

| | |
|-----------------------|---------------|
| LFC Requester: | Becera |
|-----------------------|---------------|

**AGENCY BILL ANALYSIS
2021 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 2/16/2021
Bill No: SB289

Sponsor: Sen. Linda M. Lopez
Short Title: SPECIAL ED DIVISION OF ED DEPT.

Agency Name and Code PED - 924
Number: _____
Person Writing John Sena
Phone: 505-570-7816 **Email** John.Sena@state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|-----------|---------------------------|---------------|
| FY21 | FY22 | | |
| NFI | \$1,000.0 | Nonrecurring | General Fund |
| | | | |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY21 | FY22 | FY23 | | |
| N/A | N/A | N/A | N/A | N/A |
| | | | | |

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY21 | FY22 | FY23 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| Total | NFI | NFI | NFI | NFI | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB130, School Gifted Education Requirements; HB213, School District Special Ed Services Fund; HB222, Special Education Ombud Act; HB266, Special Education Teacher Licenses; and SB346, Special Ed Ombud Act. Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Bill 289 (SB289) would create the “Special Education Act” in the Public School Code (PSC), which details the creation of a Special Education Division (SED) in the Public Education Department (PED), details the powers and duties of the SED and the assistant secretary of special education, and compiles other sections of current law – Special education; Gifted children, determination; and Special education, responsibility – into the new section of law, Special Education Act.

Finally, the bill would require the SED to work with school districts and charter schools (local educational agencies or LEAs), the University of New Mexico, the Human Services Department, the Children, Youth & Families Department, the Department of Health, and other experts to develop and maintain a statewide autism spectrum registry.

FISCAL IMPLICATIONS

SB289 would appropriate \$1 million from the general fund to the PED for expenditure in FY22 to provide professional development (PD) for teachers, instructional support providers, school administrators, substitute teachers, school resource officers, and school police or school security on working effectively with and meeting the needs of special education students. Any unexpended or unencumbered balance remaining at the end of FY22 shall revert to the general fund.

Under the bill, charter schools would be required to provide services for three-year-old and four-year-old preschool children with disabilities unless the parent or guardian chooses not to enroll the child. This may have an impact on charter schools’ operating budgets as certified special education personnel would need to be hired to accomplish this requirement. Since grade level designations are a material term in a charter school’s charter and the chartering authorizers in the state only focus on kindergarten through 12th grade, currently there are no charter schools in the state who would specifically have a preschool or prekindergarten program approved in their charter. However, just because the charter does not specify a preschool or prekindergarten program, this does not prohibit the charter school from creating or implementing a preschool or prekindergarten program.

SIGNIFICANT ISSUES

Currently, the PED maintains and operates a Special Education Division, which is led by a division director who advises the PED deputy secretary of identity, equity, and transformation. Under SB289, it is unclear if the current division director would be elevated to an assistant secretary of special education.

Additionally, the current division director and staff within the Special Education Division are tasked with the majority of the responsibilities outlined in the bill at this time, with the exception of the following responsibilities, which are primarily tasked outside of the current Special Education Division (see below):

| Proposed Primary Responsibilities for SED under SB289 | Currently Primary Responsibility Is Located Outside Present Special Education Division |
|---|--|
| Helping LEAs find placement and treatment options for special education students with severe behavior needs (page 11, lines 8-11) | Placement and treatment options are decisions made by the individualized education plan (IEP) team. The PED's current Special Education does not get involved in these decisions. |
| Monitoring curriculum and services provided to special education students in alternative settings (page 11, lines 16-20) | Curriculum decisions are determined at the local level. The PED's current Special Education Division supports the proposed primary responsibility through litigation. Additionally, the use of evidence-based practices for curriculum is mandated. |
| Monitoring where school discipline and lack of adequate services lead to detention, suspensions, or expulsions and entry into juvenile justice system (page 11, lines 21-24) | Generally, the PED's current Special Education Division monitors suspensions and expulsions through indicator 4A in the state's submission of the State Performance Plan/Annual Performance Report, which is required to be annually submitted to the U.S. Department of Education on activities related to the federal Individual with Disabilities Education Act (IDEA), Part B. |
| Monitoring the manifestation determination process to ensure compliance with the IDEA (page 12, lines 2-4) | The manifestation determination process is monitored at the district level. The PED's current Special Education Division only investigates if a family files a complaint, in accordance with Alternative Dispute Resolution procedures. |
| Monitoring the use of seclusion rooms to ensure compliance with the public school's school safety plan (page 12, lines 5-7) | The PED's current Special Education Division does not monitor seclusion rooms. School districts would create programs for students through the IEP. |
| Monitoring the use of interventions, adaptations, and modifications that are determined for each special education student based on the student's diagnostic report and IEP (page 12, lines 8-11) | The PED's current Special Education Division does not monitor the use of interventions, adaptations, and modifications that are determined for each special education student based on the student's diagnostic report and IEP. The monitoring is completed by the |

| | |
|--|---|
| | <p>student's IEP team.</p> <p>The monitoring requirement would be unduly burdensome for PED's current Special Education Division to monitor this for each special education student. Based on the 40th day certified count for the 2020-2021 school year, there are 53,808 students with disabilities who receive special education services in public schools. All 53,808 students have an IEP, which would require the SED to monitor all 53,808 students.</p> |
| <p>Include Services for Gifted Students with the proposed SED under the bill (section 7)</p> | <p>The PED's Gifted Students Program is currently under the purview of the department's Teaching, Learning, and Assessment Team.</p> |

Detailed provisions of the bill:

Specifically, SB289 would create an assistant secretary of special education, who would be appointed by the PED secretary. The assistant secretary would be charged with:

- directing the SED and advising the PED secretary on development of special education-related policy;
- coordinate transition efforts for special education students in public schools with the Higher Education Department and work to expand appropriate special education for students in preschool through college;
- coordinate with administrators and divisions to ensure implementation of special education is a priority; and
- provide PD for SED staff to develop expertise in the requirements and regulations of the IDEA.

Under SB289 the SED would be required to, among other things:

- provide assistance and advice on the allocation of resources to LEAs to improve services to meet the needs of special education students;
- seek funds to establish, develop, and implement culturally relevant support services for special education students;
- monitor special education programs in LEAs to determine if students and families are receiving adequate services;
- provide LEAs with support for the development of culturally rooted multicultural curricula and culturally sustaining pedagogy for students of all ability levels;
- help LEAs find placement and treatment options for students with severe behavior needs who are at risk of harming themselves or others;
- assist LEAs with developing transition plans for special education students;
- monitor curriculum and services provided to special education students in alternative settings due to suspension and ensure the educational services fully comply with constitutional and statutory requirements;
- monitor where school discipline and lack of adequate services lead to detentions, suspensions, or expulsions and entry into the juvenile justice system;
- monitor LEAs' processes for developing and implementing IEPs;

- monitor compliance with IDEA;
- monitor the use of seclusion rooms to ensure compliance with the LEA's school safety plan; and
- monitor the use of interventions, adaptations, and modifications that are determined for each special education student.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

The PED would be required to implement the provisions of SB289.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB289 relates to HB130, School Gifted Education Requirements; HB213, School District Special Ed Services Fund; HB222, Special Education Ombud Act; HB266, Special Education Teacher Licenses; and SB346, Special Ed Ombud Act.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

SB289 would repeal Section 22-13-6 NMSA 1978, which are the definitions for special education, and would amend the PSC to place the following definitions from the repealed section to within the definitions section of the PSC: (1) "dyslexia;" (2) "exceptional students;" (3) "gifted student;" (4) "response to intervention;" (5) "special education;" (6) "student assistance team;" and (7) "students with disabilities." Some of the definitions are amended to be more concise.

The bill would require a multidisciplinary team to consider the cultural, linguistic, and socioeconomic background of a student who is being screened for gifted services.

Finally, SB289 would explicitly include charter schools in the Special Education Act's requirements for gifted students and students with disabilities. By doing so, the bill would require charter schools to create one or more advisory committees of parents, community members, students, school staff members related to the charter school's gifted program. Additionally, the explicit inclusion of charter schools in the act would require charter schools to provide services for three-year-old and four-year-old preschool children with disabilities. This may require charter schools to change the terms of charter contracts, as they contain the grades each school will serve.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS