

LFC Requester:

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AGENCY BILL ANALYSIS  
2019 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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

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*{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:

Original  Amendment   
Correction  Substitute

Date 1/27/19

Bill No: HB243

Sponsor: Rep. Dayan Hochman-Vigil  
Short INSTRUCTION FOR DEAF  
Title: OR HARD OF HEARING

Agency Code: 924  
Person Writing Daniel Manzano  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: Add to the public school code a requirement to provide students who are deaf or having moderate to severe hearing loss with appropriate instruction.

**FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

**SIGNIFICANT ISSUES**

The federal and state law is in place and is required to provide students with disabilities appropriate instruction.

Page1 19-22 **FACTORS FOR CHOOSING INSTRUCTIONAL SETTING--CHOICE OF MODALITIES**

The instructional setting is done through a legal process. The Individualized Education Program (IEP) set the course for where and how the child will receive FAPE. These decisions are left to the IEP team. By including frequent references to the need to use evidence based practices for students. Congress clarified that methodology is vitally important. By requiring the child’s IEP to include “a statement of special education, related services and supplementary aids and services, based on peer reviewed research ...” (Section 1414(d)(1)(A)) Congress clarified that IEPs must include "research-based methodology." If it is determined that a student meets the criteria for special education services, the next step is to develop an IEP for the student. An IEP is a written statement of the educational program designed for a child to meet his or her needs. Every child who receives special education services must have an IEP. The IEP has two general purposes: 1) to set reasonable annual learning and/or functional goals for your child; and 2) to state the accommodations, services, and classroom setting the district will provide to help achieve the annual goals. Modality/Methodology is left to the districts and has been upheld. Sec. 300.39 (b) (3) Specifically designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

- (i) To address the unique needs of the child that result from the child’s disability; and
- (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

The IEP process is in place in order to meet the needs of the students in program. Special Education is instruction and services designed to meet the needs of children who have one or more disabilities as defined by federal law.

There are thirteen categories of disabilities: autism, deafness, deaf-blindness, hearing impairment, intellectual disability, multiple disability, orthopedic impairment, other health impairment, serious emotional disturbance, specific learning disability that includes Dyslexia, speech language impairment, traumatic brain injury, and visual impairment, including blindness. Individuals with Disabilities Education Act (IDEA), Part B regulations at 34 CFR Sec. 300.8.

- In New Mexico: Developmental delay is considered a disability under special education for children ages three (3) to nine (9). According to Subsection B(18) of 6.31.27 New Mexico Administrative Code (NMAC), Special Education in New Mexico may include speech-language pathology services. Districts must provide services as required by the IDEA-B. Mandating that disability services be rendered without an official diagnoses and an executable IEP is outside the scope and authority of the IDEA-B.

Pg. 2 lines 16-25 – LEAs have sole responsibility to ensure the provision of FAPE. The use of the terms “joint powers agreement and other arrangements” implies that LEAs are required to enter into such arrangements. This would be counter the requirements of IDEA-B in that requires accountability in order to receive IDEA B funds. Each LEA provides assurances for students identified as a student who is eligible for services. FAPE is provided at the location where the student attends school. LEAs do not have enter into JPs in order to ensure FAPE. Districts are fully responsible to ensure that the student receives FAPE.

P3 5-13 – The use of the word “family” is broader than the IEP requirement. The parent and or other authorized person applies to IDEA-B. IDEA requires that every child who is below the legal age of adulthood (age 18 in New Mexico) must have an adult available to make educational decisions and protect the child’s legal rights. Usually that person is a natural or adoptive parent. If no parent is available, the adult decision-maker may be any of the following:

- A person acting in the place of a parent, such as a grandparent;
- A step-parent, or other relative that lives with the child;
- A legal guardian (but not the state, if the child is in state custody);
- A foster parent who is willing to make educational decisions required of parents under the IDEA;
- If none of the above are available, a surrogate parent appointed by the district to make educational decisions and protect the child’s educational rights.

All of the above are included in the IDEA’s broad definition of a “parent.” The LEA is required by IDEA-B to implement the IEP as developed and implemented by the IEP team.

P3 14

MODALITIES The instructional setting is done through a legal process. The Individualized Education Program (IEP) set the course for where and how the child will receive FAPE. These decisions are left to the IEP team. Parents have procedural safeguards in place if they disagree with the IEP decision. Parents also can revoke consent for services at any time. Family preference goes against the IDEA B requirements.

IDEA seeks to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living. Procedures must be established in accordance with IDEA to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education, and the vehicle through which disabled children are provided a

FAPE is through an "'individualized education program' or 'IEP.

The term “individualized education program” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 1414(d) of this title, and the law describes in more detail what that entails, and IDEA includes an Individualized Education team. IDEA also details further who is part of an IEP team. The provisions HB 243 may clarify further how they ensure that the provisions cannot be interpreted as seeking to take the place or to be inconsistent with those provisions of IDEA. This would help minimize arguments relating to preemption. The provisions may also further clarify what the intended remedy is, and how this may be impacted if an individual seeks relief in state court under the statute, and through the procedural safeguards set out pursuant to IDEA.

20 U.S.C.A. § 1401 provides in part that “child with a disability” means a child hearing impairments, including deafness, and who, by reason thereof, needs special education and related services. IDEA seeks to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living. Procedures must be established in accordance with IDEA to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education, and the vehicle through which disabled children are provided a FAPE is through an "'individualized education program' or 'IEP.

The term “individualized education program” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 1414(d) of this title, and the law describes in more detail what that entails, and IDEA includes an Individualized Education team. IDEA also details who is part of an IEP team.

The new provisions in this act must ensure that the provisions cannot be interpreted as seeking to take the place or to be inconsistent with those provisions of IDEA, or the provisions may be preempted. The provisions may further clarify the intent of the provisions in light of IDEA. The provisions may also further clarify what the intended remedy is, and how this may be impacted if an individual seeking relief in state court under the statute, and through the procedural safeguards set out in IDEA.

#### **PERFORMANCE IMPLICATIONS**

The bill will affect the Federal requirements that are already in place for students.

#### **ADMINISTRATIVE IMPLICATIONS**

The bill will affect the Federal requirements that are already in place for students and the general supervision mandated by those requirements.

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

There are established federal and state laws that apply to students with disabilities. There are also procedural safeguards in place for families if they have concerns regarding their child’s program.

#### **TECHNICAL ISSUES**

N/A

#### **OTHER SUBSTANTIVE ISSUES**

#### **ALTERNATIVES**

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

There are no consequences. The IEP drives the federal and state requirements.

**AMENDMENTS**