

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 289

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Linda M. Lopez

AN ACT

RELATING TO PUBLIC EDUCATION; CREATING A DIVISION IN THE PUBLIC
EDUCATION DEPARTMENT TO FOCUS ON SPECIAL EDUCATION; PROVIDING
POWERS AND DUTIES; REQUIRING ACCOUNTABILITY; AMENDING,
REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978;
MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 9-24-4 NMSA 1978 (being Laws 2004,
Chapter 27, Section 4, as amended) is amended to read:

"9-24-4. DEPARTMENT CREATED.--

A. The "public education department" is created in
the executive branch. The department is a cabinet department
and includes the following divisions:

- (1) the administrative services division;
- (2) the assessment and accountability

underscored material = new
[bracketed material] = delete

1 division;

2 (3) the charter schools division;

3 (4) the educator quality division;

4 (5) the Indian education division;

5 (6) the information technology division;

6 (7) the instructional support and vocational
7 education division;

8 (8) the program support and student
9 transportation division;

10 (9) the quality assurance and systems
11 integration division;

12 (10) the rural education division; [~~and~~]

13 (11) the special education division; and

14 [~~(11)~~] (12) the vocational rehabilitation
15 division.

16 B. The secretary may organize the department and
17 divisions of the department and may transfer or merge functions
18 between divisions and bureaus in the interest of efficiency and
19 economy."

20 SECTION 2. Section 22-1-2 NMSA 1978 (being Laws 2003,
21 Chapter 153, Section 3, as amended by Laws 2019, Chapter 206,
22 Section 1 and by Laws 2019, Chapter 207, Section 1) is amended
23 to read:

24 "22-1-2. DEFINITIONS.--As used in the Public School Code:

25 A. "academic proficiency" means mastery of the

.219115.2

1 subject-matter knowledge and skills specified in state academic
2 content and performance standards for a student's grade level;

3 B. "charter school" means a school authorized by a
4 chartering authority to operate as a public school;

5 C. "commission" means the public education
6 commission;

7 D. "department" means the public education
8 department;

9 E. "dyslexia" means a condition of neurological
10 origin that is characterized by difficulty with accurate or
11 fluent word recognition and by poor spelling and decoding
12 abilities, which characteristics typically result from a
13 deficit in the phonological component of language that is often
14 unexpected in relation to other cognitive abilities and the
15 provision of effective classroom instruction and may result in
16 problems in reading comprehension and reduced reading
17 experience that may impede the growth of vocabulary and
18 background knowledge;

19 F. "exceptional students" means students whose
20 abilities render regular services of the public school to be
21 inconsistent with the students' educational needs;

22 G. "gifted student" means a school-age person who
23 is determined to be gifted pursuant to Section 7 of this 2021
24 act and standards adopted by the department pursuant to that
25 section;

.219115.2

underscoring material = new
~~[bracketed material] = delete~~

1 ~~[E.]~~ H. "home school" means the operation by the
2 parent of a school-age person of a home study program of
3 instruction that provides a basic academic educational program,
4 including reading, language arts, mathematics, social studies
5 and science;

6 ~~[F.]~~ I. "instructional support provider" means a
7 person who is employed to support the instructional program of
8 a school district, including educational assistant, school
9 counselor, social worker, school nurse, speech-language
10 pathologist, psychologist, physical therapist, occupational
11 therapist, recreational therapist, marriage and family
12 therapist, interpreter for the deaf and diagnostician;

13 ~~[G.]~~ J. "licensed school employee" means teachers,
14 school administrators and instructional support providers;

15 ~~[H.]~~ K. "local school board" means the policy-
16 setting body of a school district;

17 ~~[I.]~~ L. "local superintendent" means the chief
18 executive officer of a school district;

19 ~~[J.]~~ M. "parent" includes a guardian or other
20 person having custody and control of a school-age person;

21 ~~[K.]~~ N. "private school" means a school, other than
22 a home school, that offers on-site programs of instruction and
23 that is not under the control, supervision or management of a
24 local school board;

25 ~~[L.]~~ O. "public school" means that part of a school

.219115.2

underscoring material = new
~~[bracketed material] = delete~~

1 district that is a single attendance center in which
2 instruction is offered by one or more teachers and is
3 discernible as a building or group of buildings generally
4 recognized as either an elementary, middle, junior high or high
5 school or any combination of those and includes a charter
6 school;

7 P. "response to intervention" means a multitiered
8 intervention model that uses a set of increasingly intensive
9 academic or behavioral supports, matched to student need, as a
10 framework for making educational programming and eligibility
11 decisions;

12 ~~[M.]~~ Q. "school" means a supervised program of
13 instruction designed to educate a student in a particular
14 place, manner and subject area;

15 ~~[N.]~~ R. "school administrator" means a person
16 licensed to administer in a school district and includes school
17 principals, central district administrators and charter school
18 head administrators;

19 ~~[O.]~~ S. "school-age person" means a person who is
20 at least five years of age prior to 12:01 a.m. on September 1
21 of the school year, who has not received a high school diploma
22 or its equivalent and who has not reached the person's twenty-
23 second birthday on the first day of the school year and meets
24 other criteria provided in the Public School Finance Act;

25 ~~[P.]~~ T. "school building" means a public school, an

.219115.2

1 administration building and related school structures or
2 facilities, including teacher housing, that is owned, acquired
3 or constructed by the school district as necessary to carry out
4 the functions of the school district;

5 [Q.] U. "school bus private owner" means a person,
6 other than a school district, the department, the state or any
7 other political subdivision of the state, that owns a school
8 bus;

9 [R.] V. "school district" means an area of land
10 established as a political subdivision of the state for the
11 administration of public schools and segregated geographically
12 for taxation and bonding purposes;

13 [S.] W. "school employee" includes licensed and
14 nonlicensed employees of a school district;

15 [T.] X. "school principal" means the chief
16 instructional leader and administrative head of a public
17 school;

18 [U.] Y. "school year" means the total number of
19 contract days offered by public schools in a school district
20 during a period of twelve consecutive months;

21 [V.] Z. "secretary" means the secretary of public
22 education;

23 AA. "special education" means the provision of
24 services additional to, supplementary to or different from
25 those provided in the regular school program by a systematic

underscored material = new
~~[bracketed material] = delete~~

1 modification and adaptation of instructional techniques,
2 materials and equipment to meet the needs of special education
3 students;

4 [W.] BB. "state agency" or "state institution"
5 means the New Mexico military institute, New Mexico school for
6 the blind and visually impaired, New Mexico school for the
7 deaf, New Mexico boys' school, girls' welfare home, New Mexico
8 youth diagnostic and development center, Sequoyah adolescent
9 treatment center, Carrie Tingley crippled children's hospital,
10 New Mexico behavioral health institute at Las Vegas and any
11 other state agency responsible for educating resident children;

12 [X.] CC. "state educational institution" means an
13 institution enumerated in Article 12, Section 11 of the
14 constitution of New Mexico;

15 DD. "student assistance team" means a school-based
16 group whose purpose, based on procedures and guidelines
17 established by the department, is to provide additional
18 educational support to students who are experiencing
19 difficulties that are preventing the students from benefiting
20 from general instruction;

21 EE. "students with disabilities" means those
22 students who are classified as developmentally disabled
23 pursuant to the Developmental Disabilities Act;

24 [Y.] FF. "substitute teacher" means a person who
25 holds a certificate to substitute for a teacher in the

.219115.2

underscored material = new
[bracketed material] = delete

1 classroom;

2 ~~[Z-]~~ GG. "teacher" means a person who holds a level
3 one, two or three-A license and whose primary duty is classroom
4 instruction or the supervision, below the school principal
5 level, of an instructional program or whose duties include
6 curriculum development, peer intervention, peer coaching or
7 mentoring or serving as a resource teacher for other teachers;

8 ~~[AA-]~~ HH. "certified school instructor" means a
9 licensed school employee; and

10 ~~[BB-]~~ II. "certified school employee" or "certified
11 school personnel" means a licensed school employee."

12 **SECTION 3.** A new section of the Public School Code is
13 enacted to read:

14 "[NEW MATERIAL] SHORT TITLE.--Sections 3 through 8 of this
15 act may be cited as the "Special Education Act"."

16 **SECTION 4.** A new section of the Public School Code is
17 enacted to read:

18 "[NEW MATERIAL] SPECIAL EDUCATION--DEFINITIONS.--As used
19 in the Special Education Act:

20 A. "assistant secretary" means the assistant
21 secretary of special education; and

22 B. "division" means the special education
23 division."

24 **SECTION 5.** A new section of the Public School Code is
25 enacted to read:

.219115.2

underscored material = new
~~[bracketed material] = delete~~

1 "[NEW MATERIAL] SPECIAL EDUCATION DIVISION--ASSISTANT
2 SECRETARY FOR SPECIAL EDUCATION--POWERS AND DUTIES.--

3 A. The "special education division" is created in
4 the department. The secretary shall appoint an "assistant
5 secretary for special education" who shall:

6 (1) direct the activities of the division and
7 advise the secretary on development of policy regarding the
8 education of special education students;

9 (2) coordinate transition efforts for special
10 education students in public schools with the higher education
11 department and work to expand appropriate special education for
12 students in preschool through college;

13 (3) coordinate with appropriate administrators
14 and divisions to ensure that department administrators make
15 implementation of special education a priority; and

16 (4) provide adequate professional development
17 for division staff to develop expertise in the requirements of
18 the federal Individuals with Disabilities Education Act and
19 federal regulations promulgated in accordance with that act.

20 B. The division shall:

21 (1) provide assistance, including advice on
22 the allocation of resources to school districts and charter
23 schools, to improve services to meet the educational and other
24 needs of special education students, based on current published
25 best practices in special education;

.219115.2

1 (2) seek funds to establish, develop and
2 implement culturally relevant support services for special
3 education students, including:

4 (a) recruitment and retention of highly
5 qualified special education teachers and instructional support
6 providers who provide special education ancillary services; and

7 (b) teacher and instructional support
8 provider preparation, induction and professional development;

9 (3) monitor special education programs in
10 school districts and charter schools to determine if special
11 education students and their families are receiving adequate
12 services, including:

13 (a) research-based special education
14 services appropriate for individual student needs;

15 (b) best practices for special education
16 staff and families to design appropriate services, including:

17 1) assessments; 2) individualized education plans; 3) student-
18 centered goals, interventions and plans; 4) appropriate
19 interventions; 5) transition plans; 6) reevaluation every three
20 years; and 7) student exit plans from special education; and

21 (c) focused monitoring based on school
22 and student data that includes family and community members and
23 leads to yearly monitored plans;

24 (4) provide school districts and charter
25 schools with support for the development of culturally rooted

underscored material = new
~~[bracketed material] = delete~~

1 multicultural curricula and culturally sustaining pedagogy for
2 students of all ability levels;

3 (5) encourage the use of health education, the
4 arts, physical education and extended learning programs as
5 avenues for developing special education students' multiple
6 literacies and capacities for learning through exploration,
7 play and enrichment based on each student's interests;

8 (6) help school districts and charter schools
9 find placement and treatment options for special education
10 students with severe behavior needs who are at risk of harming
11 themselves or others;

12 (7) assist school districts and charter
13 schools with developing transition plans for special education
14 students, including from high school to post-secondary
15 education plans;

16 (8) monitor curriculum and services provided
17 to special education students in alternative settings due to
18 suspension and ensure the educational services fully comply
19 with constitutional and statutory requirements for services to
20 special education students;

21 (9) monitor where school discipline and lack
22 of adequate services lead to detentions, suspensions or
23 expulsions from public school and the special education
24 student's entry into the juvenile justice system;

25 (10) monitor public schools' processes for

.219115.2

underscored material = new
[bracketed material] = delete

1 developing and implementing individualized education plans;

2 (11) monitor the manifestation determination
3 process to ensure compliance with the federal Individuals with
4 Disabilities Education Act;

5 (12) monitor the use of seclusion rooms to
6 ensure compliance with the public school's school safety plan;
7 and

8 (13) monitor the use of interventions,
9 adaptations and modifications that are determined for each
10 special education student based on the student's diagnostic
11 report and individualized education plan.

12 C. The division shall work with school districts
13 and charter schools, the university of New Mexico, the human
14 services department, the children, youth and families
15 department, the department of health and other experts to
16 develop and maintain a statewide autism spectrum registry so
17 that appropriate stakeholders can identify and support children
18 and students on the autism spectrum."

19 SECTION 6. Section 22-13-5 NMSA 1978 (being Laws 1972,
20 Chapter 95, Section 1, as amended) is recompiled in the Special
21 Education Act and is amended to read:

22 "SPECIAL EDUCATION.--School districts and charter schools
23 shall provide special education and related services
24 appropriate to meet the needs of special education students
25 [~~requiring special education and related services~~]. Rules and

.219115.2

underscored material = new
[bracketed material] = delete

1 standards shall be developed and established by the department
2 for the provision of special education in the public schools
3 and classes of the public school system in the state and in all
4 institutions wholly or partly supported by the state. The
5 department shall monitor and enforce the rules and standards.
6 School districts and charter schools shall also provide
7 services for three-year-old and four-year-old preschool
8 children with disabilities, unless the parent or guardian
9 chooses not to enroll the child. Services for students age
10 three through twenty-one may include [~~but are not limited to~~]
11 evaluating particular needs, providing learning experiences
12 that develop cognitive and social skills, arranging for or
13 providing related services as defined by the department and
14 providing parent education. The services may be provided by
15 licensed school employees or contracted for with other
16 community agencies and shall be provided in age-appropriate,
17 integrated settings, including home, daycare centers, head
18 start programs, schools or community-based settings."

19 SECTION 7. Section 22-13-6.1 NMSA 1978 (being Laws 1994,
20 Chapter 25, Section 2, as amended) is recompiled in the Special
21 Education Act and is amended to read:

22 "GIFTED [~~CHILDREN~~] STUDENTS--DETERMINATION.--

23 A. The department shall adopt standards pertaining
24 to the determination of who is a gifted [~~child~~] student and
25 shall publish those standards as part of the educational

.219115.2

underscoring material = new
~~[bracketed material] = delete~~

1 standards for New Mexico schools.

2 B. In adopting standards to determine who is a
3 gifted ~~[child]~~ student, the department shall provide for the
4 evaluation of selected ~~[school-age children]~~ students by
5 multidisciplinary teams from each ~~[child's]~~ student's school
6 district. That team shall be vested with the authority to
7 designate a ~~[child]~~ student as gifted. The team shall consider
8 information regarding a ~~[child's]~~ student's cultural and
9 linguistic background and socioeconomic background in the
10 identification, referral and evaluation process. The team also
11 shall consider any disabling condition in the identification,
12 referral and evaluation process.

13 C. Each school district or charter school offering
14 a gifted education program shall create one or more advisory
15 committees of parents, community members, students and school
16 staff members. The school district may create as many advisory
17 committees as there are high schools in the school district or
18 may create a single districtwide advisory committee. The
19 membership of each advisory committee shall reflect the
20 cultural diversity of the enrollment of the school district or
21 the district's public schools or the charter school the
22 committee advises. The advisory committee shall regularly
23 review the goals and priorities of the gifted program,
24 including the operational plans for student identification,
25 evaluation, placement and service delivery and shall

.219115.2

underscored material = new
[bracketed material] = delete

1 demonstrate support for the gifted program.

2 D. In determining whether a ~~[child]~~ student is
3 gifted, the multidisciplinary team shall consider diagnostic or
4 other evidence of the ~~[child's]~~ student's:

- 5 (1) creativity or divergent-thinking ability;
- 6 (2) critical-thinking or problem-solving
7 ability;
- 8 (3) intelligence; and
- 9 (4) achievement.

10 E. When the multidisciplinary team considers the
11 diagnostic evidence for determining giftedness, the team
12 shall also consider the cultural and linguistic and
13 socioeconomic background of the student."

14 SECTION 8. Section 22-13-7 NMSA 1978 (being Laws 1972,
15 Chapter 95, Section 3, as amended) is recompiled in the
16 Special Education Act and is amended to read:

17 "SPECIAL EDUCATION--RESPONSIBILITY.--

18 A. The ~~[state board]~~ department shall make, adopt
19 and keep current a state plan for special education policy,
20 programs and standards.

21 B. The department ~~[of education with the approval~~
22 ~~of the state board]~~ shall set standards for diagnosis and
23 screening of and educational offerings for ~~[exceptional~~
24 ~~children]~~ special education students in public schools, in
25 private, nonsectarian, nonprofit training centers and in

underscored material = new
[bracketed material] = delete

1 state institutions under the authority of the secretary of
2 health.

3 C. The [~~state board~~] division shall establish and
4 maintain a program of evaluation of the implementation and
5 impact of all programs for [~~exceptional children~~] special
6 education students in the public schools. This program shall
7 be operated with the cooperation of [~~local~~] school districts
8 and charter schools. Portions of the program may be
9 subcontracted, and periodic reports regarding the efficacy of
10 programs for [~~exceptional children~~] special education
11 students shall be made to the legislative education study
12 committee.

13 D. The [~~department of education~~] division shall
14 coordinate programming related to the transition of persons
15 with disabilities from secondary and post-secondary education
16 programs to employment or vocational placement."

17 SECTION 9. TEMPORARY PROVISION--RECOMPILATION.--Section
18 22-13-8 NMSA 1978 (being Laws 2009, Chapter 162, Section 1)
19 is recompiled in the Special Education Act.

20 SECTION 10. APPROPRIATION.--One million dollars
21 (\$1,000,000) is appropriated from the general fund to the
22 public education department for expenditure in fiscal year
23 2022 to provide professional development for teachers,
24 instructional support providers, school administrators,
25 substitute teachers, school resource officers, school police

.219115.2

underscoring material = new
~~[bracketed material] = delete~~

1 or school security on working effectively with and meeting
2 the needs of special education students. Any unexpended or
3 unencumbered balance remaining at the end of fiscal year 2022
4 shall revert to the general fund.

5 SECTION 11. REPEAL.--Section 22-13-6 NMSA 1978 (being
6 Laws 1972, Chapter 95, Section 2, as amended) is repealed.

7 SECTION 12. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2021.