

<b>LFC Requester:</b>	<b>Helms</b>
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**PUBLIC EDUCATION DEPARTMENT  
BILL ANALYSIS  
2023 REGULAR SESSION**

**SECTION I: GENERAL INFORMATION**

Check all that apply:

Original  Amendment   
Correction  Substitute

Date Prepared: 02/27/23

Bill No: HB285/HECS

Agency Name  
and Code

Sponsor: Thompson

Number: PED - 924

Short Title: OFFICE OF SPECIAL

Person Writing: Gregory Frostad

Title: EDUCATION

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
None	None	N/A	NFA

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
None	None	None	N/A	NFA

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	None	None	None	None	N/A	NFA

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: The House Education Committee Substitute for HB285 (HB285/HECS) enacts the Special Education Act and creates the Office of Special Education within the Public Education Department (PED).

The effective date of the bill is July 1, 2023.

## **FISCAL IMPLICATIONS**

The bill does not contain an appropriation.

The Executive Budget and PED recommendation for FY24 includes:

- \$1.1 million to improve the literacy skills of special education students through the excellence from coaching in intensive supports for special education program;
- \$1.5 million to improve academic and behavioral outcomes for special education students through the universal design for learning framework;
- \$2 million for educator professional development and support to improve the performance of special education students in general education settings; and
- \$33.1 million for elective extended learning opportunities for students with individualized education plans and for other special education initiatives. This amount, if approved, could be used for the expenses of this bill, according to the New Mexico Department of Finance and Administration (DFA).

## **SIGNIFICANT ISSUES**

The bill requires the Office of Special Education to:

- carry out the provisions of the Special Education Act and other laws that relate to the special education of public school students and three- and four-year-old children who have disabilities. The Office will assume the duties of the current Special Education Division (SED) within PED when the director is hired. Existing SED agreements and contractual obligations would become agreements and contractual obligations of the Office of Special Education on July 1, 2024.
- consult and coordinate with the Early Childhood Education and Care Department (ECECD) to transfer the Part B, 619 Coordinator from PED to ECECD by July 1, 2024, through a formal agreement that will identify the administrative roles, responsibilities and funding for the Office of Special Education and ECECD, which includes data, legal support, and reporting. The bill requires PED to consult with ECECD regarding special education matters.

Elevating SED to an Office attached to PED would strengthen and streamline state administration of special education from cradle to career, expand transparency, ensure effective and timely delivery of services and evaluations for children and families, and provide educator training specific to special education by:

- increasing effective, timely and data-driven services for children in special education by publicizing data on student achievement, school district transition plans for students, and all incidents of student restraint and seclusion;
- providing training and professional development for special education educators on required student protections; the implementation of individualized education plans (IEPs); engagement and communication with parents, students, and educational decision-makers; de-escalation practices, positive behavior supports, and other related interventions; and structured literacy;
- initiating an educator-informed process, in coordination with the Legislature, to identify differential salaries for special educators and other supports for the special education

workforce; and

- supporting school and school district implementation of federal and state special education laws through technical assistance and accountable policies and practices.

SED currently has 24 FTE's, including a State Director of Special Education, a State Deputy Director of Special Education, a Special Education Fiscal Supervisor. Other staff include general counsel and personnel tasked with roles and responsibilities that support students and families who require special education services.

### **PERFORMANCE IMPLICATIONS**

None.

### **ADMINISTRATIVE IMPLICATIONS**

The bill requires, subject to approval of the Secretary, the PED Special Education Division's (SED) budget and personnel to transfer to the Office of Special Education.

The bill requires PED to:

- coordinate with the Office of Special Education to develop, adopt, promulgate and update an annual state plan for policy, programs and standards to improve special education outcomes for students;
- submit a report on the status of special education to the Secretary, the Governor and the Legislative Education Study Committee by November 30 of each year;
- evaluate the state's compliance with the federal Individuals with Disabilities Education Improvement Act of 2004 and state law pertaining to special education;
- monitor spending of state and federal funds for special education programs for students with disabilities, including state equalization guarantee distributions and Medicaid, and take actions to ensure appropriate spending, as needed;
- coordinate with the Office to promulgate rules regarding performance reviews, site visits, corrective action, technical assistance, and other provisions, as determined by PED and the office;
- consult with ECECD regarding special education matters.

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

None.

### **TECHNICAL ISSUES**

None.

### **OTHER SUBSTANTIVE ISSUES**

In the summer of 2020, in the wake of the *Yazzie Martinez* lawsuit, Representative Liz Thomson and the Governor formed the Special Education Transformation Team, led by PED and New Mexico Developmental Disabilities Council (DDC), to study and set priorities for special education in New Mexico. Through the work of the Transformation Team, the Special Education Ombud was established in 2021 to advocate alongside students with disabilities and their families, and to identify trends and issues in special education.

The Special Education Ombud's first annual report identified multiple ongoing issues in the education system affecting students with disabilities, including lack of behavior support

resources and training for school personnel and inadequate data collection for both individual students and across systems. The report confirmed many of the concerns and priorities identified by the Transformation Team. This bill is a continuation of the work of the Transformation Team and the Special Education Ombud.

About 16.5 percent (50,600) of students enrolled in public PreK-12 schools qualified for special education services via Individualized Education Programs (IEPs) during the current school year. Nevertheless, few special education students in New Mexico are proficient in key academic areas – just 15 percent of special education students were proficient in early literacy, 9 percent were proficient in language arts and science, and only 6 percent were proficient in math. Nearly a third did not graduate from high school on time in 2021. Improving these outcomes is a key goal of this legislation.

#### **ALTERNATIVES**

None.

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

None.

#### **AMENDMENTS**

None.