

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** SB 370aa

**51st Legislature, 1st Session, 2013**

**Tracking Number:** .191010.1

**Short Title:** School Rating Modified Assessment Formula

**Sponsor(s):** Senator Michael S. Sanchez and Others

**Analyst:** Kevin Force

**Date:** March 25, 2013

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**AS AMENDED**

**The House Education Committee amendments make a technical correction to the placement of the Senate Floor amendment and retains the intent and meaning of that amendment.**

**The Senate Floor amendment to SB 370 would allow a school to qualify as a “Supplemental Accountability Model” school if its enrollment includes at least 75 percent of one or any combination of students who have certain risk factors in their histories.**

**Bill Summary:**

SB 370 would amend the *A-B-C-D-F Schools Rating Act* to add:

- a definition for “Supplemental Accountability Model” (SAM) schools, which means a public school whose enrollment includes at least 75 percent of one or any combination of those students:
  - with a history, or family history, of incarceration or “extended or significant involvement” in the court system;
  - with a history of involvement with gangs;
  - who are pregnant or have children;
  - with a history of physical or mental health issues, such as abuse, neglect, or drug or alcohol use, and chronic or severe medical conditions;
  - with a history of discipline issues;
  - with a history of unexcused absences or truancy;
  - who withdrew from school for at least one semester;
  - with a history of academic performance below their grade-level;
  - with a history of not meeting academic expectations vis-à-vis their individualized education plans; and
  - with disabilities or special needs.
- an alternative formula for calculating the grade for SAM schools:
  - 10 points for the current standing of the school;
  - 20 points for the growth of the top 75 percent of students;
  - 20 points for the growth of the bottom 25 percent;

- 20 points for the result of an opportunity to learn survey;
- 10 points for graduation rate; and
- 20 points for college- and career-readiness.

**Fiscal Impact:**

SB 370 does not contain an appropriation.

**Substantive Issues:**

According to the Public Education Department (PED):

- Under the current definition of SAM schools,<sup>1</sup> in the *New Mexico Administrative Code*, in 2012, 36 schools qualified as SAM schools, 34 of which were high schools.
- In 2012, PED graded 182 high schools, and 19 percent of that total comprised SAM schools.
- This current definition of SAM schools is not all-inclusive, but PED provided a method by which schools may petition to qualify as SAM, or exit that classification.
- In their analysis, PED staff note:
  - a school whose mission is to serve high-risk populations may quantify their student population using any of the criteria suggested in the alternate definition, and provide evidence;
  - this option has been available since the inception of the A-F Grading program; and
  - no schools have exercised this option.
- The attempt, under SB 370, to codify the alternate SAM definition replaces this option and is “problematic on several fronts”:
  - The collection of data regarding student pregnancy, health history, and disabilities may run afoul of protections under the *Health Insurance Portability and Accountability Act*, and require parental consent.
  - Personal health information collected by public schools may be eligible for re-disclosure, under the *Family Educational Rights and Privacy Act*.
  - While PED may have rigorous security in place for such sensitive information, opening this information to registrars and other school personnel perforce raises the risk of inappropriate disclosure and would require extensive safety measures to mitigate that risk.
- Also of concern is the verifiability of sensitive information being requested from students and parents:
  - Students who have not yet reached majority cannot be held legally accountable for speaking on their own behalf.

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<sup>1</sup> Under 6.19.8.7(W) NMAC, a “SAM school” is a school where:

- 10 percent of the student population is 19 or older; or
- 20 percent of the non-gifted students qualify for special services; and
- the school’s primary mission upon establishment is to address the needs of students who are at risk for educational failure, as indicated by several criteria such as truancy, poor grades, or disruptive behavior.

- Information regarding family history in the courts system, gang-related history, pregnancy and health issues would particularly require verification and would not be easily collected.
- Much of this information would require quantifiable definitions to ensure that they support the purpose of the SAM option. For example: “inconsistent attendance,” “court involvement,” and “not meeting expectations” are undefined terms for purposes of the *A-B-C-D-F Schools Rating Act*.
- Allowing PED to retain authority to determine SAM qualifications on a case-by-case basis would retain flexibility in the current definition, while still requiring schools to provide credible, reliable, and defensible information to justify their petition for SAM status.
- The current language of the bill implies that the weighted grading formula for SAM schools would be applied to all such schools, but does not address factors of school growth, the lack of graduation rate, and college- and career-readiness for elementary and middle schools who might be classified as “SAM schools.”
- The primary change proposed by SB 370 would be to de-emphasize current year achievement and graduation, while placing heavier emphasis on growth, opportunity to learn, and college- and career-readiness for SAM schools.
- To assign new, differently weighted values to these components for a particular subset of schools suggests that PED holds different expectations for certain students, an idea that was prohibited by the US Department of Education under the requirements of *Elementary and Secondary Education Act* (ESEA) flexibility. Thus, it is possible that these grading amendments would likewise conflict with the requirements of ESEA flexibility.
- The formalized provisions of SB 370 may compel the removal of flexibility with regard to the weighted calculation of certain school grade factors. That is, currently, SAM schools:
  - can enhance their graduation rate through an additional calculation that places value upon returning dropouts;
  - may demonstrate college- and career-readiness through additional assessments that recognize work skills; and
  - are allowed leniency in bonus points for showing gains toward meeting goals for non-traditional students.

**Technical Issues:**

If the provisions of SB 370 are enacted, PED would be required to amend the rules for the A-F School Grading program at 6.19.8 NMAC to conform to the new statutory requirements.

Currently, SAM schools are subject to the same indicators and weighting system under which all other New Mexico schools fall. The accommodation made for the different circumstances under which SAM schools operate involves how they may *demonstrate* achievement of certain factors. That is, while SAM schools, like all other schools, are required to demonstrate graduation rate and career- and college-readiness, they may do so by:

- emphasizing the ability to graduate any student in a given year, not just cohort members; and
- demonstrating career- and college-readiness through meeting benchmark scores on career-readiness assessments approved by the department.

As noted, under current law and rule, SAM schools are subject to the same indicators as other schools, including school growth and points are weighted in the same manner. Under SB 370, however:

- SAM schools' points would be weighted differently from those of other schools serving the same grade level; and
- the "school growth" factor, applied to all other schools in New Mexico, would not be applicable to SAM schools.

Finally, the points-weighting system for SAM schools would be formalized by statute, whereas all other schools are subject to similar provisions, but under department rule rather than law. This may put PED in the difficult position of having to respond to changes in circumstance and federal law or policy in completely different ways for SAM schools as opposed to non-SAM schools. The grading system particulars for most schools can be altered by department rulemaking, whereas those of SAM schools must be accomplished by the Legislature, a lengthier and less certain process than rulemaking.

### **Background:**

The *A-B-C-D-F Schools Rating Act*<sup>2</sup> was enacted in the 2011 regular legislative session, providing that all New Mexico schools be graded annually by PED, and assigned an appropriate letter grade. The department finalized the school grading rules, 6.19.8 NMAC, on December 15, 2011. These initial rules did not include any reference to SAM schools; rather, during the 2012 interim, PED proposed amendments to these rules, including:

- the current definition for supplemental accountability; and
- the current provision outlining the determination of a SAM schools grade, at 6.19.8.9(D).

These amendments were finalized by publication in the *New Mexico Register* on May 31, 2012.

### **Committee Referrals:**

SEC/SPAC/HEC

### **Related Bills:**

HJM 29 *LESC A-F School Grading System Study*  
HJM 30 *Study Uses of Standardized Test Scores*

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<sup>2</sup> Laws 2011, Chapter 10