

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 528a

51st Legislature, 1st Session, 2013

Tracking Number: .192225.1

Short Title: School Discipline Policy Requirements

Sponsor(s): Senator Gerald Ortiz y Pino

Analyst: Kevin Force

Date: March 6, 2013

AS AMENDED

The Senate Education Committee amendments:

- make a small grammatical correction by striking a single quotation mark; and
- add a new subsection, which reads:

“I. Nothing in this section shall be construed as prohibiting a school employee from reporting to law enforcement an alleged crime inflicted by a student upon a school employee. Schools, school districts and the department shall not discipline, discharge or in any manner retaliate against a school employee who reports to law enforcement an alleged crime inflicted by a student upon a school employee.”

Original Bill Summary:

SB 528 proposes to amend the *Public School Code* to provide for definitions, requirements, and procedures for school discipline policies, public participation and reporting requirements, and separates these provisions from provisions regarding self-administration of certain medications by students.

Specifically, SB 528:

- strikes material regarding school discipline from the section of the *Public School Code* dealing with the self-administration of certain medications by students, specifically asthma and emergency anaphylaxis medications; and
- creates a new section for material regarding school discipline policies, and adds new requirements to that section.

The new section of the *Public School Code* that addresses school discipline policies and procedures includes among its provisions:

- requirements for the establishment of school discipline policies, including:
 - seeking input from parents, school personnel, and students;
 - holding a public hearing on the issue; and
 - filing the discipline policy with the Public Education Department (PED);

- required elements of school discipline policies, including:
 - the enumeration of possible behavior intervention measures such as counseling or mentoring;
 - potential disciplinary actions, such as in-school suspension, school service, suspension, expulsion, or alternative measures;
 - the incorporation of research-based intervention measures, positive behavioral support and disciplinary strategies proven to improve behavior and reduce the incidence of disciplinary actions;
 - the possibility of alternatives to long-term suspension, expulsion, or referral to law enforcement;
 - not referring petty acts of misconduct and misdemeanors to law enforcement; and
 - a requirement that disciplinary matters be dealt with on a case-by-case basis, considering each student’s individual circumstance, including:
 - any prior incidents involving the student;
 - whether the violation was accidental or involuntary; and
 - whether the student is eligible for special education or accommodations;

- required elements of an annual report to PED, to be submitted by each school district and charter school by May 30 of each year, and which shall include:
 - the number of arrests, citations, and referrals to the Children, Youth and Families Department (CYFD) made by law enforcement, security, school resource officers (SROs), and other personnel;
 - the alleged offenses for which students were cited, arrested, or referred to CYFD; and
 - statistics categorized by offense and the offending students’ age, race, gender and, if applicable, special education eligibility category;

- requirements that PED annually:
 - review the information reported by districts and charters; and
 - present to the Legislative Education Study Committee (LESC) a report that analyzes any disparate impact on students who are arrested, cited, or referred to CYFD based on their age, race, gender or special education eligibility;

- a requirement that each local school board or charter school governing body enter into an agreement with its county sheriff’s office, local police department, and the Juvenile Justice Division of CYFD, to be made available to the public, and to require:
 - all schools that employ SROs to require them to complete police academy basic training on the:
 - role of the SRO in a school setting;
 - school discipline requirements of the federal *Individuals with Disabilities Education Act* (IDEA);
 - use of research-based strategies and positive behavioral supports proven to decrease discipline referrals;
 - research-based best practices for interviewing children; and
 - requirements of the *Children’s Code*;

- specific complaint process to be available to any student taken into custody by law enforcement or referred to CYFD for filing a complaint with the district, charter school, PED, law enforcement, or CYFD, concerning any alleged misconduct by law enforcement or SROs; and
 - specification of circumstances under which school personnel or SROs may be required or permitted to handle disciplinary incidents without report to law enforcement, and corresponding circumstances where personnel *are* required to report to law enforcement;
- provision for individual schools to establish their own discipline policies to supplement the district’s policy, and procedures for the adoption of such policies, including:
 - parent, student, and school personnel involvement;
 - a public hearing;
 - approval by the school’s local school board; and
 - a requirement that the policy is provided to students and parents at the beginning of each school year; and
 - a stipulation that no school employee who, in good faith, reports a violation of, or attempts to enforce, the discipline policy shall be held civilly liable for any damages resulting from the report of violation or attempt to enforce the policy.

Fiscal Impact:

SB 528 does not contain an appropriation.

Fiscal Issues:

According to one analysis from PED:

- while SB 528 would require PED to add more data points to Student Teacher Accountability Reporting System (STARS), amend existing administrative rule and review each district policy submission, these tasks can be accomplished with existing resources; and
- total costs for school districts, including costs associated with sending SROs to police academy training, are indeterminate.

However, in a separate, conflicting analysis, the PED Director of Constituent Services indicates that:

- the department expects to incur “significant costs” related to:
 - collecting and reporting data, including potential costs for new data systems and additional staff necessary to meet the requirements of the bill; and
 - the training of SROs, particularly sending them to the State Police Training Academy;
- school districts have notified the LESC, the Legislative Finance Committee (LFC), and PED that current reporting requirements are already burdensome and, while PED has

taken steps to reduce this administrative burden, SB 528 necessarily would increase expenditure of resources to meet its new requirements; and

- school districts will also incur “significant staff and legal time” to rewrite all discipline policies, as SB 528 outlines an entirely new process for the development of such policies.

Original Substantive Issues:

According to the PED analysis:

- each school district would be required to determine what constitutes “petty acts of misconduct and misdemeanors,” and what infractions will be reported and not reported; and
- the requirement that districts not report “petty misconduct and misdemeanors” to law enforcement may increase the risk of repeated and escalating violent behavior if students are aware that these acts may go unreported, thus creating an increased risk of faculty, staff, and students being injured.

According to the PED Director of Constituent Services the provisions of SB 528:

- propose to allow students to file formal complaints with their school district or charter school, PED, law enforcement, or CYFD regarding any alleged misconduct by law enforcement or SROs, which is problematic because:
 - complaints may be filed with entities that do not directly employ the law enforcement agents or SROs;
 - no mention is made of the parent’s role in the complaint process to be initiated by persons who are most likely minors;
- assume that SRO training can happen locally, where it is most likely to be confined to the state police academy;
- appear to assume an understanding of IDEA provisions regarding discipline of students in special education by law enforcement and SROs, that is unlikely correct;
- may require staff of the New Mexico Corrections Department (NMCD), or districts and charter schools, to bear the cost of IDEA training, incurring additional costs to contract with lawyers to incorporate additional training in this highly specialized field of law;
- do not provide for a phase-in timetable to allow districts, charter schools, NMCD, CYFD, and PED time to prepare for new requirements.

Background:

According to the analysis offered by the Department of Health:

- the 2011-2012 Annual School Health Summary¹ report notes that the two most widely diagnosed medical issues on file with school nurses were asthma (28,884 students) and allergic disorders (30,931 students);
- there were also 1,247 students diagnosed with diabetes;

¹ *School Nursing in New Mexico: Critical to Student Success, 2011-2012 Annual School Health Services Summary Report, PED/DOH*

- school nurses were responsible for medically complex procedures for over 7,300 students, most frequently related to asthma and diabetes;
- the most commonly prescribed medications provided for students were asthma medications, epinephrine, and insulin;
- the American Academy of Pediatrics has indicated that older, more responsible students should be allowed to self-medicate at school with over-the-counter medications and certain prescription medications, such as albuterol for asthma and insulin for diabetes, when recommended by parent and physician;²
- current New Mexico law requires all schools to grant any student enrolled in K-12 authorization to carry and self-administer prescribed medications for asthma, anaphylactic emergencies, and diabetes;³ and
- separating school discipline policy from policy regarding self-administration of medication comports with both state statute and recommendations from the American Academy of Pediatrics and the National Association of School Nurses.

In 2011, this section of statute was amended to allow students to carry and self-administer asthma medication and medication for anaphylactic emergencies.

Committee Referrals:

SEC/SJC

Related Bills:

HB 234 *Create Crime of Bullying*

² *NeoReviews: An Official Journal of the American Academy of Pediatrics*, Vol. 112, No. 3, September 1, 2003

³ 6.12.2.9 NMAC