

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 587

52nd Legislature, 1st Session, 2015

Tracking Number: .199533.2

Short Title: School Education Parents' Bill of Rights

Sponsor(s): Senator Clemente Sanchez

Analyst: Kevin Force

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Bill Summary:

SB 587 proposes to enact the *Parents' Bill of Rights in Public School Education Act* to enumerate certain rights and procedures for parents of students in public school. A section-by-section synopsis of the bill follows.

Section 1 declares the short title of the act.

Section 2 states the purposes of the act, which are to:

- encourage parents to actively participate in their children's education; and
- provide specific rights to parents regarding their children's education.

Section 3 provides for parental access to all of a school district's written records that concern their child, including attendance, test scores, grades, discipline, counseling, health and immunization, and teacher and school counselor evaluations.

Section 4 enumerates the responsibilities that local school boards have to the parents of their students:

- the development and adoption of policies to promote parents' involvement with their children's education, including procedures for:
 - parental participation designed to improve cooperation with teachers in areas such as homework, attendance, and discipline;
 - parents to learn about their children's courses of study;
 - a parent who finds materials or activities harmful because it questions the parent's beliefs regarding sex, morality, or religion to withdraw his or her child from the objectionable activities;
 - learning about school-approved clubs and activities, either curricular or extracurricular;
 - governing concurrent enrollment, advanced placement, and honors courses; and
 - a parent's right to:
 - review test results;
 - inspect instructional materials;
 - receive the school report card;

- publicly review textbooks and courses of study; and
- opt out of the collection of biometric data used to identify students;
- a requirement that a parent submit a written request for his or her children’s information, including provision for:
 - when, where, and to whom the request is to be submitted;
 - a school district’s denial of the parent’s request for information; and
 - a right of appeal to the local school board, if the parent’s request for information is denied; and
- adoption of procedures for grievances regarding violation of the provisions of the act.

Section 5 lists those actions for which a parent must give prior written consent, including:

- psychological examination or treatment, unless required by law for special education;
- making an audio, video, or audiovisual recording of the parent’s child, unless the recording is to be used only for:
 - maintenance of safety, order, and discipline in a school’s common areas or school buses;
 - purposes of extracurricular or co-curricular activities;
 - regular classroom instruction; or
 - media coverage of the school.

Section 6 requires parental consent for questioning by a law enforcement officer, including:

- a requirement of prior consent for any interviews, unless the law enforcement officer feels such an interview is justified by an emergency;
- a requirement that a law enforcement officer, who finds that an emergency that justifies interviewing the student without prior parental consent exists, complete and sign a form stating that prior consent was sought and not obtained, and that the interview was nevertheless conducted due to an emergency; and
- a right for parents to be present at any interview of their child by a law enforcement officer, including a school resource officer (SRO), except in case of emergencies.

Section 7 addresses the issue of school districts that employ school resource officers, including:

- a definition of “school resource officer,” specific to this section, which means a certified law enforcement officer commissioned by the appropriate authority of the community where the officer’s school is located;
- a requirement that districts have written policies describing the rules and objectives of the SRO program, to include:
 - delineation of when the SRO acts as a school employee, in contrast to when the officer acts as a law enforcement officer; and
 - prohibition against SROs switching between these respective roles in the course of an interview or investigation;

- a requirement that districts have publicly available written agreements between the district and the SRO's commissioning authority that clearly establish each party's duties.

Section 8 addresses situations where a parent may decline the prescription or administration of a psychotropic drug, and includes:

- a definition of "psychotropic drug," specific to this section, which means a substance, used in the diagnosis, treatment, or prevention of a disease, or a component of medication, which is intended to alter a person's perception, emotion, or behavior; and
- a prohibition against an SRO using a parent's refusal to administer a psychotropic drug as the sole reason for a report of abuse or neglect, unless the SRO has cause to believe the refusal:
 - presents a substantial risk of death or injury; or
 - resulted in an observable, material impairment to the growth and development of the child.

Section 9 stipulates that a parent is entitled to remove his or her child temporarily from a class or school activity that conflicts with the parent's religious or moral beliefs, if the parent provides the teacher with a written statement allowing the child's removal. However, it does not allow withdrawal of a child merely to avoid a test, or to prevent the child from taking a particular class for a semester; nor does it exempt a child from satisfying grade-level or graduation requirements.

Fiscal Impact:

SB 587 does not contain an appropriation.

Technical Issues:

SB 587 includes two definitions, applicable only to their respective sections (see "Bill Summary," above). Specifically,

- Section 7 includes a definition of "school resource officer," and limits the definition's application to that section of the bill, yet the term is also used in Section 6; and
- Section 8 includes a definition of "psychotropic drug."

Further, Section 7 refers to an SRO's "commissioning authority," and Section 4 refers to "biometric data," yet the bill includes no definitions for these terms. The sponsor may wish to consider amending the bill to provide for a separate definitions section, containing the two terms already defined, as well as definitions for "commissioning authority" and "biometric data," applicable to the entire act.

Other undefined terms are "concurrent educational opportunities" and "concurrent classes" (page 3, lines 19 and 21, respectively). While they may suggest certain programs, their particular meaning seems unclear partly because state law and agency rule employ different terms.

- State law¹ offers opportunities for “dual credit,” a program through which a secondary student may enroll in postsecondary classes that earn credit at both the secondary and postsecondary levels simultaneously. This program does imply *concurrent* enrollment in both secondary and postsecondary levels, but it also prescribes a number of other conditions that a student must meet to earn credit at both levels.
- Public Education Department (PED) rule defines the term “concurrent enrollment”² as “enrollment of high school students in courses at the postsecondary level that are *not* designated as dual credit (emphasis added). This includes courses not listed within the dual credit master agreement between the eligible local education agencies and postsecondary institution (a requirement for earning credit at both levels). Students who are concurrently enrolled may also be enrolled in the dual credit program if they meet eligibility requirements . . .”

Depending on his intentions, the sponsor may wish to consider deleting the references to concurrent opportunities and classes and substituting them with references either to dual credit or to concurrent enrollment.

Additionally, SB 587 does not appear to address the possibility of anyone other than a “parent” having custodial interest in a child, such as relatives other than a parent having guardianship, foster parents, or guardians *ad litem*. The sponsor may wish to consider amending the bill to address other persons who may have guardianship or custody of a child.

Finally, although the provisions of the act apply to school districts and their local boards, no separate reference has been made to charter schools. This exclusion is of particular relevance to state-chartered charter schools, as they lack any direct relationship with local school boards or school districts. The sponsor may wish to consider amending the bill to include application of its provisions to charter schools.

The Administrative Office of the District Attorney (AODA) notes a potential internal conflict. Section 4, allowing parents to withdraw children from instruction and activities that they may find harmful, appears to conflict with Section 9, which permits parents to withdraw their children only on the basis of moral or religious objection, and only for the minimal period necessary.

Substantive Issues:

The analysis from PED notes a number of areas where there may be conflicts with other areas of law, such as:

- the federal *Individuals with Disabilities Education Act* (IDEA), which requires that students with disabilities and their parents be provided with certain safeguards, including student and parental rights, such as:³
 - parental consent for testing for special education and related services;
 - the development of the student’s Individualized Education Plan (IEP); and

¹ See, e.g.: Sections 22-13-1.4(B) and 22-13-1.1(D)(1) NMSA 1978.

² Please see, 6.30.7.7(D) NMAC.

³ Please see, “Parent and Child Rights in Special Education Procedural Safeguards Notice,” at: <http://ped.state.nm.us/SEB/forms/Parent%20and%20Child%20Rights%20Procedural%20Safeguard%20Notice%20-%20March%202014.pdf>.

- disciplinary procedures for the resolution of disputes with schools or school districts through alternative dispute resolution;⁴
- the *Federal Educational Rights and Privacy Act (FERPA)*⁵, because:
 - SB 587 requires parental access to all written records of a school district regarding the parent’s child;
 - FERPA grants parents the right to:
 - have access to their children’s educational records;
 - seek to have those records amended; and
 - the right to have some control over the disclosure of personally identifiable information from those records; however,
 - when a student turns 18, these rights under FERPA transfer from the parent to the student; and
- other sections of New Mexico law that govern parents’ access to their children’s health records, such as:
 - the *Public Health Act*, which holds that any person, *regardless of age*, has capacity to consent to examination and treatment by a licensed physician for any sexually transmitted disease (emphasis added);⁶ and
 - the *Family Planning Act*, which holds that neither the state, nor any health facility that offers family planning, may subject any person to any requirement as a prerequisite for such services, and which does *not* offer exemptions based on age, creating a situation where parental rights may violate the student’s expectation of healthcare-related privacy.⁷

The New Mexico State Police (NMSP) note that the bill requires law enforcement personnel to secure parental permission before interviewing a child at school and, failing that, to document their attempts to obtain the permission. This requirement is problematic, NMSP contend, because the *Children’s Code*⁸ directs school personnel, after receiving proper identification, to allow law enforcement to interview children in some circumstances without parental permission. Therefore, they note that SB 587 may both conflict with current law and hinder investigations of child abuse and neglect, especially where parents may be suspects in that investigation. NMSP suggest, therefore, amendment of the bill to include an exemption from the requirement to obtain parental permission for law enforcement investigating allegations of abuse or neglect.

⁴ Because gifted educational programs are considered to be special education in New Mexico, those students and their parents are also afforded limited procedural safeguards.

⁵ Please see, 20 U.S.C. § 1232g, and 34 CFR Part 99.

⁶ Please see, Section 24-1-9, NMSA 1978, “Capacity to consent to examination and treatment for a sexually transmitted disease.”

⁷ Please see, Section 24-8-5 NMSA 1978, Prohibition against imposition of standards and requirements as prerequisites for receipt of requested family planning services.

⁸ Please see, Section 32A-4-5(C), Admissibility of report in evidence; immunity of reporting person; investigation of report.

Finally, the Attorney General's Office notes additional conflicts with other areas of law, such as:

- the *Health Insurance Portability and Accountability Act* (HIPAA), because HIPAA, while generally allowing parental access to children's medical records, contains some exceptions, such as instances where minors give consent to medical care, and are permitted to do so under state law, without parental consent;⁹
- requirements of New Mexico law pertaining to minimal instruction times,¹⁰ or the *Compulsory School Attendance Law*,¹¹ because Section 4 of the bill requires school districts to adopt procedures allowing parents to withdraw their children from instruction, if they find the pertinent material immoral or harmful, without addressing what happens after the occurrence of such a withdrawal; and
- requirements of New Mexico law directing the boards of regents of the state's higher educational institutions to determine student eligibility for college enrollment,¹² as Section 4 of SB 587 requires school districts to set procedures to determine access to college courses.

Background:

Other states recently have considered the issues of student data and parental rights:

- New York has recently adopted a similar "Parents' Bill of Rights"¹³ that came about as a reaction to parent backlash against the state education department's plans to provide identifiable student data to the not-for-profit, inBloom,¹⁴ which runs a data service for managing student data to facilitate school districts' management of student information. The organization has come under criticism for gathering information and concerns that such information might later be sold to target either students or their parents.¹⁵ As a result of this criticism, six of the nine states that had signed up for the service withdrew from the project, and New York adopted the Parents' Bill of Rights that is applicable to all students, and their parents or guardians. Among other provisions, this legislation:
 - prohibits a student's personally identifiable information from being used for commercial purposes;
 - grants parents the right to inspect and review the complete contents of their child's education records;
 - places safeguards in school districts to protect student data, including personally identifiable information stored or transferred by districts, including:
 - all databases that contain student information which are to be protected by secure passwords and logins that are to be monitored and kept current; and

⁹ Please see, 42 U.S.C. § 300gg, 29 U.S.C. § 1181 *et seq.*, and 42 U.S.C. § 1302 *et seq.*

¹⁰ Please see, e.g., Section 22-2-8.1, School year; length of school day; minimum.

¹¹ Chapter 22, Article 12 NMSA 1978

¹² See, e.g., Section 22-1-1 NMSA 1978, State institutions; admission requirements to be established by boards of regents.

¹³ See New York Education Law, Section 2-D.

¹⁴ See, "New York Posts 'Parents' Bill of Rights' to Safeguard Student Data, Reid, August 12, 2014, Education Week, at:

http://blogs.edweek.org/edweek/parentsandthepublic/2014/08/ny_state_education_department_releases_parents_bill_of_rights_to_safeguard_student_data.html.

¹⁵ See, "Big Data Could End Professor Lectures," Fletcher, August 1, 2013, Salon, at: http://www.salon.com/2013/08/01/big_data_puts_teachers_out_of_work_partner.

- limitation of access to those who are deemed to be warranted to possess the information;
 - lists student data elements to be collected by the state;¹⁶ and
 - allows for parental complaint for possible breaches of data.
- The Senate of Colorado, in its present legislative session, proposed and passed a Parents' Bill of Rights, containing provisions similar to the New York version, as well as to SB 587, and which is currently before the Colorado House Committee on Public Health Care and Human Services.¹⁷

Committee Referrals:

SEC/SJC

Related Bills:

SB 202aa *Public Education Data Advisory Council*
SB 456 *Duty to Report Suspected Child Abuse*
HB 53a *No Compelled Medication Use for Students*
HB 163aa *School Use of Social Security Numbers*
HB 271 *CYFD & PED Information Sharing*

¹⁶ See, http://www.p12.nysed.gov/irs/sirs/2011-12/2011-12SIRSGuidance/NEWER/2013-14SIRSMannual9-1_20131107.pdf.

¹⁷ <http://www.leg.state.co.us/CLICS/CLICS2015A/csl.nsf/BillFoldersSenate?openFrameset>.