



# State of New Mexico

Michelle Lujan Grisham  
Governor

## EXECUTIVE ORDER 2023-062

### ESTABLISHING THE OFFICE OF SPECIAL EDUCATION WITHIN THE PUBLIC EDUCATION DEPARTMENT

**WHEREAS**, the New Mexico Public Education Department (the “Department”) was established to ensure every New Mexico student, including those with disabilities, receives high-quality education;

**WHEREAS**, over 16% of students enrolled in public schools qualified for special education services in the 2022-2023 school year, but low academic proficiency of special education students (e.g., 15% proficient in early literacy, 9% in language arts and science, and 6% in math), as well as high dropout and low graduation rates, indicate a need for significant improvement in the quality of education provided to students with disabilities;

**WHEREAS**, in the *Martinez/Yazzie* consolidated lawsuit, the district court held that New Mexico has not met its duty to provide an education to the State’s “at-risk” students, which explicitly included students with disabilities;

**WHEREAS**, the State must develop and implement a plan to set consistent statewide standards and goals for special education, and collect and report comprehensive data to inform evidence-based policies, processes, and programs that adequately serve students with disabilities;

**WHEREAS**, the State must monitor all federal and State funding distributed to public schools for special education students to ensure special education spending leads to high-quality special education services and excellent outcomes for students with disabilities; and

**WHEREAS**, to improve the outcomes of students with disabilities in this State from cradle to career, the Department must elevate special education and lead a collaborative effort, including key education stakeholders and every State agency that serves children and youth with disabilities and their families, to accomplish the full intent of the federal Individuals with Disabilities Education Act of 2004 (the “IDEA”).

**NOW, THEREFORE, I**, Michelle Lujan Grisham, Governor of the State of New Mexico, by the authority vested in me by the Constitution and the Laws of the State of New Mexico do hereby **ORDER** and **DIRECT** as follows:

1. **Creation of Office; Appointment of Director.** The Office of Special Education (the “Office”) is hereby established within the Department. The Department Secretary shall appoint and hire a director of the Office, who shall report directly to the Secretary. The Department shall remain the state agency responsible for enforcing the IDEA.

2. **Duties of Office.** In coordination with the Department Secretary and relevant divisions and bureaus of the Department, the Office shall:

A. Develop and annually update a state plan that establishes statewide special education standards and goals to improve outcomes for students with disabilities;

B. Collect statewide data on the following: students with disabilities, effectiveness and provision of special education programs and services, specific disciplinary actions taken against students with disabilities, and school spending of state and federal special education funds;

C. Submit a report on the status of special education, nationwide compensation trends, and best practices to the Department Secretary, the Governor, and the Legislative Education Study Committee by July 31 of each year;

D. Oversee and enforce the State's compliance with the IDEA and any state law pertaining to special education;

E. 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; provided that the Office shall coordinate with the Human Services Department to monitor Medicaid spending for special education;

F. Develop, review, and propose updates to state special education statutes, rules, policies, and technical assistance to ensure that they meet the needs of students with disabilities;

G. Consult and coordinate with other units of the Department, other state agencies, public post-secondary educational institutions, and key education and community stakeholders to: (1) address the needs of students with disabilities in all educational activities, programs, and policies; (2) prioritize and expand appropriate services for children and youth with disabilities from birth to career; (3) ensure timely and comprehensive screenings and evaluations for students with disabilities or students who are suspected of having a disability; (4) reduce restraint, seclusion, and disciplinary actions for students with disabilities, including removal from the classroom; and (5) ensure that all students with disabilities in State custody receive free and appropriate public education;

H. Coordinate with school districts and public post-secondary education institutions to develop and provide: (1) education, training, and professional development programs and materials for licensed school employees, instructional support providers, and related service providers in educating and serving students with disabilities; and (2) targeted training for school district and public school officials, governing boards, and employees on the IDEA, Section 504 of the federal Rehabilitation Act of 1973, state laws that prohibit discrimination against students with disabilities, disability-specific policies and practices, de-escalation practices and techniques,

positive behavior interventions, inclusion and integration practices, individualized education programs, and engagement with students and parents;

I. Provide technical assistance and recommendations to school districts and public schools to implement evidence- and research-based programs and services that are culturally and linguistically responsive in all state and federally funded special education settings;

J. Conduct activities to promote the recruitment and retention of qualified special education educators, instructional support providers, related services providers, and diagnosticians;

K. Analyze, collect data on, and take appropriate action on the recommendations of the Office of the Special Education Ombud, as needed;

L. Solicit input regarding quality of special education service delivery in the State from community and educational stakeholders, including educators, students, and their families; and

M. Take any other actions, as directed by the Department Secretary.

**3. Special Education Salary Differential Levels.** No later than July 1, 2024, the Office shall, in consultation with the Department, relevant state agencies, educators, legislative committees, and school districts, identify and study options and make recommendations for salary differential levels, time allocations, and other supports for licensed school employees, educational assistants, and other instructional support providers who educate or provide instructional support to students with disabilities, taking into consideration their duties and responsibilities.

**4. Transfer of Preschool Special Education.** No later than July 1, 2024, the Department and the Office shall consult and coordinate with the Early Childhood Education and Care Department to execute a formal written agreement that transfers the Part B, 619 Coordinator to the Early Childhood Education and Care Department in compliance with Part B of the IDEA and identifies the administrative

roles, responsibilities, personnel, and funding for both the Office and the Early Childhood Education and Care Department.

**5. Transition of Special Education Division.** By July 1, 2024, the Office shall assume the duties of the Special Education Division (the “Division”) of the Department, provided that the Division shall continue to function until the director of the Office has been hired.

**I FURTHER ORDER and DIRECT** as follows:


1. This Order shall take effect immediately and shall remain in effect until renewed, modified, or rescinded.
2. Nothing in this Order shall be construed to conflict with federal or state law.
3. Nothing in this Order shall be construed to create a private right of action, including an action to enforce any provision of this Order or mandate the undertaking of any particular action pursuant to this Order.
4. Nothing in this Order shall be construed to limit the rights of students with disabilities or the responsibilities and duties of the Department, school districts, or public schools pursuant to federal and state law.

ATTEST:  


MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE  
THIS 25TH DAY OF MAY 2023

WITNESS MY HAND AND THE GREAT  
SEAL OF THE STATE OF NEW MEXICO

  
MICHELLE LUJAN GRISHAM  
GOVERNOR

