

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 192

50th Legislature, 1st Session, 2011

Tracking Number: .182620.1

Short Title: Conform to Federal Disability Definitions

Sponsor(s): Senator Lynda M. Lovejoy and Representative Mimi Stewart

Analyst: Pamela Herman

Date: February 6, 2011

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

Bill Summary:

SB 192 is essentially a clean-up bill—it amends the *Public School Code* to change certain language so that state law regarding special education aligns with that the federal *Individuals with Disabilities Education Act* (IDEA).

Among its provisions, the bill:

- moves definitions currently contained in sections of law governing special education to the section of the *Public School Code* containing definitions;
- specifically includes charter schools in the mandate to provide special education;
- eliminates the use of the obsolete terms “exceptional children” and “handicapped” in reference to students with disabilities and gifted students;
- eliminates the obsolete term “multidisciplinary team” and replaces it with “evaluation team” in describing the process for determining a student’s eligibility for gifted education;
- eliminates the modifier “developmentally” as applied to “disabled,” in describing programs for three- and four-year old disabled children for purposes of the *Public School Finance Act*;
- defines “students with developmental delay” and authorizes school districts or charter schools to provide special education and related services to three- through nine-year olds in accordance with federal law and Public Education Department (PED) rule;
- removes from a definition, and places in substantive law, language stating that a school district (or charter school) may offer gifted programs to students who do not meet eligibility criteria for a gifted student, provided that the state shall only provide state funds for department-approved programs for gifted students;

- restates the responsibility of PED to monitor and report on the provision of special education services:
 - specifying:
 - ✓ the use of quantifiable and qualitative indicators,
 - ✓ a focus on improving educational results and functional outcomes, and
 - ✓ ensuring that school districts and others meet the requirements of the state performance plan; and
 - eliminating language permitting portions of the program to be subcontracted; and
- makes other minor technical changes throughout—for example, eliminates the terms “children,” “state board” and “certified personnel” and replaces them with “students,” “department” and “licensed personnel.”

Fiscal Impact:

SB 192 does not contain an appropriation.

Fiscal Issues:

The PED analysis for SB 192 states that it would generate additional funding under the State Equalization Guarantee (SEG) formula, because, as drafted, the bill provides funding at the C and D levels for students who are “gifted only,” that is, not “twice exceptional” or gifted as well as disabled.

However, the language of SB 192 would not change the *status quo* regarding C and D level programs for gifted students:

- the PED bill analysis reports that Albuquerque Public Schools (APS) currently offers C and D level programs for gifted students, reporting 201 C level and five D level “gifted only” students. The analysis states that the C level students generated approximately \$764,200 and the D level students approximately \$37,125 for APS, or approximately \$247,990 more than if the students were funded at A and B levels;
- in fact, there were 218 C level and 39 D level “gifted only” students in 15 school districts in New Mexico on the 120th day of school year 2009-2010, according to data provided by PED to the Legislative Education Committee (LESC) staff in the 2010 interim;
- the *Public School Finance Act* provides that special education programs for “exceptional students” (a term in current law interpreted to include gifted students) are those “approved by the department” and classified as class A, B, C and D programs;
- the act specifies the amount of special education services to be provided at each level in approved programs (minimal for Class A; moderate for Class B; extensive for Class C; and maximum for Class D), and refers to agency rule for the ratio of students to professionals at each level; and
- existing C and D level programs for the gifted are, by statute, those approved by PED, and regardless of the passage of SB 192, continued funding of those programs will be subject to PED approval based on agency rule.

Substantive Issues:

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

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

SB 192 is the result of this group’s efforts.

Background:

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

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

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

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

Related Bills:

None as of February 5, 2011.