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FISCAL IMPACT REPORT

SPONSOR Gallegos, DY/Kernan **ORIGINAL DATE** 02/20/17
LAST UPDATED 03/08/17 **HB** 411/aHF1

SHORT TITLE Points of Contact for Certain Students **SB** _____

ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Possibly Minimal	Possibly Minimal		Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)

Public Education Department (PED)

SUMMARY

Synopsis of House Floor Amendment

The House Floor amendment to House Bill 411 incorporates changes to ensure the State Education Agency (SEA) and Local Education Agencies (LEAs) collaborate with CYFD. The amendment additionally clarifies how points of contact are utilized by and within charter schools.

Synopsis of Original Bill

House Bill 411 (HB 411) creates a new section of the Courses of Instruction and School Programs section of the laws relating to public schools. The bill defines “foster care” and “involved in the juvenile justice system”. Each school district/local education agency (LEA) would be required to designate a person to serve as a point of contact (POC) for students in foster care or involved in the juvenile justice system. That person would be responsible for several tasks pursuant to this bill.

For children transferring into a school, the receiving school’s POC would be responsible for ensuring the child is enrolled whether or not the necessary records are produced, ensuring that the receiving and transferring school transfer records within two business days, ensuring timely transfer of credits, and collaborates with “juvenile and criminal justice” placements to assist in

transition to the school district.

For children transferring out of a school, the transferring school's POC must provide all records to the receiving school within two business days.

For children in foster care, the POC must develop policies for determining whether it is in the child's best interest to remain in the school of origin, policies for transportation, and policies for dispute resolution. The POC must also convene or participate in best interest determinations and ensure transportation occurs pursuant to the policies.

For both children in foster care and juvenile justice, the POC must ensure equal opportunities for activities and programs, timely assistance with college and career readiness, receipt of special education services, identifying supportive staff, ensuring communication between those involved in the child's education (including CYFD), and ensuring access to training for district staff regarding the impact of trauma on learning and trauma-informed practices.

The bill requires CYFD notify a school when a child enters foster care or when a child in foster care enrolls in school.

The bill indicates that the educational decision maker (EDM) for a youth in juvenile justice may notify the school to obtain support services.

The bill adds a definition of EDM to the abuse and neglect act. The bill also adds a section to the abuse and neglect act requiring that the court appoint an EDM at the custody hearing and review the EDM at every subsequent proceeding. The bill requires that the EDM be the respondent parent unless a finding by the court states that it would be contrary to the best interests of the child. If such finding is made the court must appoint another qualified individual.

FISCAL IMPLICATIONS

HB411 requires PED and CYFD to work together to provide guidance and technical assistance to school districts and state chartered charter schools regarding students in foster care and students in the juvenile justice system. In order to ensure that the requirements of HB411 are implemented, the agencies would need to establish a system of monitoring. Depending on the system that is developed, PED could not report if this could be done with existing resources.

PED reported the responsibilities outlined for the POC in each district could become such that districts may need to add dedicated staff. The number of students addressed in HB411 in each district would affect this decision and the amount of funding necessary cannot be determined at this time.

CYFD reported fiscal implications of this bill may include minimal increases in the mileage paid to foster parents for transportation of children.

SIGNIFICANT ISSUES

CYFD reported:

Pursuant to NMSA §32A-1-4(P), CYFD's legal custody of a child includes the right to,

among other things, “...provide the child with food, shelter, personal care, education, and ordinary and emergency medical care...” It is possible, that the best interest determinations may infringe upon CYFD’s ability to make, within the law, certain decisions about the child’s education.

Many sections of the bill, specifically decisions around school of origin and transportation, appear to be accomplished within this bill without any collaboration with CYFD or the foster parent. Both CYFD and the foster parent are integral parts of the team of people that would be necessary to ensure the best interest of the child are being met.

This bill is inconsistent with the Every Student Succeeds Act in several ways including requirements regarding appointment of local POCs, development of policies, and oversight of the LEAs by the State Education Agency (SEA) and CYFD. CYFD and PED must comply with the federal law regardless of whether it is codified in state law. If it is codified it should match the federal law so as not to create any conflict.

Currently, the Court and CYFD are already implementing, without codification, some of the items within this bill. Specifically, CYFD has a policy and forms for notification to schools and the Court Rules Committees have drafted forms for use for the appointment and review of the EDM.

Page 3, Lines 16 – 21 is confusing as it relates to transfer of children from “juvenile or criminal justice placement” to a school district. It is unclear what the term juvenile or criminal justice placement means. Juvenile justice involved youth typically reside with parents unless they are in CYFD’s legal custody in which case they are either in a juvenile detention facility or in foster care.

The development of district policies should be done in collaboration with CYFD to ensure that the policies developed do not conflict with existing law or CYFD policies and procedures.

While the two laws can likely be read together, this bill may create tension with foster parents’ authority to make decisions regarding extra-curricular and other activities as required by the Preventing Sex Trafficking and Strengthening Families Act and within NMAC 8.26.2.13.

PED reported:

HB411 adds new language to public school code requiring school districts to establish a POC for students in foster care and for students involved in the juvenile justice system. Section 1112 (c)(5)(B) of the federal Every Student Succeeds Act (ESSA) requires that school districts and state charter schools receiving Title I Part A funding establish a POC that would facilitate educational services for students in foster care. This responsibility would be duplicative of federal law. ESSA does not provide for a POC for students in juvenile justice settings.

HB411 lists POC responsibilities as facilitating immediate enrollment regardless of whether records normally required for enrollment are available; prompt transfer of records; timely transfer of credits; and through collaboration with the education program

staff in a juvenile justice setting and the educational decision maker appointed by the children's court, the development and implementation of a transition plan. POC responsibilities in US Department of Education ESSA guidance documents list similar POC responsibilities.

For students in foster care, HB411 requires that the POC be responsible for developing district policies for best interest determinations about whether students will remain in their school of origin; transportation policies around best interest determination placements; and dispute resolution. ESSA requires that these responsibilities be conducted in collaboration with the state's child welfare agency (CYFD). The responsibility is duplicative of federal law.

For students in foster care and those in the juvenile justice system, HB411 requires that the POC ensure that students have equal opportunity to participate in extracurricular activities and career and technical programs; receive timely assistance from counseling staff; and receive all special education services and accommodations required by law. POC's must also ensure that school district staff and teachers have access to training and resources about system-involved youth and the impact of trauma on learning.

HB411 requires that CYFD notify a school when a student currently enrolled in that school enters foster care or a student in foster care enrolls in that school. It would also allow for a student or a student's educational decision maker to notify a school that the student is involved in the juvenile justice system to obtain support and services from the POC. Note that SB213 as amended states that students who are delinquent would only be identified if the parent chooses to disclose the adjudication of delinquency.

Under the federal Individuals with Disabilities Act (IDEA), at 34 CFR Sec. 300.519, the role and authority of surrogate parents is provided for students with disabilities that are wards of the state. Under this section, public agencies must ensure that the rights of students with disabilities are protected and that the surrogate parent may represent the child in all matters relating to educational placement and the provision of a free and appropriate public education (FAPE) for the child. HB 411 would be duplicative of what is already required under federal law.

According to the school year 2015-16 Consolidated State Performance Report, 1,764 students were involved in juvenile justice educational programs in locally operated facilities and 464 students were provided educational services in state operated facilities. These programs are in part served through ESSA Title I Part D and IDEA funding. Each of these programs requires that services be provided to facilitate the transition of students into further schooling or employment.

The New Mexico Children Youth and Families Department (CYFD) reports that there are currently 2,663 children and youth in the foster care system. According to *Research Highlights of Education and Foster Care*:

- Students in foster care at the age of 17 are less likely to graduate from high school than their peers;
- 56%-75% of foster youth change schools when first entering care; and
- 34% of 17-18 year olds in care have experienced 5+ school changes.

Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care January 2014

(http://www.fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=1279&Command=Core_Download&method=inline&PortalId=0&TabId=124)

TECHNICAL ISSUES

CYFD reported Page 3, Lines 16 – 21 is confusing as it relates to transfer of children from “juvenile or criminal justice placement” to a school district. It is unclear what the term juvenile or criminal justice placement means. Juvenile justice involved youth typically reside with parents unless they are in CYFD’s legal custody in which case they are either in a juvenile detention facility or in foster care.

OTHER SUBSTANTIVE ISSUES

CYFD believes this bill may create tension with foster parents’ authority to make decisions regarding extra-curricular and other activities as required by the Preventing Sex Trafficking and Strengthening Families Act and within NMAC 8.26.2.13.

KK/jle/sb/jle