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FISCAL IMPACT REPORT

ORIGINAL DATE 02/23/17

SPONSOR Thomson LAST UPDATED _____ HB 355

SHORT TITLE Bullying & Cyberbullying Penalties SB _____

ANALYST Klunt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Possibly Significant			Recurring	CYFD & PED Operating Budgets

(Parenthesis () Indicate Expenditure Decreases)

Relates to: SB115, Safe Schools for All Students Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 355 (HB 355) amends 22-2-21 NMSA 1978 by adding a section that mandates a minimum penalty for students who are confirmed to instigate bullying or cyberbullying and requires these students and their parents or guardians to be referred to the Juvenile Justice Services (JJS) program of the Children, Youth and Families Department (CYFD) for mandatory counseling for the remainder of the school year.

FISCAL IMPLICATIONS

HB355 requires a change in the existing school district and state-chartered charter school discipline policies to include minimum penalties for bullying and cyber bullying. The Public Education Department (PED) is required to provide guidance and to work collaboratively with public and charter school districts statewide and JJS of the CYFD to develop a framework that incorporates the mandatory penalty for bullying or cyberbullying instigators as part of every school's discipline policy. PED reported this change would require the agency to restructure its current, developmentally appropriate Positive Behavior and Intervention Supports (PBIS) in the

Response to Intervention (RtI) system to incorporate this penalty. No allocation is provided through HB355 for making changes to the PBIS system and disseminating the information. PED reported administrative costs would also have to be determined, based upon any oversight of school districts and state-chartered charter schools as to the implementation and compliance with this required penalty.

CYFD believes the fiscal impact to may range from moderate to significant. While there are no statistics on the number of students who engage in bullying or cyberbullying in New Mexico, any requirement for CYFD to provide counseling services will require additional FTE, and, in the event that CYFD is mandated to pay for counseling services provided by an outside source, CYFD will require additional funding.

SIGNIFICANT ISSUES

Since 2007 public schools and local and state charter schools have been required to implement bullying prevention programs and processes as defined in 6.12.7 NMAC: Bullying Prevention. The PED provides guidance to all schools for developing these policies and is now in a new three-year cycle for every school to revise and submit Safe School Plans to the PED for review. The rule requires each school to develop and implement a policy that addresses bullying. The policy must include, but is not limited to:

- Definitions;
- An absolute prohibition against bullying (including cyberbullying as of the 2013-2014 school year);
- Staff training on cyberbullying;
- A method to ensure initial and annual dissemination of the anti-bullying and anti-cyberbullying policy to all students, parents, teachers, administrators and all other school or district employees;
- Procedures for reporting incidents of bullying and cyberbullying, which ensure confidentiality to those reporting bullying incidents and protection from reprisal, retaliation or false accusation against victims, witnesses or others with information regarding a bullying incident; and
- Consequences for bullying and cyberbullying which include consideration of compliance with state and federal IDEA requirements; consequences for knowingly making false reports pursuant to the anti-bullying policy; procedures for investigation by administration of incidents reported pursuant to the anti-bullying policy; and a requirement that teachers and other school staff report any incidents of bullying.

A number of school districts within New Mexico currently utilize progressive discipline matrices, which provide age-appropriate recommended guidelines in the disposition of discipline situations. The matrices allow for flexibility in responses, depending on the circumstances of the behavior or education status of the student. A progressive discipline approach would be congruent with the PED's Response to Intervention (RtI) framework.

The PED currently has systems in place that address bullying prevention programs and strategies; it also maintains a website devoted to bullying prevention information, strategies and resources. Resources already include training opportunities developed collaboratively by the U.S. Department of Education, Department of Justice, Department of Health and Human Services, and Substance Abuse and Mental Health Services Administration (SAMSHA) among others.

Both the PED's Wellness Policy Guidance Document and the Safe Schools Program, located in the Coordinated School Health and Wellness Bureau (CSHWB), provide oversight to the state's schools development and implementation of providing licensed counseling and bullying prevention. A full array of the programs resources can be found on the PED's website.

The CYFD JJS program typically only becomes involved with youth who have committed a delinquent act (NMSA 32A-2-3(A)). As bullying and cyberbullying are not currently defined as delinquent acts, unless the youth is charged with another crime, CYFD believes JJS may be an inappropriate entity to make referrals to.

CYFD is concerned with a few aspects of this proposed bill, primarily the automatic referral to JJS. Currently, there are two ways that youth have contact with juvenile probation: a referral from a law enforcement agency based on any allegation of a delinquent act, or voluntary contact with our Families in Need of Services (FINS) program.

FINS is a prevention and intervention program that works with parents who call or come in to their local probation office because they are in need of support, services, counseling, etc. The FINS program allows for interventions without requiring the youth and their family go through the formal court process. Juvenile Probation has shifted their focus over the past few years to keep youth out of the system that would be better served with community resources. Several studies have shown that youth at times do much better *without* formal supervision as many times the behavior is normal "teenage" behavior. Mandatory counseling may not address underlying issues that are causing the behavior.

While JJS employs behavioral health therapists, those employees work with at-risk high-needs youth whose diagnosis falls within the serious emotional disturbance category. To properly fulfill the mandate of this bill, either CYFD will need additional FTE to meet the need of this population, or CYFD will need the ability to make referrals to outside counselors for provision of services. The bill, as written, implies that the counseling is to be provided directly by CYFD itself.

The statute amended by this bill already has a provision for counseling (NMSA 22-2-21(B)(4)).

CYFD reported the bill is silent on who is responsible for payment to the counselor providing services in the event that CYFD/JJS makes a referral to outside counseling services. If the cost is to be paid by CYFD, CYFD will require additional funding. If the cost is to be paid by the parents, there are potential due process issues, in addition to the possibility that the family cannot afford to pay for or access the services required by the bill. Many of the families served by CYFD do not have the resources such as transportation, child care, and so on, that may be needed to comply with the requirement of counseling.

The bill further requires that parents attend counseling. It is unclear why there is an automatic requirement that parents be included in the counseling.

The bill states that this counseling is mandatory. It is unclear what, if any, consequence there may be if the student or parents refuse the mandatory counseling.

The bill requires that the counseling continue for the remainder of the school year. This time period appears arbitrary as, depending on when the incident of bullying or cyberbullying occurs,

the counseling could be for one week or nine months. Typically, counselors have discretion to determine if a client has successfully completed the necessary counseling. This bill removes that discretion. The bill is silent on frequency of counseling sessions.

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