2 school or any combination of those and includes a charter
3 school;

4 O. "response to intervention" means a multitiered
5 intervention model that uses a set of increasingly intensive
6 academic or behavioral supports matched to student need as a
7 framework for making educational programming and eligibility
8 decisions;

9 ~~[M-]~~ P. "school" means a supervised program of
10 instruction designed to educate a student in a particular
11 place, manner and subject area;

12 ~~[N-]~~ Q. "school administrator" means a person
13 licensed to administer in a school district and includes school
14 principals and central district administrators;

15 ~~[O-]~~ R. "school-age person" means a person who is
16 at least five years of age prior to 12:01 a.m. on September 1
17 of the school year and who has not received a high school
18 diploma or its equivalent. A maximum age of twenty-one shall
19 be used for a person who is classified as special education
20 membership as defined in Section 22-8-21 NMSA 1978 or as a
21 resident of a state institution;

22 ~~[P-]~~ S. "school building" means a public school, an
23 administration building and related school structures or
24 facilities, including teacher housing, that is owned, acquired
25 or constructed by the school district as necessary to carry out

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1 the functions of the school district;

2 [Q-] T. "school bus private owner" means a person,
3 other than a school district, the department, the state or any
4 other political subdivision of the state, that owns a school
5 bus;

6 [R-] U. "school district" means an area of land
7 established as a political subdivision of the state for the
8 administration of public schools and segregated geographically
9 for taxation and bonding purposes;

10 [S-] V. "school employee" includes licensed and
11 nonlicensed employees of a school district;

12 [T-] W. "school principal" means the chief
13 instructional leader and administrative head of a public
14 school;

15 [U-] X. "school year" means the total number of
16 contract days offered by public schools in a school district
17 during a period of twelve consecutive months;

18 [V-] Y. "secretary" means the secretary of public
19 education;

20 Z. "special education" means specially designed
21 instruction to meet the unique needs of students with
22 disabilities, including instruction in physical education and
23 instruction conducted in the classroom, in the home, in
24 hospitals and institutions and in other settings and may
25 include speech-language pathology services as provided by rule

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1 of the department;

2 [W-] AA. "state agency" or "state institution"
3 means the New Mexico military institute, New Mexico school for
4 the blind and visually impaired, New Mexico school for the
5 deaf, New Mexico boys' school, girls' welfare home, New Mexico
6 youth diagnostic and development center, Sequoyah adolescent
7 treatment center, Carrie Tingley crippled children's hospital,
8 New Mexico behavioral health institute at Las Vegas and any
9 other state agency responsible for educating resident children;

10 [~~X-~~] BB. "state educational institution" means an
11 institution enumerated in Article 12, Section 11 of the
12 constitution of New Mexico;

13 CC. "student" means a public school student who:

- 14 (1) has not graduated from high school;
- 15 (2) is regularly enrolled in one-half or more
16 of the minimum course requirements approved by the department
17 for public school students; and

- 18 (3) in terms of age:
 - 19 (a) is at least five years of age prior
20 to 12:01 a.m. on September 1 of the school year;

- 21 (b) is a least three years of age at any
22 time during the school year and is receiving special education
23 services pursuant to rules of the department; or

- 24 (c) has not reached the student's
25 twenty-second birthday on the first day of the school year and

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1 is receiving special education services pursuant to rules of
2 the department;

3 DD. "student assistance team" means a school-based
4 group whose purpose, based on procedures and guidelines
5 established by the department, is to provide additional
6 educational support to those students who are experiencing
7 difficulties that are preventing them from benefiting from
8 general instruction;

9 EE. "students with disabilities" means those
10 students who are evaluated pursuant to department rule as
11 having mental retardation; a hearing impairment; deafness; a
12 speech or language impairment; a visual impairment, including
13 blindness; a serious emotional disturbance; an orthopedic
14 impairment; autism; traumatic brain injury; another health
15 impairment; a specific learning disability, including dyslexia;
16 or deaf-blindness or other multiple disabilities, and who, by
17 reason of their disabilities, require special education and
18 related services;

19 ~~[Y.]~~ FF. "substitute teacher" means a person who
20 holds a certificate to substitute for a teacher in the
21 classroom;

22 ~~[Z.]~~ GG. "teacher" means a person who holds a level
23 one, two or three-A license and whose primary duty is classroom
24 instruction or the supervision, below the school principal
25 level, of an instructional program or whose duties include

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1 curriculum development, peer intervention, peer coaching or
2 mentoring or serving as a resource teacher for other teachers;

3 ~~[AA.]~~ HH. "certified school instructor" means a
4 teacher or instructional support provider; and

5 ~~[BB.]~~ II. "certified school employee" or "certified
6 school personnel" means a licensed school employee."

7 **SECTION 2.** Section 22-8-21 NMSA 1978 (being Laws 1974,
8 Chapter 8, Section 11, as amended) is amended to read:

9 "22-8-21. SPECIAL AND GIFTED EDUCATION PROGRAM UNITS.--

10 A. For the purpose of the Public School Finance
11 Act, special and gifted education programs for [~~exceptional~~
12 ~~children~~] students with disabilities and gifted students are
13 those approved by the department and classified as follows:

14 (1) class A programs, in which [~~department-~~
15 ~~certified individuals~~] department-licensed persons provide
16 services to [~~children~~] students whose individualized education
17 programs require a minimal amount of special or gifted
18 education and in which the ratio of students to professionals
19 is regulated by the [~~state board~~] department;

20 (2) class B programs, in which [~~department-~~
21 ~~certified individuals~~] department-licensed persons provide
22 services to [~~children~~] students whose individualized education
23 programs require a moderate amount of special or gifted
24 education and in which the ratio of students to professionals
25 is regulated by the [~~state board~~] department;

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1 (3) class C programs, in which [~~department-~~
2 ~~certified individuals~~] department-licensed persons provide
3 services to [~~children~~] students whose individualized education
4 programs require an extensive amount of special education and
5 in which the ratio of students to professionals is regulated by
6 the [~~state board~~] department;

7 (4) class D programs, in which [~~department-~~
8 ~~certified individuals~~] department-licensed persons provide
9 services to [~~children~~] students whose individualized education
10 programs require a maximum amount of special education and in
11 which the ratio of students to professionals is regulated by
12 the [~~state board. Students in class D programs may be enrolled~~
13 ~~in private, nonsectarian, nonprofit educational training~~
14 ~~centers in accordance with the provisions of Section 22-13-8~~
15 ~~NMSA 1978~~] department; and

16 (5) programs for [~~developmentally~~] disabled
17 three- and four-year-old children [~~meeting~~] that meet standards
18 approved by the [~~state board~~] department.

19 B. All students assigned to the programs for
20 [~~exceptional children~~] students with disabilities and gifted
21 students classified in Subsection A of this section shall have
22 been so assigned as a result of diagnosis and evaluation
23 performed in accordance with the standards of the department
24 before the students may be counted in the determination of
25 special education program units as provided in Subsection C of

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1 this section.

2 C. The number of special education program units is
3 the sum of the following:

4 (1) the MEM in approved class A and B programs
5 as defined in Subsection A of this section multiplied by the
6 cost differential factor .7;

7 (2) the MEM in approved class C programs as
8 defined in Subsection A of this section multiplied by the cost
9 differential factor 1.0;

10 (3) the MEM in approved class D programs as
11 defined in Subsection A of this section multiplied by the cost
12 differential factor 2.0;

13 (4) the MEM for [~~developmentally~~] disabled
14 three- and four-year-old children [~~as defined in Subsection A~~
15 ~~of this section~~] that meet standards approved by the department
16 multiplied by the cost differential factor 2.0; provided that
17 no [~~developmentally~~] disabled three- or four-year- old student
18 shall be counted for additional ancillary service units; and

19 (5) for related services ancillary to
20 providing special education, the number of full-time-equivalent
21 [~~certified or~~] licensed ancillary service and diagnostic
22 service personnel multiplied by the cost differential factor
23 25.0.

24 D. For the purpose of calculating membership in
25 class C and class D programs, students shall be counted in

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1 actual grade placement or according to chronological age if not
2 in actual grade placement."

3 SECTION 3. Section 22-13-5 NMSA 1978 (being Laws 1972,
4 Chapter 95, Section 1, as amended) is amended to read:

5 "22-13-5. SPECIAL EDUCATION.--School districts and
6 charter schools shall provide special education and related
7 services appropriate to meet the needs of all [~~children~~
8 ~~requiring special education and related services. Regulations~~]
9 students with disabilities. Rules and standards shall be
10 developed and established by the [~~state board~~] department for
11 the provision of special education in the schools and classes
12 of the public school system in the state and in all
13 institutions wholly or partly supported by the state. The
14 [~~state board~~] department shall monitor and enforce the
15 [~~regulations~~] rules and standards. School districts and
16 charter schools shall also provide services for three-year-old
17 and four-year-old preschool children with disabilities, unless
18 the parent or guardian chooses not to enroll [~~his~~] the child.
19 If a child receiving services in the department of health's
20 family, infant, toddler program has [~~his~~] a third birthday
21 during the school year, the child's parents [~~shall~~] have the
22 option of having the child complete the school year in the
23 family, infant, toddler program or enrolling the child in the
24 public school's preschool program. A child with a disability
25 who enrolls in the public school's preschool program and who

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1 has [~~his~~] a third birthday during [~~a~~] the school year may
2 receive special education and related services from the
3 beginning of that school year. Services for students age three
4 through twenty-one may include, but are not limited to,
5 evaluating particular needs, providing learning experiences
6 that develop cognitive and social skills, arranging for or
7 providing related services as defined by the [~~state board~~]
8 department and providing parent education. The services may be
9 provided by [~~certified~~] licensed school [~~personnel~~] employees
10 or contracted for with other community agencies and shall be
11 provided in age-appropriate, integrated settings, including
12 home, daycare centers, head start programs, schools or
13 community-based settings."

14 SECTION 4. Section 22-13-6.1 NMSA 1978 (being Laws 1994,
15 Chapter 25, Section 2, as amended) is amended to read:

16 "22-13-6.1. GIFTED [~~CHILDREN~~] STUDENTS--DETERMINATION.--

17 A. The department shall adopt standards pertaining
18 to the determination of who is a gifted [~~child~~] student and
19 shall publish those standards as part of the educational
20 standards for New Mexico schools.

21 B. In adopting standards to determine who is a
22 gifted [~~child~~] student, the department shall provide for the
23 evaluation of selected [~~school-age children~~] students by
24 [~~multidisciplinary~~] school district or charter school
25 eligibility teams [~~from each child's school district~~]. That

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1 team shall be vested with the authority to designate a [~~child~~]
2 student as gifted. The team shall consider information
3 regarding a [~~child's~~] student's cultural and linguistic
4 background and socioeconomic background in the identification,
5 referral and evaluation process. The team also shall consider
6 any disabling condition in the identification, referral and
7 evaluation process.

8 C. Each school district or charter school offering
9 a gifted education program shall create one or more advisory
10 committees of parents, community members, students and school
11 staff members. The school district or charter school may
12 create as many advisory committees as there are high schools in
13 the district or may create a single districtwide advisory
14 committee. The membership of each advisory committee shall
15 reflect the cultural diversity of the enrollment of the school
16 district or the schools the committee advises. The advisory
17 committee shall regularly review the goals and priorities of
18 the gifted program, including the operational plans for student
19 identification, evaluation, placement and service delivery and
20 shall demonstrate support for the gifted program.

21 D. In determining whether a [~~child~~] student is
22 gifted, the [~~multidisciplinary~~] evaluation team shall consider
23 [~~diagnostic or other~~] evidence of the [~~child's~~] student's:

- 24 (1) creativity or divergent-thinking ability;
25 (2) critical-thinking or problem-solving

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1 ability;

2 (3) intelligence; and

3 (4) achievement.

4 E. Nothing in this section shall preclude a
5 school district or charter school from offering additional
6 gifted programs for students who do not meet the eligibility
7 criteria for a gifted student, but the state shall only
8 provide state funds for department-approved gifted programs
9 for gifted students."

10 SECTION 5. Section 22-13-7 NMSA 1978 (being Laws 1972,
11 Chapter 95, Section 3, as amended) is amended to read:

12 "22-13-7. SPECIAL EDUCATION--RESPONSIBILITY.--

13 A. The ~~[state board]~~ department shall make, adopt
14 and keep current a state plan for special education policy,
15 programs and standards.

16 B. The department ~~[of education with the approval~~
17 ~~of the state board]~~ shall set standards for ~~[diagnosis]~~
18 evaluation and screening of and educational offerings for
19 ~~[exceptional children]~~ students with disabilities in public
20 schools, in private, nonsectarian, nonprofit training
21 centers, in residential treatment centers and in state
22 institutions under the authority of the secretary of health.

23 ~~[G. The state board shall establish and maintain~~
24 ~~a program of evaluation of the implementation and impact of~~
25 ~~all programs for exceptional children in the public schools.~~

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1 ~~This program shall be operated with the cooperation of local~~
2 ~~school districts. Portions of the program may be~~
3 ~~subcontracted, and periodic reports regarding the efficacy of~~
4 ~~programs for exceptional children shall be made to the~~
5 ~~legislative education study committee.]~~

6 C. The department shall monitor the provisions of
7 special education in school districts and shall report
8 annually to the public on the performance of each school
9 district.

10 D. The department [~~of education~~] shall
11 [~~coordinate~~] monitor programming related to the transition of
12 [~~persons~~] students with disabilities from secondary [~~and~~] to
13 post-secondary education [~~programs to~~] and employment or
14 vocational placement."

15 SECTION 6. Section 22-16-4 NMSA 1978 (being Laws 1967,
16 Chapter 16, Section 222, as amended) is amended to read:

17 "22-16-4. SCHOOL BUS ROUTES--LIMITATIONS--EXCEPTIONS--
18 MINIMUM REQUIREMENTS.--

19 A. Bus routes shall be established by the local
20 school district.

21 B. Except as provided in Subsections C and D of
22 this section, no school bus route shall be maintained for
23 distances less than:

24 (1) one mile one way for students in grades
25 kindergarten through six;

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1 (2) one and one-half miles one way for
2 students in grades seven through nine; and

3 (3) two miles one way for students in grades
4 ten through twelve.

5 C. In school districts having hazardous walking
6 conditions as determined by the local school board and
7 confirmed by the state transportation director, students of
8 any grade may be transported a lesser distance than that
9 provided in Subsection B of this section. General standards
10 for determining hazardous walking conditions shall be
11 established by the state transportation division of the
12 department [~~of education~~] with the approval of the [~~state~~
13 ~~board~~] secretary, but the standards shall be flexibly and not
14 rigidly applied by the local school board and the state
15 transportation director to prevent accidents and help ensure
16 student safety.

17 D. [~~Exceptional children~~] Students with
18 disabilities whose [~~handicaps~~] disabilities require
19 transportation and three- and four-year-old children who meet
20 the [~~state board approved~~] department-approved criteria and
21 definition of [~~developmentally~~] disabled may be transported a
22 lesser distance than that provided in Subsection B of this
23 section."

24 SECTION 7. REPEAL.--Section 22-13-6 NMSA 1978 (being
25 Laws 1972, Chapter 95, Section 2, as amended) is repealed.

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