

LFC Requester:	Sunny Liu
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**AGENCY BILL ANALYSIS
2019 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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:
Original **Amendment**
Correction **Substitute**

Date 2/11/19
Bill No: HB454

Sponsor: Rep. C. Trujillo, Rep. Linda. Trujillo, et al
SCHOOL DISTRICT GIFTED EDUCATION REQUIREMENTS
Short Title: _____

Agency Code: 924
Person Writing Analysis: 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)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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: House bill 454 seeks to amend a new section of the public school code to (section 22-1-2 NMSA 1978 2003, chapter 153, Section 3 as amended by Laws 2015, Chapter 58, Section 2 and by Laws 2015, Chapter 108, Section 1) expand the meaning of “school-age person” and to require the public education department to establish and expand acceleration opportunities for certain qualifying students. The bill amends “ school age person” may begin kindergarten early, want to add social works, transportation costs, OT, range of options for acceleration, inclusion and twice exceptional.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

FAPE does not apply for students identified as gifted. Students under the age of 5 are not evaluated for giftedness. The term gifted has aligned itself to students with disabilities in statute but it is not aligned with IDEA B.

Currently, a student may enter kindergarten at an earlier age than is expected. However, in New Mexico students must be at least five years old prior to 12:01 am on September 1 of the school year in order to be a “qualified student” who earns state funding to the district or charter school. Therefore, early kindergarten admission is not available in New Mexico at this time, unless the district or charter school agrees to admit the student and not count him or her for funding. This is a local-level decision. (See state statute at Subsection M of 22-8-2 NMSA 1978.)

The ratio of staff to students would change following the current special education NMAC 6.29.1.9 PROCEDURAL REQUIREMENTS: H (5) The student/adult caseload shall not exceed 4:1 for center-based special education services in which one of the adults in the program is a properly licensed professional providing three- and four-year old children with the amount of special education needed to implement each child's IEP. This includes a child who will turn three at any time during the school year, and who is determined to be eligible for Part B services. The child may be enrolled in a Part B preschool program at the beginning of the school year if the parent so chooses, whether or not the child has previously been receiving Part C services.

Additional funding would need to be allocated. Schools would receive gifted funding but the numbers of staff would increase due to age of student.

Early admission would need to change within the in the Public School Finance Act.

Public School Finance Act [22-8-1 NMSA 1978]:

M. "qualified student" means a public school student who:

- (1) has not graduated from high school;
- (2) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and
- (3) is at least five years of age prior to 12:01 a.m. on September 1 of the school year; or
- (4) is at least three years of age at any time during the school year and is receiving special education services pursuant to rules of the department; or
- (5) has not reached the student's twenty-second birthday on the first day of the school year and is receiving special education services pursuant to rules of the department;

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

Transportation- This bill would require transportation for those who qualify.

SIGNIFICANT ISSUES

Section 22 page 3; section 19 page 8

Since giftedness (only and not in the presence of another disability under the IDEA) is not a disability category recognized under the IDEA, the federal term FAPE does not apply to students who are gifted in New Mexico. That is because although state rules for developing an "appropriate" IEP for students who are gifted contain many of the same required elements, some of the IDEA's substantive requirements are specifically exempted by state special education rule. In other words, students who are gifted only are not entitled to a FAPE as defined by the IDEA. 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. "Gifted child" means a school-age person, as defined in Section 22-13-6 (D) NMSA 1978, 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 IEP team determines that special education services are required to meet the child's educational needs.

The public agency responsibilities set forth in 6.31.2.9 NMAC do not apply to gifted education programs.

Section 19 page 8

No definition for person and throughout the document it either reflects child, person or student.

Section 4-25 p11 Section 1-22

Potential needs for related services would be referred to SAT for a suspected disability.
Transportation is not clear.

Section 2 D (1) consider the potential need for social work services, transportation costs and occupational therapy for students identified as gifted pursuant to this section:

The Student Assistance Team is in place if the family suspects other needs. The fiscal

implication would include additional diagnostician evaluations as well as related service evaluations and the cost to educate the student would begin earlier. If they meet the eligibility requirements under IDEA they would be eligible for twice exceptional eligibility. This has already been established though guidance manuals. Transportation costs would increase if you need to transport to another site rather than the school site and possible to and from secondary sites if they are an elementary student as well as post-secondary sites.

Student Assistance Team

If there is another need that is concerning, the student would be referred to the Student Assistance Team. Student Intervention System (New Mexico's RtI Framework): Subsection D of 6.29.1.9 NMAC: As cited below, this state rule sets forth that the public agency shall follow a three-tier model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning or behavior.

(1) In Tier 1, the public agency must ensure that adequate universal screening in the areas of general health and well-being, language proficiency status, and academic levels of proficiency has been completed for each student enrolled. If universal screening, a referral from a parent, a school staff member, or other information available to a public agency suggests that a particular student needs educational support for learning, then the student shall be referred to the student assistance team (SAT) for consideration of interventions at the Tier 2 level.

(2) In Tier 2, a properly constituted SAT at each school, which includes the student's parents and student, as appropriate, must conduct the child study process and consider, implement and document the effectiveness of appropriate research based interventions utilizing curriculum-based measures. In addition, the SAT must address culture and acculturation, socioeconomic status, possible lack of appropriate instruction in reading or math, teaching and learning styles in order to rule out other possible causes of the student's educational difficulties. When it is determined that a student has an obvious disability or a serious and urgent problem, the SAT shall address the student's needs promptly on an individualized basis, which may include a referral for a multidisciplinary evaluation to determine possible eligibility for special education and related services consistent with the requirements of 34 CFR Sec. 300.300.

The provision regarding due process and appeals in Section 3, page 12, lines 2 through 5, is ambiguous as it pertains to certain terms. The provision requires inclusion of procedures by districts for appeal and due process, and safe reversion of placement within a reasonable time frame if the acceleration is ineffective. The provision does not clarify what is intended by the phrase that the acceleration is ineffective. The provision may clarify further whether accelerating a student, when it results in placing the younger student in a class with older students, could ever be determined to be ineffective solely based on the fact that the younger student may not be as mature in other way as the older students.

The provision regarding due process and appeals in Section 3, page 12, lines 2 through 5, also does not clarify what is within a reasonable time frame, and perhaps putting a maximum time limit would assist understanding what is meant by reasonable time frame. It is also unclear whether the appeal and due process afforded in the provision is intended in any way to overlap with the already established state rules providing for filing of a state complaint or a request for a due process hearing.

For filing a state complaint, the already existing provision is in Rule 6.31.2.13(H) NMAC, which in part prescribes procedures to be used in filing and processing complaints alleging the failure of the department or a public agency to comply with state or federal laws or regulations governing programs for children with disabilities under the IDEA or with state statutes or

regulations governing educational services for gifted children. For requesting a due process hearing, the provision is in Rule 6.31.2.13(I) NMAC, which establishes in part procedures governing impartial due process hearings for requests for due process in IDEA cases governed by 34 CFR Secs. 300.506-300.518 and 300.530-300.532; and (b) claims for gifted services. It is unclear whether the new provision is intended to be the extent of the administrative remedies for a gifted child under the accelerated program, or whether there is any anticipated overlap with the existing rules, or something different.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

Additional staff needed for 4:1 ratio for younger children.

Districts will need to create plans for testing that does not interfere with eligibility testing for students with disabilities.

Transportation would need to be addressed.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This section is referenced in the current Gifted Technical Assistance Manual

<https://webnew.ped.state.nm.us/wp-content/uploads/2018/03/Gifted-TA-manual.pdf>

(2) adopt an academic acceleration policy that allows all of the following:

(a) a range of options such as: 1) early entry into kindergarten; 2) skipping grades; 3) facilitated enrollment in concurrent high school and college credit courses; 4) credit for demonstrated mastery of subject matter; and 5) other research-based interventions for gifted and high-ability learners as a priority for expending Every Student Succeeds Act funding

Please note that this is not federally funded and cannot be expended in the federal Every Student Succeeds Act funding as stated above. This is not in the State Title I or Title II plans.

(b) specified nondiscrimination and inclusiveness of all students, including those with disabilities, language differences and socioeconomic differences;

This is addressed in the Gifted Technical Assistance Manual.

(c) provisions that the individual education plan team may make acceleration decisions for students identified as gifted and that the student assistance team may make acceleration decisions for other advanced students not identified as gifted; and

Two items included in this sentence. IEP already makes the decisions and advanced students would be addressed through SAT.

(d) inclusion of procedures for: 1) appeal and due process; and 2) safe reversion of placement within a reasonable time frame if the acceleration is ineffective;

This is addressed in the Gifted Technical Assistance Manual. Gifted is not afforded FAPE. They can file a complaint if state rules for gifted have been violated and it would be limited to that. Child placement is part of the IEP team.

(3) uphold the student's right to accelerate through a dual-credit or concurrent credit course in the

event that the student's home school offers the course that would allow the student to earn credit toward graduation;

This is addressed in the Gifted Technical Assistance Manual.

(4) provide special supports for disadvantaged and disabled students who are also identified as gifted pursuant to this section to participate in acceleration; and

This is addressed in the Gifted Technical Assistance Manual.

(5) accept accelerated credit or college credit earned at accredited schools toward graduation from the student's home high school.

This is addressed in the Gifted Technical Assistance Manual.

F. A twice-exceptional student shall continue to be eligible for special education and related services even though the child achieves a high score on an intelligence test. For purposes of this section, "twice exceptional" means a student who qualifies as a gifted student and meets the criteria for a disability under federal law."

This is addressed in the Gifted Technical Assistance Manual.

These are IEP team decisions that are already in place. For preschool children, child find screenings shall serve as interventions under Subsection B of 6.31.2.10 (6.31.2.10(A))

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

It is not clear what transportation means.

There would be a change to Public School Finance Act [22-8-1 NMSA 1978]

We would need to address additional staff for the younger age range. 4:1 ratio.

The guidance document for gifted addresses the majority of the issues.

Gifted is not afforded FAPE. They can file a complaint if state rules for gifted have been violated and it would be limited to that. If due process is filed it will increase legal costs to districts.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Children under five will not be considered for early admission if they meet the criteria for gifted.

Related services would not be provided without an evaluation.

The SAT team would stay intact, as considerations for student needs would be addressed through the established process.

AMENDMENTS