

What Every Board Member Needs to Know About Special Education

Presented by: Dawn M. Vernooy



WALSH GALLEGOS
KYLE ROBINSON & DE LOS SANTOS P.C.

1

Board Authority Related to Special Education

- Subject to the rules of the department, develop educational policies for the school district
- Have the capacity to sue and be sued
- Review and approve the annual school district budget
- Except for expenditures for salaries, contract for the expenditure of money according to the provisions of the Procurement Code
- Give prior approval for any educational program in a public school in the school district that is to be conducted, sponsored, carried on or caused to be carried on by a private organization or agency

NMSA 1978, § 22-5-4



2

Boards Develop Educational Policies for Districts

3

Policy Development

- ❑ Board develops educational policies for the school district. NMSA 1978, § 22-5-4 (A).
- ❑ Board reviews district policies on an annual basis and revises as needed. 6.29.1.9 (A)(6) NMAC.
 - ❑ Superintendent attends all board meetings, or when necessary, designates a licensed administrator to attend. 6.29.1.9 (C)(4) NMAC.
 - ❑ Superintendent administers/carries out the educational policies of the board, state and federal requirements and applicable laws and rules of the PED. NMSA 1978, § 22-5-14(B)(1); 6.29.1.9 (C)(1) NMAC.

Policies and Administrative Procedures and Practices should not conflict.

4

Board Norms: Policy Development

- ❑ Check your Board Policies:
 - ❑ How many readings are required before a policy can be adopted, modified or repealed?
 - ❑ Are there circumstances that would allow for fewer readings?
 - ❑ How are ways you can monitor policy compliance from the dais?
- ❑ For NMSBA Policy Users:
 - ❑ See Policy BG (School Board Policies).
 - ❑ See Policy BGB (Policy Adoption).
 - ❑ See Policy BGC (Policy Revision and Review).



5

Policies Affected by Special Education

- ❑ EEAB Special Education Student Transportation
- ❑ IHB Special Instructional Programs
- ❑ IHBA Special Instructional Programs and Accommodations for Disabled Students
- ❑ DD Funding Proposals, Grants, and Special Projects
- ❑ IHBB Gifted and Talented Education
- ❑ IKA Grading/Assessment Systems
- ❑ IKE Promotion and Retention of Students
- ❑ IIB Class Size
- ❑ JKD Student Suspension/Expulsion
- ❑ JR Student Records



6

Are Districts Required to Have Procedures?

- ❑ Yes. It is a requirement of IDEA-B [Individuals with Disabilities Education Act Part B funding].
- ❑ “An LEA [Local Educational Agency or District] is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the SEA [State Educational Agency: in NM the PED] that the LEA meets each of the conditions in §§300.201 through 300.213.” 34 C.F.R. § 300.200.
- ❑ One of the conditions is consistency with State policies:
 - ❑ “The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§ 300.101 through 300.163, and §§ 300.165 through 300.174.” 34 C.F.R. § 300.201.
- ❑ LEAs are required as part of their IDEA-B Application each year to assure, among other things, that it has new and or revised policies and procedures consistent with State policies.

WG

7

Highlight on JKD Suspension/Expulsion

- ❑ There are many special rules and procedures that your staff is required to follow when imposing disciplinary consequences on students with disabilities.
- ❑ These students cannot be long-term suspended or expelled without provision of services. They must continue to receive FAPE even after committing an expellable offense.

WG

8

Interim Alternative Educational Settings

- ❑ What are types of Interim Alternative Educational Settings
 - ❑ Self-contained behavioral units
 - ❑ An alternative program of some sort
 - ❑ A residential program
 - ❑ District pays costs

WG

9

Boards Can Sue and Be Sued

WG

10

Legal Recourse for Parents

- ❑ IDEA provides two ways for Parents to make claims against Districts if they disagree with decision that the District has made for their Child:
 - ❑ Requests for Due Process Hearings
 - ❑ State Complaints

WG

11

(Some) Types of Complaints Parents Make

The District failed to . . .

- ❑ Identify student as a student entitled to special education
- ❑ Identify all the educational needs of student
- ❑ Develop an appropriate individualized educational program (IEP)
- ❑ Implement student's IEP
- ❑ Follow IDEA's and/or PED's regulatory procedures when student violated Code of Conduct or engaged in other disruptive behavior before removing student from school—for a special education student that is the IEP placement
- ❑ Provide parent meaningful participation in making educational choices for student

WG

12

What are Requests for Due Process Hearings?

- ❑ Parent files a complaint with PED requesting a special type of hearing called a Due Process Hearing (DPH) in front of a neutral judge called a hearing officer
- ❑ DPHs are litigation
- ❑ DPHs are filed against the Board

WG

13

The Hearing Officer System

- ❑ Hearing Officers must be completely independent of the school district and the state agency.
- ❑ Their decisions are not reviewable by anyone at PED or in the school district.
- ❑ A party who is dissatisfied with the decision can appeal to court. That is the only avenue of appeal.

WG

14

Initial Steps in Defense

- ❑ Like other kinds of legal complaints, the District must respond to the complaint.
 - ❑ Timeline expedited: response due in 10 calendar days
- ❑ 5-8 days hearing is set during a pre-hearing conference
- ❑ Opportunity to settle complaint during a mediation with a New Mexico Public Education Department appointed mediator

WG

15

Mediation Process

- ❑ Mediation must be attended by District Representative with authority to commit resources and Special Education Director
- ❑ District Representative and Special Education Director will meet with District's Attorney to discuss mediation strategy and range of offers for Parent
 - ❑ IEP meeting
 - ❑ Evaluations
 - ❑ Training
 - ❑ Compensatory Education
 - ❑ Parent's attorney's fees
- ❑ Settlement discussion led by mediator

WG

16

Board's Role in Mediation

- ❑ Pre-mediation closed session meeting
- ❑ Appoint representative
 - ❑ (most often) Superintendent
- ❑ Give him or her settlement authority
 - ❑ May approve a ceiling for settlement without further board approval
- ❑ Post-Mediation closed session meeting
 - ❑ Approve settlement

WG

17

Costs

The costs of a due process hearing include:

- ❑ Hearing Officer fees
- ❑ Court reporter fees
- ❑ The District's attorney's fees
- ❑ If the parent is successful, the parents' attorneys' fees

NMPSIA:

- ❑ Does not provide a defense at the administrative stage
- ❑ Reimburses a portion of the cost
- ❑ On June 30th of each year

WG

18

Remedies for the Parent

- ❑ Parent may recover the cost of tuition and other educational expenses borne by the parent.
- ❑ Hearing Officer may order an equitable remedy, including independent evaluations or oversight, training, and compensatory services to make up for the denial.

WG

19

Damages?

- ❑ Money damages, other than reimbursement for educational expenses, are generally not available under IDEA.
- ❑ But suits frequently seek damages pursuant to other laws, such as Section 504, the ADA, or Section 1983.

WG

20

Attorneys' Fees

- If the parent prevails on issues raised against the school district, the parent is entitled to recover their attorney's fees.
- When settlements are negotiated, attorney's fees are usually addressed.
- It is often cheaper to settle a case that the district can win rather than to litigate it to victory.

WG

21

Issues the Board Will Hear About

- "We can't afford it" is not a defense if "it" is required for the student to receive FAPE.
- Neither is "we don't do that for any of our other students."
- Neither is "we've never done that before."

WG

22

What are State Complaints?

- ❑ State Complaints are not litigation and the Board may not hear about them . . . But they cost districts time and resources
- ❑ Parent files a complaint with PED which is investigated by a PED-appointed investigator

WG

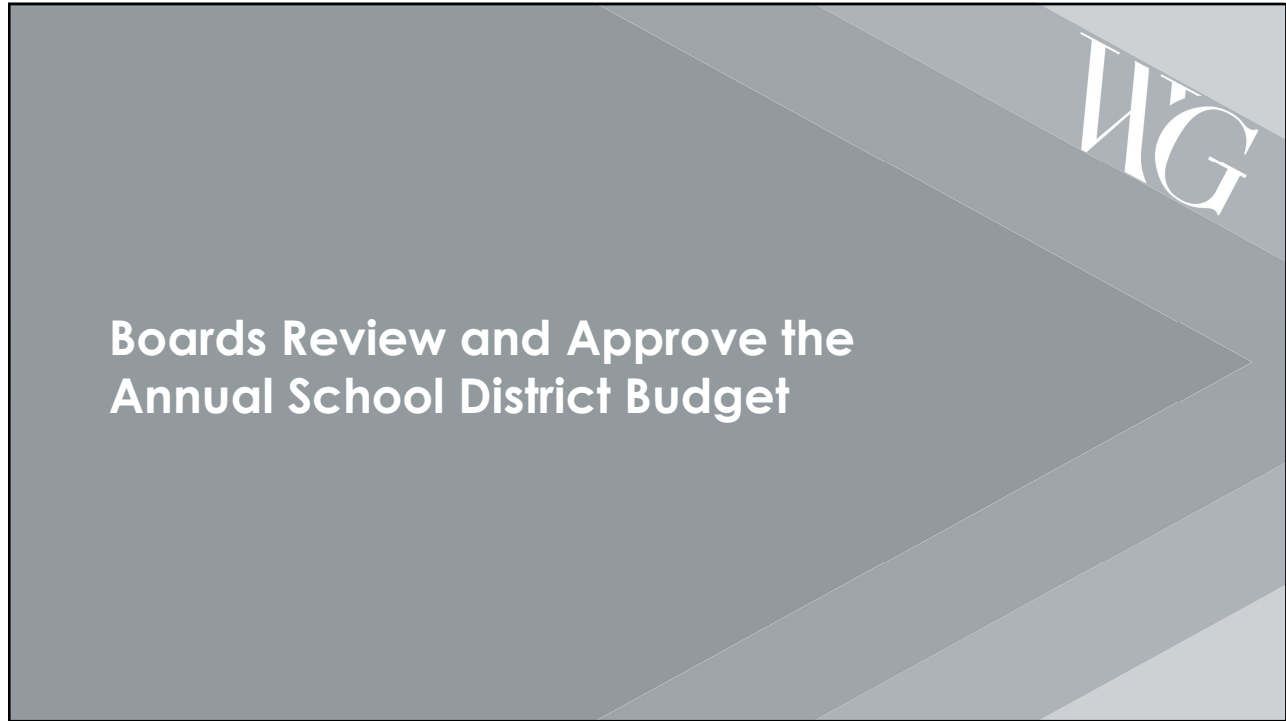
23

What is the State Complaint Process?

- ❑ After Parent files complaint, PED sends the district an Acknowledgement letter, which identifies the investigator, the legal issues to be investigated, and requests special education records
- ❑ Can be for individual students or systemic
- ❑ District has two weeks to investigate, produce its response to the legal issues, and produce the student records
- ❑ Can be mediated or involve a facilitated IEP as means of dispute resolution
- ❑ If unresolved, investigator produces a complaint report with finds of fact and conclusions of law accompanied by a Corrective Action Plan (CAP) if the school has violated IDEA and/or PED regulations

WG


24




25

Line Items

- ❑ Special Education Funding
 - ❑ More funding for special education could avoid complaints, especially in the area of providing qualified staff and staff development
- ❑ FTEs for Special Education Teachers, Educational Assistants, Behavior Specialists, Related Service Providers
 - ❑ Beef up the quality of services in your programs, including your alternative programs.
- ❑ Therapeutic and Interim Alternative Educational Settings
- ❑ Legal access for your special education directors to address potential issues early.



26



**Boards Contract for the Expenditure
of Money According to the
Provisions of the Procurement Code
&
Give Prior Approval For Any
Educational Program Carried on by
a Private Organization or Agency**

27

Staff Training and Qualifications

- ❑ “Each public agency is responsible for ensuring that personnel serving children with disabilities are qualified under state licensure requirements and are adequately prepared for their assigned responsibilities, pursuant to 34 CFR Sec. 300.156. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to children with disabilities under Part B of the IDEA.”

6.31.2.9(B)(10) NMAC.



WG

28

SOAR Report, October 2025

Position	Number of Vacancies
Teachers	604
Educational/Instructional Assistants	289
Counselors	63
Speech Language Pathologists	36
Administrators (Principals and Assistant Principals)	29
Paraprofessionals	22
Instructional Coaches	21
Emotional/Behavioral Support Providers	18
Educational Diagnosticians	13
Interventionists	10
School Psychologists	10
Total Vacancies	1,115



**SOAR: Southwest Outreach Academic Research
Evaluation & Policy Center**



29

SOAR Report, October 2023

Position	Number of Vacancies
Teachers	751
Educational/Instructional Assistants	482
Counselors	54
Speech Language Pathologists	39
Emotional/Behavioral Support Providers	30
Administrators (Principals and Assistant Principals)	26
Paraprofessionals	24
Educational Diagnosticians	21
School Psychologists	19
Instructional Coaches	13
Interventionists	12
Total Vacancies	1,471

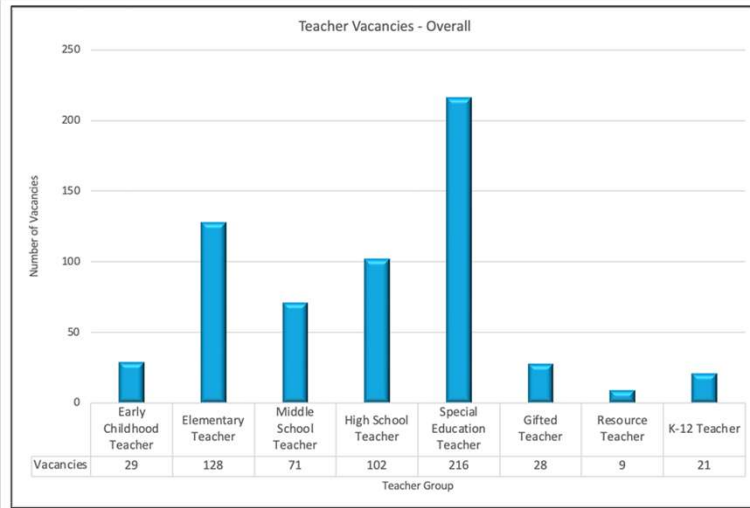


**SOAR: Southwest Outreach Academic Research
Evaluation & Policy Center**



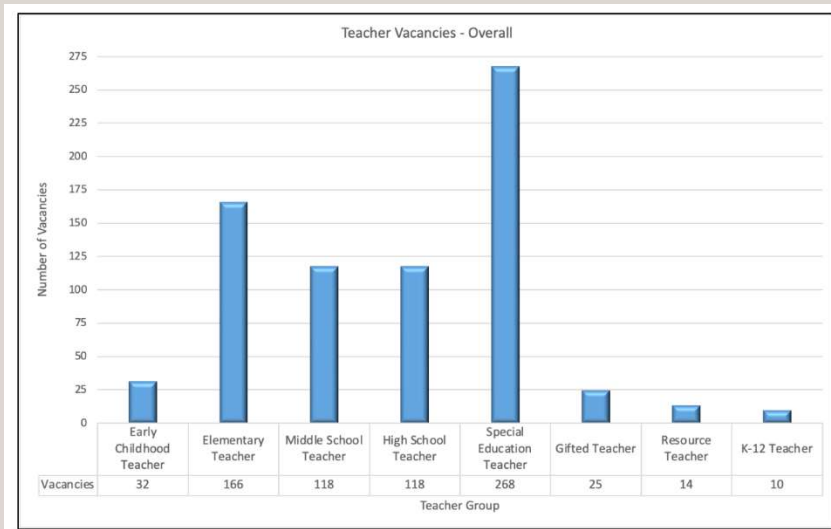
30

SOAR Report, October 2025



31

SOAR Report, October 2023



32

Defensible Programs

A Regional Education Cooperative (REC) may be authorized by the PED pursuant to the Regional Cooperative Education Act, NMSA 1978, § 22-2B-1 et. seq.

Work with your REC and/or neighboring districts to create Regional programs:

- Significant cost savings
- Each participating District pays a proportionate share of costs
- Districts can share the expertise available within each respective districts
- Districts can ensure greater quality of control over programming
- Potentially reduce bus transportation costs and time on the bus for students

WG

33

Defensible Programs (cont.)

- Create District equivalent of "Private" Programs:
 - Opportunity for significant cost savings
 - A program on regular campus is a child's LRE
 - Greater opportunities for inclusion
 - District "experts" on campus to assist other students as needed
 - Improved quality control
 - Reduce transportation and tuition costs

WG

34

Defensible Programs (cont.)

- ❑ Work with private agencies to create District programs:
 - ❑ Use private companies to develop programs within the school district when it is not cost effective to create your own
 - ❑ Use an MOU when contracting with private companies
 - ❑ Allow other districts and charter schools to pay tuition to enroll their students in the program
 - ❑ Benefits are similar to those of regional and District operated programs

WG

35

Defensible Programs (cont.)

- ❑ Consider the use of Evidenced-Based Curriculum/Programs frequently requested by parents
 - ❑ While IDEA does not require that districts include specific methodologies in an IEP, parent requests must be discussed and considered.
 - ❑ Using frequently requested curriculum and methodologies may reduce parent requests for special education, private schools, and or Due Process.

WG

36

Defensible Programs (cont.)

- ❑ Consider hiring/contracting services from community specialists
- ❑ Board Certified Behavior Analysts (BCBA) for students with Behavioral needs:
 - ❑ Conduct Functional Behavioral Assessments (FBAs), develop Behavior Intervention Plans (BIPs), train staff in Applied Behavior Analysis (ABA) strategies for student with Autism
 - ❑ Supervise Registered Behavior Technicians (RBTs)
- ❑ Certified Academic Language Therapist (CALT) for students with Dyslexia and reading disabilities:
 - ❑ Conduct evaluations, develop and implement reading programs using multisensory language strategies.

WG

37

Defensible Programs (cont.)

- ❑ Work with Regional Educational Cooperatives:
 - ❑ Provide professional development for staff
 - ❑ Provide direct related services
 - ❑ Provide evaluations
 - ❑ Provide Medicaid management
 - ❑ Provide fiscal management and purchasing management

WG

38

Defensible Programs (cont.)

- ❑ Consider Online/Virtual Related Services:
 - ❑ Speech/Language and other related services are available in an "online" or "tele-practice" modality
 - ❑ Can reduce legal liabilities by ensuring that IEP services are provided
 - ❑ Can train staff, including school health aids
 - ❑ In all cases, the service delivery must be appropriate for the individual student.
- ❑ Consider working with teaching programs at state/local colleges and universities, including those with OT, SLP, PT programs.

WG

39

QUESTIONS?



WG

40

Dawn M. Vernooy
dvernooy@wabsa.com



WALSH GALLEGOS
KYLE ROBINSON & DE LOS SANTOS P.C.

500 Marquette Ave. NW, Suite 1310
Albuquerque, NM, 87102
Phone: 505-243-6864
Fax: 505-843-9318



41

The information in this presentation was prepared by Walsh Gallegos Kyle Robinson & De Los Santos P.C. It is intended to be used as general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.



WALSH GALLEGOS
KYLE ROBINSON & DE LOS SANTOS P.C.

© 2026

42