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FISCAL IMPACT REPORT

ORIGINAL DATE 2/7/2007
 LAST UPDATED 3/06/07

SPONSOR SEC _____ HB _____

SHORT TITLE School District Delinquency Petition Notices SB CS/68/aSEC _____

ANALYST McOlash _____

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 32.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Education Department (PED)

SUMMARY

Synopsis of SEC Amendment

The Senate Education Committee amendment to SB 68/SECS strikes all of the language in the bill except for the words “AN ACT RELATING TO JUVENILES;” and inserts in the title the following words:

REQUIRING THE PUBLIC EDUCATION DEPARTMENT AND THE
 CHILDREN, YOUTH AND FAMILIES DEPARTMENT TO
 PROMULGATE RULES FOR THE DEVELOPMENT OF EDUCATION
 AND MANAGEMENT PLANS FOR AT-RISK CHILDREN.

The SEC amendment then adds new material requiring the Public Education Department (PED) and the Children, Youth and Families Department (CYFD) to promulgate rules for the development and implementation of education and management plans for a child who poses a danger to self or to others.

This child must be adjudicated as a delinquent or arrested for a crime that, upon

adjudication would render the child as a youthful offender or serious youthful offender.

SIGNIFICANT ISSUES

Senate Bill 68/SECS as amended by SEC

Senate Bill 68/SECS as amended by SEC fails to speak to the promulgation of rules by PED and CYFD for at-risk children, as indicated in the title. The amended bill, when addressing the education and management plans, only refers to the development and implementation of plans for a single child and outlines a process for meetings. Under this circumstance, each child's planning meetings, discussions, and plan development could be unique and generalizable rules for all children are not developed. The process appears to be similar to the individual education plans developed for special education students. It does not, however, indicate any direct responsibility for formalizing, implementing, and monitoring the plan. The amended bill makes no mention of notifications of school superintendents or anyone else when a child has been adjudicated for any offenses.

The amendment includes the following (emphasis added):

B. The rules shall require meetings among appropriate school officials, the juvenile probation and parole officer supervising the child, the child's parent or guardian and any caseworkers, counseling and treatment providers assigned to the child to discuss and develop an education and management plan that meets the child's educational needs, addresses any management concerns regarding the child and promotes a safe and secure educational environment for the child, other students and staff.

C. The rules shall mandate compliance with the highest standards of confidentiality in accordance with the Children's Code, the Children's Court Rules, the federal Family Educational Rights and Privacy Act and other applicable state and federal laws. All records and information obtained in the development of an education and management plan are subject to the confidentiality and penalty provisions of Section 32A-2-32 NMSA 1978.

Synopsis of Original Bill

The Senate Education Committee Substitute for SB 68 enacts a new section of the Delinquency Act requiring the Children Youth and Families Department (CYFD) to notify the superintendent of the school district where a child resides or is currently enrolled of adjudication for one of 15 enumerated serious offenses.

Notification must also be made by CYFD to the head master of a charter school or a private school where the child is enrolled.

Notification must occur within 30 days of adjudication and shall become part of the child's school record, provided that the notification and all reference to the adjudication shall be purged from the school record whenever:

- 1) records relating to the adjudication have been sealed;
- 2) the child obtains a high school diploma or equivalent; or
- 3) the child has not attended any school in the district for three years.

The bill requires the CYFD and PED to adopt rules to implement the notification provision.

Senate Bill 68/SECS

The PED identifies a number of problematic issues with this bill, among them:

1. The bill does not describe the consequences of non-reporting or what the superintendent should/must do with the delinquency notification other than to file it.
2. Given that place of delivery of a notice turns on a child’s residency or enrollment in a school district, the bill would require reporting to a school district even if a child is home schooled or has dropped out.
3. The bill does not prescribe uses a school district or private school can make of the adjudication notification but presumably leaves that up to rulemaking by CYFD and the PED.
4. Given that enrollment in a private school is generally a contractual arrangement between the parents/guardians of a child and the private school, the reporting requirement may constitute impairment of a contract, which would implicate Article 2, Section 19 (“Bill of Rights”) of the New Mexico Constitution, which prohibits laws that impair contracts.
5. Any attempt by a school district to restrict, isolate or punish a child about whom the adjudication notification was filed is subject to challenge under the referenced constitutional provision (New Mexico Constitution Article XII, Section 1) as well as under due process provisions of the state and federal constitutions.

TECHNICAL ISSUES

Page 1, Line 24, after “adjudicated” insert the word “delinquent”.

Page 3, Line 19, after district” insert the words “charter school or private school”.

BM/nt