



**Report  
to  
The LEGISLATIVE FINANCE COMMITTEE**



Public Education Department  
Special Education  
August 21, 2013

**Report #13-07**

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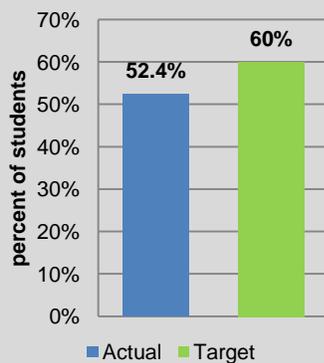
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***New Mexico's state share of special education funding is 83 percent, the second highest percentage nationally, compared with a 56 percent national average.***

**Students Receiving 80 Percent of Daily Services in the Regular Classroom**



Source: SEB Annual Performance Audit

***Special education math and reading proficiency rates declined from 15.5 percent in FY09 to 13.7 percent in FY13.***

**Special Education Funding, Including Gifted**  
(in millions)

FY	Federal IDEA-B	State	Total
2009	\$90.6	\$448.6	\$539.2
2010	\$90.5	\$436.6	\$527.1
2011	\$90.2	\$428.7	\$518.9
2012	\$91	\$420.7	\$511.7
2013	\$86.4	\$412.2	\$498.6
2014*	\$86.4	\$417.2	\$503.6

\*Preliminary

Source: PED, New America Foundation

Half a billion dollars are spent annually in New Mexico on special education. In FY13, 83 percent, or \$412 million, of special education expenditures came from the state's general fund, the second highest percentage of state share nationally. While overall education outcomes in New Mexico are low, for students with disabilities they are even lower—only 17 percent perform on grade level in math and reading and 51 percent graduated from high school in four years with a standard diploma in FY12.

Numerous studies, including previous Legislative Finance Committee evaluations, have noted flaws in New Mexico's approach to special education funding. Even as initiatives to more accurately identify students for special education have proven effective, the state's funding formula continues to create incentives for school districts to qualify students for special education to receive additional support, to place students at higher service levels, and to claim excessive related services personnel. Contrary to best practices in special education policy, New Mexico's formula penalizes school districts and charter schools who invest in early intervention and placement at lower service levels. Consistent with previous studies, a census-based model encourages appropriate identification and equitably funds students with disabilities.

Also, unlike other states, New Mexico includes gifted students within its special education system. Similar to the analysis of identifying and funding students with disabilities, separating gifted students from the special education component of the formula and funding those services through a census-based approach will better serve gifted students across the state.

Additionally, because of decreasing revenues during the recent recession, the state is at risk of losing federal Individuals with Disabilities Act (IDEA) funding for failing to maintain fiscal effort at the FY09 benchmark of \$412 million, not including other state agencies. Maintenance of effort (MOE) is particularly challenging in New Mexico, given the state's high share of special education funding. Different sources of the money necessary to maintain this funding level exist, including introducing supplemental appropriations or shifting funds made available to special education within the existing formula. Options also exist for how to distribute these additional funds, whether as a proportion of a school district's or charter school's special education population, its overall population, or through a revised census population. Supplemental appropriations or making a special education spending target clear through language in the General Appropriations Act appear to be simple, acceptable methods for meeting federal MOE requirements in future years.

Finally, the state could improve outcomes and save money by revising the complaint resolution process, consolidating special education systems statewide, and sharing best practices around analyzing student data; similarly, school districts could adjust salary schedules to hire more specialized personnel in-house.

**The American Institute of Research noted, “Fiscal incentives in the current state funding formula to identify students as needing special education services.”**

**Districts with Above-Average C-Level and D-Level Rates**

District/Charter	C and D Mem as % Of Total Mem
Bernalillo	9.8%
Santa Rosa	8.5%
Taos	8.3%
Albuquerque	8.2%
Las Cruces	7.2%
Cuba	6.6%
Gallup	6%
Los Alamos	5.9%
Rio Rancho	5.6%
Socorro	5.5%
Belen	5.5%
Aztec	5.3%
<b>Statewide</b>	<b>5.3%</b>

Source: LFC Analysis

**Census-based Funding Advantages:**

- Simple, understandable, transparent
- Equitable
- Reduces over-identification and over-placement incentives
- Increases flexibility to fund cost-effective placement options, including pre-referral interventions

**The process for determining service levels is subjective, differing from site to site, and frequently double-funds related services.**

**Each related service provider a school district or charter school claims generates 25 units through the SEG; in FY13, this equaled \$92 thousand per FTE.**

**KEY FINDINGS**

**New Mexico’s public school funding formula creates financial incentives that contradict modern special education policy.**

Even as initiatives to reduce special education rates in New Mexico have proven effective, the state’s funding formula continues to create incentives for school districts and charter schools to over-identify students, to place students at higher service levels, and to claim excessive related services personnel. Contrary to best-practices in special education policy, New Mexico’s formula penalizes school districts and charter schools who invest in early intervention and placement in the least restrictive, least costly environments.

Special education identification rates range from 0 percent to 52 percent and many school districts with the lowest percentage of special education students tend to have the highest poverty rates. In Gadsden, for example, 10.4 percent of students qualify for special education, 2.3 percentage points lower than the state average. Similarly, Espanola (10.8 percent) Deming (11 percent), and Gallup (11.2 percent) all identify special education students below the state average.

***The SEG does not control related services costs and the state has not provided clarity around expected caseloads.***

In addition to generating revenue based on the number of students weighted by service level, New Mexico’s current formula funds additional staff to serve those students. As described in the administrative code, these include personnel such as educational assistants, school counselors, school social workers, speech-language pathologists, and a variety of therapists. From FY02 to FY13, New Mexico’s number of related services FTE increased from 1,780 to 1,850, while the number of A-level to D-level special education students decreased from 60 thousand to 57.6 thousand.

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

Currently, eight states and the federal government distribute special education funds based on total student enrollment, or census, rather than special education enrollment, resources used, or actual expenditures. Census-based funding reforms have been found to correspond to an 8 percent to 10 percent reduction in state special education enrollment rates; the reductions were greatest in subjectively diagnosed categories, such as specific learning disabilities and mental retardation, and in early and late grades. Rather than reducing incentives to identify disabilities, the incentive is to reduce costly placements.

For school districts with 500 or more students, using a single-weight, census-based approach encourages appropriate identification rates and placements in least costly environments. Using the national special education identification average of 13.8 percent, 26 of 51 school districts, including some with the highest poverty rates in the state, would have generated an additional \$35 million in special education revenue in FY13 to improve instruction and services.

**Hypothetical Census-Based Funding Increases, FY13**  
(in millions)

Deming	\$1.8
Clovis	\$1.8
Central	\$1.9
Rio Rancho	\$1.9
Roswell	\$1.9
Santa Fe	\$2.7
Hobbs	\$3
Gallup	\$3.5
Farmington	\$3.7
Gadsden	\$4.2
<b>500 Plus Total</b>	<b>\$35</b>

Source: LFC Analysis

**Maintenance of Effort Target**  
(in millions)

	USDE Ruling	LFC Estimate
PED Sped Funding w/o DD Mem	\$398.7	\$398.7
PED Sped Funding w/ DD Mem	\$26.8	\$13.4
State Agencies	\$36.5	\$36.5
<b>PED Target</b>	<b>\$425.5</b>	<b>\$412.1</b>

Source: LFC Analysis

***New Mexico is among four states denied a waiver for FY11.***

***New Mexico's FY11 waiver determination is currently pending an appeal with the USDE.***

*New Mexico has a special education high-cost fund to assist school districts and charter schools with exceptionally expensive students.* To address high need children with disabilities, each state has the option to reserve for each fiscal year 10 percent of the amount of federal IDEA-B funds the state budgets for other state-level activities. In its FY14 federal IDEA budget application, New Mexico allocated \$957 thousand for its high-cost fund, Puente Para los Niños.

**The state can meet its federal maintenance of effort requirements within the current formula and funding level.**

The federal government provides three special education funding grants under IDEA. The largest is IDEA-B, which supports special education programs for kindergarten through twelfth grade. As a condition of IDEA-B, a state must not reduce its amount of financial support for special education and related services for children with disabilities below the amount of that support for the preceding fiscal year. If a state's level of financial support drops below the amount made available the previous year, IDEA requires the USDE to reduce the state's allocation of section IDEA funds by the same amount by which the state failed to satisfy the MOE requirement, unless the USDE waives the requirement.

To calculate the MOE, the amount of special education funding appropriated through the public education funding formula is combined with other state special education funds to arrive at an overall level of state financial support. The LFC estimates the MOE target at \$412 million, an amount that includes all special education units (A, B, C, and D) excluding gifted only, all related services units, and an adjusted number of 3Y/4Y units.

Based on this target, New Mexico has potential MOE shortfalls in PED's portion of special education funding in FY10 through at least FY14. The state received a waiver for FY10 and included supplemental appropriations as well as flexibility to direct more money within the formula in FY13 and FY14. New Mexico's level of state support for special education is among the highest in the nation, making MOE particularly challenging.

The PED submitted two separate waiver requests for FY10 and FY11, each citing a precipitous and unforeseen decline in the financial resources of the state as the reason for the waiver from the MOE requirements. The USDE granted the state's waiver for FY10, but denied the FY11 request. New Mexico is currently appealing that ruling.

***Moving forward, when New Mexico's special education appropriation falls short of the FY09 target of \$412 million, the state has several options for funding the gap and distributing those funds.*** By FY16, using the current approach to determining the amount the state makes available to special education, funding will likely exceed the FY09 MOE target of \$412 million. Reaching this target will require a 4.7 percent increase in funding from the FY14 appropriated amount, a 2 percent increase in the number of FY13 special education units, and a 1 percent increase in overall number of FY14 units. Unless changes are made to how the state makes funds available for special education, however, increases in this target raise the state's MOE requirement, creating challenges in the event of overall revenue decreases.

**Impact of Distribution Options**  
(in thousands)

	Sped Units	Total Membership
Gadsden	\$1,279	\$1,595
Farmington	\$891	\$1,161
Gallup	\$1,043	\$1,265
Hobbs	\$720	\$918
Santa Fe	\$1,254	\$1,404
Deming	\$448	\$581
Central	\$574	\$704
Cobre	\$244	\$172
Bernalillo	\$485	\$384
Taos	\$403	\$301
Las Cruces	\$3,066	\$2,860
ABQ	\$11,646	\$10,248

Source: LFC Analysis

**To date, no states have applied for a FAPE waiver and no relevant case law exists, making the USDE's standard unclear.**

**In FY11, FY12, and FY13, the LFC estimates the state could receive approximately \$22 million in FAPE waivers.**

**Although local MOE does not include benefit costs, applying a conservative rate of 30 percent, the actual expenditures totaled \$397 million in FY10, nearly identical to the amount the state made available.**

**Many charter schools and school districts meet the needs of gifted students at no additional cost through dual credit courses, online courses, advanced placement courses, or honors courses.**

**Albuquerque had 5,800 gifted IEPs in FY13.**

Options for meeting special education MOE include: using new money to boost the total program cost; funding the MOE gap through supplemental or special appropriations; designating a funding amount made available to special education to be distributed through the public school formula; or categorically separating special education funding from the current public school formula, creating a second formula, total amount made available, and unit value.

While increasing special education funding through the current formula has a disqualifying effect, shifting to a modified census-based approach treats school districts and charter schools more equitably.

***A free and appropriate public education waiver could reduce New Mexico's MOE liability in prior as well as future years.*** In its MOE waiver application, the PED argued it should be allowed to reduce its MOE based on workload reductions when children with disabilities move from one level of service to another or otherwise need less costly services. The USDE, however, did not take these assertions into account but the June 2013 response noted another waiver provision in IDEA if a state provides "clear and convincing evidence that all children with disabilities have available to them a free and appropriate public education (FAPE)." According to the PED, the burden of proof to receive this waiver—no due process rulings or other measures that a student was entitled to compensatory services—is too high for any state to qualify. Based on a summary of due process hearings, however, it appears New Mexico is eligible for this FAPE waiver.

***School districts and charter schools appear to meet local MOE requirements and have flexibility to adjust spending.*** Similar to the state, school districts and charter schools must demonstrate spending the same amount or more on special education from year-to-year. However, while states are not allowed the flexibility to reduce maintenance of effort except when waived in rare circumstances, a school district or charter school is allowed to reduce its level of special education expenditures for reasons such as changes in personnel costs, decreases in enrollment, or exiting of exceptionally costly students. While individual school districts report spending more on special education than they receive in state funds, the overall costs appear consistent with the amount the state makes available.

**New Mexico's approach to identifying, serving, and funding gifted services is costly and inefficient.** New Mexico has included giftedness within special education since 1972, although this is not a requirement of federal special education regulations. In contrast, most other states separate giftedness from special education. Including giftedness within special education requires school districts and charter schools to dedicate a significant amount of resources to IEP preparation and meetings. In Colorado, by comparison, school districts or charter schools are required to submit a plan to the state for meeting the needs of gifted students and receive additional funding without the full requirements surrounding an IEP.

***The current unit weight likely over-estimates the true cost of educating gifted students.*** Gifted funding is designed to cover the additional cost of services, but the majority of gifted students receive services in the regular

**Cost-model simulations indicate gifted students are funded beyond what it costs to provide services.**

**For due process hearings, Albuquerque reported spending nearly \$234 thousand in FY13 on attorney fees, court reporters, and hearing officers.**

**The LFC conservatively estimates the state could save 30 percent by purchasing a statewide IEP-management system.**

**PED Special Education Funding Effort, FY09 - FY13**  
(in millions)



Source: LFC Analysis

classroom or in advanced courses also offered to non-gifted students. For a self-contained gifted classroom, the LFC estimates the average per-student cost at \$3,525, less than the FY13 unit value of \$3,674. For a pull-out model, the most common approach to providing gifted services, it appears the break-even point for charter schools and school districts is approximately 28 students per gifted teacher.

**Census-based funding will create incentives to more accurately identify and serve gifted students.** As with special education, a census-based model limits the link between identification and funding. This method works by taking an average measure of the gifted population and applying it to each school's population to identify the number of funded gifted students. A census-based approach increases incentives to accurately identify gifted students by limiting the link between funding and the number of students.

**The PED can improve special education outcomes and save money by proliferating best practices across the state.** Limiting the need for due process hearings and containing the time required will help school districts and charter schools reduce non-instructional special education expenditures. Due process hearings can be costly to school districts or charter schools, not only in the dollar amount spent, but the staff time dedicated to resolving the complaint. The school district or charter school is responsible for its own legal defense costs, the hearing officers' fees, the court reporter fees, and incidental expenses such as providing a room for the hearing, paying substitute teachers to fill in for the testifying teachers, and the preparation and time of other school staff witnesses required to testify at the hearing.

**Purchasing a statewide IEP system could save money and increase consistency.** Many school districts and charters use to generate IEPs and electronically transfer the data into the state's student teacher accountability reporting system (STARS). Based on a sample of school districts and charters, depending on the number of students and the complexity of the system, IEP software costs per student range from \$6 to \$18 per student annually; one estimate for a similar statewide system is \$8 per student.

By acting as the agent to collectively procure a statewide IEP system, the PED could increase efficiency and cost savings associated with economies of scale and reduce information and transaction costs. Additionally, consolidation improves data consistency, allowing the PED to better monitor program quality.

**School districts and charters could benefit from more state-level resources to help improve special education opportunities for students and aid in ensuring the proper amount of effort is being maintained at the local level.** School districts and charters report communication from the PED on special education is generally about changes in regulations or mandates or about noncompliance after the department has reviewed the information sent through STARS.

**New Mexico's schools are developing and using innovative and successful homegrown practices the PED could share and replicate across the state.** Effective methods have been developed by schools to intensively use student

**By revising its salary schedule, Hobbs reduced its contractual services spending from \$960 thousand in FY12 to \$283 thousand in FY13.**

**A vast body of research concludes lower income levels are typically associated with worse health outcomes, which in turn leads to more students needing special education services.**

**NM High Cost Fund Awards, FY13**

District	Amount Awarded
Albuquerque Sign Language Academy	\$0
Bernalillo	\$37,948
Carrizozo	\$4,277
Hagerman	\$14,986
Lake Arthur	\$48,982
Learning Community Charter School	\$34,239
Total	\$140,432
Amount available	\$957,000
<b>Balance</b>	<b>\$816,568</b>

Source: PED

**In FY13, South Valley Charter School had 4.5 related services personnel for 15 special education students.**

data to provide pre-referral services, identify and place special education students with better accuracy, determine service needs and make appropriate staffing decisions, and validate IEP team decisions.

*Contractual services, a large cost-driver within special education, could be contained with adjustments to salary schedules for related services personnel.* Most school districts and charters schools contract for specialized therapists and diagnosticians. School districts and charters are limited in their ability to hire these staff in-house because of supply shortages as well as competition with other employers offering hiring salaries.

**KEY RECOMMENDATIONS**

**The Legislature should:**

Revise the funding formula to:

- use a census-based, single-weight approach to fund special education for school districts with more than 500 students;
- use a student count, single-weight approach to fund special education for charter schools and school districts with less than 500 students; and
- phase-in the increases and decreases in funding;

Create a fund for school districts or charter schools serving high proportions of high-cost students with disabilities;

Monitor the USDE’s ruling on the PED’s appeal, and based on that outcome, identify a method for maintaining effort that meets federal criteria while preserving the state’s public school funding formula;

Revise statute to separate giftedness from special education; and

Revise statute to a census-based, single-weight approach for determining gifted units that more accurately reflects costs.

**The PED should:**

Pursue FAPE waivers for when the total number of special education units is less than the FY09 benchmark of 106 thousand;

Revise the dispute resolution administrative code so school districts are not solely responsible for the entire cost of due process hearings for which they are not found liable;

Create administrative rule to limit the length of due process hearings;

Clearly promote alternatives to the due process hearing;

Implement statewide special education systems, such as IEP software; and

Provide additional opportunities to proliferate successful practices, such as use of student data to drive decision-making, across schools.

## BACKGROUND INFORMATION

**Funding.** In 1975 the federal Education for All Handicapped Children Act (P.L. 94-192) was passed to provide programs and services for students with disabilities. P.L. 94-192 was reauthorized in 1990 as the Individuals with Disabilities Education Act (IDEA). IDEA-B is a state grant-in-aid program requiring participating states to provide a free and appropriate public education (FAPE) to all children with disabilities within the least restrictive environment. In New Mexico, special education policy is particularly relevant at the state level, given that the state funds 83 percent of all special education appropriations.

**Table 1. Special Education Funding,  
Including Gifted**  
(in millions)

FY	Federal IDEA-B	State Funding	Total Funding
2009	\$90.6	\$448.6	\$539.2
2010	\$90.5	\$436.6	\$527.1
2011	\$90.2	\$428.7	\$518.9
2012	\$91	\$420.7	\$511.7
2013	\$86.4	\$412.2	\$498.6
2014 (preliminary)	\$86.4	\$417.2	\$503.6

Source: PED, New America Foundation

Federal statute permits the Public Education Department (PED) to budget approximately \$10 million in IDEA-B funds for uses such as administration, complaint investigation, technical support, and a high-cost fund, Puente Para Los Ninos. The remaining \$80 million flows to school districts and charters according to a base payment amount, overall membership and the number of students living in poverty.

In FY13, 62 thousand New Mexico students received special education services, including gifted students and three-year olds and four-year olds (3Y/4Y). Excluding gifted students, 12.7 percent of the state's kindergarten through twelfth grade students qualified for special education, lower than the national rate of 13.8 percent.

The additional per pupil special education expenditures in FY13, including gifted and 3Y/4Y, were \$6,894, approximately twice that of each regular education student. Based on an overall per pupil expenditure calculation based on special education professional salary estimates and a personnel-to-student ratio, not adjusted for cost of living, New Mexico's special education spending per student ranks 39<sup>th</sup> nationally.

**Table 2. Estimated Special Education Expenditure Index (from low spenders to high spenders), 2008-2009**

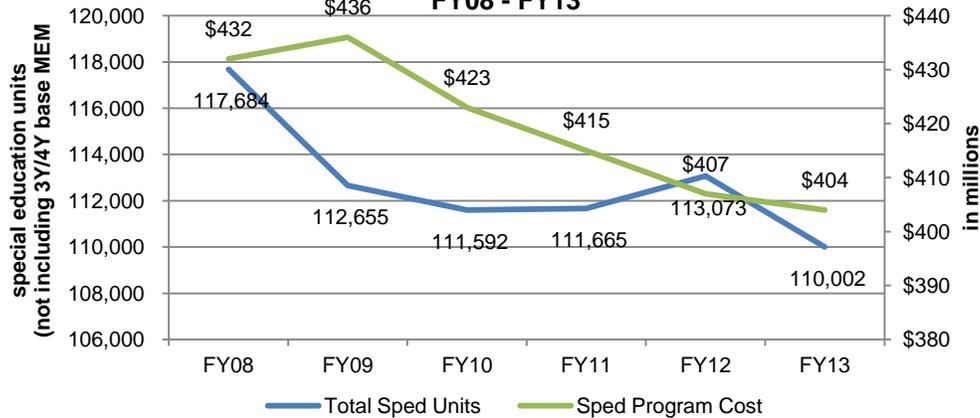
State	SPED Professional Salary/Per Pupil Index	State	SPED Professional Salary/Per Pupil Index
Mississippi	0.24	Michigan	0.90
District of Columbia	0.41	Oregon	0.90
Florida	0.54	Colorado	0.96
Oklahoma	0.55	<b>United States</b>	<b>1.00</b>
Texas	0.61	New Jersey	1.02
Ohio	0.62	California	1.06
Indiana	0.65	Wyoming	1.10
Utah	0.66	Virginia	1.12
South Dakota	0.66	Rhode Island	1.13
West Virginia	0.67	Louisiana	1.13
Missouri	0.73	Alaska	1.15
<b>New Mexico</b>	<b>0.76</b>	Pennsylvania	1.17
Washington	0.76	Delaware	1.19
South Carolina	0.76	Minnesota	1.21
North Carolina	0.77	Georgia	1.28
Montana	0.77	Maine	1.34
Arkansas	0.80	Massachusetts	1.38
Alabama	0.81	Illinois	1.46
Kentucky	0.82	Iowa	1.48
North Dakota	0.82	Maryland	1.56
Nevada	0.84	Kansas	1.62
Arizona	0.85	New York	1.84
Nebraska	0.85	Connecticut	1.93
Tennessee	0.87	Hawaii	1.94
Idaho	0.87	New Hampshire	2.28
Wisconsin	0.89		

\*Note: Vermont data are not included

Source: Thomas B. Fordham Institute, 2011

At its funding peak in FY09, the state equalization guarantee (SEG) distribution for special education and gifted was \$436 million, or 18 percent of the public school support appropriation of \$2.4 billion. Although the state protected education during the recent recession and maintained the overall proportion of special education funding at 18 percent of the total SEG, special education funding decreased \$32 million to \$404 million in FY13. Some of this decrease, however, can be attributed to a corresponding drop in the number of special education units, from 113 thousand in FY09 to 110 thousand in FY13.

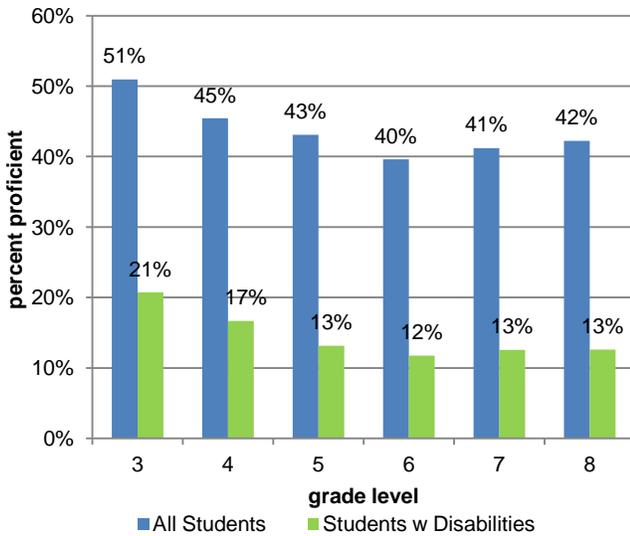
**Chart 1. State Special Education and Gifted Funding and Units, FY08 - FY13**



Source: PED

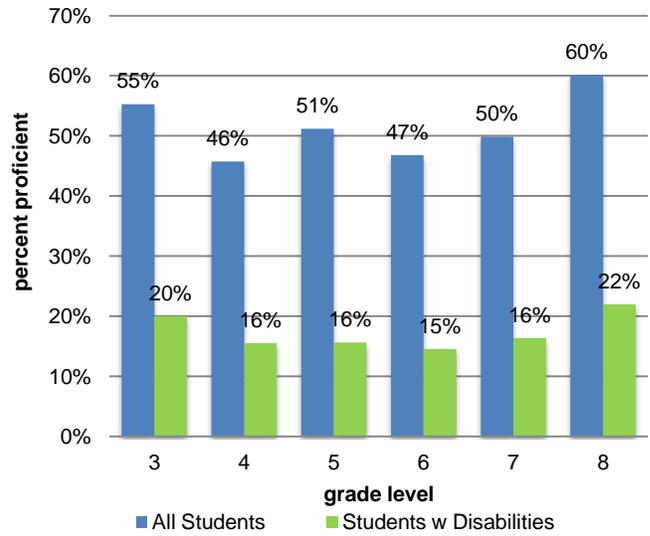
**Performance.** Special education proficiency rates are lower than the states’ overall rates. On the FY13 standards-based assessment (SBA), the total population of students outperformed students with disabilities by about 30 percentage points in both reading and math in grades three through eight.

**Chart 2. Math Proficiency, FY13**



Source: PED

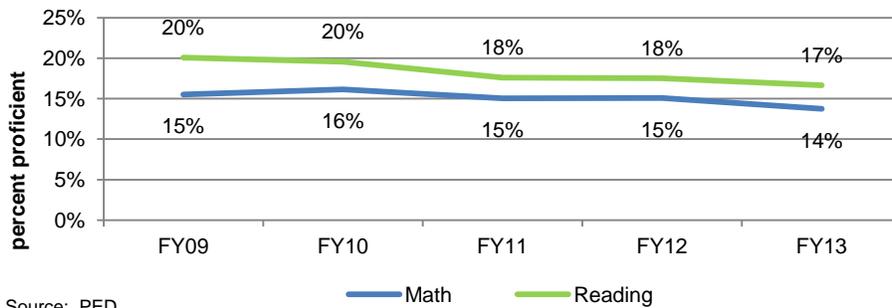
**Chart 3. Reading Proficiency, FY13**



Source: PED

Proficiency rates in reading and math for students with disabilities have declined since special education funding peaked in FY09.

**Chart 4. Special Education Math and Reading Proficiency**



Source: PED

*Based on the National Assessments of Education Progress (NAEP), students with disabilities are not performing well relative to the national average.* In the “all students” category, New Mexico’s fourth-graders perform worse on the NAEP than the national average as well as neighboring states.

**Table 3. Fourth Grade NAEP Scores, All Students**

	National Average	Arizona	Colorado	New Mexico	Texas
Reading	186	169	178	177	188
Math	218	210	217	210	220

Source: National Center for Education Statistics

Comparing the performance of students with disabilities to the national average, the gap in New Mexico is similar to that in Arizona on both reading and math, and the gap is similar to Colorado in reading. Students with disabilities in Texas perform better than those in New Mexico on both exams, and those in Colorado outperform students in this state on math.

*Secondary school performance measures are mixed.* Annually, the PED reports the state’s performance to the United States Department of Education (USDE) on 20 indicators tracking a variety of special education inputs and outputs. On certain indicators, such as SBA participation and postsecondary outcomes, students with disabilities are exceeding the state’s targets. For other indicators, such as proficiency rates and time spent in regular education settings, the results are below the targets. The graduation and dropout rates indicate moderate performance. Additional detail about each indicator is provided in **Appendix B**.

**Table 4. Performance Indicators, Federal FY11**

<b>Special Education Performance Indicator</b>	<b>Target</b> (before ESEA waiver)	<b>Actual</b>
<u>Graduation Rate</u> : The percent of special education students with IEPs (excluding gifted students) who graduate in the standard 4 years.	50.5%	50.5%
<u>Dropout Rate</u> : Percent of special education students with IEPs (excluding gifted students) dropping out of high school.	6.1%	6.5%
<u>Math Proficiency Rate</u> : The percentage of special education students with IEPs (excluding gifted students) scoring at or above proficient on the state math SBA relative to their grade level.	66%	15.3%
<u>Reading Proficiency Rate</u> : The percentage of special education students with IEPs (excluding gifted students) scoring at or above proficient on the state reading SB A.	75%	25.1%
<u>Math Participation Rate</u> : The participation rate for special education students with IEPs (excluding gifted students) on the state math SBA.	95%	98.9%
<u>Reading Participation Rate</u> : The participation rate for special education students with IEPs (excluding gifted students) on the state reading SBA	95%	98.8%
<u>Education in the Least Restrictive Environment</u> : The percentage of students who receive 80% or more of their daily services in the regular classroom.	60%	52.4%
<u>Postsecondary Outcomes</u> : The percentage of students who had IEPs (excluding gifted students) during their secondary education, and are no longer enrolled in secondary school that are now in postsecondary education, a training program, competitively employed, or engaged in some other employment.	79.5%	81.3%

Source: PED SEB Annual Performance Audit

## FINDINGS AND RECOMMENDATIONS

### NEW MEXICO'S PUBLIC SCHOOL FUNDING FORMULA CREATES FINANCIAL INCENTIVES THAT CONTRADICT MODERN SPECIAL EDUCATION POLICY

**While special education identification trends have shifted since 2003, variations between school districts and charter schools continue to point to need to revise the funding mechanism.** Even as initiatives to reduce special education rates in New Mexico have proven effective, the state's funding formula continues to create incentives for school districts and charter schools to over-identify students, to place students at higher service levels, and to claim excessive related services personnel. Contrary to best practices in special education policy, New Mexico's formula penalizes school districts and charter schools who invest in early intervention and placement in the least restrictive, least costly environments. While the Public Education Department (PED) monitors special education identification rates and services, given the subjectivity within individualized education programs (IEPs), increased auditing is an incomplete approach to uncovering cases of abuse.

According to the Journal of Education Finance, states fund special education in four ways: pupil weights, teacher units, cost reimbursements, or census methods of allocation.

**Table 5. State Funding of Special Education, 2007**

Type of Funding	Number of States (duplicated count)
Weight-per-pupil (NM)	20
Cost Reimbursement	10
Instructional Unit	6
Census	5
Other Grants	17

Source: Fifty-State Survey of School Finance Policies

New Mexico currently uses a weight-per-pupil approach, establishing four classification levels for special education students in kindergarten through twelfth grade, as well as defining units for three- and four-year olds and ancillary service providers through the Public School Finance Act, Section 22-8-21 NMSA 1978.

Students classified as A-level or B-level receive an additional 70 percent of the unit value, students classified as C-level receive an additional 100 percent of the unit value, and students classified as D-level receive an additional 200 percent of the unit value.

**Table 6. Special Education Program Units**

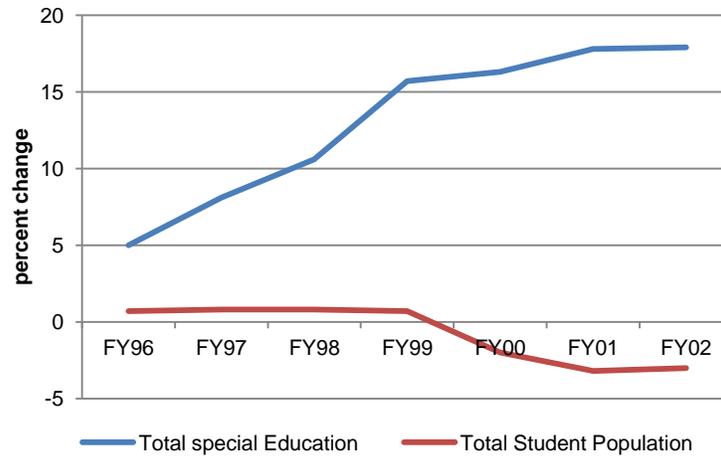
Program	Description	Cost Differential
Class A	Minimal amount of special education	0.7
Class B	Moderate amount of special education	0.7
Class C	Extensive amount of special education	1
Class D	Maximum amount of special education	2
3Y/ 4Y DD	Three- and four-year old developmentally disabled	2
Related Services FTE	Full-time-equivalent certified or licensed ancillary service and diagnostic service personnel	25

Source: New Mexico Statutes Annotated 1978

***Numerous studies of special education highlight potential within New Mexico's public school funding formula to over-identify special education students, including placing students at higher-than-needed service levels.*** A wide body of research suggests finance systems which provide additional special education funding contribute to increases in identification rates. As of 2008, 33 states, including New Mexico, used special education finance systems based on head counts of identified special education students, all of which exhibited increases within their special education enrollment.

Similarly, a 2003 Legislative Finance Committee (LFC) program evaluation noted from FY95 to FY02, the state’s special education population increased 18 percent, while the total student population decreased 3 percent. A key recommendation was to study whether the funding formula should be revised to better serve both students in special education as well as regular education.

**Chart 5. Change in Student Populations**



Source: LFC, 2003

Along the lines of this recommendation, a Funding Formula Task Force commissioned a 2008 study of New Mexico’s funding formula, including the special education components, by the American Institutes of Research (AIR). The AIR study found New Mexico to have a pupil-weighted special education identification rate of 15.8 percent in FY06, higher than the national average of 13.8 percent, and also noted, “Fiscal incentives in the current state funding formula to identify students as needing special education services.” To reduce the incentive to identify students with higher weights and simplify the formula, the AIR study first recommended funding special education with a single, overall weight of 1.72. While this value is less than the 2.0 weight assigned to D-level students, it was determined overall to provide sufficient funding for special education, with some exceptions for particularly high-cost cases.

The AIR study’s second recommendation was to adopt a census-based funding system. Using the state average identification rate in FY07, AIR recommended a fixed identification rate of 16 percent. Under the scenario of these two combined recommendations, 16 percent of a school district’s total number of students would be funded an additional 1.72 times the current unit value. For example, given the FY13 unit value of \$3,674, a school district with 1,000 students would receive \$1 million for special education services (1,000 students x 16 percent x \$3,674 x 1.72). The AIR study estimated this methodology would have cost the state an additional \$20 million, with the goal of reducing the identification rate to align with national averages over five to ten years.

<b>Census-based Funding Advantages</b>	
•	Simple, understandable, transparent
•	Equitable
•	Reduces over-identification and over-placement incentives
•	Increases flexibility to fund cost-effective placement options, including pre-referral interventions

Additionally, a 2011 LFC evaluation of the state’s funding formula identified similar concerns with the special education components, as well as limited guidance regarding classification of D-level students, inconsistent service-level identification methods across the state, ambiguity around the definition of eligible related service providers, and lack of control around appropriate caseloads for those related service providers. Consistent with previous reports, the evaluation recommended moving to a census-based special education funding model set at 16 percent and a unit weight of 2.0.

Finally, a formula study prepared for the J.F. Maddox Foundation in 2012 concurred with the census-based recommendations, emphasizing the importance of establishing a high-cost fund, particularly to protect smaller school districts most vulnerable to the risks of providing adequate services.

***In response to an increase in special education units in FY11, the Public Education Department (PED) initiated two rounds of audits.*** Consistent and thorough efforts to validate the enrollment of students and services are important so funding is accurately and fairly distributed according to state statutes and administrative rules. Partially based on an increase of 1,518 special education students as well as related services personnel, the PED initiated an ad hoc auditing process, reviewing 34 school districts and 28 charter schools. Following those reviews, the PED contracted with the Accounting and Consulting Group for a more in-depth audit of nine school districts and one charter school. While both rounds of reviews found reporting inaccuracies and questionable spending, the effort was not intended to revise determinations of eligibility for special education or service levels. Increased oversight and monitoring is a partial remedy to special education over-identification and misclassification.

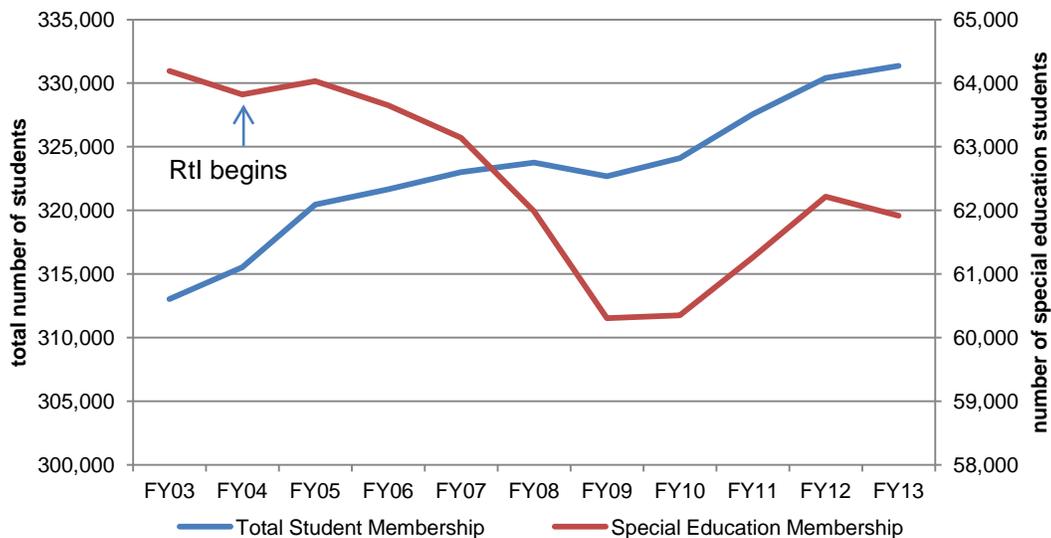
***A change in how students are identified for special education appears to have slowed the special education identification rate statewide.*** The 2003 LFC evaluation indicated the special education membership averaged approximately 20 percent of the total student membership; even excluding the 3 percent of students considered gifted, New Mexico’s rate was substantially higher than the national average of 12 percent. The evaluation also noted ineffective interventions, resulting in over-identification of special education students. Research indicated school districts often placed students in special education because general education did not have the programs necessary to assist with learning disabilities or behavioral problems. Even as the overall student population declined, the number of special education students rapidly increased.

- Examples of Tier II Interventions**

  - Increased frequency and duration of instruction
  - Reduced group size
  - Individual tutoring
  - Specialists to deliver instruction
  - Re-teaching or replacing the core academic curriculum or social skills program

The 2004 reauthorization of the federal Individuals with Disabilities Education Act (IDEA) included response to intervention (RtI), a model requiring schools to intervene to address students’ learning needs prior to evaluating the children for special education services. Since the adoption of RtI, the overall number of students in special education decreased: from FY04 to FY13, the overall student population in New Mexico rose 6.1 percent, from 312 thousand to 331 thousand, while the overall special education population declined 2.8 percent, from 64 thousand to 62 thousand.

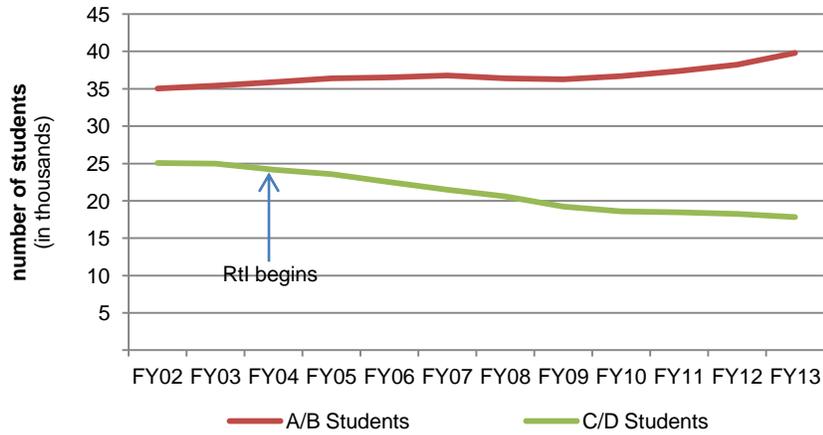
**Chart 6. Enrollment Trends, FY03 - FY13**



Source: LFC Analysis of PED Data

Statewide, special education populations have also shifted from higher levels of service to lower levels, suggesting the effectiveness of interventions. From FY02 to FY13, for example, A-level and B-level special education membership steadily rose 13.5 percent, from 35 thousand to 40 thousand, but much of this increase corresponds with an even greater decrease of 28.9 percent in C-level and D-level membership, from 25 thousand to 18 thousand.

**Chart 7. Changes in Special Education Membership**



Source: PED Final Funded

*Even with successful implementation of Rtl, some school districts and charter schools’ identification trends and placement service levels exceed state and national averages.* Currently, individualized education program (IEP) teams at the site-level assess each student’s level of need to determine the appropriate service level, resulting in wide variation in classification rates.

Statewide, from FY09 to FY13, the number of A-level and B-level students increased 8 percent, while the number of C-level and D-level students decreased 8 percent. The trend fluctuated significantly in many charter schools as well as in school districts of all sizes. Gallup, Socorro, and Albuquerque, for example, all had increasing numbers and percentages of C-level and D-level students, even while overall student populations in those school districts stayed flat or declined.

**Table 7. Membership Changes**

	Diff. A/B Mem. FY09-FY13	% Diff. A/B Mem. FY09-FY13	Diff. C/D Mem. FY09-FY13	% Diff. C/D Mem. FY09-FY13	Diff Total Mem FY09-FY13	% Change Total Mem FY09-FY13
Gallup	71	7%	121	21%	-489	-4%
Socorro	-20	-8%	14	17%	-27	-2%
Albuquerque	1,566	18%	657	10%	123	0%
<b>Statewide</b>	<b>2,874</b>	<b>8%</b>	<b>-1,596</b>	<b>-8%</b>	<b>8,683</b>	<b>3%</b>

Source: LFC Analysis of Final Funded Run

Statewide, C-level and D-level students make up 5.3 percent of the total student population. Thirty-seven school districts or charter schools, however, have higher rates of C-level and D-level students, including the following with more than 500 students.

**Table 8. Districts with Above-Average C-Level and D-Level Rates**

District/Charter	C and D Mem as % Of Total Mem
Bernalillo	9.8%
Santa Rosa	8.5%
Taos	8.3%
Albuquerque	8.2%
Las Cruces	7.2%
Cuba	6.6%
Gallup	6.0%
Los Alamos	5.9%
Rio Rancho	5.6%
Socorro	5.5%
Belen	5.5%
Aztec	5.3%
<b>Statewide</b>	<b>5.3%</b>

Source: LFC Analysis of Final Funded Run

*Special education identification rates range from 0 percent to 52 percent.* School districts and charter schools with the highest percentage of special education students are typically small, ranging from 38 students to 2,400 students, and 10 of the top 22 schools or districts are charter schools.

**Table 9. Highest Percent of Special Education Students, FY13**

District/Charter	Total K-12 Mem	Total A-D Sped Mem	% Special Ed
Albuquerque Sign Language St. Charter	72	37	51.5%
Village Academy St. Charter	38	16	41.2%
Mission Achievement and Success	107	39	36.5%
La Resolana Leadership	66	20	30.2%
La Academia De Esperanza	321	96	29.9%
Roy	38	9	25.3%
Melrose	205	51	25.2%
Reserve	152	38	25.1%
Vista Grande	100	25	24.9%
Mountainair	281	68	24.3%
Lake Arthur	127	30	23.8%
Los Puentes	205	47	22.8%
Mosaic Academy Charter	180	41	22.6%
Dora	232	52	22.6%
Roots and Wings	53	12	22.1%
Taos	2,419	518	21.4%
Floyd	215	46	21.2%
Tucumcari	1,020	216	21.2%
Peñasco	445	94	21.1%
Animas	209	43	20.4%
Estancia	833	168	20.2%
Amy Biehl St. Charter	289	57	19.7%
<b>Statewide</b>	<b>328,740</b>	<b>41,793</b>	<b>12.7%</b>

Source: Final Funded Run, FY13

Of the schools or districts with the lowest percentage of special education students in FY13, all 38 were charter schools (**Appendix C**).

**Many school districts with the lowest percentage of special education students tend to have the highest poverty rates.** A vast body of research concludes lower income levels are typically associated with worse health outcomes, which in turn leads to more students needing special education services. In New Mexico, however, some of the school districts with the highest poverty rates have the lowest percentages of special education students, suggesting a lack of proper identification resources. In Gadsden, for example, 10.4 percent of students qualify for special education, 2.3 percentage points lower than the state average. Similarly, Espanola, 10.8 percent, Deming, 11 percent, and Gallup, 11.2 percent, all identify special education students below the state average.

**Table 10. Districts with Greater than 500 Students with the Lowest Special Education Identification Rates, FY13**

District	Total K-12 Mem	Total A-D Sped Mem	% Special Ed
Tularosa	884	77	8.7%
Loving	565	50	8.9%
Hatch	1,290	117	9.0%
Pecos	588	56	9.5%
Lovington	3,218	313	9.7%
Hobbs	8,541	826	9.7%
Gadsden	13,736	1,426	10.4%
Clayton	533	56	10.5%
Clovis	8,382	880	10.5%
Española	4,063	438	10.8%
<b>Statewide</b>	<b>328,740</b>	<b>41,793</b>	<b>12.7%</b>

Source: LFC Analysis of Final Funded Run

**Some school districts and schools become magnets for serving higher-need, higher-cost students.** For certain high-cost, low-incidence disabilities, such as autism, national spending is more than three times as high than for other learning disabilities (Chambers, Shkolnik, and Perez, 2003), leading to higher proportionate costs. In New Jersey, for example, a school district located next to a military base established a reputation for serving specific types of disabilities, and as a result, personnel with high-needs children tend to be stationed at this base.

The same trend can be seen in New Mexico: while Albuquerque has 31.6 percent of the state’s total special education population, it serves 37.2 percent of the state’s autistic population and 37.1 percent of the state’s emotionally disturbed population.

**Table 11. High Incidence of High-Cost Categories, FY13**

Rank	Autism		Emotional Disturbance		Multiple Disabled	
	School	%	School	%	School	%
1	The Ask Academy	18.8%	Academy of Trades and Tech	31.3%	La Tierra Montessori School	14.3%
2	Sage Montessori Charter School	17.4%	The Great Academy	25.0%	Corona	9.1%
3	Taos Academy	16.7%	Mountainair	15.3%	Maxwell	7.7%
4	Aldo Leopold Charter	14.3%	Village Academy	12.5%	Hatch	6.5%
5	Cloudcroft	14.3%	Cesar Chavez	11.1%	Questa	6.2%
<b>Statewide</b>		<b>3.4%</b>	<b>3.3%</b>		<b>1.5%</b>	

Source: LFC Analysis of PED Snapshot Data

**The process for determining service levels is subjective, differing from site to site, and frequently double-funds related services.** Responses to a statewide LFC questionnaire confirm IEP teams determine A-level through D-level placements by estimating the amount of time needed to meet each student’s goals and objectives. While statute describes calculating service levels without including related services, numerous school districts and charter

schools include these services, resulting in higher levels. Many IEPs, including the state-recommended version, direct IEP teams to calculate a percentage of all services to determine the appropriate level, even though related services full-time equivalent (FTE) are a separately funded component.

**Figure 1. State IEP Schedule and Level of Services**

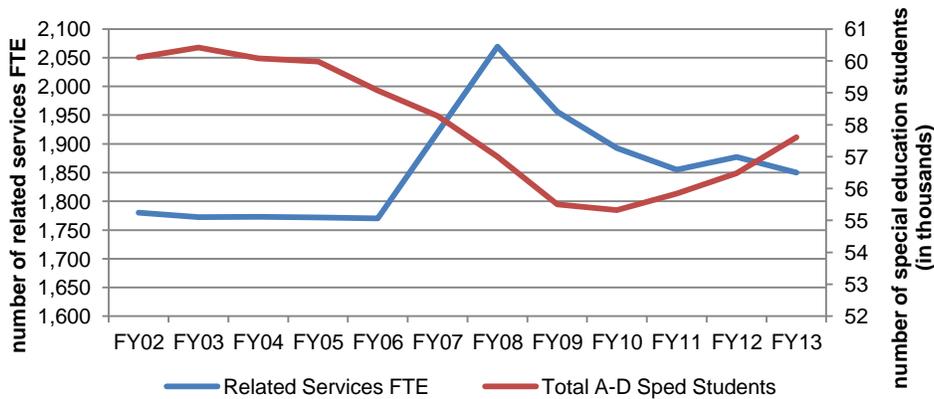
★ Special Education & Related Services	Minutes per Day/ Week/ Month/ Semester/Year	Start Date	Ending Date	Service Provider (s)	Location	
					Time in Regular Classroom	Time in Special Education Setting
<b>Time Totals</b>						
X = The total number of hours per week of special education service. _____ Y = The total number of hours in a typical school week, (excluding lunch and recess). _____ <b>Level of service = X divided by Y (express as percent).</b> _____ Example: X = 6 hrs./wk Y = 30 hrs./wk. 6 divided by 30 = .2 (20%) = Level 2 (moderate)						
<input type="checkbox"/> 10% or less of the school day (Level 1-minimum)	<input type="checkbox"/> 11% - 49% of the school day (Level 2-moderate)	<input type="checkbox"/> 50%- or more of the school day (Level 3-extensive)	<input type="checkbox"/> approaching a full school day or 3Y/4Y (Level 4-maximum)			

Source: PED

**The SEG does not control related services costs and the state has not provided clarity around expected caseloads.** In addition to generating revenue based on the number of students weighted by service level, New Mexico’s current formula funds additional staff to serve those students. Each related service provider a school district or charter school claims generates 25 units through the SEG; in FY13, this equaled \$92 thousand per FTE. As described in the administrative code, these include personnel such as educational assistants, school counselors, school social workers, speech-language pathologists, and a variety of therapists.

*The number of related services FTE is not directly related to the number of special education students.* From FY02 to FY13, New Mexico’s number of related services FTE increased from 1,780 to 1,850, while the number of A-level to D-level special education students decreased from 60 thousand to 57.6 thousand. As a result, the average number of students per FTE ranged from a high of 33.9 in FY06 to a low of 27.5 in FY08.

**Chart 8. Related Services FTE to Special Education Students**  
(including gifted)



Source: PED Final Funded

Excluding gifted students, the average related services FTE served 23 students in FY13. Seventy-five school districts or charter schools, however, have ratios less than the state average, including the South Valley Charter School, with 4.47 related services FTE serving 15 students, or a ratio of 3.4 students per FTE.

*With the exception of speech-language pathologists, the state has not provided caseload guidance for other types of therapists.* Statute caps caseloads at 60 students per speech-language pathologists for speech-only students. For these pathologists as well as other therapists, school districts report student need guides hiring decisions, but as described in more detail later in this evaluation, the only downward pressure appears to be lack of supply.

**Census-based models minimize the link between funding and local decision-making over disability identification and placement.** Currently, eight states and the federal government distribute special education funds based on total student enrollment, or census, rather than special education enrollment, resources used, or actual expenditures: Alabama, California, Idaho, Massachusetts, Montana, New Jersey, Pennsylvania, and Washington (Ahearn, 2010; National Association of State Directors of Special Education).

Dhuey and Lipscomb (2013, 2009) found census-funding reforms corresponded with an 8 percent to 10 percent reduction in state special education enrollment rates between FY92 and FY04. The reductions were greatest in subjectively diagnosed categories, such as specific learning disabilities and mental retardation, and in early and late grades. Rather than reducing incentives to identify disabilities, the incentive is to reduce costly placements. Findings suggest capitation reforms led to an immediate decline in less severe disability rates but a lagged policy response in more severe categories. Other findings include a decreased use of outside school placements among severe disabilities and no significant change in the rates of dispute resolution.

Consistent with these findings, in its first year of using a census-based approach, New Jersey's percentage of special education students decreased from 14.8 percent in FY09 to 13.5 percent in FY10.

*Moving to census-based funding in New Mexico will decrease incentives to over-identify students and allow school districts and charter schools to provide intervention services to reduce special education identification rates.* This analysis used data from FY13, including student counts and a unit value of \$3,674, to demonstrate how a single-weight, census-based approach compares with the actual amounts school districts and charter schools received in FY13.

In FY13, 12.7 percent, or 42 thousand of the 329 thousand students in kindergarten through twelfth grade received special education services, not including gifted only students or three-year old or four-year old (3Y/4Y) students. Based on classification levels and the number of related services FTE, these 42 thousand kindergarten through twelfth grade students generated 90 thousand units, meaning, on average, school districts and charter schools received 2.16 times the unit value for each special education student. This is higher than the average weight the AIR study recommended, 1.72, because that value included students qualifying for gifted services who are generally A-level or B-level and receive less additional units; similarly, including these students in FY13 lowers the average number of additional units per special education student to 1.76.

*For school districts with 500 or more students, using a single-weight, census-based approach encourages appropriate identification rates and placements in least costly environments.* In FY13, 51 school districts had 500 or more students, totaling 300 thousand of New Mexico's 328 thousand students. On average, 12.8 percent of the students in these school districts qualified for special education services, less than the national average of 13.8 percent. Under a census-based approach to funding special education, the total number of students in each school district is multiplied by the targeted rate of special education identification. This census amount is then multiplied by a single weight, in this case, the statewide special education average of 2.16, to arrive at a number of special education units.

In FY13, these 51 school districts had 84 thousand A-level through D-level and related services units, generating \$307 million; in contrast, using the national average of 13.8 percent produces 90 thousand units or \$329 million in special education funding, not including 3Y/4Y DD students or gifted.

**Table 12. 13.8% Single-weight Census**

	<b>FY13 Actual</b>	<b>13.8% Census</b>
Units (A-D and Rel. Serv.)	83,581	89,518
Sped Funding (in millions)	\$307	\$329

Source: LFC Analysis

In this scenario, 26 of the 51 school districts, including some with the highest poverty rates in the state, would have generated an additional \$35 million in special education revenue in FY13 to improve instruction and services. These school districts, such as Gadsden and Gallup, receive increased funding because they currently have lower than average identification rates as well as fewer D-level and related services units.

**Table 13. Hypothetical Census-Based Funding Increases, FY13**

(in millions)

Deming	\$1.8
Clovis	\$1.8
Central	\$1.9
Rio Rancho	\$1.9
Roswell	\$1.9
Santa Fe	\$2.7
Hobbs	\$3.0
Gallup	\$3.5
Farmington	\$3.7
Gadsden	\$4.2
<b>500 Plus Total</b>	<b>\$35</b>

Source: LFC Analysis of Final Funded Run

On the other hand, 15 school districts generate 3,603 fewer units in this scenario than under the current formula; using the FY13 unit value, this amounts to \$13.2 million needed to hold these school districts harmless.

This decrease in units happens for two reasons: one, an identification rate greater than the 13.8 percent average, or two, a higher average unit weight per member because of a greater proportion of heavily weighted D-level and related services units. For example, while Albuquerque's identification rate is identical to the state average, the proportion of D-level students and related service provider units increases the average unit weight per student to 2.26, higher than the state average of 2.16.

**Table 14. Hypothetical Census-based Funding Decreases, FY13**

<b>District/ Charter</b>	<b>Average unit weight per mem</b>	<b>Total Sped Mem as % of Total Mem</b>	<b>Total K- 12 Mem</b>	<b>FY13 Actual A-D and Rel Serv Units</b>	<b>FY13 Census Units (Total K- 12 Mem * 0.138)</b>	<b>Change in Units (Census - FY13 Actual)</b>	<b>Change in \$ (Census - FY13 Actual)</b>
Albuquerque	2.26	13.8%	86,574	28,126	25,806	-2,320	-\$8,522,980
Bernalillo	2.44	15%	3,041	1,174	906	-268	-\$983,774
Taos	2.1	18%	2,419	959	721	-238	-\$875,405
Cobre	3.48	12%	1,260	588	376	-212	-\$779,158
Las Cruces	2.1	13.9%	23,913	7,293	7,128	-166	-\$607,971
Cuba	2.84	15.4%	549	262	164	-98	-\$359,640
Los Alamos	1.9	16.1%	3,463	1,106	1,032	-74	-\$270,373

Clayton	3.41	10.5%	533	215	159	-56	-\$207,188
Estancia	1.95	17%	833	291	248	-43	-\$157,595
Raton	2.68	11.4%	1,179	389	351	-38	-\$138,860
Belen	1.99	14.6%	4,419	1,339	1,317	-22	-\$79,348
Grants	2.2	13.1%	3,491	1,061	1,040	-21	-\$76,410
Socorro	2.01	14.7%	1,668	516	497	-19	-\$70,532
Santa Rosa	2.53	12.1%	620	202	185	-17	-\$61,348
Pecos	3	9.5%	588	186	175	-11	-\$40,042
<b>Statewide</b>	<b>2.16</b>	<b>12.7%</b>	<b>300,317</b>	<b>83,581</b>	<b>89,519</b>	<b>5,938</b>	<b>\$21,813,481</b>

Source: LFC Analysis

To ease the abrupt increase or decrease in funding, other states, such as Tennessee, have phased in changes to provide a “soft landing” for the receiving institutions. In New Mexico, this could involve limiting both the increases as well as the decreases charter schools and school districts receive each year, transitioning to full implementation of census-based funding over a period of several years.

*Applying a single weight based on an actual count of special education students stabilizes funding for charter schools and small school districts.* Effective census-based funding assumes a large enough sample size to achieve average special education populations. California, another the state using a census-based model, describes the assumption that “over reasonably large geographic areas, the incidence of disabilities is relatively uniformly distributed.” To achieve this more even distribution as well as take advantage of economies of scale, California funds special education through 127 local plan areas, rather than the state’s 1,000 school districts.

While New Mexico has the capacity to similarly use its regional education cooperatives, special education funds are currently distributed directly to school districts or charter schools. Of the 182 school districts and charter schools in FY13, 77 charter schools and 24 school districts had 500 or less students, making them particularly sensitive to swings in percentage of special education students. At these 101 school districts and charter schools, an average of 11.5 percent of students qualified for special education services, slightly lower than the overall state average of 12.7 percent.

In FY13, these school districts and charter schools generated 3,464 A-level through D-level and related services special education units for a total special education program cost of \$12.7 million. In contrast, applying a single weight of 2.16 units per student, the total program cost would have been \$14.5 million, \$1.8 million greater than the actual FY13 program formula funding.

In some instances, applying this single weight increases funding for a charter school or school district, while in others, the school district or charter school would receive less money under the single-weight approach than the actual FY13 amount. Using this single-weight approach, an additional \$1.9 million would be needed to hold FY13 funding levels harmless at 24 school districts and charter schools that would have generated 530 fewer units.

**Table 15. Single-weight Special Education Costs for 500 Students or Less, FY13**  
(in millions)

Total A-D Sped Mem	Total A-D Sped Mem * Avg. Sped Weight (2.16)	Single-weight Program Cost (Total * Avg Wt * Unit Value)	Current A-D and Rel. Ser. Sped Units	Difference in Units, Weighted – FY13	Current A-D and Rel Ser Program Cost	Difference Weighted - FY13
1,871	4,041	\$14.5	3,464	530	\$12.6	\$1.9

Source: PED Final Funded Run

**New Mexico has a special education high-cost fund to assist school districts and charter schools with exceptionally expensive students.** To address high need children with disabilities, each state has the option to reserve for each fiscal year 10 percent of the amount of federal IDEA-B funds the state budgets for other state-level activities. In its FY14 federal IDEA budget application, New Mexico allocated \$957 thousand for its high-cost fund, Puente Para los Niños.

The Special Education Expenditure Project (SEEP), a nationally-representative study conducted by the Center for Special Education Finance, examined the characteristics of high cost special education students, defining these high cost students as those in the top 5 percent of the expenditure distribution for special education students (Chambers, Kidron, and Spain, 2004). The researchers found the high cost special education students cost 4.2 times more to educate at the elementary level and 3.5 times more at the secondary level.

In a breakdown of the high cost special education students, the study found four disability categories accounted for 76.8 percent of all high cost special education students; nearly a third of students in this high cost category had multiple disabilities, 16 percent had emotional disturbances, 17 percent had autism, and 11 percent had hearing impairments or deafness.

**Table 16. Percent of High Cost Special Education Students by Category**

Disability Category	U.S.
Autism	17.2
Emotional Disturbance	16.2
Hearing Impairment/ Deafness	11.1
Mental Retardation	7.1
Multiple Disabilities	32.3
Orthopedic Impairment	3
Other Health Impairment	2
Specific Learning Disability	0
Traumatic Brain Injury	2
Visual Impairment/ Blindness	8.1

Source: Chambers, Kidron, and Spain, 2004

*The challenges of funding high cost students exist regardless of the funding model.* IDEA defines “high cost” as 3 times greater than the average amount per student, or \$20,892 in New Mexico in FY13. Additionally, to receive these funds, a school district or charter school must expend a minimum of 25 percent of the cost plus \$20,892. According to multiple school districts, the application process is excessively burdensome. In FY12 as well as FY13, the PED received applications from six school districts or charter schools for high cost reimbursement and distributed the remaining balances to school districts and charter schools based on population and poverty.

**Table 17. NM High Cost Fund Awards, FY13**

District	Amount Awarded
Albuquerque Sign Language Academy	\$0
Bernalillo	\$37,948
Carrizozo	\$4,277
Hagerman	\$14,986
Lake Arthur	\$48,982
Learning Community Charter School	\$34,239
Total	\$140,432
Amount available	\$957,000
<b>Balance</b>	<b>\$816,568</b>

Source: PED

*Some states include provisions to supplement special education magnet school districts.* In New Jersey, for example, school districts may apply to receive additional special education aid for unusually high rates of low-incidence disabilities, such as autism, deaf/blindness, severe cognitive impairment, and medically fragile. Similar to New Mexico's high-cost fund, to qualify for these funds school districts demonstrate how expenditures exceed revenues.

## **Recommendations**

The Legislature should revise the funding formula to:

- use a census-based, single-weight approach to fund special education for school districts with more than 500 students;
- use a student count, single-weight approach to fund special education for charter schools and school districts with less than 500 students; and
- phase-in the increases and decreases in funding to provide soft landings for school districts and charter schools.

The Legislature should create a fund for school districts or charter schools serving high proportions of high-cost students with disabilities.

**THE STATE CAN MEET ITS FEDERAL MAINTENANCE OF EFFORT REQUIREMENTS WITHIN THE CURRENT FORMULA AND FUNDING LEVEL**

**The federal IDEA requires states to provide children with special education services as a condition of receiving federal funds.** The federal government provides three special education funding grants under IDEA. The largest is IDEA-B, which supports special education programs for kindergarten through twelfth grade. Under 20 U.S.C. §1412(a)(18)(A) and 34 CFR §300.163.(a), a state must not reduce its amount of financial support for special education and related services for children with disabilities below the amount of that support for the preceding fiscal year. If a state’s level of financial support drops below the amount made available the previous year, IDEA requires the USDE to reduce the state’s allocation of section IDEA funds by the same amount by which the state failed to satisfy the MOE requirement, unless the USDE waives the requirement.

To calculate the MOE, the amount of special education funding appropriated through the public education funding formula is combined with other state special education funds appropriated through the Children, Youth, and Families Department, the Division of Vocational Rehabilitation, the New Mexico School for the Deaf, the New Mexico School for the Blind and Visually Impaired, and the New Mexico Corrections Department to arrive at an overall level of state financial support.

*The LFC estimates the MOE target at \$412 million.* In the June 2013 response to New Mexico’s waiver, the USDE ruled the calculation of the PED’s MOE should include all special education units (A, B, C, and D) excluding gifted only, all related services units, and all 3Y/4Y units; these units are not adjusted through the training and experience index. The PED’s data submission, however, counted all 3Y and 4Y students as full-time equivalents, rather than multiplying those students by 0.5. While New Mexico is currently appealing the USDE’s ruling, adjusting the 3Y/4Y mem units, the LFC currently estimates an MOE target of \$412 million.

**Table 18. Maintenance of Effort Target**  
(in millions)

	USDE Ruling	LFC Estimate
PED Sped Funding w/o DD Mem	\$398.7	\$398.7
PED Sped Funding w/ DD Mem	\$26.8	\$13.4
State Agencies	\$36.5	\$36.5
<b>PED Target</b>	<b>\$425.5</b>	<b>\$412.1</b>

Source: LFC Analysis

Applying the same approach used to arrive at the FY09 target result in formula shortfalls in FY10 through FY13.

**Table 19. LFC Estimated MOE Shortfall by Fiscal Year**  
(excluding additional appropriations and workload adjustments)

State Fiscal Year	State Sped Funding (A-D, 3Y/4Y, Related Services, no gifted)	DD Mem	PED Total	Grand Total	State Agencies	PED MOE Shortfall
FY09	\$398.7	\$13.4	\$412.1	\$448.6	\$36.5	\$0.0
FY10	\$385.6	\$13.7	\$399.4	\$436.6	\$37.3	-\$12.8
FY11	\$376.3	\$14.5	\$390.8	\$428.7	\$37.9	-\$21.3
FY12	\$367.8	\$14.9	\$382.7	\$420.7	\$38.0	-\$29.4
FY13	\$362.8	\$11.4	\$374.2	\$412.2	\$38.0	-\$37.9
Projected FY14	\$377.0	\$11.8	\$388.8	\$426.8	\$38.0	-\$23.3

Source: LFC Analysis

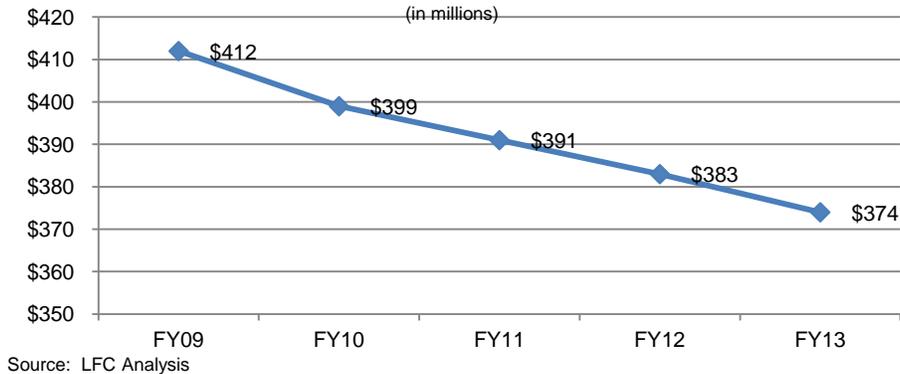
Notes: FY10 PED received MOE waiver; FY11 waiver pending; FY13 and FY14 GAA provides sufficient funding to cover shortfalls

**New Mexico's level of state support for special education is among the highest in the nation, making MOE particularly challenging.** Nationally, states' share of funding for special education averages 56 percent, with 36 percent from local sources, and 8 percent from the federal government. In New Mexico, by comparison, 83 percent of special education funding comes from the state with the remaining 17 percent from federal IDEA-B funds.

Numerous states with declining revenues have cut funding to other education categories or shifted the balance of special education funding from the state to school districts. During the recent recession, for example, Colorado preserved a categorical special education funding level of \$135 million, even while decreasing appropriations to other education line items from \$99 million to \$71 million.

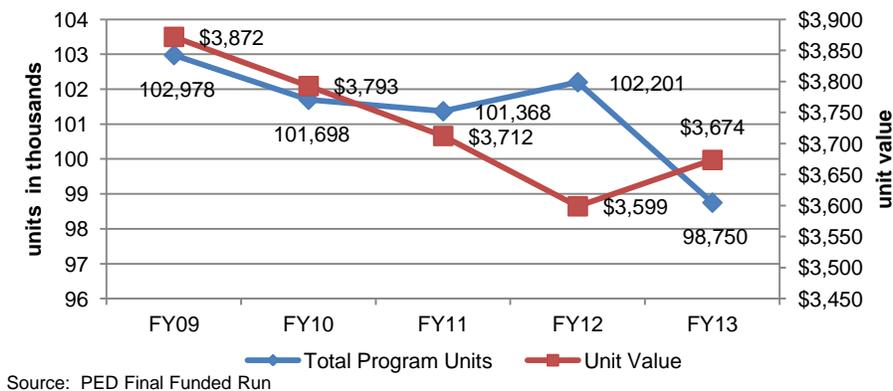
**Two types of MOE waivers are available to states.** The first waiver is in the event of "exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the state." The second is if the state provides clear and convincing evidence that all children with disabilities have a free and appropriate public education (FAPE) available to them. From FY09 to FY13, excluding gifted only students, the amount New Mexico allocated to special education through the public school funding formula decreased each year from \$412 million to \$374 million, a total drop of 9 percent.

**Chart 9. PED Special Education Funding Effort, FY09 - FY13**  
(in millions)



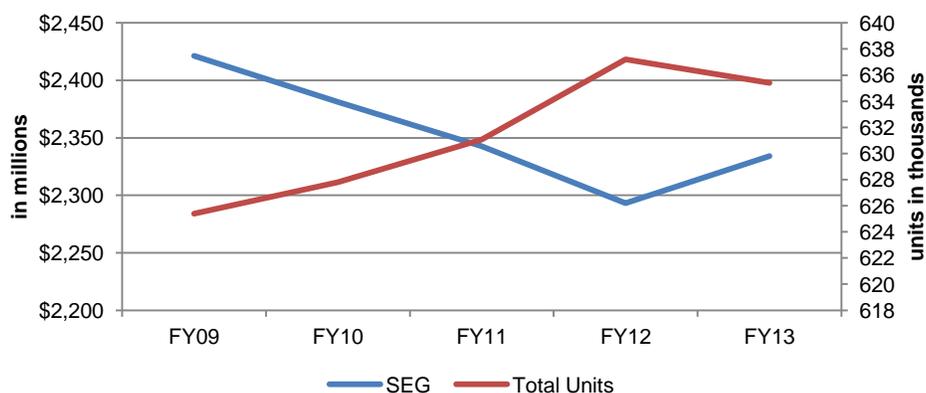
This steady decrease was a result of both a decline in the unit value as well as a drop in the total number of special education units. From FY09 to FY13, the unit value decreased 5.1 percent, from \$3,872 to \$3,674, in part because the total number of units grew at a greater rate than the program cost. At the same time, the total number of special education units decreased 4.1 percent, from 103 thousand to 99 thousand.

**Chart 10. Unit Value and Units, FY09 - FY13**



From FY09 to FY13, the program cost decreased 3.6 percent, from \$2.4 billion to \$2.3 billion, while the number of units increased 1.6 percent from 625 thousand to 635 thousand.

**Chart 11. State Equalization Guarantee and Total Units, SY05 - SY13**



Source: PED Final Funded

*The PED submitted two separate waiver requests for FY10 and FY11, each citing a precipitous and unforeseen decline in the financial resources of the state as the reason for the waiver from the MOE requirements.* The PED submitted supporting documentation to the USDE and requested a waiver in the amount of approximately \$15.3 million for FY10 and \$12.9 million for FY11. In response to questions from the USDE, the PED submitted an amended waiver request for FY11, estimating the MOE shortfall to be \$28.2 million, an increase of \$15.3 million from the initial request. The PED submitted additional data, requesting reduction of the MOE shortfall to \$3.2 million in FY10 and \$10.9 million in FY11. According to a Legislative Education Study Committee staff report, the information the PED submitted to the USDE included:

- A statement exercising provisions of CFR §300.230 to claim credit for up to 50 percent of an increase in federal grant awards as state financial support;
- Amendments to the PED’s MOE calculation, including taking credit for workload reductions and pension contributions swaps; and
- Explanations of extenuating economic circumstances.

*The USDE granted New Mexico a waiver for FY10.* Having determined the state the state experienced a precipitous and unforeseen decline in its financial resources in FY10 and treated special education equitably when compared to other state programs, the USDE granted the PED a waiver of \$48 million. The percentage decrease in state financial support for special education and related services, 10.4 percent, was smaller than the average percentage decrease in recurring appropriations across agencies, 11.2 percent. During FY10, IDEA American Recovery and Reinvestment Act (ARRA) funds were available to assist New Mexico and school districts and charter schools in meeting their obligation to make a FAPE available to all children with disabilities.

*The USDE alleges that New Mexico failed to meet the MOE requirements in FY11 and denied the state’s waiver request.* The USDE concluded New Mexico did not experience an exceptional or uncontrollable circumstance in FY11. The USDE determined recurring revenues increased from FY09 to FY11 (and from FY10 to FY11) and the state accrued substantial funds in FY11 that were available for special education and related services. The USDE rejected the PED’s waiver request in the amount of \$34 million. Pursuant to the USDE determination, the PED has requested a hearing and the state’s FY14 IDEA-B grant will not be reduced until a final determination is made. Although FY12 and FY13 were not the subject of the waiver requests, the USDE noted data provided by the PED suggests in each year the state might have also failed to meet MOE.

**New Mexico is not the only state that has requested a MOE waiver from the USDE, but is among four states denied a waiver for FY11.** The department granted waivers to the following states based on precipitous declines in financial resources and exceptional and uncontrollable financial circumstances: Alabama (\$9.2 million); Kansas (\$34.2 million); New Jersey (\$25.6 million); South Carolina (\$20.3 million); and West Virginia (\$491 thousand). New Mexico, along with Iowa, Oregon, and South Carolina were denied a MOE waiver request for FY11.

**Table 20. IDEA-B MOE Waiver Determinations**

(in millions)

Year	2008-2009		2009-2010		2010-2011	
State	Requested	Approved	Requested	Approved	Requested	Approved
New Mexico			\$15.3	\$48.1	\$28.2	Denied
Alabama			\$9.2	\$9.2		
Iowa			\$38.1	\$38.1	\$4.1	Denied
Kansas			\$60.2	\$53.3		
New Jersey			\$25.7	\$25.7		
Oregon					\$15.7	Denied
South Carolina	\$20.3	\$20.3	\$67.4	\$31.2	\$75.3	Denied
West Virginia			\$0.5	\$0.5		

Source: USDE, Federal Education Budget Project

States requesting IDEA-B MOE waivers use a variety of funding formulas for special education. Two waiver states, Iowa and South Carolina, use multiple student weights like New Mexico.

**Table 21. IDEA-B MOE Waiver State Special Education Funding Formulas, FY09**

Formula Type	Description	Waiver State
Census-Based	A fixed dollar amount per total enrollment or Average Daily Membership (ADM).	AL, NJ
Multiple Student Weights	Funding (either a series of multiples of the general education amount or tiered dollar amounts) allocated per special education student that varies by disability, type of placement, or student need.	IA, NM, SC
Resource Based	Funding based on payment for a certain number of specific education resources (e.g., teachers or classroom units), usually determined by prescribed staff/student ratios that may vary by disability, type of placement or student need.	KS
Single Student Weights	Funding (either a single multiple of the general education amount or a fixed dollar amount) allocated per special education student.	OR
No Separate Special Education Funding	Funding to support special education is rolled into the overall funding levels.	WV*

\*West Virginia has an additional flat grant dedicated just to special education based on child count, but that is not part of the main state finance formula and the amount provided is minimal compared to the state's public school foundation program.

Source: Project Forum at NASDSE

**Moving forward, when New Mexico's special education appropriation falls short of the FY09 target of \$412 million, the state has several options for funding the gap and distributing those funds.** By FY16, using the current approach to determining the amount the state makes available to special education, funding will likely exceed the FY09 MOE target of \$412 million. Reaching this target will require a 4.7 percent increase in funding from the FY14 appropriated amount, a 2 percent increase in the number of FY13 special education units, and a 1 percent increase in overall number of FY14 units. Unless changes are made to how the state makes funds available for special education, however, increases in this target raise the state's MOE requirement, creating challenges in the event of overall revenue decreases.

**Table 22. MOE Projection, FY15**

Sped Units (FY13 * 1.02)	Sped Funding (in millions)	Unit Value	School Support Units (Grand Total Units – Sped Units) * 1.01	School Support Total (in billions)	Total Program Cost (in billions)	% Increase from FY14
103,952	\$412	\$3,963	531,549	\$2.11	\$2.52	4.68%

Source: LFC Analysis

This analysis presents options for how the state can meet its MOE target using the most recent financial data available, FY13, although conclusions are similar in other fiscal years.

**Option one: Funding an MOE gap using new money to boost the total program cost.** If, using the current methodology, the amount of special education revenue generated through the funding formula is less than the MOE target, total public education funding could be increased enough to raise the unit value to meet the MOE target. In FY13, to generate an additional \$38 million in special education funding using this approach, the state could have appropriated an additional \$235 million to raise the unit value to \$4,043.

**Option two: Fund an MOE gap through supplemental or special appropriation.** During the 2013 session, this is partially how New Mexico addressed the FY13 and FY14 MOE gaps. However, distributing these additional funds based on either the proportion of special education units penalizes school districts or charter schools with lower special education identification rates.

For example, if the \$38 million estimated gap were distributed based on special education units, because its proportion of special education units is smaller than its overall proportion of students, Gadsden receives \$316 thousand less than it does if the funds are distributed based on total membership. Conversely, school districts or charter schools with a high proportion of special education units, such as Albuquerque, receive more under this distribution scenario. The reverse is true if funds are distributed based on total membership.

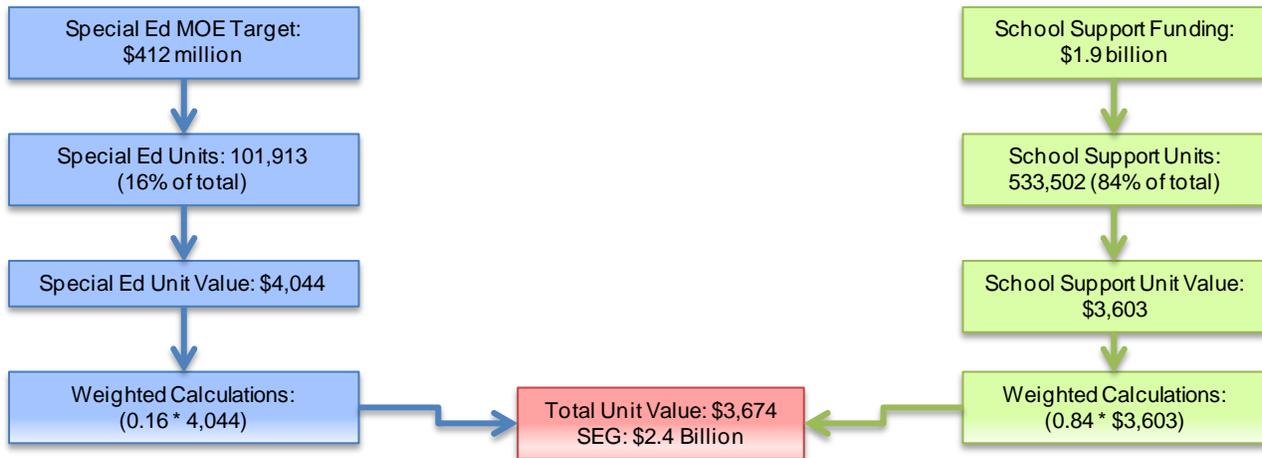
**Table 23. Impact of Distribution Options**  
(in thousands)

	Sped Units	Total Membership	Difference
Gadsden	\$1,279	\$1,595	-\$316
Farmington	\$891	\$1,161	-\$270
Gallup	\$1,043	\$1,265	-\$222
Hobbs	\$720	\$918	-\$198
Santa Fe	\$1,254	\$1,404	-\$150
Deming	\$448	\$581	-\$133
Central	\$574	\$704	-\$130
Cobre	\$244	\$172	\$72
Bernalillo	\$485	\$384	\$101
Taos	\$403	\$301	\$102
Las Cruces	\$3,066	\$2,860	\$206
Albuquerque	\$11,646	\$10,248	\$1,398

Source: LFC Analysis

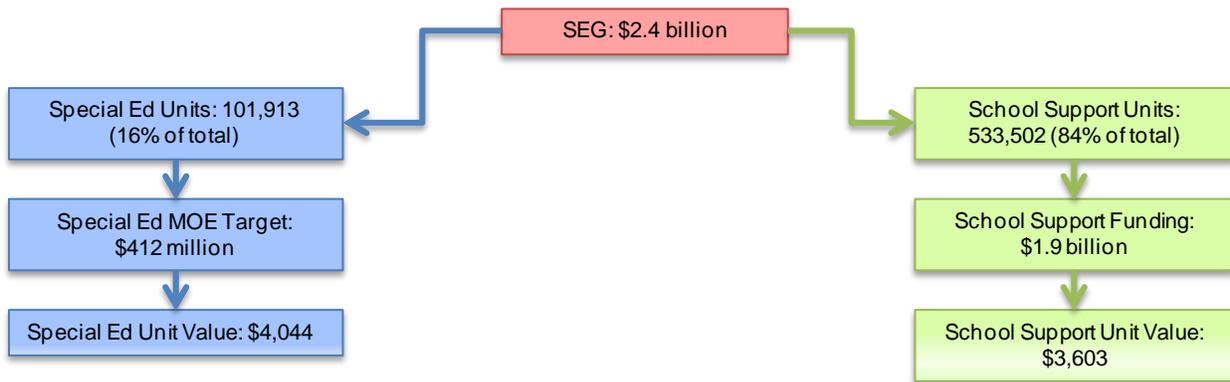
**Option three: Designate a funding amount made available to special education to be distributed through the public school formula.** To comply with the federal IDEA, New Mexico could add language to the General Appropriation Act specifying an amount made available to special education without creating a categorical special education appropriation. For FY15 and until the Legislature raises the MOE target, this language would specify \$412 million to be made available to special education through the existing public school formula. Within the formula, special education units would be separated from all other units, shown here as “School Support Units,” with a single unit value calculated based on the total program cost.

**Figure 2. Option 3: Shifting within the Funding Formula**



*Option four: Categorically separate special education funding from the current public school formula, creating a second formula, total amount made available, and unit value.* This amount made available to special education would be subtracted from the public school appropriation before calculating a second unit value, shown here as the “School Support Unit Value.”

**Figure 3. Option 4: Categorical Appropriation outside the Funding Formula**



Given the current distribution of units, shifting funds either categorically or within the formula favors school districts or charter schools with a higher proportion of special education units.

**Table 24. MOE Funding and Distribution Pros and Cons**

		Funding Source	
		Categorical Appropriation	Made Available Language within Public School Formula
Distribution Method	Special Ed Units	-meets USDE MOE test -increased transparency -favors districts with higher proportion of special education units -creates two unit values -risk of separating other categories (i.e. bilingual)	-meets USDE MOE test -maintains existing formula -maintains a single, "total unit value" --favors districts with higher proportion of special education units
	Total Membership	-meets USDE MOE test -increased transparency -favors districts with lower proportion of special education units -risk of separating other categories (i.e. bilingual) -funds some districts with no special education students	-meets USDE MOE test -maintains existing formula -single unit value -favors districts with lower proportion of special education units -funds some districts with no special education students

Source: LFC Analysis

**Redistributing the amount made available for special education through a modified census-based approach treats school districts and charter schools more equitably.** Under this scenario, the MOE target, \$412 million, is subtracted from the total program cost, \$2.3 billion; for this analysis, the remaining program cost, \$1.9 billion, is referred to as the “school support” fund. The MOE target is distributed to school districts and charter schools based upon the number of special education units. The school support amount, \$1.9 billion, is distributed based on a school district or charter school’s proportion of all non-special education units.

Applying a 13.8 percent census rate and a unit weight of 2.16 for FY13, the state would meet its MOE requirement, and statewide, school districts and charter schools would need an additional 7,705 school support units at a cost of \$27.8 million to maintain their actual FY13 funding amounts.

**Table 25. Census-based Funding to the MOE Target, FY13**

	MOE Target (in millions)	Census units + 3Y/4Y	Sped unit value (MOE target/ Census Units)	Grand Total Units –Sped Units	Program Cost - Sped Census Costs (in millions)	School Support Unit Value	Hold Harmless Units (Adjusted School Support Unit Value)	Hold Harmless Amount (in millions)
Scenario 1 (13.6% census, 2.16 weight)	\$412	108,576	\$3,795	533,502	\$1,922	\$3,603	7,705	\$27.8

Source: LFC Analysis of Final Funded Run

Using a “soft landing” to phase-in this transition, in year one, school districts and charter schools would receive 50 percent of the additional census-based revenue and school districts and charter schools that would have lost money under the census scenario would be held harmless. This reduces the net cost to the state to \$13.8 million, less than the \$16.9 million the state made available as a supplemental appropriation as well as the \$38 million the state is projected to need to make up the FY13 MOE gap. In future years, the state’s hold harmless cost should decrease as school district’s and charter school’s special education identification rates move closer to the funded targets.

**A free and appropriate public education waiver could significantly reduce New Mexico’s MOE liability in prior as well as future years.** In its MOE waiver application, the PED argued it should be allowed to reduce its MOE based on workload reductions when children with disabilities move from one level of service to another or otherwise need less costly services. The USDE, however, did not take these assertions into account because they are unsupported by the federal statute describing waivers in exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the state.

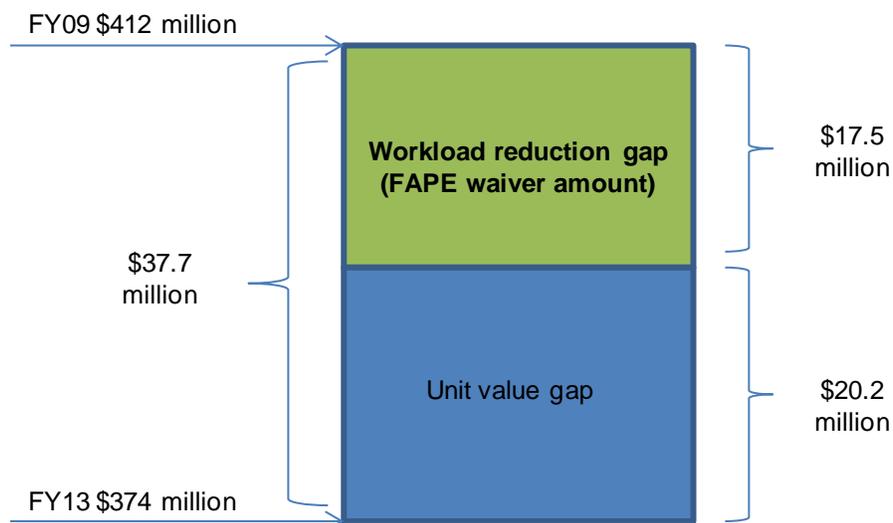
The USDE’s June 2013 response noted another waiver provision in IDEA if a state provides “clear and convincing evidence that all children with disabilities have available to them a free and appropriate public education (FAPE).” According to the PED, the burden of proof to receive this waiver—no due process rulings or other measures that a student was entitled to compensatory services—is too high for any state to qualify.

The first assurance the state provides in its IDEA-B application, however, is “a free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21.” Additionally, CFR 300.164(c)(3), suggests a more reasonable and attainable threshold: a summary of all state and federal monitoring reports and state complaint decisions and hearing decisions issued within three years prior to the date of the state’s request for a waiver, that includes any finding that FAPE has not been available to one or more eligible children, and evidence that FAPE is now available to all children addressed in those reports or decisions.

To date, no states have applied for this waiver and no relevant case law exists, so the USDE’s standard is unclear. New Mexico, however, stands to significantly reduce its MOE in FY11, FY12, and FY13. In each of those years, the total number of units dropped when compared with FY09. While the unit value also dropped for each of those years, overall spending on special education would have decreased even if the state had kept the unit value flat. The difference between the actual amount funded in FY11, FY12, and FY13 and the amount that would have been funded using the FY09 unit value is the workload reduction that could be eligible for the FAPE waivers.

**Workload reductions have resulted in the state spending less on special education in FY11, FY12, and FY13.** While the Legislature appropriated additional funds to cover the MOE shortfall in FY13, in any year when the number of units is less than the high-water mark of FY09, a portion of reduction in funding can be attributed to this decrease in workload. In FY13, for example, the total number of units decreased 4,525 because of drops in the number of C-level, D-level, 3Y/4Y, and related services units. One method of calculating the workload reduction gap is to calculate the difference between the FY13 actual special education funding amount and the amount that would have been generated using the FY09 unit value. Using this approach, funding the 101.9 thousand FY13 units at the FY09 unit value would have reduced the MOE gap from \$37.7 million to \$20.2 million. This \$17.5 million is the waiver amount the PED could seek by demonstrating New Mexico reduced its MOE while still providing a FAPE to all students.

**Figure 4. FAPE Waiver Gap**



Similarly, FAPE waivers could apply in FY11 and FY12, as well as in any subsequent years when the number of total special education units drops.

**Based on the summary of due process hearings, it appears New Mexico is eligible for this FAPE waiver.** As part of the FAPE waiver, New Mexico must demonstrate that FAPE is now available to all children addressed in complaint or hearing decisions. Under IDEA, when a student has been denied FAPE, a hearing officer determines the appropriate injunctive remedy to enable the student to regain the ground lost. In determining the nature and the amount of compensatory services, the hearing officer is obligated to determine what relief is appropriate to meet the student’s needs at the current time, in light of all of the circumstances.

For each year a waiver is requested, the state must provide a summary of hearing decisions within the previous three years. For the past eight years, the state averaged five due process hearings per year. For the FY13 waiver application, for example, the state would summarize hearings from FY11, FY12, and FY13.

Of the 15 due process cases heard from FY11 to FY13, the ruling in five cases was FAPE had been provided. In the remaining ten cases, the hearing officer determined FAPE had been denied but ordered the school district or charter school to provide compensatory services (**Appendix D**).

**Table 26. Examples of Due Process Rulings, FY13**

<b>Summary of Allegations</b>	<b>Findings/ Resolution</b>	<b>FAPE Outcome</b>
Requesting placement in private setting	Request for due process hearing denied	No denial of FAPE
District failed to provide Student, who is legally blind, with needed specialized instruction, related orientation and mobility services, assistive technology services, extended school year services and access to instructional materials.	District did not provide extended school year services or orientation and mobility services, depriving student of FAPE	District will provide comprehensive summer programming as compensatory education
Two IEPs questioned on implementation of the functional behavioral assessment and behavior improvement plan	Compensatory education request denied because student did not provide evidence of compensatory services to remedy past action and improved behavior did not require a behavioral plan for the second IEP	No denial of FAPE

Source: LFC Analysis of PED Data

In numerous cases, this involved additional hours of speech or similar therapies, one-one-one tutoring, a behavior intervention plan, or a facilitated IEP. In a more extreme example, the hearing officer ordered a school district to provide an additional year of eligibility to a student who was denied FAPE in his final year of high school. In all ten cases, however, it appears that injunctive relief was provided and the PED can demonstrate “*FAPE is now available to all children addressed in those reports or decisions.*”

**School districts and charter schools appear to meet local MOE requirements and have flexibility to adjust spending.** Similar to the state, school districts and charter schools must demonstrate spending the same amount or more on special education from year-to-year. However, while states are not allowed the flexibility to reduce maintenance of effort except when waived in rare circumstances, a school district or charter school is allowed to reduce its level of special education expenditures for reasons such as changes in personnel costs, decreases in enrollment, or exiting of exceptionally costly students.

Approved by the USDE, New Mexico’s current local MOE calculation is not intended to reflect the complete costs of special education. Instead, the process is designed to compare salary expenditures from year-to-year. Including additional costs, such as benefits, subjects school districts and charter schools to arbitrary fluctuations in spending beyond their control, such as the changes associated with the recent retirement swap.

***While individual school districts report spending more on special education than they receive in state funds, the overall costs appear consistent with the amount the state makes available.*** In FY10 the state made \$399 million available to school districts and charter schools for special education, while the local MOE expenditures totaled \$305 million. Although the local MOE did not include benefit costs, applying a conservative rate of 30 percent, the actual expenditures total \$396.5 million, nearly identical to the amount the state made available. Numerous school districts, however, report including benefits and additional job codes increases local special education expenditures beyond revenues the state makes available.

**Table 27. Local MOE vs. Actual Expenditures**

(in millions)

<b>District</b>	<b>Local MOE Reported Amount</b>	<b>Full Expenditure Amount (including benefits and other job codes)</b>	<b>Difference</b>
Hobbs	\$7.1	\$8	\$0.9
Santa Fe	\$13.7	\$16	\$2.7
Albuquerque	\$137	\$142	\$5

Source: LFC Files

### **Recommendations**

The Legislature should monitor the USDE's ruling on the PED's appeal, and based on that outcome, identify a method for maintaining effort that meets federal criteria while preserving the state's public school funding formula.

The PED should pursue FAPE waivers for FY11, FY12, and FY13 as well as subsequent years when the total number of special education units is less than the FY09 benchmark of 106 thousand.

**NEW MEXICO’S APPROACH TO IDENTIFYING, SERVING, AND FUNDING GIFTED SERVICES IS COSTLY AND INEFFICIENT**

**Unlike most states, New Mexico considers gifted students within its special education population.** New Mexico has included giftedness within special education since 1972, although this is not a requirement of federal special education regulations. New Mexico defines giftedness as a student “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 individualized education program (IEP) team determines that special education services are required to meet the child’s educational needs.”

Including giftedness within special education requires school districts and charter schools to dedicate a significant amount of resources to IEP preparation and meetings; in Albuquerque, alone, this amounted to 5,800 IEPs in FY13. A majority of the 235 respondents to an LFC survey spend 28 percent or more of total instructional time creating IEPs and 35 percent or more of their total time at IEP meetings. Respondents commonly noted because of the work required to complete IEPs, preparation often must occur beyond regular work hours and that paperwork is extensive, repetitive, and burdensome.

In contrast, most other states separate giftedness from special education. In Colorado, for example, school districts or charter schools are required to submit a plan to the state for meeting the needs of gifted students and receive additional funding without the full requirements surrounding an IEP.

**Based on a gifted student’s identification level, New Mexico’s funding formula allocates additional money.** In FY13, for example, each A- or B-level gifted student generated an additional \$2,500, each C-level student an additional \$3,674, and each D-level gifted student an additional \$7,347. On average, in FY13 each gifted student in New Mexico generated an additional \$2,600. By comparison, in FY13, between both state and local funds, Colorado provided \$622 per gifted student and Oklahoma applied an additional weight of 0.34 for each gifted student.

**New Mexico’s gifted identification rate is lower than the national average and neighboring states, although many charter schools exceed both the state and national averages.** In FY13, gifted students made up 4.6 percent of all kindergarten through twelfth grade students in New Mexico, compared with a national average calculated by the National Association for Gifted Children (NAGC) of 6 percent. Gifted populations vary widely across states, reaching as high as 16.6 percent in Oklahoma.

**Table 28. Gifted Populations, FY09**

State	Gifted Student Population	Total Student Population	Percent Gifted
Arizona	76,569	1,062,452	7.2%
Colorado	56,092	818,443	6.9%
Oklahoma	107,249	644,777	16.6%
Texas	355,847	4,524,844	7.9%
Utah	6,864	551,013	1.3%

Source: Davidson Institute for Talent Development

In New Mexico, 52 school districts or charter schools had more gifted students than the state average in FY13, 37 of which were charter schools and 15 were school districts. All but three of the highest 30 schools or school districts with the highest percentage of gifted students were charter schools.

Ninety-eight percent, or 14.7 thousand out of 15 thousand gifted students are A-level or B-level. C-level students make up another one and a half percent, and D-level gifted students comprise the final half percent. Six charter schools or school districts have gifted students classified as D-level, while 10 school districts have no identified gifted students and four school districts have only one identified gifted student. The largest of these 14 school districts has 500 students.

**School districts and charter schools use similar practices for identifying gifted students.** Seventy-five percent of respondents to a statewide LFC survey indicated traditional IQ assessments were the most common evaluation method used to identify gifted students. Other methods of identification used in New Mexico are the Discovering Intellectual Strengths and Capabilities while Observing Varied Ethnic Responses (DISCOVER), the Frasier Talent Assessment Profile (FTAP), and PED-approved alternative identification methods.

**IEPs are used to determine a level of service for gifted students.** Like students with disabilities, IEP teams classify gifted students as levels A, B, C, or D. Ninety-eight percent of gifted students in New Mexico are A- or B-level and most gifted students are generally taught in regular classrooms. The most common service provided to gifted students is modified curriculum, with gifted only courses or gifted-specific course material cited less frequently.

Based on statewide LFC survey data, 50 percent of gifted students spend at least 70 percent of time in a regular education setting with the instructor receiving consultation from a gifted teacher; 35 percent of gifted students spend at least 70 percent of time in the regular classroom with pullouts for therapy or other services. Finally, 74 percent of respondents indicated no gifted students receive services in a completely self-contained classroom and 65 percent indicated no gifted students spent time in a self-contained classroom with some inclusion.

**The current unit weight likely over-estimates the true cost of educating gifted students.** The PED, school districts, and charter schools do not track educational costs. Instead these entities track spending, making it difficult to identify the true cost of educating gifted students. Unless services are provided efficiently, spending likely over-estimates the cost, and cost minimization cannot be assumed if public school institutions know the state will cover the marginal cost of providing extra services (Dhuey and Lipscomb, 2013).

Gifted funding is designed to cover the additional cost of services, but the majority of gifted students receive services in the regular classroom or in advanced courses also offered to non-gifted students. For example, many schools and school districts provide dual credit courses, online courses, advanced placement courses, or honors courses for all students.

**Cost-model simulations indicate gifted students are funded beyond what it costs to provide services.** While exact costs for educating gifted students are not captured in the state’s uniform chart of accounts, this evaluation estimated the cost structures for two scenarios, a gifted only class and a pull-out.

Scenario one, a gifted only class, assumes two primary costs for educating gifted students, instruction and resources. Instructional costs are the teacher’s salary and benefits while resource costs are pupil services and instructional materials.

Including pupil services and materials, the average per-student cost in this scenario is \$3,525, less than the FY13 unit value of \$3,674. A- and B-level gifted students generate an additional \$2,500, C-level students an additional \$3,674, and D-level students \$7,347. At each level, combining the unit value with the additional gifted revenue, the amount a gifted student generates appears to exceed the educational costs.

**Table 29. Gifted Cost Differentials for a Self-Contained Class**

Level of Giftedness	Current Total Revenue	Cost Differences
Level A/B	\$6,173	-\$2,648
Level C	\$7,346	-\$3,821
Level D	\$11,020	-\$7,495

Source: LFC Analysis

Scenario two is a departmentalized or pull-out model. In this model, students spend a majority of time in the regular classroom, receiving additional enrichment through a daily or weekly pull-out class. At 28 students per week, school districts receive the amount of additional revenue equal to costs, and receive excess revenue beyond 28 students.

**Table 30. Pull-Out Model Cost Differentials**

Number of Students	Additional Revenue Generated (0.7 Unit Weight)	Cost Differential
24	\$60,000	-\$6,983
30	\$75,000	\$8017
32	\$80,000	\$13,017
36	\$90,000	\$23,017
40	\$100,000	\$33,017
42	\$105,000	\$38,017
48	\$120,000	\$53,017
56	\$140,000	\$73,017

Source: LFC Analysis

**Reducing the additional unit weight more accurately reflects the costs associated with educating gifted students.** In both the self-contained as well as the pull-out scenarios, the state is likely over-funding gifted student education. It appears with each teacher serving 37 students, the additional costs could be fully funded with a gifted unit value of 0.5, or \$1,837 per gifted student. This means a teacher would need to see approximately four groups of five students at least three days a week and three groups of six students the other two days a week.

**Table 31. Pull-Out Model Revenues with a Unit Differential of 0.5**

Number of Students	Additional Revenue Generated	Cost Differential (Cost of Pull-Out: \$66,983)
24	\$44,088	-\$22,895
30	\$55,110	-\$11,573
32	\$58,784	-\$8,199
36	\$66,132	-\$851
40	\$73,480	\$6,497
42	\$77,154	\$10,171
48	\$88,176	\$21,193
56	\$102,872	\$35,889

Source: LFC Analysis

Finally, removing the paperwork burdens associated with IEPs could further enable school districts and charter schools to reach this instructional ratio.

**Census-based funding will create incentives to more accurately identify and serve gifted students.** As with special education, a census-based model limits the link between identification and funding. This method works by taking an average measure of the gifted population and applying it to each school's population to identify the number of funded gifted students. A census-based approach increases incentives to accurately identify gifted students by limiting the link between funding and the number of students. Again, because of the need for a large enough sample size to improve the evenness of distribution, analysis of this approach is only applied to charter schools and school districts with more than 500 students.

**Given New Mexico's average gifted identification rate of 4.6 percent, the analysis applies a gifted census rate of 5 percent.** At higher census rates, such as the national average of 6 percent, many school districts and charter schools receive additional units, resulting in an increase in gifted funding of \$11 million compared with FY13 expenditures. Applying the statewide average of 4.6 percent, more school districts experience a decline in their fundable gifted population, increasing hold harmless costs.

Using a 5 percent census rate and a 0.5 unit weight for school districts and charter schools greater than 500 students, overall gifted units and spending decrease. The hold harmless cost reflects the amount to ensure school districts with gifted populations greater than 5 percent do not lose FY13 actual funding amounts.

**Table 32. Gifted Census-Based, Single-Weight Scenario**

(in millions)

<b>Scenario</b>	<b>Gifted Units</b>	<b>Gifted Spending (in millions)</b>	<b>Hold Harmless Cost</b>	<b>Total</b>
Current	9,758	\$34.9	\$0	\$34.9
5% Census-Based	7,596	\$27.9	\$8.1	\$36

Source: LFC Analysis of Final Funded Run

Albuquerque, Las Cruces, Moriarty, and Los Alamos experience the largest losses under this scenario. To hold these and other school districts harmless would have required expending an additional \$1.1 million in FY13. In contrast, school districts under-identify gifted students, such as Gadsden, Santa Fe, Deming, Belen, and Espanola, would receive increased funding to better serve gifted populations.

### **Recommendations**

The Legislature should:

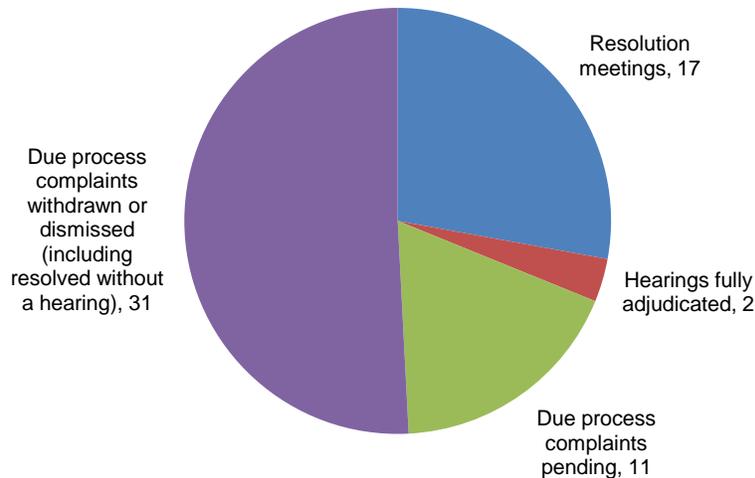
- Revise statute to separate giftedness from special education; and
- Revise statute to a census-based, single-weight approach for funding gifted units that more accurately reflects costs.

# THE PED CAN IMPROVE SPECIAL EDUCATION OUTCOMES AND SAVE MONEY BY PROLIFERATING BEST PRACTICES ACROSS THE STATE

**Limiting the need for due process hearings and containing the time required will help school districts and charter schools reduce non-instructional special education expenditures.** Currently, school districts and charter schools bear the expense of special education due process hearings, even in favorable rulings. Due process hearings can be costly to school districts or charter schools, not only in the dollar amount spent, but the staff time dedicated to resolving the complaint. The school district or charter school is responsible for its own legal defense costs, the hearing officers' fees, the court reporter fees, and incidental expenses such as providing a room for the hearing, paying substitute teachers to fill in for the testifying teachers, and the preparation and time of other school staff witnesses required to testify at the hearing. Hearings are currently not limited in length and often last a week or longer.

In FY11, 44 due process complaints were filed statewide with the PED. Albuquerque, the school district with the largest special education population and most due process hearings, reported spending nearly \$234 thousand in FY13 on attorney fees, court reporters, and hearing officers; similarly, Rio Rancho reported spending \$27 thousand on one due process hearing in FY13. For school districts, the due process hearing expense may exceed the cost of the remedy being requested for the student, leading the school district to settle the due process complaint without a hearing because it is less expensive and burdensome.

**Chart 12. Total Number of Due Process Complaints Filed in New Mexico, FY11**



Source: PED

***State administrative code, not federal regulation, places the expense of the due process hearings on charter schools and school districts.*** By rule, public agencies are responsible for the administrative costs associated with a due process hearing and any expenses related to the preparation of the complete record of the proceedings for filing with a reviewing federal or state court in a civil action, as well as its own legal fees or other costs. While IDEA funds cannot be used to pay attorney's fees, the state is not required to shift all expenses to school districts or charters.

***The state could better promote alternatives to the dispute resolution hearing process to parents and students to avoid unnecessary expenses.*** School district staff expressed concerns that parents were sometimes unaware of the alternatives to a due process hearing and filed the paperwork before addressing concerns with the school district. Other options include alternative dispute resolution, an opportunity for parents and school districts or charters to reach a mutual agreement in an informal setting. This option allows school districts or charters time to work with

parents to resolve the conflict quickly, thus allowing both parties to control the outcome and avoid the cost of a hearing. Within 15 days of a due process hearing being filed, school districts must offer a resolution session, including staff who know the student, school district administration, and the parents. Parents and the school district staff can waive the resolution session and proceed with mediation at the state's expense. If the issues raised in the due process hearing request are resolved, the parties develop a legally binding agreement.

Another option is a facilitated IEP (FIEP) meeting. If the dispute is resolved through an FIEP or mediation, the due process hearing complaint is withdrawn.

**Purchasing a statewide IEP system could save money and increase consistency.** Many school districts and charters use software such as TIENet or Edupoint to generate IEPs and electronically transfer the data into the state's student teacher accountability reporting system (STARS). Based on a sample of school districts and charters, depending on the number of students and the complexity of the system, IEP software costs per student range from \$6 to \$18 annually per student.

By acting as the agent to collectively procure a statewide IEP system, the PED could increase efficiency and cost savings associated with economies of scale and reduce information and transaction costs. One estimate for a customizable statewide system including identification paperwork, IEPs, a transfer process, Section 504 documentations, evaluation and reevaluation information, and a special process for preschool identification, is \$8 per student, a 30 percent reduction from the estimated current state average. Additionally, consolidation improves data consistency, allowing the PED to better monitor program quality.

In 2005, the Bureau of Exceptional Education and Students Services at the Florida Department of Education facilitated a task force that recommended the implementation of a statewide IEP. Among the benefits of the standardization of a statewide IEP format, the Florida online IEP system allows for automatic pre-population of some portions of the IEP from existing state and local data systems, such as student demographic information and assessment data. Students' IEPs transfer with students who move among the state's schools, eliminating the lag time associated with student movement or having to create an entirely new IEP. Teachers and parents have a consistent IEP format regardless of what school the student attends and the consistent format aids the state's efforts to assist school districts in training and compliance monitoring. For similar reasons, numerous other states, including New York, Connecticut, and Oregon, have adopted statewide IEP systems.

**School districts and charters could benefit from more state-level resources to help improve special education opportunities for students and aid in ensuring the proper amount of effort is being maintained at the local level.** School districts and charters report communication from the PED on special education is generally about changes in regulations or mandates or about noncompliance after the department has reviewed the information sent through STARS. Communication occurs at statewide meetings, by email, through webinars, and letters to superintendents and special education directors. In the LFC survey, however, school district staff requested more opportunities to collaborate and network with colleagues as well as increased training around student assistance teams and RtI.

The state of Washington provides special education services to 124 thousand students annually across 295 school districts. The special education division maintains a number of resources for school districts on its website, including RtI training materials and modules, evaluations of interventions, and funding information and resources.

***In an effort to ensure the school districts and charters are maintaining effort each year toward Washington's IDEA-B funding, the state also maintains a MOE test spreadsheet to be completed by special education directors and business managers.*** The template is provided as a tool to assist school districts in planning and managing local MOE. School districts and charters enter expenditure data into the worksheet and embedded formula calculations inform the school district of its MOE status (**Appendix E**).

**New Mexico’s schools are developing and using innovative and successful homegrown practices the PED could share and replicate across the state.** Effective methods have been developed by schools to intensively use student data to provide pre-referral services, identify and place special education students with better accuracy, determine service needs and make appropriate staffing decisions, and validate IEP team decisions.

For example, at Puesta del Sol Elementary School in Rio Rancho, 13 percent of students qualify for special education and 75 percent receive a free or reduced-price lunch. Grade-level teams inclusive of special education leadership and staff developed a process by which teachers and specialists conduct a school-wide data study three times each year. During the study, the teachers look at student proficiency and growth in the areas of math and reading (**Appendix G**).

The Puesta del Sol team created a uniform electronic data-entry system that is easy for teachers to access use to make meaningful instructional decisions. Students who are not making expected progress are then placed on an individual plan for student success (IPSS) or are referred to the student assistance team (SAT). The SAT meets weekly, so teachers do not have to wait for a data study to initiate intervention services. Using the information, staff can easily audit a student’s longitudinal data to make appropriate recommendations. In SY12, Puesta del Sol Elementary School received a school grade of “C,” improving to a “B” in SY13. Similarly, Monte Vista Elementary School in Las Cruces uses visual data to demonstrate student growth and areas for improvement.

**Figure 5. Monte Vista Elementary Data Study, FY13**



**Contractual services, a large cost-driver within special education, could be contained with adjustments to salary schedules for related services personnel.** Most school districts and charters schools of all sizes across the state contract for specialized therapists and diagnosticians. School districts and charters are limited in their ability to hire these staff in-house because of supply shortages as well as competition with other employers offering hiring salaries.

Most school districts and charters pay related services personnel on the three-tiered teaching salary schedule of \$30 thousand, \$40 thousand, and \$50 thousand. Using statewide data, this equates to a rate of \$49 per hour, including benefits. Costs for school districts to contract with vendors for identical services, however, are higher. For example, in FY13, Tucumcari paid \$50 per hour for salaries and benefits of in-house therapists, compared with \$110 per hour for similar contract services. Also, based upon its FY13 price agreements with eight vendors, Rio Rancho paid an average of \$67 per hour for these specialized services.

In response, Hobbs school district revised its salary schedules to offer more competitive salaries for related services personnel while still saving compared with contract costs. In FY12, Hobbs spent \$960 thousand in special education contract services but reduced that amount to \$283 thousand in FY13.

## **Recommendations**

The PED should:

- Revise the dispute resolution administrative code so school districts are not solely responsible for the entire cost of due process hearings for which they are not found liable;
- Create administrative rule or set guidelines by which the time dedicated to a due process hearing is limited in an effort to contain school district and charter expenses;
- Clearly promote alternatives to the due process hearing through educational materials on the PED website, at school locations, and through special education advocacy groups;
- Implement statewide special education systems, such as IEP software, to reduce costs and improve consistency; and
- Provide additional opportunities to proliferate successful practices, such as use of student data to drive decision-making, across schools.

<b>AGENCY RESPONSE</b>
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The Public Education Department's response will be inserted following the August 21, 2013 hearing.



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HANNA SKANDERA  
SECRETARY OF EDUCATION

SUSANA MARTINEZ  
Governor

August 21, 2013

**MEMORANDUM**

**TO:** David Abbey, Director, Legislative Finance Committee

**FROM:** Hanna Skandera, Secretary, Public Education Department 

**RE:** **SPECIAL EDUCATION EVALUATION**

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Thank you for the opportunity to respond to the draft evaluation report on special education. Please accept my compliments to your staff for their professionalism and collaborative approach throughout the evaluation process. As always, the Public Education Department (PED) is committed to continuous quality improvement, best practices, and positively impacting outcomes for all of our students in New Mexico. By improving efficiencies in the way New Mexico funds special education and ensuring our students with disabilities receive services appropriate to their individual needs, we hope to address low graduation rates, prepare students for college and career, and enhance their opportunities for success.

Recent issues related to special education funding highlight the uniqueness of New Mexico's funding formula, particularly with regard to how students are funded when their level of required intervention is reduced or they exit special education services. This piece of the formula incentivizes the wrong set of outcomes and could result in students remaining in special education services longer than necessary.

The report also addresses New Mexico's special education maintenance of effort (MOE) and makes recommendations as to how the state might address this going forward. New Mexico has requested a hearing to contest a number of issues raised by the U.S. Department of Education and its preliminary ruling of a waiver request submitted for an MOE shortfall for fiscal year 2011 and the state's exercise of provisions contained in 34 CFR § 300.230 and will not comment specifically on these issues so as not to prejudice the state's position at hearing.

On all other issues, the PED looks forward to working with stakeholders to ensure the implementation of the funding formula is consistent, ensures the individual needs of students are met and that student success remains the primary focus. In FY12, the PED conducted a number of audits of school districts in order to ensure that special education units were being claimed accurately and that districts received the funding to which they were entitled to provide a free and appropriate public education to students with disabilities. One outcome of these audits was a realignment of units claimed that appear to more accurately reflect the actual need of districts. The PED continues to provide oversight of districts through the audit process to ensure special education units are claimed accurately.

The exit conference between the Legislative Finance Committee (LFC) and PED was held Friday, August 2, 2013, and the draft report was discussed. The following is the PED's response to the draft report.

## BACKGROUND

The background section does a good job of setting up the report, but the analysis of some data is inconsistent, does not identify key milestones and at times seeks to find reasons to explain failures when the data makes a different point. The implication noted in the report that higher funding levels are responsible for increased student proficiency, discounts the effect of highly effective teachers and leaders, accountability and other external factors. While students with disabilities continue to underperform their general education peers in single year static comparisons, the relative growth of this population over time is remarkable. It is significant to note the recent upsurge in gains for students with disabilities; for example, the graduation rate for students with disabilities improved from 47 percent in FY11 to 55.7 percent in FY12, an increase of 8.7 percentage points, one of the largest increases of any subgroup. In addition, gains in graduation and proficiency rates were well above those of other subgroups. It is indicative of a renewed focus on students that have traditionally been left behind and employing new strategies to ensure success. More money is not always the answer. High expectations coupled with effective teaching and a renewed focus on individual students is demonstrating success and should be celebrated and supported.

This report places a specific focus on revising the funding mechanism, specifically with regard to establishing a census-based rate to be used for funding within the funding formula. However, we need to be cautious that we don't have a "reverse incentive" where, through the census-based methodology, districts and charter schools actually under-identify students in order to take advantage of a census rate greater than what is needed to educate this population of student.

It is important to note that the individualized education program (IEP) process is a local responsibility of the multi-disciplinary team assembled to ensure the individual needs of every identified student with a disability are addressed. Care needs to be taken to protect the integrity of this process.

The federal Individual with Disabilities Education Act (IDEA) regulations (34 CFR § 300.34) define related services as “transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education.” The IDEA regulations and state special education rules define the specific related (ancillary) services. The provision of a related service is considered a modification to the student’s program and should be calculated as part of the student’s overall program. Figure 1 is an excerpt from the state’s recommended IEP form, available to all districts and charter schools, which includes related services as part of the student’s overall program. When the IDEA was reauthorized, states were required to develop a state-recommend IEP form and New Mexico has complied. In the most recent verification visit from the Office of Special Education Programs (OSEP) in October 2011, the form was reviewed and no concerns were noted. Specific instructions on how to calculate the schedule of services for each individual student with a disability is located in the PED’s technical assistance manual, *Developing Quality IEPs*.

## FINDINGS AND RECOMMENDATIONS

### **Moving to census-based funding in New Mexico decreases incentives to over-identify students and allows districts and charters to provide intervention services to decrease special education identification rates.**

While the finding focuses on decreasing incentives to over-identify students it may serve to incentivize districts to under-identify students as well. Caution needs to be taken to ensure that by addressing one concern others are not created. The federal IDEA regulations regarding the least restrictive environment (34 CFR § 300.114) requires that students with disabilities are educated, to the maximum extent possible, with students who are not disabled. The least restrictive environment is determined, at least annually, by the student’s IEP team. The team must always consider and document a lesser restrictive placement, through a series of pointed questions on the IEP form, before moving the student to a more restrictive setting. The IDEA regulations (34 CFR § 300.115) require school districts to provide a continuum of alternative placements. A census-based model could interfere with the integrity of the IEP process and limit educational settings for students with disabilities.

With regard to over-identifying students, the federal IDEA regulations (34 CFR §§ 300.173 and 300.646) require states to annually examine data for the over-identification of students as students with disabilities by racial and ethnic groups. The law provides specific consequences for those districts that over-identify students, and the state has a specific procedure in place to determine if a district has violated the law. OSEP approved the state’s procedure during the October 2011 verification visit.

### **The state can meet its federal maintenance of effort requirements within the current formula and funding level.**

As the committee is no doubt aware, New Mexico’s primary method for funding K–12 education is extremely unique. For many years prior to the most recent fiscal recession, this funding

method has proved sufficient for the federal government and the requirements under the

maintenance of effort. Recently, the U.S. Department of Education has provided inconsistent guidance to New Mexico in this crucial area affecting thousands of students. Additionally, parties within the state have intentionally delivered data to the U.S Department of Education with an explicit effort to exclude the PED and undermine the State's efforts. The PED is proud of the collaborative effort produced by both the department and LFC to this point. However, efforts to confuse and mislead in this crucial situation for political gain should be recognized for the damaging role it can play in hurting funding to our students.

**New Mexico has a special education high-cost fund to assist districts and charters with students with exceptionally-expensive needs.**

The federal IDEA regulations (34 CFR § 300.704(c)) allow states the option to reserve 10 percent of the state's state-directed activities funds in order to assist school districts and charter schools in meeting the needs of students with disabilities who have high needs. The strict criterion for the distribution of these is defined in the regulation. In order to receive these funds, school districts and charter schools must provide documentation and information that meets the criteria set forth in the regulation and state procedure. It is the school district's or charter school's responsibility for the provision of a free appropriate public education (FAPE). The awarding of funds is determined by a committee of school district and state agency staff. This optional fund is provided as a possible safety net to prevent costly formal dispute resolution such as due process hearings.

**Unlike most states, New Mexico considers students who are gifted within its special education population.**

The IDEA does not recognize those students whose only identified exceptionally is giftedness (gifted only) as requiring special education services. However, according to New Mexico rules, (Subsection F (1) (a) of 6.31.2.12 NMAC), students who are gifted only receive special education services through the state. The report addresses related service costs and references students who are gifted only. Related services are a provision of a FAPE under the IDEA and are needed in order for the student to benefit from the specially-designed instruction in order to meet the unique needs of the student with a disability. This provision only applies to students who are gifted and considered disabled under the IDEA.

**Limiting the need for due process hearing and containing the time required will help districts and charters reduce non-instructional special education expenditures.**

Due process hearings can be filed alleging a denial of FAPE of not more than two years. Limiting the amount of time for a due process hearing may be perceived as a denial of due process rights for both parents and school districts. Once a due process hearing officer is assigned to the case, the PED is not allowed to interfere in the proceedings. According to Subsection I (9) of 6.31.2.13 NMAC, "Hearing Officers shall conduct proceedings under these rules with due regard for the costs and other burdens of due process proceedings for public

agencies, parents and students. In that regard, hearing officers shall strive to maintain a reasonable balance between affording parties a fair opportunity to vindicate their IDEA rights and the financial and human costs of the proceedings to all concerned. Accordingly, each hearing officer shall exercise such control over the parties, proceedings and the hearing officer's own practices as he deems appropriate to further those ends under the circumstances of each case." Hearing Officers are trained annually and the state's due process hearing manual includes information on how to conduct a hearing.

The federal IDEA regulations (34 CFR § 300.517) and state special education rules address attorney's fees as follows: "In any action or proceeding brought under the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the prevailing party who is the parent of a child with a disability; to a prevailing party who is a school district against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or to a prevailing school district against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation."

The PED provides fact sheets for parents in Spanish and English on alternative dispute resolution options. The fact sheets are on the PED's website and are distributed by school districts and New Mexico's parent and training information centers, Parents Reaching Out and Education for Parents of Indian Children with Special Needs. Both parent centers are funded by the PED to provide several trainings during the year for parents of students with disabilities. New Mexico's procedural safeguard notice, available in Spanish, English and Diné (written and audio), provides parents with alternative dispute resolution options including informal resolution to mediation at state expense. The state's complaint form and due process hearing request forms both include an explanation of the alternative dispute options and asks parents if they are interested in participating in one of the options. When the acknowledgement letters are sent to parents, the fact sheets and request form for alternative dispute resolution are included in an attempt to encourage the parents to select these options instead of a formal complaint or due process hearing. All of these options are available at state expense. School district staff are aware of these options and must take a proactive role in resolving special education disputes at the lowest level possible since often times, the state is unaware or parental concerns at the local level.

The state provides a full time staff member dedicated to promoting alternative dispute resolution options. The individual also serves as a parent liaison between school districts and parents for the sole purpose of resolving disputes at an informal level.

**Purchasing a statewide IEP system could save money and increase consistency.**

In February 2013, at the annual special education stakeholder's meeting, it was recommended that the state develop an IEP system. Three Hundred Thousand Dollars (\$300,000.00) of IDEA funds has been set aside this year to begin the development of an IEP system in STARS.

**Districts and charters could benefit from more state-level resources to help improve special education opportunities for students and aid in ensuring the proper amount of effort is being maintained at the local level.**

The Special Education Bureau provides monthly webinars on the third Wednesday of the month which are archived and available for review at any time on the REC 9 website. Three special education directors' academies are held each year, plus one academy for new special education directors. Academies are held in September, January, and April (virtual academy). Additionally, District staff are surveyed annually on professional development needs and presentations are provided by state staff and school district staff. Once the training has occurred, it is the school district's responsibility to train its staff including staff of local charter schools. The IDEA regulations (34 CFR § 200.207) requires school districts to annually ensure that all personnel necessary to carry out the IDEA are appropriately and adequately prepared. This assurance is required in order for a school district to receive IDEA B funds and it is their responsibility to meet it. Further, The Special Education Bureau website includes 14 technical manuals posted for school staff with additional links to other PED bureaus for information on state-level assessments and the state's Response to Intervention (RtI) Framework <http://ped.state.nm.us/RtI/index.html>.

The PED has also developed comprehensive professional development modules, which are located on the REC 9 website, in the areas of Dyslexia and the assessment of students with disabilities. The assessment modules include specific guidance and checklists on how to assess all of the IDEA disability categories and developmental delay.

The PED also provides over \$3 million in funding for the Regional Education Cooperatives (RECs) to provide technical assistance, support and training for member districts.

Further, the PED has set aside IDEA funds and is working with the OBMS contractor to develop reports that will automate the state's local MOE process and allow school districts to track and monitor funds expended to provide services to special needs students.

In conclusion, the students and parents of New Mexico expect a state government that can put aside political differences when it comes to ensuring the continued success of every student. The PED continues, and will continue, to stand ready to work with all those who are ready to put our students first.

cc: Susana Martinez, Governor, State of New Mexico  
Representative Luciano "Lucky" Varela, Chair, Legislative Finance Committee  
Senator John Arthur Smith, Vice Chair, Legislative Finance Committee  
Hipolito J. Aguilar, Deputy Secretary, Finance and Operations  
Leighann Lenti, Deputy Secretary, Policy and Programs

## APPENDIX A: PROGRAM EVALUATION SCOPE AND METHODOLOGY

### **Evaluation Objectives.**

- Follow-up on previous LFC evaluations of special education.
- Analyze special education funding mechanisms and spending patterns.
- Review performance and program outcomes, including efforts to improve quality of special education services.

### **Scope and Methodology.**

- Met with LFC, Legislative Education Study Committee (LESC), Legislative Council Service (LCS), and State Auditor staff.
- Reviewed best practices in special education identification.
- Compared New Mexico's special education funding mechanism with other states.
- Visited selected school districts and charters to observe special education implementation at the central office and site-based level.
- Electronically surveyed special education teachers, special education directors, student assistance team chairs, and principals.
- Analyzed PED Final Funded Run data as well as break-out of gifted only and students with disabilities units.
- Reviewed applicable laws and regulations; LFC file documents, including the 2003 audit of special education programs; relevant performance reviews from other states; and performance measures.

### **Evaluation Team.**

Michael Weinberg, Lead Program Evaluator  
Valerie Crespín-Trujillo, Program Evaluator  
Andrew Rauch, Program Evaluator

**Authority for Evaluation.** LFC is authorized under the provisions of Section 2-5-3 NMSA 1978 to examine laws governing the finances and operations of departments, agencies, and institutions of New Mexico and all of its political subdivisions; the effects of laws on the proper functioning of these governmental units; and the policies and costs. LFC is also authorized to make recommendations for change to the Legislature. In furtherance of its statutory responsibility, LFC may conduct inquiries into specific transactions affecting the operating policies and cost of governmental units and their compliance with state laws.

**Exit Conferences.** The contents of this report were discussed with Secretary-designate Skandera, senior PED staff, Legislative Education Study Committee staff, Legislative Council Services staff, and staff from the State Auditor's Office on August 2, 2013.

**Report Distribution.** This report is intended for the information of the Office of the Governor; [insert agencies]; Office of the State Auditor; and the Legislative Finance Committee. This restriction is not intended to limit distribution of this report, which is a matter of public record.



Charles Sallee  
Deputy Director for Program Evaluation

## APPENDIX B: SPECIAL EDUCATION PERFORMANCE INDICATORS, FY12

***The state is not meeting its special education graduation rate target.*** According to the PED’s Annual Special Education Performance Audit for FY11, the number of students with disabilities graduating high school in four years with a standard diploma fell short of the state’s target of 69 percent. Disabled students with IEPs graduated at a rate of 50.5 percent during the 2012 school year, almost 20 percentage points lower than the total student cohort graduation rate of 70.3 percent. For the 2012 school year, new calculations were used to generate the students with disabilities (SWD) graduation rate. Graduating students with disabilities who were not previously categorized as SWD during prior screenings were identified and added to the total. Better identification increased the number of disabled students graduating with the Standard Option in 2012, and it rectified any undercounting of disabled students. Special legislation was passed that did not require 2012 cohort members to take an exit exam in order to graduate. Schools were encouraged to help students complete the necessary requirements and take advantage of this opportunity. These two actions increased the number of SWD who graduated in FY11 relative to the constant base of students with disabilities that entered high school four years earlier. These new calculations caused the PED to revise their baseline graduation rate down to 50.5 percent. However, the PED was unable to report changes from the previous year due to the new calculations. In California, about 60 percent of students with disabilities graduate on time. New Mexico’s target rate is above that, but for the 2012 school year, 60 percent of SWD did not graduate on time. A lack of historical information makes it difficult to compare to California’s 60 percent graduation rate over time. Going forward, the PED has increased the target graduation rate to 71.8 percent.

***The state is not meeting its special education target dropout rate.*** Special education students with IEPs dropped out at a faster rate than the statewide average for the 2012 school year. The overall dropout rate was 4.7 percent versus 6.5 percent for students with IEPs. The state’s target dropout rate was 6.1 percent for SWD. Although the target was not met, there was a 1 percent decrease in the dropout rate from the previous year.

***Special education students are performing poorly on Standards Based Assessments (SBA).*** Special education students performed below the SBA targets. For high school students with disabilities, the PED identified target proficiency rates of 66 percent in math and 75 percent in reading. Only 15.3 percent and 25.1 percent of students with IEPs were proficient in math and reading respectively. However, reading proficiency increased by over 7 percent from the previous school year. There was a slight decline in math proficiency of .16 percent from the 2011 school year. After receiving the Elementary and Secondary Education Act (ESEA) waiver, the PED revised their performance targets to 50 percent for math and 56.7 percent for reading.

**Table 34. IEP Student State Assessment Performance, FY11**

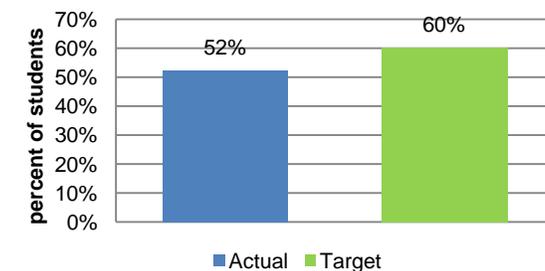
State Assessment Subject	2011-2012 Target	2011-2012 Actual	Difference Between 2011-2012 and 2010-2011
Math	66.0%	15.3%	-0.2%
Reading	75.0%	25.1%	7.3%

Source: PED SEB Annual Performance Audit

***Disabled student participation on the SBAs is exceeding the target rate.*** As outlined in a 2003 LFC report on special education, the SWD participation on the SBA is key monitoring indicator. Despite poor performance, disabled students with IEPs surpassed the participation targets outlined by the state. Over 98 percent of students with disabilities took the math and reading assessments. However, there was a slight decline in participation rates from the previous year. Participation on the math exam decreased by .02 percent, and there was a decline of .16 percent in the percentage of students who took the reading exam. The target participation rates of 95 percent were not revised.

**The results are mixed when it comes to disabled students receiving services in the least restrictive environment.** Another indicator identified in the 2003 LFC report was time spent receiving services in the regular classroom. The national average is that 60 percent of SWDs spend at least 80 percent of their day receiving instructions and services in the regular classroom. For the 2012 school year, the PED's target was the national average of 60 percent. This target was not met. Of students with IEPs, 52.4 percent received 80 percent of their daily services in the regular classroom. The rate decreased 2011 school year, but the percentage of students with IEPs who have met this criterion has held between 52 percent and 55 percent over the last five years. This target has not been revised.

**Figure 6. Students Receiving 80 percent of Daily Services in the Regular Classroom**



Source: PED SEB Annual Performance Audit

A similar indicator looks at the rate of students with IEPs who spend less than 40 percent of their day receiving services in the regular classroom. The state did not meet its target of 17 percent. Of students with IEPs, 22.6 percent of students spent less than 40 percent of their day being served in a regular classroom. The percentage spending less than 40 percent of their day receiving services in the regular classroom has increased by roughly 2 percent since the 2008 school year. Despite the increase, the target for this indicator has been revised down to 11 percent for the 2013 school year.

**Disabled student postsecondary outcomes are exceeding the target rate.** An important indicator for SWDs is postsecondary outcomes. This indicator is a measure of success for SWDs after the end of secondary education, and it measures the rate at which these students are enrolled in postsecondary education, job training programs, competitively employed, or engaged in some other employment. Other postsecondary outcomes are tracked by the PED, but this indicator is the most comprehensive. The PED's target for this outcome measure was 79.5 percent. The target was met and exceeded according to the calculations in the annual performance audit. Of students with disabilities, 81.3 percent of students were enrolled in postsecondary education, participating in a job training program, or were employed competitively or otherwise. When compared to California, New Mexico is performing well with regards to postsecondary outcomes. In California, roughly 66 percent of students with disabilities are employed or enrolled in postsecondary education, as compared to over 81 percent in New Mexico. For the 2013 school year, the PED has revised the postsecondary outcome target up to 80 percent.

It should be noted that the 81 percent reported in this performance measure is based off of survey data. Of the 2,780 students who exited secondary education in 2012, only 1,456 responded to the survey. Roughly half of the SWD population who exited secondary education programs in 2012 did not respond to the survey. Therefore, we cannot be certain how many students with disabilities who exited secondary education in 2012 are truly enrolled in postsecondary education, participating in a job training program, or are employed.

## APPENDIX C: SPECIAL EDUCATION IDENTIFICATION DATA

District/ Charter	Total Mem	Total sped Mem (A-D, 3Y/4Y)	% Sped	Total Gifted Mem	% Gifted
ACAD FOR TECH & CLASSICS	357	51.0	14%	43	12%
ACADEMIA DE LENGUA Y CULTURA	77.5	7.1	9%	4	5%
ACADEMY OF TRADES & TECH ST. CHARTER (APS)	117.5	15.4	13%	0	0%
ACE (APS)	208.5	29.0	14%	3	1%
ALAMOGORDO	6098.5	1119.9	18%	269.5	4%
ALB TALENT DEV SECONDARY	139	14.1	10%	2	1%
ALBUQUERQUE	86574	13436.7	16%	5104.5	6%
ALBUQUERQUE INSTI. MATH & SCI. (AIMS) ST. (APS)	295	2.5	1%	100	34%
ALBUQUERQUE SCHOOL OF EXCELLENCE ST. CHAR (APS)	290	17.8	6%	21	7%
ALBUQUERQUE SIGN LANGUAGE ST. CHARTER (APS)	72	37.1	52%	1.5	2%
ALDO LEOPOLD ST. CHARTER (SILVER CITY)	109	16.3	15%	5	5%
ALICE KING COMMUNITY SCHOOL	323	40.2	12%	8.5	3%
ALMA D' ARTE STATE CHARTER (LAS CRUCES)	186.5	22.2	12%	13	7%
AMY BIEHL ST. CHARTER (APS)	289	56.9	20%	16	6%
ANANSI CHARTER	111.5	16.2	15%	15.5	14%
ANIMAS	208.5	42.6	20%	10	5%
ANTHONY CHARTER	83.5	7.6	9%	6	7%
ARTESIA	3570	541.1	15%	92.5	3%
ASK ACADEMY ST. CHARTER (RIO RANCHO)	186.5	13.3	7%	4.5	2%
AZTEC	3162.5	527.6	17%	127.5	4%
BATAAN MILITARY ACADEMY	123.5	14.1	11%	1	1%
BELEN	4419	771.4	18%	74	2%
BERNALILLO	3040.5	514.4	17%	58	2%
BLOOMFIELD	2986.5	523.0	18%	151	5%
CAPITAN	496.5	51.1	10%	3	1%
CARINOS DE LOS NINOS	250.5	35.4	14%	0	0%
CARLSBAD	5771	1081.4	19%	273.5	5%
CARRIZOZO	145.5	24.4	17%	1	1%
CENTRAL CONS.	6142.5	1112.8	18%	381.5	6%
CESAR CHAVEZ COMM. ST. CHARTER (APS)	188	28.4	15%	1	1%
CHAMA VALLEY	373	72.6	20%	7	2%
CHRISTINE DUNCAN COMMUNITY	126	22.4	18%	0	0%
CIEN AGUAS INTERNATIONAL ST. CHARTER (APS)	224	10.3	5%	16.5	7%
CIMARRON	323	47.3	15%	2	1%
CLAYTON	532.5	78.7	15%	0	0%
CLOUDCROFT	386.5	54.0	14%	27.5	7%
CLOVIS	8381.5	1165.4	14%	452	5%
COBRE CONS.	1260	195.0	16%	1.5	0%

District/ Charter	Total Mem	Total sped Mem (A-D, 3Y/4Y)	% Sped	Total Gifted Mem	% Gifted
CORAL COMMUNITY (APS)	45	8.0	18%	4	9%
CORONA	76	7.5	10%	5	7%
CORRALES INTERNATIONAL	204.5	30.1	15%	14	7%
COTTONWOOD CHARTER	170	29.0	17%	14	8%
COTTONWOOD CLASSICAL ST. CHARTER (APS)	444	25.6	6%	77	17%
CREATIVE ED. PREP INST #1 ST. CHARTER (APS)	180.5	19.0	11%	3	2%
CUBA	549	94.7	17%	5	1%
DEMING	5153.5	680.5	13%	84	2%
DEMING CESAR CHAVEZ	152.5	9.0	6%	0	0%
DES MOINES	81	14.8	18%	0	0%
DEXTER	983.5	160.0	16%	41	4%
DIGITAL ARTS & TECH ACADEMY	315.5	23.5	7%	10	3%
DORA	232	52.4	23%	7.5	3%
DULCE	695.5	107.5	16%	4	1%
EAST MOUNTAIN ST. CHARTER (APS)	365.5	34.4	9%	63.5	17%
EL CAMINO REAL	415.5	65.2	16%	10	2%
ELIDA	137	21.0	15%	4	3%
ESPAÑOLA	4063	530.8	13%	21	1%
ESTANCIA	833	168.0	20%	26.5	3%
ESTANCIA VALLEY (MORIARTY)	293	24.2	8%	25	9%
EUNICE	601.5	80.8	13%	3	1%
FARMINGTON	10490	1455.3	14%	668.5	6%
FLOYD	214.5	45.5	21%	0	0%
FT. SUMNER	304.5	51.0	17%	27	9%
GADSDEN	13735.5	1911.0	14%	243.5	2%
GALLUP	11483.5	1502.8	13%	459	4%
GILBERT L. SENA STATE CHARTER (APS)	174	15.2	9%	1	1%
GORDON BERNELL	431.5	19.3	5%	1	0%
GRADY	97.5	18.5	19%	0	0%
GRANTS	3490.5	607.3	17%	72.5	2%
HAGERMAN	435	82.3	19%	1	0%
HATCH	1289.5	145.4	11%	6	1%
HOBBS	8540.5	970.0	11%	220.5	3%
HONDO	157.5	18.9	12%	4	3%
HORIZON ACADEMY WEST ST. CHARTER (APS)	430.5	35.2	8%	14	3%
HOUSE	94	11.8	13%	1	1%
INT'L SCHOOL MESA DEL SOL ST. CHARTER (APS)	202.5	13.4	7%	5	3%
J. PAUL TAYLOR ACADEMY (LAS CRUCES)	173	23.0	13%	21	12%
JAL	363	60.4	17%	6	2%
JEFFERSON MONT. ACAD.	165.5	23.7	14%	19.5	12%
JEMEZ MOUNTAIN	280.5	39.8	14%	1	0%

District/ Charter	Total Mem	Total sped Mem (A-D, 3Y/4Y)	% Sped	Total Gifted Mem	% Gifted
JEMEZ VALLEY	350	49.1	14%	6	2%
LA ACADEMIA DE ESPERANZA	321	96.1	30%	2.5	1%
LA ACADEMIA DOLORES HUERTA	125	15.0	12%	8	6%
LA PROMESA ST. CHARTER (APS)	251.5	25.2	10%	1	0%
LA RESOLANA LEADERSHIP (APS)	66	19.9	30%	0.5	1%
LA TIERRA MONTESSORI (ESPANOLA)	74	9.0	12%	0	0%
LAKE ARTHUR	127	30.2	24%	2	2%
LAS CRUCES	23912.5	3959.1	17%	1698.5	7%
LAS MONTANAS	287.5	32.5	11%	6.5	2%
LAS VEGAS CITY	1780	256.8	14%	47	3%
LEARNING COMMUNITY (APS)	184	22.9	12%	2.5	1%
LINDRITH AREA HERITAGE	23.5	3.1	13%	0	0%
LOGAN	293	53.5	18%	0	0%
LORDSBURG	517.5	101.1	20%	7	1%
LOS ALAMOS	3463	667.1	19%	458.5	13%
LOS LUNAS	8206	1141.4	14%	201.5	3%
LOS PUENTES	204.5	46.7	23%	1	1%
LOVING	564.5	65.4	12%	4	1%
LOVINGTON	3218	629.6	20%	148	5%
MAGDALENA	375.5	72.2	19%	8.5	2%
MASTERS PROGRAM ST. CHARTER (SFPS)	138.5	12.2	9%	5.5	4%
MAXWELL	89	16.0	18%	0	0%
MCCURDY CHARTER SCHOOL (ESPANOLA)	503	34.3	7%	32	6%
MEDIA ARTS COLLAB. ST. CHARTER (APS)	188.5	22.2	12%	9.5	5%
MELROSE	204.5	51.5	25%	5	2%
MESA VISTA	393	61.3	16%	6.5	2%
MIDDLE COLLEGE HIGH	63.5	1.5	2%	20	32%
MISSION ACHIEVEMENT & SUCCESS-MAS (APS)	107	39.1	37%	46	43%
MONTE DEL SOL	352	53.0	15%	30.5	9%
MONTESSORI ELEMMENTARY ST. CHARTER (APS)	356	26.1	7%	6	2%
MONTESSORI OF THE RIO GRANDE	199	18.6	9%	2	1%
MORA	497.5	73.0	15%	12	2%
MORENO VALLEY HIGH	86	6.0	7%	3	4%
MORIARTY	3179.5	452.3	14%	158.5	5%
MOSAIC ADADEMY CHARTER	180	40.6	23%	6.5	4%
MOSQUERO	47	8.0	17%	1	2%
MOUNTAIN MAHOGANY	196.5	36.5	19%	8	4%
MOUNTAINAIR	281	68.3	24%	3	1%
NATIVE AMERICAN COMM ACAD.	389.5	46.4	12%	9.5	2%
NEW AMERICA CHARTER SCHOOL ST. CH. (APS)	375	23.8	6%	1	0%
NEW AMERICA SCHOOL (LAS CRUCES)	235	7.7	3%	0	0%

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District/ Charter	Total Mem	Total sped Mem (A-D, 3Y/4Y)	% Sped	Total Gifted Mem	% Gifted
NEW MEXICO INTERNATIONAL SCHOOL (APS)	114	4.1	4%	1	1%
NEW MEXICO SCHOOL FOR THE ARTS ST. CH (SANTA FE)	177	9.5	5%	8.5	5%
NEW MEXICO VIRTUAL ACADEMY	489	58.4	12%	57	12%
NORTH VALLEY ACADEMY ST. CHARTER (APS)	488.5	45.3	9%	2	0%
NUESTROS VALORES	111.5	13.6	12%	0	0%
PAPA	350	41.8	12%	46	13%
PECOS	587.5	77.6	13%	13	2%
PEÑASCO	444.5	93.6	21%	8.5	2%
POJOAQUE	1994	249.4	13%	29	2%
PORTALES	2930.5	540.5	18%	63.5	2%
QUEMADO	145.5	14.0	10%	0	0%
QUESTA	389.5	70.0	18%	1	0%
RALPH J. BUNCHE ACADEMY (APS)	101	8.8	9%	0	0%
RATON	1178.5	189.4	16%	17	1%
RED RIVER VALLEY (QUESTA)	62.5	8.3	13%	0	0%
RESERVE	151.5	38.1	25%	5	3%
RIO GALLINAS CHARTER SCHOOL	108	17.5	16%	2	2%
RIO RANCHO	16483	2195.4	13%	737.5	5%
ROBERT F. KENNEDY	263.5	43.8	17%	1	0%
ROOTS & WINGS	52.5	11.6	22%	3	6%
ROSWELL	9667.5	1709.3	18%	665	7%
ROY	37.5	9.5	25%	0	0%
RUIDOSO	2093	257.0	12%	87.5	4%
SAGE MONTESSORI CHARTER (APS)	149	17.5	12%	0	0%
SAN DIEGO RIVERSIDE CHARTER	101.5	4.1	4%	0	0%
SAN JON	110.5	15.8	14%	1	1%
SANTA FE	12474.5	1964.2	16%	245	2%
SANTA ROSA	620	90.0	15%	4	1%
SCHOOL OF DREAMS ST. CHARTER (LOS LUNAS)	353.5	29.3	8%	6.5	2%
SIA TECH	284.5	35.3	12%	0	0%
SIDNEY GUTIERREZ	62.5	7.0	11%	20.5	33%
SILVER CITY CONS.	2974.5	420.1	14%	39.5	1%
SOCORRO	1668	296.4	18%	65.5	4%
SOUTH VALLEY	238.5	19.5	8%	5	2%
SOUTH VALLEY PREP ST. CHARTER (APS)	124	15.4	12%	10.5	9%
SOUTHWEST AER.,MATH & SCIENCE-SAMS (APS)	276	32.3	12%	60	22%
SOUTHWEST INTERMEDIATE LEARNING CENTER (APS)	111.5	1.6	1%	32	29%
SOUTHWEST PRIMARY LEARNING CENTER (APS)	105	7.2	7%	32.5	31%
SOUTHWEST SECONDARY LEARNING CENTER (APS)	283.5	8.7	3%	34.5	12%
SPRINGER	188.5	30.5	16%	0	0%
TAOS	2418.5	518.3	21%	121.5	5%

District/ Charter	Total Mem	Total sped Mem (A-D, 3Y/4Y)	% Sped	Total Gifted Mem	% Gifted
TAOS ACADEMY ST. CHARTER (TAOS)	141.5	12.8	9%	15.5	11%
TAOS CHARTER	213	41.0	19%	15.5	7%
TAOS INTEGRATED SCHOOL OF ARTS ST. (TAOS)	137.5	10.3	8%	1	1%
TATUM	310.5	57.0	18%	12	4%
TEXICO	528.5	99.9	19%	2.5	1%
THE GREAT ACADEMY (APS)	230	4.6	2%	0	0%
TIERRA ADENTRO ST. CHARTER (APS)	186.5	28.6	15%	5	3%
TIERRA ENCANTADA CHARTER	236	19.7	8%	5.5	2%
TRUTH OR CONSEQ.	1299	218.2	17%	40	3%
TUCUMCARI	1020	216.2	21%	20.5	2%
TULAROSA	883.5	120.2	14%	16	2%
TURQUOISE TRAIL	463	73.1	16%	26.5	6%
TWENTY FIRST CENT.	240	37.7	16%	21	9%
UPLIFT COMMUNITY SCHOOL (APS)	103	10.2	10%	0	0%
VAUGHN	116.5	13.3	11%	1	1%
VILLAGE ACADEMY ST. CHARTER (BERNALILLO)	38	15.7	41%	0	0%
VISTA GRANDE	99.5	24.8	25%	4	4%
WAGON MOUND	70	7.4	11%	0	0%
WALATOWA CHARTER SCHOOL (JEMEZ VALLEY)	63	10.1	16%	0	0%
WEST LAS VEGAS	1549.5	222.7	14%	10.5	1%
WILLIAM W & JOSEPHINE DORN CHARTER (APS)	10	0.0	0%	0	0%
ZUNI	1259	197.4	16%	5.5	0%
<b>STATEWIDE</b>	<b>328739.5</b>	<b>50106.6</b>	<b>15%</b>	<b>15086.5</b>	<b>5%</b>

Source: LFC analysis of Final Funded Run FY13

**APPENDIX D: DUE PROCESS HEARING SUMMARIES, FY11-FY13**

Date	Hearing Number	District	Summary of Allegations	Findings/ Resolution	FAPE met
FY13	1213-27	Reserve	District did not fully comply with a previous order	Request dismissed with prejudice	FAPE provided
	1213-14	Not stated	Requesting placement in private setting	Request for due process hearing denied	No denial of FAPE
	1213-19	Las Vegas City	District failed to provide Student, who is legally blind, with needed specialized instruction, related orientation and mobility services, assistive technology services, extended school year services and access to instructional materials.	District did not provide extended school year services or orientation and mobility services, depriving student of FAPE	District will provide Student with compensatory education in the form of comprehensive summer programming
	1213-13	Albuquerque	A 19-year old student with a disability challenged his graduation in Texas with a regular high school diploma, claiming he was entitled to full services under the IDEA from the New Mexico school district where he enrolled at the beginning of the school year.	Student ineligible for special education services in New Mexico unless and until the Texas graduation overturned by a hearing officer or court with authority to do so.	No denial of FAPE
	1213-05	Albuquerque	Two IEPs questioned on implementation of the functional behavioral assessment and behavior improvement plan	Compensatory education request denied because student did not provide evidence of compensatory services to remedy past action and improved behavior did not require a behavioral plan for the second IEP	No denial of FAPE
FY12	1112-29	Pojoaque Valley	The District failed to deliver a one-on-one aide for approximately three weeks, two summers of extended school year services, all required hours of related services, transportation in the morning, adaptive physical education for two years, and adequate transition assessments and services.	District ordered to assess to assist in transition, to make up all undelivered related services, to enroll student in adaptive physical education, to provide specified individual and consultation related services and specified transition services through SY14 (one year beyond statutory eligibility), and to reimburse parents for transportation costs	FAPE denied, but injunctive relief provided through compensatory services
	1112-14	Reserve	Failure to develop behavior goals, instruction, and a behavior improvement plan; failure to reevaluate for emotional disturbance; allowing parents to reject services found necessary by the IEP team	District to conduct a functional behavior assessment, a behavior improvement plan, and a psychological evaluation and use the results to reintegrate the student into the classroom; 3 hours of tutoring and compensatory speech and language therapy (compensatory)	FAPE denied, but injunctive relief provided through compensatory services
	1112-08	Mora	District failed to meet its child-find obligation	District delayed seeking an evaluation past the point where its staff had ample reason to suspect that child's escalating behavioral difficulties and lack of understanding of and response to consequences and other interventions were attributable to a disability requiring specialized instruction designed to meet child's needs	FAPE was denied and the district ordered to pay for an independent evaluation, including per diem reimbursement for travel
	1112-05	Los Lunas	District failed to evaluate student in all suspected areas of disability, disregarded its child-find responsibility, and applied improper discipline measures	Parent failed to meet burden of proof for all allegations; district independently committed to conduct a psychological evaluation apart from hearing decision.	Dismissed with prejudice, FAPE not denied

Date	Hearing Number	District	Summary of Allegations	Findings/ Resolution	FAPE met
FY11	1011-44	Los Lunas	District did not identify or evaluate emotional disturbance with adverse impact on student's educational performance	District did not meet its evaluation obligation for serious emotional disturbance; student determined to be eligible for services and PED-facilitated IEP ordered within 30 days of order	Denial of FAPE, but request for 200 hours of compensatory tutoring/ instruction denied due to insufficient record to prove what services student should have received had LEA provided services in the first place
	1011-37	Albuquerque	Inadequate speech and language services, lack of specially trained staff, failure to address students' inappropriate touching, failure to provide extended school year services, failure to reevaluate within three years, use of restraints, failure to identify toileting goal, sufficiency of assistive technology	Speech services inadequate and district must complete formal assessment and provide 45 minutes of speech five times per week; three hours of speech per week for eight weeks as compensatory staff sufficiently trained; therapeutic holding not considered restraint, failure to include toilet training a procedural error	FAPE was denied and compensatory services required
	1011-33	Albuquerque	District did not evaluate student for autism and because of severe anxiety disorder student's time at school limited	IEP team failed to develop an educational program reasonably calculated to confer FAPE; complete evaluation and facilitated IEP ordered	FAPE was denied and compensatory services required, including one-on-one instruction, speech, and psychological services
	1011-28	Albuquerque	IEP not implemented as charter school changed segregated special education services	Request granted in-part	FAPE denied and compensatory services required, including additional therapy services and instructional support and reimbursement for tutoring services while in charter school
	1011-27	Los Lunas	District exited student from speech services; parent wanted student evaluated for ADHD	While interventions were provided, district must evaluate student to determine eligibility for special education	Failure to evaluate a denial of FAPE but no compensatory education or equitable relief awarded
	1011-11	Albuquerque	District used seclusion and restraint to control and punish aggressive behavior, rather than services appropriate for autistic students	Student provided a FAPE in third grade, not fourth; de-escalation techniques did not violate IDEA; disability spanned both autism and emotional disturbance	FAPE denied and compensatory services required, including placement in the district's behavior intervention program

Source: PED website: [http://www.ped.state.nm.us/SEB/community/dispute\\_resolution.html](http://www.ped.state.nm.us/SEB/community/dispute_resolution.html)

# APPENDIX E: WASHINGTON STATE LOCAL MOE WORKSHEET

## Maintenance of Effort Worksheet

For the Preliminary Special Education Maintenance of Effort Tests and Determination of Possible Amount Supplanted  
#N/A

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Determination Status    #N/A    #N/A    #N/A    #N/A

Section A: Preliminary Maintenance of Effort Tests		Actual	Actual	Budgeted/Actual	Projected
(Test 1) Aggregate		FY 10-11	FY 11-12	FY 12-13	FY 13-14
1.	State Special Education Direct Expenditures (Program 21). Program 21 expenditures must include expenditure amounts related to Revenue Account 4121 redirected through the apportionment process to another school district or ESD.	\$ -	\$ -	\$ -	
2.	<b>Minus</b> Payments From Other Districts for the Provision of Special Education (Revenue 7121).	\$ -	\$ -	\$ -	\$ -
3.	<b>Minus</b> Special Education Medicaid Reimbursements (Revenue 6321).	\$ -	\$ -	\$ -	\$ -
4.	<i>Minus Special Education Medicaid Reimbursements (Revenue 6121). (Improper Coding. Districts should use 6321.)</i>	\$ -	\$ -	\$ -	\$ -
5.	<b>Minus</b> Special Education Medicaid Reimbursements - State Portion (Revenue 4321)				
6.	<b>Net Expenditures</b>	\$ -	\$ -	\$ -	\$ -
7.	<b>Aggregate Test</b>		PASS	PASS	PASS
8.			\$ -	\$ -	\$ -

(Test 2) Aggregate Per-Pupil		FY 10-11	FY 11-12	FY 12-13	FY 13-14
9.	Resident special education students. For 2013-2014, do <b>not</b> include students' age birth through two.	-	-	-	
10.	Expenditures per pupil.	\$ -	\$ -	\$ -	\$ -
11.	<b>Per Pupil Test</b>		PASS	PASS	PASS
12.	<b>FAIL Amount</b>		\$ -	\$ -	\$ -
13.	<b>FAIL Amount (Extended)</b>		\$ -	\$ -	\$ -

(Test 3) Local Aggregate (See Note on Instructions tab regarding §300.203(b)(2))		FY 10-11	FY 11-12	FY 12-13	FY 13-14
14.	Local contribution reported on F-196 Resource to Program Expenditure Report.	#N/A	\$ -	\$ -	\$ -
14.	<i>Amount of local resources used the last time the district passed MOE on local resources.</i>	#N/A	#N/A	#N/A	\$ -
15.	Local Aggregate Maintenance of Effort Test		#N/A	PASS	PASS
16.	<b>FAIL Amount</b>		\$ -	\$ -	\$ -

(Test 4) Local Per-Pupil (See Note on Instructions tab regarding §300.203(b)(2))		FY 10-11	FY 11-12	FY 12-13	FY 13-14
17.	Local expenditures per pupil.	\$ -	\$ -	\$ -	\$ -
18.	<i>Local expenditures per pupil used the last time the district passed MOE on local resources.</i>	\$ -	\$ -	#N/A	\$ -
18.	Local Per Pupil Maintenance of Effort Test		PASS	PASS	PASS
19.	<b>FAIL Amount</b>		\$ -	\$ -	\$ -
20.	<b>FAIL Amount (Extended)</b>		\$ -	\$ -	\$ -

21. Preliminary Maintenance of Effort Test Results	#N/A	PASS	PASS
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Section B: Special Education Maintenance of Effort Reduction	Actual	Actual	Budgeted/Actual	Projected
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Special Education  
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Federal Allocation Information - For Calculation of Local Contribution Reduction		FY 10-11	FY 11-12	FY 12-13	FY 13-14
22.	IDEA Allocations (age 3-21 only).	\$ -	\$ -		\$ -
23.	Current FY minus Prior FY IDEA Allocations (line A) times 50% (for districts who Meet Requirements).		#N/A	#N/A	#N/A
24.	Current FY minus Prior FY IDEA Allocations (line A) times 50% divided by Resident special education students.	\$ -	\$ -	\$ -	\$ -
25.	Maximum potential CEIS (15%)	\$ -	\$ -	\$ -	\$ -
26.	Actual CEIS	\$ -	\$ -	\$ -	\$ -
27.	Did the district fail all four MOE Tests?		#N/A	No	No
28.	If Yes, If 50% is larger than CEIS, 50%, otherwise lesser of 50% or CEIS minus CEIS Actual.		#N/A	-	-
29.	Smallest fail amount		-	-	-
30.	Will application of 50% reduction rule allow the district to pass MOE?		#N/A	N/A	N/A
31.	Application of the 50% rule will allow the district to pass...		#N/A		
32.	Adjusted Preliminary Maintenance of Effort Test Results		#N/A	PASS	PASS
33.	Possible Supplanted Amount		#N/A	-	-

**NOTE:** If the district will only pass MOE by use of the 50% rule, the amount of the reduction in allowable expenditures **must** be spent on ESEA-related activities. Districts utilizing the 50% rule must certify to OSP1 that the amount of the reduction in expenditures have been spent on ESEA-related activities.

**Based on the information from your data study, 5<sup>th</sup> Grade Content Area: \_\_\_\_\_  
 Please list the students who fall in your lowest quartile OR who have shown regression or low growth on NWEA**

Student's Name	Data that indicates concern	Current Support (IPSS, SAT, IEP)	Interventions Next Steps (Specific Goals)

**Regression Concerns (Only list students here who are not already listed above, but have also shown regression based on their NWEA Growth Score)**

Student's Name	Fall NWEA RIT Score	Regression	SBA Prediction %	Next Steps (Specific Goals)

**Are there any students who scored in the Beginning Steps range on the 2011-2012 NMSBA who are listed in any of the above charts?**

<b>Name:</b>	<b>Name:</b>
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