

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 129

52nd Legislature, 1st Session, 2015

Tracking Number: .198936.1

Short Title: Clarify School Test Individual Choice

Sponsor(s): Representative Stephanie Garcia Richard

Analyst: Christina McCorquodale

Date: February 7, 2015

Bill Summary:

HB 129 adds a new section to the *Public School Code* that allows parents to request a waiver from their child's participation in the college and career readiness assessment approved by the Public Education Department (PED) and from any other assessments that are not factored into their student's grade point average. Opting out of these assessments will not affect the following for students:

- promotion or retention decisions;
- eligibility to participate in activities sanctioned by the school or the New Mexico Activities Association;
- graduation and scholarships; and
- attendance record.

The bill also requires that lack of test results from those students who opt out will not affect:

- A-F school grades; or
- school personnel decisions or consequences (see "Background," below).

Fiscal Impact:

HB 129 does not have an appropriation.

Fiscal Issues:

The PED analysis notes that a 95 percent participation rate for students is required for federally required accountability assessments and that the state could risk losing up to \$400 million in federal funds if the participation rate is decreased (see "Background," below).

Technical Issues:

On page 1, paragraph A, lines 22 and 23 refer to "school leader of a charter school"; however, the term "head administrator" is used in statute.

Substantive Issues:

Currently New Mexico school districts may provide guidance for parents who wish for their child to opt out of assessments, including the college and career readiness assessment. Districts may obtain waiver requests from PED for the following to include:

- New Mexico statewide assessment parental refusal form;
- waiver of targeted levels of proficiency of the general graduation exam due to medical or mental health issues for students with disabilities;
- waiver request for graduation requirements;
- New Mexico high school competency exam waiver request; and
- waiver for end-of-course assessment for English language learners (ELL).

The PED analysis also states that if parents waive their child's participation in any or all of these assessments it will have varying effects:

- significantly limit the assessment information available to the teachers and school administrators;
- hamper instructional planning for student;
- jeopardize the school's accountability rating because this rating is based in part on participation rates for testing;
- affect the evaluation of the teacher if school rating is affected by decreased participation rates;
- prevent a student from receiving a diploma of excellence if the student is to graduate in 2015 or later; and
- result in a notation on the student's transcript stating, "student failed to participate in the state mandated 11th grade testing."

PED adds that districts set their own policies regarding which assessments are factored into a student's course grade or grade point average. On the other hand, if enacted, this bill will ensure that students whose parents' opt out of testing will not be affected by such district policies.

Background:

Legislative Education Study Committee Statewide Testing Survey

During the 2014 December interim meeting, the Legislative Education Study Committee (LESC) staff presented results of a statewide testing survey. Reflecting responses from 55 of the state's 89 school districts (including Albuquerque Public Schools), the survey considered all state- and district-mandated assessments to include;

- Partnership for Assessment of Readiness for College and Careers (PARCC); and
- the National Center and State Collaborative (NCSC) assessments.

The LESL statewide testing survey found that:

- at any of the grade levels, ELL students spend four to five more hours on testing than non-ELL students, partly because ELL students take additional language placement and language proficiency assessments;
- it appears that grades 3, 7, and 8 are the most tested for both ELL and non-ELL students;

- the average testing times per student for these school grades are as follows:
 - in third grade, ELL students average 27.11 hours of testing and non-ELL students 21.64 hours;
 - in seventh grade, ELL students average 27.86 hours of testing and non-ELL students 22.69 hours; and
 - in grade 8, ELL students average 27.37 hours and non-ELL students 22.20 hours;
- in grades K-3, formative assessments represent half of the testing time for a given student;
- in grade 9, the proportion of formative assessments in relation to the total of assessments increases 75 percent; and
- for other grades (grades 3-8 and grades 10 and 11), the proportion of formative assessments drops to 25 percent.

Federal Accountability Assessments, School Grading, and Teacher and Principal Evaluation

On November 14, 2014, the US Department of Education granted New Mexico’s request for an extension of the *Elementary and Secondary Education Act* (ESEA, also known as the *No Child Left Behind Act of 2001*) flexibility through the end of school year 2014-2015. However, as suggested under “Fiscal Issues,” above, the flexibility does not waive the ESEA requirement that 95 percent of students participate in the state assessments.

New Mexico’s ESEA flexibility application includes sections that discuss three distinct principles:

1. college- and career-ready expectations for all students;
2. state-developed differentiated recognition, accountability, and support; and
3. supporting effective instruction and leadership.

Principle two specifically relates to New Mexico’s *A-B-C-D-F Schools Rating Act*, which passed during the 2011 legislative session. Under the act, each public school in New Mexico will be given a grade of A, B, C, D, or F annually. The goals of the act are as follows:

- measure schools based on both proficiency and growth;
- meaningfully differentiate levels of success;
- avoid holding schools accountable for characteristics beyond their control; and
- provide meaningful data to champion success and identify areas of improvement.

Additionally, based on the application, growth was specifically defined as learning a year’s worth of knowledge in one year’s time as demonstrated by student performance on the New Mexico Standards-Based Assessment¹ in reading and mathematics. As such, the school grading model includes growth measures for students moving from one performance level to a higher performance level, students who remain proficient or advanced, as well as growth for students who remain in beginning step or nearing proficient but move a certain number of scale score points. Additionally, the act specifies that the state must also look explicitly at the bottom 25 percent of students within a school.

¹ During school year 2014-2015, New Mexico will begin administering the Partnership for Assessment of Readiness for College and Careers (PARCC) assessment.

Principle three within New Mexico’s ESEA flexibility application specifically relates to the state’s teacher and school leader evaluation system.

Adopted in August 2012 and amended in September 2013, the PED rule titled *Teacher and School Leader Effectiveness* implements an evaluation program for public school teachers and administrators called the Effectiveness Evaluation System (EES). During the 2013 interim, the LESC heard a variety of testimony on the provisions and implementation of this rule and on other aspects of teacher and principal evaluation.

In PED rule, 50 percent of a teacher’s evaluation is based on student achievement measures, whether derived from the state standards-based assessments or some other student assessment. Details vary, however, depending upon whether a teacher is a member of Group A, Group B, or Group C.

- Group A teachers teach subjects tested by the standards-based assessments in those grades in which the assessments are administered;
- Group B teachers teach either non-tested subjects or tested subjects in which the standards-based assessments are not administered; and
- Group C teachers teach in grades K-2.

For the remainder of a teacher’s evaluation:

- 25 percent is based on teaching observations by one of two types of observers – either “approved” or “certified” – using the New Mexico Teacher Evaluation Advisory Council (NMTEACH) observation rubric; and
- 25 percent is based on “multiple measures,” which vary, again, according to the group to which the teacher belongs.

Committee Referrals:

HEC/HRPAC

Related Bills:

HB 156 *Innovations in Teaching Act*

SB 217 *Individual Choice on Some School Tests* (Identical)