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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 3/12/15

**SPONSOR** Sanchez, C      **LAST UPDATED** \_\_\_\_\_      **HB** \_\_\_\_\_

**SHORT TITLE** School Education Parents' Bill Of Rights      **SB** 587

**ANALYST** Chavez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the District Attorneys (AODA)  
 Attorney General’s Office (AGO)  
 Public Defender Department (PDD)  
 Children, Youth and Families Department (CYFD)  
 New Mexico Corrections Department (NMCD)  
 Department of Public Safety (DPS)  
 Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

Senate Bill 587 adds several new sections to the Public School Code and creates the “Parents’ Bill of Rights in Public School Education Act.” The purpose of the Act is to encourage parent participation in educational programs and to provide for specific rights for parents regarding the education of their children. A parent’s rights as outlined in the bill include access to attendance records, test scores, grades, disciplinary records, counseling records, health and immunization information, and teacher and school counselor evaluations.

The bill requires local school boards to adopt plans and policies to promote parent involvement in schools within the district, that school employees obtain written parental consent before conducting a psychological exam or to videotape or tape record a child unless it is to be used for safety, co-curricular, extracurricular, regular classroom instruction or media coverage purposes. The bill also requires parental consent before a student is interviewed by law enforcement unless

the law enforcement officer determines that an emergency situation warrants the interview without parental consent.

SB 587 requires school districts that employ school resource officers (law enforcement officers whose post of duty is at a public school) to adopt written policies that define the role of school resource officers and when a resource officer acts in the role of a school employee and when in the role of a law enforcement officer. The district must have written agreements between the district and the commissioning authority, and annually assess and report on the school resource officer program.

The bill prohibits school employees from using the refusal of a parent to administer or consent to the administration of a psychotropic drug, or psychiatric or psychological testing or treatment of a child, as the sole basis for making a report of neglect. Exceptions are provided in cases where the employee believes there is a substantial risk of death, disfigurement or bodily injury to the child or other conditions.

Finally, the bill allows for parents to temporarily remove a child from a class or activity if it conflicts with the parent's religious or moral beliefs, but does not entitle a parent to remove a child to avoid a test or to prevent a student from taking a subject for an entire semester, and does not exempt a child from grade level and graduation requirements.

## **FISCAL IMPLICATIONS**

This bill does not contain an appropriation. School districts would be required to implement the requirements of the act, which may cause a significant administrative burden for the school districts.

## **SIGNIFICANT ISSUES**

**Section 3** provides that a parent is entitled to all written records of a school district regarding the parent's child. The bill includes health and immunization information and teacher and school counselor evaluations. However, several agency analyses noted this may conflict with current statutes. Section 24-1-9 NMSA 1978 states that 'Any person regardless of age has the capacity to consent to an examination and treatment by a licensed physician for any sexually transmitted disease.' PED notes that such examination and treatment could occur at a school-based health center. Additionally, Section 24-8-5, NMSA 1978 provides that "Neither the state...nor any health facility furnishing family planning services shall subject any person to any standard or requirement as a prerequisite for receipt of any requested family planning service." PED analysis notes that, as a minor does not need parental consent in these situations, the parent's bill of rights could potentially be in conflict with statutes in relation to confidential services for minors in NM.

**Section 4** of the bill requires local school boards to develop and adopt policies to promote the involvement of parents of children enrolled within the school district, including access to attendance records, test scores, grades, disciplinary records, counseling records, health and immunization information, and teacher and school counselor evaluations. This section also includes a grievance procedure for parents who do not receive the requested information from a school.

PED notes that all school districts receiving federal Title I funding are required to develop and

adopt comprehensive policies for the involvement of parents in their children’s education. These policies include efforts to assist parents of the children being served in understanding state standards, district and school assessments, and how to monitor a child’s progress and in how to reach out to, communicate with, and work with parents as equal partners, implement and coordinate parent programs, and build ties between parents and the school, similar to the requirements within Section 4 of the bill. PED adds it is possible that policy requirements in Section 4 of SB 587 could be incorporated into existing district policies.

PED also notes that while Section 4 requires that procedures be implemented to allow parents to review test results and to receive a school report card, this requirement is already in existence under the federal No Child Left Behind Act, which requires that districts communicate the results of state assessments to parents as well as the issuance of an annual school report card.

AGO expresses concern that the requirement of school districts to implement procedures by which parents may withdraw their children from activities or instruction where the parents find the material immoral or harmful may be problematic, in that the bill does not explain what happens if a child is withdrawn from instruction pursuant to this procedure. Additionally AGO notes that “if the child misses instruction, the school may be in violation of various laws, including the minimal instructional time requirements of Section 22-2-8.1 NMSA 1978 and any requirements regarding the particular education missed.” However, Section 9 of the bill notes that any exemption from instruction “does not exempt a child from satisfying grade level or graduation requirements.” It is not clear, however, if instructional time requirements are included in grade level or instructional requirements.

**Section 5** adds new language in relation to consent for certain activities including conducting a psychological examination of a child (unless required by law regarding special education) or making a video or audio recording of a child. Exceptions for video and audio recordings include recordings for safety purposes, co-curricular or extra-curricular activities, classroom instruction, or media coverage.

PED analysis notes the IDEA requires written consent and prior written notice (PWN) for an initial evaluation for special education and related services. Written consent and PWN is required for the initial placement for special education and related services. Once the student is receiving special education services, additional evaluations or testing do not require written consent, although written consent is obtained. PED adds PWN requirements are applicable in many circumstances.

AGO notes that by limiting this exception to special education laws, “this provision of the bill may result in a conflict with any other laws that require psychological treatment or testing of students.” Additionally, AGO states the requirement of consent before videotaping a child “may raise first amendment concerns given freedom of the press and freedom of expression which allow most videotaping of public activities. However, to the extent that school activities are not public, Section 5’s requirement of consent should be enforceable.”

**Section 6** of the bill proposes to require parental consent for questioning by law enforcement officers, unless the officer determines there is an emergency which justifies conducting the interview without parental consent. In such an event, the officer is required to fill out of form stating consent was sought and not obtained but that the interview was conducted anyway because the officer considered the interview to be justified because of an emergency. However,

the term “emergency” is not defined.

AGO, AODA, the Corrections Department (NMCD) and the Department of Public Safety (DPS) express concern that this section conflicts with the Children’s Code, which allows a law enforcement officer investigating an allegation of child abuse to interview a child without a parent’s permission in certain circumstances. DPS notes that under 32A-4-5 NMSA 1978, “after being properly identified, school personnel shall permit a member of law enforcement to interview a child with respect to a report without the permission of the child’s parent or guardian. If this bill was enacted, as it is written, not only would it conflict with the current statute under the Children’s Code, it could adversely affect a child abuse/neglect investigation, particularly in situations where the parents or step-parents are potential suspects in the investigation.”

PDD additionally notes the bill does not appear to provide a remedy if there is a violation of this subsection, and it is unclear if any statements obtained in violation of the statute would be subject to suppression in a court of law.

**Section 7** provides new material on the use of school resource officers within school districts. School districts, at their discretion, currently may enter into an agreement with local, county, state police, or private entity for the assignment of a resource officer on a school campus. This section requires those school districts that elect to employ school resource officers meet certain requirements, including written agreements between the school district and commissioning authority and assessment and reporting practices.

PED analysis states:

Currently, there are no statewide policies describing the objectives of a school resource officer program and rules that would govern its operation. Such policies are developed at the district level due to the variance in agreements that districts may have with local, county, state police, or private entities for the provision of a resource officer. Any policy must follow state statute as applicable. For example, suspensions of students by police force must adhere to local school authority procedures, as laid out in state rule, NMAC 6.11.2.12, Procedure for Detentions, Suspensions and Expulsions.

However, PED notes the following concerns regarding the section of the bill related to school resource officers:

- Because school officers would operate as law enforcement officers, the arrests they make in schools would be formal and, though the state’s Arrest Record Information Act limits access to such records, it creates an opportunity for students whose records are created to go to district court when the student believes the arrest record is inaccurate or incomplete. (See Sections 29-10-8 and 29-10-3 NMSA 1978)
- Leaving the assessment of the school resource officer program, with particular attention to the rate and nature of school-based arrests to a school district may create the appearance of a chain of command from the superintendent to the certified law enforcement officer when, in fact, superintendents would have no such authority.

**Section 8** of the bill prohibits school employees from threatening to report or reporting a parent for neglect on the sole basis of refusing to administer or consent to the administration of psychotropic drug or consenting to psychiatric or psychological testing unless the school employee has cause to believe that the refusal presents a substantial risk or has resulted in an observable and material impairment.

AGO states that by prohibiting school employees from reporting child neglect based on a parent's refusal to consent to a child's psychiatric treatment, testing, or the administration of psychotropic drugs, Section 8 may conflict with Section 32A-4-3 NMSA 1978, which requires a school official suspecting that a child is abused or neglected to report such abuse or neglect. However, Section 8 as currently written only prohibits such refusal as being the *sole* basis of reporting neglect, implying that additional evidence of abuse would be required in order to make a report. Also, this section of law provides other exceptions to the prohibition of reporting a parent based on such refusal.

Regarding students with disabilities, PED notes IDEA prohibits school personnel from requiring students with disabilities to obtain a prescription for a controlled substance in order to be provided a free appropriate public education.

**Section 9** of the bill allows the parent to remove the child temporarily from a class or other school activity that conflicts with the parent's religious or moral beliefs. This section does not exempt the child from satisfying grade level or graduation requirements. PED analysis states currently the department allows this option in the opt-out policy for sex education through NMAC 6.29.6.11, Sexuality Performance Standard Exemption, as long as the student meets all requirements as defined in rule.

## **PERFORMANCE IMPLICATIONS**

PED states SB 587 supports PED's Strategic Lever 2: Real Accountability, Real Results through increasing parental involvement.

## **CONFLICT, RELATIONSHIP**

Section 6 of the bill, which requires parental consent to interview a child, may conflict with Section 32A-4-5 NMSA 1978, regarding interviewing children who may be the subject of child abuse.

HB 53 prohibits schools from "denying any student access to programs or services because the parent or guardian of the student has refused to place the student on psychotropic medication." HB 53 also amends Section 32A-4-6 NMSA 1978, of the Children's Code, to prohibit a child be taken into protective custody solely on the grounds that the child's parent, guardian or custodian refuses to consent to the administration of a psychotropic medication to the child. SB 587 does not amend this section of the Children's Code.

SB 526 creates the Family and Community Engagement Act, requiring local school boards to establish a family and community engagement program for each school in the school district and requires PED to establish structures and positions to promote family and community engagement

## **TECHNICAL ISSUES**

Further clarification may be needed regarding when a parent may be allowed to withdraw their children from an activity. On page 3, Subsection 3, the bill states a school district must establish procedures for a parent to withdraw their child from any activity they may object to "on the basis that it is harmful", *including* because it questions the parents' beliefs or practices in sex, morality

and religion. On page 9, subsection A, a parent is entitled to remove a child from a class or other school activity “that conflicts with the parent’s religious or moral beliefs.” The use of “including” on page 3 may imply that additional reasons may be used by a parent for withdrawing a student. The Legislature may wish to clarify what is meant by the term “harmful.” AGO notes the bill’s provisions allowing parents to exempt their children from material and activities they consider “harmful” may be so vague that any assertion by a parent would be sufficient to excuse a student.

PED noted the following technical corrections: “On page 2, line 5, the word ‘to’ following ‘entitled’ should be deleted. On page 3, line 20, the word ‘cases’ should be changed to ‘classes.’”

PED also notes “multiple sections of the Parents’ Bill of Rights in Public School Education Act focus on parental consent. Section 40-10A-102 NMSA 1978, The Uniform Child-Custody Jurisdiction and Enforcement Act, reads that a “person acting as a parent” means a person, other than a parent, who: (A) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child-custody proceeding; and (B) has been awarded legal custody by a court or claims a right to legal custody under the law of this state. It is unclear if the language within SB587 would address a guardian in lieu of a parent or a situation where in loco parentis is applicable.”

## **OTHER SUBSTANTIVE ISSUES**

SB 587 establishes the Parents’ Bill of Rights in Public School Education Act. PED analysis notes that, under the Individuals with Disabilities Education Act (IDEA), parents of students with disabilities are already provided certain rights. IDEA requires that parents of students with disabilities and students with disabilities be provided procedural safeguards which include parental and student rights. These rights encourage parents to be involved in the educational decisions of their children including consent for testing for special education and related services, the development of the child’s annual Individualized Education Program (IEP), disciplinary procedures and avenues to resolve dispute with schools or school districts through alternative dispute resolution and dispute resolution.

KC/je/bb