

<b>LFC Requester:</b>	<b>Sunny Liu</b>
-----------------------	------------------

**AGENCY BILL ANALYSIS  
2018 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply: Date 01/30/18  
**Original**     **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_  
**Bill No:** HB175

**Sponsor:** Rep. Christine Trujillo    **Agency Code:** 924  
SCHOOL ACCELERATION    **Person Writing**    Montaño  
**Short**    OPPORTUNITIES    **Email**    [Matthew.Montano1@state.nm.us](mailto:Matthew.Montano1@state.nm.us)  
**Title:** \_\_\_\_\_ **Phone:** 827-4522

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		
None	See fiscal implications	Recurring	General Fund and School District Budgets

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
None	N/A	N/A		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY18</b>	<b>FY19</b>	<b>FY20</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	None	Unknown see fiscal implications	Unknown see fiscal implications	Unknown see fiscal implications	Recurring	General Fund and School District Budgets

(Parenthesis ( ) Indicate Expenditure Decreases)

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

The bill requires the public education department to establish and expand acceleration opportunities for certain qualifying students.

Gifted education is recognized in the state of New Mexico. Gifted is included under state rules for special education; giftedness is considered an exceptionality and not a disability. School districts and charter schools have the same responsibility to provide services to students K–12 identified as gifted as to students with disabilities.

HB 175 amends the section of public school code 22-13-6.1 NMSA 1978 (being Laws 1994, Chapter 25, Section 2, as amended) to read: school-age children to school-age persons. Gifted children would meet the definition of “school-age person” per 22-1-2 if adopted. Please see fiscal implications.

Section 22-13-6.1, gifted children determination, is amended adding requirements for school districts offering a gifted education program to consider including social work and occupational therapy services and transportation costs. In addition, school districts must adopt academic acceleration policies for all students who are gifted. This bill would include due process procedures under district acceleration policies.

**FISCAL IMPLICATIONS**

The definition of a school-age person in HB 175 on line 25, page 1 allows students qualifying for gifted education to begin kindergarten early. This is not a simple word change. It has fiscal implications.

Special Education caseload ratios cannot be greater than 1:4 for center-based programs, in accordance with Subsection I of 6.29.1.9 of the NMAC. When moving toward regular inclusive classrooms, these classrooms will maintain ratios of one teacher and one or two educational assistants, with at least 10 and up to 14 children without an IEP, and with no more than 4 to 6 children with an IEP, as determined by the child’s IEP. Students with disabilities have a right to FAPE in the LRE in accordance with 34 CFR §§ 300.114-300.115. The LRE decision is made in accordance with 34 CFR § 300.116, and placement is made by a group of individuals that includes the child’s parent(s).

[http://ped.state.nm.us/ped/LiteracyDocs/PreK/Preschool\\_FOCUS\\_11-21-16.pdf](http://ped.state.nm.us/ped/LiteracyDocs/PreK/Preschool_FOCUS_11-21-16.pdf)

Additional staff would be needed in the classroom based on age of student. Amount of staff needed cannot be determined at this time. Evaluations costs may begin at \$250.00 per evaluation depending on the age of the child. Evaluations would need to be done one on one and not in a group. Districts will need to find an appropriate evaluation for three and four year olds. Diagnostic materials will need to be purchased and training would need to occur for evaluators. If a qualifying evaluation is presented at the school, placement in kindergarten could be considered but not funded currently. This leaves districts open to all parents of three and four year olds requesting an evaluation. Gifted is currently an exception to child find. Child find as required by Individuals with Disabilities Education Act (IDEA) does not apply to gifted children.

HB 175 requires school districts offering gifted education programs to consider the potential need for social work services, transportation costs and occupational therapy for students identified as gifted. The cost of providing social work and occupational therapy services cannot be determined at this time. Ancillary or related services do not have caseload minimums or maximums so the cost to the state or school districts due to the increase in ancillary Full-time Equivalents (FTE) is unknown since these decisions are made through the student's Individualized Education Program (IEP) team. Transportation costs would increase if school districts need to transport to another site rather than the student's home school site and they must include the cost of car seats. Districts may need to transport to and from secondary sites, meaning middle and high school, if they are an elementary student as well as post-secondary sites for example two or four year colleges.

HB 175 requires school level Student Assistance Teams (SAT) to make acceleration decisions for students considered advanced but who do not qualify for gifted services. The cost of assessing these students and providing programs for them cannot be determined. It is unclear if students identified as advanced would generate units under the funding formula or if school districts would be responsible for covering that cost.

Under HB 175, districts would be required to include due process procedures applying to academic acceleration policies. This may increase the number of due process hearings filed. This is paid through the general fund. Each due process hearing may cost an average of \$50,000.

## **SIGNIFICANT ISSUES**

In 2016-2017 there were 15,016 students in New Mexico identified as being gifted.

Since giftedness is considered an exceptional program and not a part of the federal Individuals with Disabilities Education Act (IDEA) unless a student who is gifted has a disability under the IDEA, the federal term Free Appropriate Public Education (FAPE) does not apply to students who are gifted. Instead, state special education rules for gifted education determine what procedures and programmatic standards apply as an "appropriate" free public school education for students who are gifted. The student's IEP team is responsible for determining what is appropriate for the student who is gifted and some of the requirements in HB 175 may or may not be appropriate. Per subsection F of 6.31.2.12 (NMAC), protections for child find evaluations, Free and Appropriate Public Education (FAPE) and Least Restrictive Environment (LRE), do not apply to gifted children.

HB 175 requires school districts to develop academic acceleration policies such as skipping grades, facilitated enrollment in concurrent high school and college credit courses and credit for demonstrated mastery of subject matter. All of these provisions are currently allowed and are decisions to be made for individual students through the IEP team.

HB 175 requires school districts to develop academic acceleration policies that require inclusiveness of all students, including those with disabilities, language differences and socioeconomic differences. This provision is already included in Subsection E(2) of 6.31.2.12 NMAC which allows for alternative methods of identification for giftedness due to the student's cultural background, linguistic background, socioeconomic status or disability condition(s). This would be duplicative of current state law.

HB 175 requires school districts to develop procedures for appeal and due process. Under Subsection F of 6.31.2.12 NMAC, procedural safeguards, which include formal state level complaints, due process hearings, and alternative dispute resolution, are already allowable. This would be duplicative of current state law.

If a student meets the eligibility requirements under IDEA they would be eligible for twice exceptional eligibility and all of the procedural safeguards under the IDEA would apply. This has already been established through guidance manuals (see the Gifted Technical Assistance Manual <http://ped.state.nm.us/ped/RtIdocs/GiftedTManual.pdf>).

## **ADMINISTRATIVE IMPLICATIONS**

The Public Education Department (PED) would need to notify school districts and charter schools regarding the changes to the public school code and the requirements to develop policies and procedures regarding ancillary and transportation services, acceleration programs, special supports for disadvantaged and disabled youth and the acceptance of accelerated credit or college credit towards graduation from the student's home school for students who are gifted or advanced.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 174 would amend the definition of a school age person to include gifted kindergarteners who begin kindergarten early as part of academic accelerations proposed by HB175.

## **TECHNICAL ISSUES**

Page 3, line 23 replace "plan" with "programs" in order to be in compliance with state and federal laws.

## **OTHER SUBSTANTIVE ISSUES**

None

## **ALTERNATIVES**

None

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Schools and IEP teams can continue making decisions for students identified as "gifted" in a manner that is specific to the child.

**AMENDMENTS**

None