



LFC Requester: Liu

**PUBLIC EDUCATION DEPARTMENT  
BILL ANALYSIS  
2025 REGULAR SESSION**

**SECTION I: GENERAL INFORMATION**

Check all that apply:

Original  Amendment   
Correction  Substitute

Date Prepared: 01/31 /25

Bill No: SB38

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

**Sponsor:** Stewart

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**Short Title:** SPECIAL EDUCATION ACT

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**SECTION II: FISCAL IMPACT**

(Parenthesis ( ) Indicate Expenditure Decreases)

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
\$5,000.0	\$5,000.0	Recurring	GRO

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
None	None	None	N/A	NFA

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

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	N/A	N/A	N/A	N/A	N/A	N/A

Duplicates/Relates to Appropriation in the General Appropriation Act:

The executive budget recommendation for FY26 includes \$9 million for special education: \$4 million for special education initiatives, an amount concordant with the LESC budget recommendation, and \$5 million for special education salary differentials appropriated from the government results and opportunity (GRO) fund in 2024 for FY25, FY26, and FY27.

## **SECTION III: NARRATIVE**

### **BILL SUMMARY**

Synopsis: Senate Bill 38 (SB38) would amend the [Public Education Department Act](#) to establish the Office of Special Education (OSE), established previously within the Public Education Department (PED) by executive order, and move the Office of the State Special Education Ombud (OSSEO) to PED. The bill would also create the Special Education Act as a new article of [Public School Code](#).

The provisions of the bill would address topics of transparency, effectiveness and timeliness of both services and special education evaluations and would provide for professional learning about special education. Provisions of the bill would facilitate the continuation of programs developed and implemented by OSE over the last year, including Parent University, statewide monitoring of school districts and charter schools, and professional development.

By July 1, 2025, the bill would require the initiation of a transfer from the Public Education Department (PED) to the Early Childhood and Care Department (ECECD) of all federal grant funding for preschool-age students with disabilities and all powers and duties related to this funding. While PED will maintain the responsibility to monitor compliance with the IDEA, ECECD will collaborate with PED to supervise and monitor the provision of special education to preschool age students,

The bill is endorsed by the Governor's Office.

### **FISCAL IMPLICATIONS**

The bill does not contain an appropriation.

### **SIGNIFICANT ISSUES**

About 16.5 percent (50,600) of students enrolled in public PreK-12 schools qualified for special education services via individualized education plans during the current school year. However, few special education students in New Mexico are proficient in key academic areas – just 10.3 percent of special education students are proficient in early literacy, 9 percent are proficient in reading, and only 4.3 percent are proficient in math. Nearly one-third did not graduate from high school on time in the 2022-23 academic year. Improving these outcomes is a key goal of this legislation.

The creation of the Office of Special Education in statute will build on the progress made by the 2021 establishment of the Special Education Ombud, further prioritizing the needs of special education students in the state's public education system. The OSE will coordinate with other state departments, including the Early Childhood Education and Care Department, the Higher Education Department, the Children, Youth and Families Department, the Indian Affairs Department, the Developmental Disabilities Council, and the Division of Vocational Rehabilitation, to provide the best outcomes for students from cradle to career. Establishing the Office of Special Education in statute will help ensure that students with disabilities and their families receive the support they need to access the best possible education and succeed in school and life.

The bill's amendment to Section 9-24-4 NMSA 1978 would ensure the statutorily created OSE is not reorganized or merged with other divisions or bureaus by the Secretary of Education; all other divisions and organizational units of the PED are subject to re-organization by the Secretary.

The Special Education Act would be created as a new article of the Public School Code. It would outline the organizational structure of the OSE, the duties and qualifications of its Deputy Secretary, and the duties assigned to the office, which would include:

Supervision of school districts and charter schools:

- Oversee and enforce school district and charter school compliance with state and federal law, monitor policies and the implementation of those policies, perform site visits, and require remedial action when not in compliance.
- Monitor school expenditures of funds allocated for special education, whether through the state equalization guarantee (SEG) or other federal or state funding sources and take action to ensure such expenditures are in accordance with law and meet state standards.
- Work with the OSSEO to review and investigate its recommendations and take action in support of those recommendations.
- Review and recommend rulemaking, develop policies, and provide guidance that includes guidance for parents, recommendations for schools, professional development for school personnel, and training for members of school boards and charter school governing bodies.
- Provide technical assistance to support recruitment and retention of qualified special education professionals.

Collect and analyze data:

- Develop and maintain an online system for the formulation of individualized education plans, review special education data, and monitor student progress.
- Provide procedural safeguards for students and ensure successful transition between early childhood education and care, public schools, and higher education or the workforce, in coordination with other agencies.
- Determine which special education data is needed to evaluate the state's compliance with federal and state laws related to special education, coordinate with other divisions of the department to ensure that school districts collect that data in a consistent and uniform manner and submit an annual report.
- Create and update a statewide special education plan.
- Consult and coordinate with other divisions, state agencies, and public postsecondary education institutions.

The bill would require, by July 1, 2026, strategies to be developed for improving recruitment and retention of special education personnel in public schools.

## **PERFORMANCE IMPLICATIONS**

Stronger state-level oversight of special education programs in New Mexico public schools, as provided for in this bill, will ensure compliance with state and federal law and will support improved educational outcomes. The current [OSE State Plan](#) has been designed to improve adoption of best practices by local district and charter school educators, and help facilitate families' understanding of these practices.

## **ADMINISTRATIVE IMPLICATIONS**

Upon the completion of the transfer of powers and duties related to special education for preschool-age students to ECECD, as provided for in SB38, the administrative burden of these duties would be reduced within the Administrative Services Division of PED. One FTE staff is currently tasked with preschool-age services and has been transferred to and is functioning at ECECD. Some related administrative duties would remain with OSE to maintain collaboration with ECECD.

SB38 would require the PED to promulgate rule in order to align regulation with statute.

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

None.

## **TECHNICAL ISSUES**

None.

## **OTHER SUBSTANTIVE ISSUES**

By amending the Public School Finance Act, the bill would strengthen the department's supervisory authority over school district and charter school budgets, ensuring that program costs allocated for students with disabilities and gifted students are transparently reported and appropriately spent.

Although what constitutes services that must be provided by federally assisted schools under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C.A. § 1400 et seq.) does not apply to gifted students nationwide, this bill may help to extend similar rights to related services by state law to both gifted students and students with disabilities in New Mexico. The new rule adopted in 2023, [6.31.3 NMAC Gifted and Talented Students](#), did include related services for gifted students in its scope and objective. 6.31.2 NMAC [Children with Disabilities](#) aligns with 34 CFR §300.34, to define related services which include transportation and developmental, corrective, and other supportive services required to meet students' individual needs. The department may need to amend rule or set standards to explicitly specify the related services that must be provided for gifted students who demonstrate need or to explicitly state that they are the same as for students protected under IDEA.

According to the current OSE [State Plan for 2024-2027](#), more than 16 percent of public school students in the 2023-2024 school year were eligible for special education services. Many of these students struggle academically: 15 percent of students with disabilities score proficient in early literacy and even fewer do in language arts, science, and math. Dropout rates are high, and graduation rates are low, demonstrating an urgent need to share the data related to special education to improve the broader special education system. Students with disabilities are the lowest achieving student group.

**ALTERNATIVES**

None.

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

None.

**AMENDMENTS**

None.