

NM special ed funding issues run deep

Written by By Joey Peters NM Political Report
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As a report from the New Mexico State Auditor's Office reaffirmed, New Mexico has had serious problems with funding special education in recent years.

But the state's ongoing struggles with special education go deeper than the audit, which found the state underfunded the program by \$110 million from 2010-2012.

Throughout the years, state lawmakers have clashed with Gov. Susana Martinez on how to fix the problem.

The issue goes back to the federal Individuals with Disabilities Act, a landmark federal law passed in the 1970s that mandated public education access to special-needs students. Part of the law requires that every state increase special education money each year, or keep it level from the year before. This ensures the special needs student services are met.

Meeting this annual funding formula, known as the maintenance of effort, means the federal government will grant New Mexico roughly \$90 million in special education money for that year.

"If we fail to meet it, the federal government takes money out of our regular education program," said state Sen. Mimi Stewart, D-Albuquerque.

The consequences, Stewart said, could mean less special education services and more mainstreaming of special needs students into classrooms with other students. So far, the federal government has been slow to penalize the state for the problem.

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New Mexico has had a hard time meeting the federal requirement. This failure began in 2009, under former Gov. Bill Richardson and continued through subsequent years, coming to light publicly in 2013.

To this day, the state Public Education Department uses a different formula than the federal government to calculate special education funding.

Last year, a federal judge denied New Mexico Public Education Department's request to waive a \$34.1 million fine in missed special education funding in 2011. The state is appealing that decision.

Still, the state Legislature has made efforts to allocate additional money to fix the shortfall. Martinez, however, opted to wait until a court decides whether or not the state must make up the shortfall.

The governor and Legislature's clashing perspectives on special education funding came to a head in 2014. That year, the state Legislature approved \$10 million in extra funding for special education, after recommendations of Legislative Finance Committee analysts. Martinez, however, vetoed immediate use of that extra money and instead left it in state reserves.

"She line-item [vetoed] it out, saying it's not necessary," said Stewart, who at the time chaired the Legislative Education Study Committee. "So we were probably \$10 million shorter than what was in the budget."

Martinez spokesman Chris Sanchez didn't return requests for comment for this story before press time.

But, the administration's attitude toward the federal special education funding requirement was on full display at a Board of Finance meeting attended by Martinez in May of 2014. There, state Public Education Department Deputy Secretary Paul Aguilar explained that his department's

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special education funding calculations differed with the federal government's calculation.

Aguilar said that the state's formula "factors in schools that are doing great things, moving kids up in special education and improving their status."

"The federal government has chosen to ignore those things, relying on the argument that what we made available at our high-point year, 2009, we should make available in 2014," Aguilar told finance board members.

This led both Martinez and board member Robert Aragon, a former Democratic state representative who changed parties and ran unsuccessfully for state auditor last year, to rant against the federal requirement.

"It has nothing to do with the mission of making our special ed kids better," the governor said. "Having a special needs sister, it is disgusting to think that children can't learn."

Aragon's comments verged into an abstract lecture about how he thought the establishment of the federal Education Department violated the U.S. Constitution. He said that the Constitution doesn't mention education and that the 10th Amendment says everything not mentioned in the Constitution would be left to the states.

"This whole discussion is predicated upon a political payback by Jimmy Carter in 1976 to [the National Education Association] so that he could get their money so that he could run a campaign," Aragon said, referring to the federal education department.

He added that it's "repugnant when there's a gun to our head that the federal government would say, 'You don't get these moneys unless you do exactly as we say,' and we have congressmen and senators who represent this state supposedly who won't fight that issue based on the 10th amendment."

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While Martinez maintained that “to this day we have not denied a single special ed child a single service,” others beg to differ. As New Mexico Political Report wrote this week, some advocates lament how local schools don’t mandate training in evidence-based methods like Applied Behavioral Analysis, which is used on students with autism.

“Our schools have not invested the resources necessary to help teachers support students with disabilities, especially those with challenging behaviors,” said Tara Ford, an attorney with Pegasus Legal Services for Children.

New Mexico’s special education proficiency levels also remain low. According to state education department data, students with disabilities averaged 10 percent proficiency in reading and math and a 25 percent proficiency level in science during the 2013-2014 school year.

Perhaps the most important facet of the problem involves the parents of special needs students. Many parents aren’t aware of the nuances of the system that funds their children’s education.

“People on the ground don’t understand,” said Liz Thomson, a former state representative who works with special needs students and raised an autistic son.

Most school employees also “don’t have a clue what it looks like,” she said.

Thomson spent three decades working in public schools as a physical therapist for children with growth motor problems, which often includes students with cerebral palsy and Down’s Syndrome. She currently does this in Jemez Valley Public Schools.

Thomson said accountability for tracking how special education money is spent is virtually non-existent. She’d like to see special education in New Mexico receive its own fund rather than a part of the general fund.

“A number of school districts use it for other things,” Thomson said, citing spending special

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education funding on textbooks and athletic equipment as examples.

While confusion remains over how the funding works, parents are more likely focused on how their children are performing academically. Figuring this out is no easy task.

Thomson brings up Individualized Education Program meetings, where parents meet with school officials to evaluate how their special needs child is doing in school. She said these meetings are weighted toward the system and not the parents or children. For example school officials' constant use of complicated acronyms.

"Parents are told, 'We can't do this for your child then everybody else will want it,'" she said.

Even after she learned the system, Thomson would still bring an advocate with her to meetings.

"The vast majority of parents who step outside of an IEP meeting don't know what happens," she said.

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