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| <b>LFC Requester:</b> | <b>Becerra</b> |
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**AGENCY BILL ANALYSIS  
2021 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** 3/5/2021  
**Bill No:** SB346

**Sponsor:** Sen. Linda M. Lopez  
**Short**    SPECIAL ED OMBUD ACT  
**Title:**    \_\_\_\_\_

**Agency Name and Code**    PED - 924  
**Number:** \_\_\_\_\_  
**Person Writing**    John Sena  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

| Appropriation |         | Recurring or Nonrecurring | Fund Affected |
|---------------|---------|---------------------------|---------------|
| FY21          | FY22    |                           |               |
| NFI           | \$295.0 | 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)**

|              | <b>FY21</b> | <b>FY22</b> | <b>FY23</b> | <b>3 Year<br/>Total Cost</b> | <b>Recurring or<br/>Nonrecurring</b> | <b>Fund<br/>Affected</b>      |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|-------------------------------|
| <b>Total</b> | NFI         | Unknown     | Unknown     | Unknown                      | Recurring                            | DDPC's<br>operating<br>budget |

(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 Obmud Act; HB266, Special Education Teacher Licenses; and SB289, Special Ed Division of Ed Dept.

Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: Senate Bill 346 (SB346) would create the “Special Education Ombud Act,” which establishes the Office of the State Special Education Ombud (“Office”), and provides duties and requirements for the Office.

**FISCAL IMPLICATIONS**

SB346 would appropriate \$295 thousand from the general fund to the Development Disabilities Planning Council (DDPC) for expenditure in FY22 for the purposes of the provisions of the bill. Any unexpended or unencumbered balance remaining at the end of FY22 shall revert to the general fund.

**SIGNIFICANT ISSUES**

**The PED’s work with students with disabilities:**

In 2020, the Public Education Department (PED) created the Special Education Working Group, which included partnering with the DDPC, the Early Childhood Education and Care Department, Disability Rights New Mexico, legislators, regional educational cooperatives, Native American disability law experts, parents, teachers, and administrators. The Special Education Working Group was tasked with building transformative strategies to support students with disabilities and focused on the following topics pertaining to students with disabilities: behavioral needs, family advocacy and support, initial evaluation, educator training and support, and PED’s role within this structure. SB346 is a direct result of the work of the PED’s Special Education Working Group.

The PED’s strategic plan highlights the department’s commitment to students with disabilities by focusing on job-embedded professional development, special education training for teachers to ensure they are prepared to support students with disabilities in the general education setting, increased family support and advocacy assistance, compliance monitoring and technical assistance, and improved data systems.

The PED’s Special Education Division (SED) is charged with leading the department’s efforts to

provide a comprehensive state compliance, monitoring, dispute resolution structure, and professional development system for local educational agencies (LEAs) in their work with students with disabilities, some of which is similar to the provisions in SB346 tasked to the Office. For instance, the SED has established systems to ensure that the federal Individuals with Disabilities Education Act (IDEA), Part B requirements are based on data review and monitoring. Specifically, if an LEA reports data to the STARS system and the reported data does not align with IDEA, Part B or state requirements, then the LEA will receive a message that an error has been identified related to the data submission. The LEA is required to address the issues related to that data submission.

Additionally, the dispute resolution process for mediation, state complaints, and due process hearings is administered by the Office of General Counsel (OGC) within the PED and governed by the processes and requirements set forth in 6.31.2.13 of the New Mexico Administrative Code. The PED contracts with independent mediators, state complaint investigators, and due process hearing officers who assist in conducting the required dispute resolution processes. The SED, in collaboration with the OGC, monitor the outcomes and implementation of the dispute resolution processes. As detailed in the charts below, the SED in collaboration with the OGC, facilitated IEP meetings (Table 1), provided mediation services (Table 2), and held due process hearings (Table 3):

| <b>Table 1 – IEP FACILITATION</b> |           |           |                              |
|-----------------------------------|-----------|-----------|------------------------------|
|                                   | 2018-2019 | 2019-2020 | 2020-2021<br>(as of 2/12/21) |
| Facilitated IEP meetings          | 4         | 0         | 1                            |
| Issues resolved through FIEP      | 3         | 0         | 1                            |

| <b>Table 2 - MEDIATIONS</b>       |           |           |                              |
|-----------------------------------|-----------|-----------|------------------------------|
|                                   | 2018-2019 | 2019-2020 | 2020-2021<br>(as of 2/12/21) |
| Mediations                        | 36        | 18        | 16                           |
| Issues resolved through mediation | 26        | 16        | 10                           |
| Pending mediations                | 0         | 0         | 6                            |

| <b>Table 3 – DUE PROCESS HEARINGS</b>        |           |           |                              |
|--|-----------|-----------|------------------------------|
|  | 2018-2019 | 2019-2020 | 2020-2021<br>(as of 2/12/21) |
| Total due process hearing requests           | 28        | 24        | 15                           |
| Resolved with resolution session             | 1         | 2         | 0                            |
| Resolved with mediation                      | 19        | 12        | 5                            |
| Resolved outside of mediation                | 0         | 1         | 1                            |
| Number resolved with FIEP                    | 1         | 0         | 0                            |
| Resolved with a hearing and hearing decision | 7         | 5         | 0                            |
| Dismissed by hearing officer without hearing | 0         | 4         | 2                            |
| Pending                                      | 0         | 0         | 7                            |

The SED received the following state complaints related to special education services (SES), detailed in Table 4 below:

| <b>Table 4 – STATE COMPLAINTS</b>                     |           |           |                              |
|---|-----------|-----------|------------------------------|
|   | 2018-2019 | 2019-2020 | 2020-2021<br>(as of 2/12/21) |
| Total state complaints                                | 32        | 28        | 14                           |
| Resolved with mediation                               | 7         | 4         | 3                            |
| Resolved with FIEP                                    | 2         | 0         | 1                            |
| Violations found and correction action plan initiated | 17        | 15        | 6                            |
| No violation found                                    | 3         | 7         | 0                            |
| Withdrawn by parent                                   | 3         | 2         | 3                            |
| Pending   | 0         | 0         | 1                            |

Finally, the SED provides resources related to SES for school districts, charters, and parents on its website. The topics include resources on procedural safeguards, advocacy and support groups, free or low-cost legal supports, and information on the SED’s parent liaison, who assists parents and families with their SES concerns.

**SB346 detailed provisions:**

Under SB346, the Office would be created in the DDPC. The DDPC would be required to appoint the State Special Education Ombud (“State Ombud”), who would head the Office and supervise the staff of the Office. The State Ombud may contract for services to assist the Office in conducting its duties and may use the service of volunteers. The State Ombud would be required to:

- identify, investigate, and resolve concerns pertaining to SES that are filed by the Office by parents;
- assist students and parents in protecting the educational rights of students;
- inform students and parents about special education resources in their community;
- ensure that students and parents have regular and timely access to the services provided through the Office and that students and parents receive timely responses from representatives of the Office;
- identify any patterns of concerns that emerge regarding SES and educational rights and recommend strategies for improve to the PED;
- collaborate with the PED to ensure that all dispute resolution processes are available to students and parents;
- collaborate with the parent training information centers and protection and advocacy agencies within the state to identify and report systemic special education issues to the PED;
- ensure that Office staff, contractors, and volunteers are training in various special education matters;
- develop procedures for the certification of ombuds;

- analyze, comment on, and monitor the development and implementation of federal and state laws, rule, and other governmental policies and actions that pertain to the educational rights of students with respect to the adequacy of SES in the state;
- recommend changes to laws, rules, policies, and actions pertaining to special educational rights of students as the Office determines to be appropriate;
- facilitate public comment on proposes laws, rules, policies, and actions; and
- provide information to public and private agencies, legislators, and other persons regarding the problems and concerns of SES, and make recommendations relates to those problems and concerns.

Under SB346, the Office would be required to prepare an annual report, no later than December 1 of each year, that includes: (1) actions taken by the Office in the year for which the report is prepared; (2) special education concerns identified by or on behalf of students and parents, resolutions of concerns, and the effectiveness of the resolution processes; (3) recommendations for improving the quality of SES provided to students and protecting the educational rights of students; and (4) policy, regulatory, and legislative recommendations to solved identified concerns and improve processes related to special education.

Additionally, the Office would be required to identify, investigate, and seek to resolve concerns related to special education. Under SB346, the Office would have access to the student's educational record, upon request and with consent from the student or the student's parent, from the PED, a school district, or public school to carry out the Office's responsibilities. There would also be requirements related to the confidentiality of students' files and records maintained by the Office.

Finally, under SB346, every public school providing SES would be required to post in the public school, and on the public school's website if applicable, a notice regarding the Office's services and contact information. Additionally, each public school providing ESE would be required to distribute this information related to the Office at the beginning of each school year and before the first scheduled individual educational plan (IEP) meeting of the school year. The DDPC would be required to ensure that adequate legal counsel is available and is able to provide advice and consultation to the Office.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

Under SB346, the following collaborative work would occur related to the following responsibilities outlined in the bill:

- the Office would collaborate with the PED to ensure all dispute resolution processes are available to students and parents, including the special education parent liaison, mediation, facilitated IEP meetings, state complaint, and investigations and due process hearings;
- the Office would report systemic special education issues to the PED;
- the Office would have access to the student's educational records from the PED, upon approved request and consent from the student or student's parent;
- the DDPC would be required to report to the PED the noncompliance of public school

personnel or a contractor or volunteer of a school district or charter school that fails to comply with the provisions of this proposed act; and

- the Office would be required to collaborate with the PED to access processes and resources to address special education services concerns and to identify further appropriate actions to be taken in response to the Office's annual report.

Under SB346, the PED may take the following actions in response to the Office's annual report: a corrective action plan or any other administrative action to ensure that students receive the free and appropriate public education required under the federal IDEA and state law.

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

SB346 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 SB289, Special Ed Division of Ed Dept.

### **TECHNICAL ISSUES**

N/A

### **OTHER SUBSTANTIVE ISSUES**

Based on the 40<sup>th</sup> day certified count for the 2020-2021 school year, there are 53,808 students with disabilities who receive SES in public schools.

### **ALTERNATIVES**

N/A

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

N/A

### **AMENDMENTS**

N/A