

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** HB 271a

**52nd Legislature, 1st Session, 2015**

**Tracking Number:** .199016.1

**Short Title:** CYFD & PED Information Sharing

**Sponsor(s):** Representative Gail Chasey and Others

**Analyst:** Kevin Force

**Date:** March 16, 2015

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**AS AMENDED**

**The House Education Committee amendments:**

- **change references to “students in the state’s care” to “students in the state’s legal custody”; and**
- **remove the section-specific definition of “students in the state’s care” (Section 1, Paragraph D of the original bill.)**

**Original Bill Summary:**

HB 271 proposes to require information-sharing between the Public Education Department (PED) and the Children, Youth and Families Department (CYFD) by:

- creating a new section of the *Public School Code*; and
- amending a section of the *Abuse and Neglect Act*.

Section 1 creates a new section of the *Public School Code* to:

- define, for purposes of this new section, the term “students in the state’s care” to mean children who have been placed in the custody of CYFD by a court order, but not necessarily requiring physical placement of the child out of the home;
- require CYFD and PED to establish procedures for sharing data and reporting outcomes that may be helpful to assessing and meeting educational challenges of students who have been placed in the state’s care as a result of abuse and neglect, including:
  - a requirement that, at least once per month, CYFD supply PED with a list of students in the state’s care that includes for each student:
    - his or her place of residence;
    - the name and contact information of the student’s foster parent or other responsible adult at the student’s residence;
    - the name and contact information of the CYFD staff person responsible for the student’s oversight;

- the name and contact information of the person responsible for making decisions regarding the student’s education; and
  - the student’s home school; and
- a requirement that, at least once per month, PED:
- inform each school district of any of its students who are in the state’s care;
  - provide school districts information regarding the students that will be helpful in ensuring that those students receive appropriate educational supports and services;
- or*
- an option for PED to allow CYFD staff direct access to PED’s data system for the purpose of accessing the education records of students in the state’s care [emphasis added];

Section 1 of HB 271 also:

- requires PED to issue an annual report on the aggregated educational status of students in the state’s care, including:
  - the number of such students;
  - academic achievement;
  - truancy and graduation rates;
  - special education eligibility rates, by category; and
  - suspension, expulsion, and dropout rates;
- requires PED to establish rules directing how school districts will share educational records with CYFD staff; and
- requires school districts to establish policies regarding the sharing of educational records with CYFD staff by August 31, 2015.

The amendment to the *Abuse and Neglect Act*, in Section 2 of the bill, adds PED employees to those parties to whom records of abuse and neglect may be disclosed.

**Fiscal Impact:**

HB 271 does not contain an appropriation.

**Technical Issues:**

HB 271 requires PED to “establish rules governing how school districts will share” student educational records with CYFD staff. Generally, when referring to rules and regulations, the term “promulgate” is preferred, as it has legal implications that the more generic term, “establish” may lack. The sponsor may wish to consider amending the bill to replace the requirement that PED “establish” rules with one that it “promulgate” them.

According to the CYFD analysis, the definition of “students in the state’s care” proposed by HB 271 may be in conflict with the definition of “legal custody” in the *Children’s Code*.<sup>1</sup>

### **Substantive Issues:**

According to the PED analysis:

- Current data-sharing agreements between PED and CYFD abide by federal and state regulations, including the federal *Family Education Rights and Privacy Act* (FERPA).
- The provisions of the bill require that PED mediate any data-sharing between school districts and CYFD, while there is no federal law prohibiting direct sharing between school districts and CYFD.
- While PED has no objection to sharing aggregate data on educational outcomes with CYFD, because FERPA prevents the sharing of personally identifiable information, PED cannot promulgate rules to require or facilitate such sharing of data.

On the other hand, the CYFD analysis notes that:

- HB 271 allows for access to the larger scale PED data system, but it does not address the local school district’s data;
- while the PED data system may benefit CYFD on a broad scale, it would be better for individual children who are in the legal custody of CYFD for CYFD to have direct access to the data systems of each local school district; and
- the bill does not address or require any particular action on the part of CYFD or PED with regard to the information gathered; without direction regarding what is to be done with this information, these procedures and reports may not have any real effect on the outcomes for students in the state’s care.

Finally, the analysis by the Administrative Office of the Courts says that sharing information on both aggregate and individual levels “is essential to ensure the educational success of children in the state’s care. Without such an exchange the child welfare, education, and judicial systems run the risk of operating at cross purposes.”

### **Committee Referrals:**

HSCAC/HEC/HJC

### **Related Bills:**

HB 163aa *School Use of Social Security Numbers*  
SB 202aa *Public Education Data Advisory Council*

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<sup>1</sup> §34A-1-4 (O) NMSA 1978: “legal custody” means a legal status created by order of the court or other court of competent jurisdiction or by operation of statute that vests in a person, department or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline the child and to provide the child with food, shelter, personal care, education and ordinary and emergency medical care; the right to consent to major medical, psychiatric, psychological and surgical treatment and to the administration of legally prescribed psychotropic medications pursuant to the Children’s Mental Health and Developmental Disabilities Act [32A-6A-1 NMSA 1978]; and the right to consent to the child’s enlistment in the armed forces of the United States.