

<b>LFC Requester:</b>	<b>Sunny Liu</b>
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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)**

*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:*

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

**Date** 2/18/19  
**Bill No:** SB612

**Sponsor:** Sen. Lopez  
PUBLIC EDUCATION DEPT.  
SPECIAL NEEDS DIVISION

**Agency Name and Code Number:** 924 PED

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**Short Title:** \_\_\_\_\_

**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: Creating a division dedicated to Special Education at a cabinet level

**FISCAL IMPLICATIONS**

With the expansion of the Special Education Bureau (SEB) to a Division of the Public Education Department (PED), comes the need to increase personnel to support the division in order to maintain the extensive federal accountability requirements of the Individuals with Disabilities Education Act Part B (IDEA-B). If the Bureau becomes a Division, state equalization guarantee (SEG) funding must increase proportionately to serve students with disabilities. The funding increases are as follows: membership for students developmentally disabled (DD) from 2.0 units to 2.33 units; related services for students with disabilities from 25.0 units to 25.33 units.

**SIGNIFICANT ISSUES**

The Special Education Bureau needs to be elevated and represented in all PED entities that impact students with disabilities. This Bureau works with the most significant student needs in the state. Historically, the SEB has not been equally represented throughout the PED. It has only been within the last year that the visibility of the Bureau has been recognized by senior leadership. This Bureau works directly with Office of Special Education Programs (OSEP), families, staff, Special Education Directors, Administrators, Stakeholders and litigation.

The current structure that the Bureau operates under is multi-layered. Elevating the Bureau to a Division level will streamline operations and provide quicker access to timely decision making that will have a positive effect on students with disabilities.

In order for the State to secure its annual special education IDEA grant award of approximately ninety-six million dollars per year, the State provides written and signed assurances in the grant application that assure the grantor that the State will adhere to the requirements of the IDEA. Germane to SB 612, is the assurance that the provision of Free and Appropriate Education (FAPE) to students eligible for special education services will be delivered in the Least Restrictive Environment (LRE) without interruption. Adhering to the federal requirements sometimes

results in federal rules superseding State rules. A definition for FAPE is needs to be included in SB 612.

**SECTION 2** of SB 612 introduces *some* definitions that appear to conflict with IDEA. Some substantive examples include: 1. Dyslexia, a disability recognized under the category of Specific Learning Disability (SLD) by IDEA, is introduced in SB 612 as what appears to be a disability yet to be recognized. 2. Exceptional students and gifted students as defined in SB 612 and existing New Mexico Administrative Code (NMAC) are not recognized disabilities under IDEA-B and thus are not eligible for the provision of FAPE. These examples and others present significant issues in restructuring from a Bureau to a Division.

Other definitions that pose significant issues resulting from inconsistencies with IDEA-B are: The difference between superintendent and principal; Response to Intervention (RtI); surrogate parent and/or foster parent; Special Education (NMAC 6.31.2.7); differentiating between disabled and disabilities; Special Assessment Team (SAT) (NMAC 6.31.2).

### **SECTION 3**

Class A programs exclude related services necessary to carry out student program requirements. Related service providers are required to be licensed by the state board; subsequent administration is carried out by PED's Licensure Bureau.

The Individualized Education Program (IEP) Team consists of only members identified by IDEA-B. It includes parents of students with disabilities and excludes agency level influence. IEPs are influenced by evidenced based evaluations which are presented to the IEP team whom determines a course of action specific to each child. SB 612's definition of IEP is loosely organized and lacks the specificity needed to adhere to the IDEA and to result in a well-developed IEP.

The PED is not aware of any federal or state Act known as "the Special Education Act". PED assumes that this citation SB 612 is referring to the IDEA-B which was last re-authorized by US Congress in 2004. The definition needs to reflect the proper language in order to be accurate.

Number (5) the definition of instructional support providers is referenced as generating 25.33 units, a unit value tied to licensed related service providers. The term instructional support providers appears to be out of the context of related service providers and has the potential to be interpreted as service providers that might lack the education, experience and skills that are needed to deliver the highly specialized services that make up related services.

### **SECTION 7**

SB 612 asserts the inclusion of gifted students through age three; note the IDEA-B does not include the provision of FAPE for gifted students.

Citing high performance students as a subset of gifted is misleading as the criteria used to determine high performing students and gifted students is different. Students that fail to meet gifted eligibility would be better served by way of Special Assessment Team (SAT) interventions.

## SECTION 9

Due to the specialization and complexities of special education, the introduction of a designated cabinet level position should come with licensing requirements at minimum a license and background in Special Education.

A. Number (1): Policy development regarding special education is not advised. The policy arm of special education rest with the OSEP which is the PED's oversight entity located in Washington DC.

A. Number (2) Coordinate transition efforts: A comprehensive transition network to include the Department of Vocational Rehabilitation (DVR) is in place. Transition is one of the SPP Compliance Indicators, SPP 13. This activity is closely monitored and reported on annually to OSEP.

B. Number 4, B, (1): The IEP is the legal document to ensure that each student with disabilities is receiving proper services and is making adequate progress. Intervention by the PED at this level is not in the purview of the Bureau. When conducting oversight, the Bureau is very much involved in identifying deficiencies at the IEP level and following up with required corrective action. This methodology, i.e. compliance and subsequent corrective action is the national standard. Non-corrected noncompliance that impacts students' access to FAPE can be address by the complaint process which is another effective tool for improving outcomes for students with disabilities.

B. Number 3 (a) Researched based special education services: The Bureau has placed emphasis on evidence based practice and found its implementation to produce substantive outcomes. It's suggested that this model be sustained. Ultimately, the students' needs are addressed by the IEP team. The focus must include evidence based practices. FERPA and HIPAA compliance should always be at the forefront of any action associated with special education services and the people viewing student information.

B. Number 4: Discipline should be evidence based positive behavioral interventions that include restorative justice. This should be evidence based as well.

Number 6: This may need to go to mental health providers. Maybe outside of school.

Number 7: The section is a grievance issue, not a policy.

Number 9, (c) Student Assistance Team (SAT) is not under Special Education this is a general education function. SAT is a process intended to intervene prior to Special Education referrals. FERPA and HIPAA would have to be considered. The data systems used would have to interface with one another. Permissions would have to be in place. This is a major database tracking system. This could cost millions to set up and track. This could be from personnel to do the work, tracking systems put in place, computer systems and analysis.

**PERFORMANCE IMPLICATIONS**

**ADMINISTRATIVE IMPLICATIONS**

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

**TECHNICAL ISSUES**

**OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

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

We would continue to report to a Deputy Secretary.

**AMENDMENTS**