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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**54th Legislature, 1st Session, 2019**

**Bill Number** SB612                      **Sponsor** Lopez  
**Tracking Number** .213244.1              **Committee Referrals** SEC/SFC  
**Short Title** Public Education Dept. Special Needs Division  
**Analyst** Ochoa                                      **Original Date** 2/20/19  
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**BILL SUMMARY**

Synopsis of Bill

Senate Bill 612 (SB612) would create a new special education division and a new assistant secretary of special education within the Public Education Department (PED). Additionally, the bill would provide salary differentials for certain special education teachers, increase the special education cost differential factors within the public school funding formula, and reorganize the Public School Code to include a new “Special Education Act”.

**FISCAL IMPACT**

The bill does not contain an appropriation; however, there are multiple recurring costs associated with implementing the provisions of SB612. The bill would increase the cost differential factor for class A and B programs from .7 to 1.3, for class C programs from 1.0 to 1.33, for class D programs from 2.0 to 2.33, for developmentally disabled three- and four-year-old children from 2.0 to 2.33, and for related services from 25.0 to 25.33. At the 2018-2019 preliminary unit value, SB612 would increase special education funding formula spending for A, B, C, and D class programs from \$278 thousand to \$370 thousand, a 33 percent increase.

The bill would require the new special education division to have an assistant secretary of special education. In current statute, only the Indian education division has an assistant secretary with a designated job code of a division director. According to state personnel reports, the average salary of a PED division director is \$96,159. Currently, the special education bureau is led by a division director. It is unclear if a change in title would lead to a change in salary.

SB612 would require special education teachers be paid a salary differential equal to that of a national board-certified teacher (see Technical Issues). According to FY19 data, there were a total of 4,355 special education FTE in New Mexico. According to the National Board for Professional Teaching Standards, teachers in New Mexico who have completed the national board certification earn an additional \$5,800 per year. The cost of implementing this differential provision would equal approximately \$25.3 million. Additionally, there are currently 94 national board-certified

special education teachers in New Mexico. Teachers who fall into this category would receive a double differential under SB612.

The effective date of SB612 would be June 14, 2019, and the fiscal implication would therefore affect the FY20 budget.

## **SUBSTANTIVE ISSUES**

**Reorganization.** SB612 would repeal Section 22-13-6 NMSA 1978, which includes special education definitions, and adds the same terms to the definitions section of the Public School Code, Section 22-1-2 NMSA 1978. The meaning of the terms would not change under SB612; however, any instance that mentions “children” would be replaced with the word “student”. The affected terms are dyslexia, exceptional students, gifted student, response to intervention, special education, student assistance team, and students with disabilities.

SB612 would amend Section 22-8-21 NMSA 1978 by replacing “department-certified individuals” with “licensed teachers and instructional support providers”. Again, any mention of “children” would be replaced with “students”. “State board” would be replaced by “department” to correlate with PED’s current structure. “Related services ancillary to providing special education” and “ancillary service and diagnostic service personnel” would be replaced with “instructional support providers.”

SB612 would amend Section 22-13-5 NMSA 1978 by adding “and charter schools” each time “school districts” are mentioned. Charter schools would also be included in Section 22-13-6.1 NMSA 1978, outlining the determination of students identified as gifted; again, “child” would be replaced with “student.”

**Special Education Division.** SB612 would create a special education division and assistant secretary of special education. The division would be required to provide assistance for schools to implement and improve special education programs; recruit and retain highly-qualified special education teachers; monitor programs to ensure students are receiving adequate services; provide support and resources to ensure schools provide culturally and linguistically responsive instruction; help schools identify placement and treatment options for students with severe behavior needs; monitor the number of special education students with disciplinary issues that could lead to prison; monitor individualized education plans (IEP) and the manifestation process; advocate for full funding of school counselors and student assistance teams for each school; and collaborate with multiple entities to develop and maintain a statewide autism spectrum registry. Analysis from the Higher Education Department (HED) notes the 2008 New Hampshire legislature approved a regulation that established and implemented a statewide autism registry that requires healthcare providers to record all new autism diagnoses. The registry data has been used to plan services for children and adults in the state.

The assistant secretary for special education would be required to direct and advise upon the activities of the division; coordinate with HED for prekindergarten through postsecondary special education alignment of services; coordinate with other divisions within PED; and provide staff with appropriate professional development.

**Salary Differential.** Section 10(A) of SB612 would allow special education teachers to receive a salary differential if they complete a department-designated amount of hours of professional development, mentor other special education teachers, collaborate with school staff in designing

intervention and assessment plans, and provide professional development for school or district level staff. Additionally, special education teachers would be required to teach “in the most challenging categories and levels of disability” in order to receive the salary differential. The language does not set clear parameters to determine who would be eligible for the salary differential.

**Framework for Special Education Teachers.** SB612 would require the special education division to develop a framework comparable to the national board for professional teaching standards that would lead to special education teacher certification. The National Board for Professional Teaching Standards: Exceptional Needs Standards outline essential competencies special education teachers should exemplify in and out of the classroom. The high level standards statements are knowledge of students; knowledge of philosophy, history, and law; diversity; family partnerships; assessment; communication; social development and behavior; curriculum and instruction; learning environment; instructional resources; contributing to the profession and to education through collaboration; and reflective practice.

The New Mexico Administrative Code (NMAC) includes licensure requirements for teachers of gifted and special education students. Section 6.64.18 NMAC, Competencies for Teaching Gifted Students was last updated in 2010 and Section 6.61.6 NMAC, Licensure in Special Education PreK-12 was last updated in 2008. Institutions of higher education use these standards to ensure their coursework aligns with licensure requirements. It is likely the new special education division would need to collaborate with institutions of higher education to ensure high quality preparation of special education teachers.

Research shows a majority of pre-service and novice special education teachers are not adequately prepared. A study published by The University of Akron indicates culturally responsive teaching has been proven to be effective in preparing special education teachers. The report notes this may be due to minority students being disproportionately identified to receive special education services when compared to Caucasian students. The next highest leverage concept noted by the report was behavior management. Specifically, special education teachers should understand how to address aversive student behavior, particularly since the number of students who display these behaviors in the classroom setting is consistently increasing. Finally, the report notes that due to differences in coursework requirements, beginning special education teachers have less content area knowledge than general education teachers. These components could be addressed by the new framework to ensure better-prepared special education teachers serve New Mexico students.

## **ADMINISTRATIVE IMPLICATIONS**

PED would be required to implement the provisions of SB612.

## **TECHNICAL ISSUES**

Section 10(B), indicates all special education teachers would receive a salary differential once the division has developed a framework for special education certification. It is unclear if there is a contradiction between Section 10(B) and Section 10(A). Section 10(A) outlines specific provisions special education teachers would be required to meet in order to receive the salary differential.

Section 10(B), page 21 lines 4-6 would require special education teachers to “be counted in the teaching and experience index the same as national board-certified teachers.” The name of the index is “training and experience.” Additionally, the training and experience index only includes

degrees earned and years of experience, not content area specialization. The national board certification salary differential is a 1.5 multiplier found in Section 22-8-23.4 NMSA 1978 separate from the training and experience index. The sponsor may wish to create a separate factor for special education teachers independent of the training and experience index and national board certification.

**RELATED BILLS**

HB159, Bilingual Education in Public Ed Dept., would create the Bilingual Multicultural Education Division and Hispanic Education Division with corresponding assistant secretaries.

HB454, School District Gifted Education Requirements

SB467, School Treatment of Students with Disability

**SOURCES OF INFORMATION**

- LESC Files
- Higher Education Department (HED)

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