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FISCAL IMPACT REPORT

ORIGINAL DATE 1/22/19
 SPONSOR Padilla LAST UPDATED 2/28/19 HB _____
 SHORT TITLE Standardize School Bathroom Use Policies SB 26/aSEC/aHEC
 ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	NFI	Minimal	Non-recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico School for the Blind and Visually Impaired (NMSBVI)
 Public Education Department (PED)
 Human Services Department (HSD)
 Regional Education Cooperatives (REC)

SUMMARY

Synopsis of HEC Amendment

The House Education Committee to Senate Bill 26 states that the Public Education Department must put forward rules for standardization of bathroom use policies. Previously, the bill’s language stated that the department shall include the components listed as numbers one to four in the synopsis of the original bill below, and the amendment indicates that the department may consider those components.

Synopsis of SEC Amendment

The Senate Education Committee amendment adds to the long title of the bill, inserting the heading “prohibiting withdrawal or withholding of any privilege as discipline for requesting bathroom use.

The amendment also adds sexual orientation and gender identity to the list of factors to be taken into account in maintaining the dignity of the individual child.

Synopsis of Original Bill

Senate Bill 26 amends the state’s Public School Code to add a requirement that the public

education department set rules for appropriate bathroom use policy in the public and charter schools of the state. The following would be included in such a policy:

1. Appropriate rules that vary depending on students' age, special needs and the presence of any physical impairments,
2. Inclusion of recommendations from pediatricians, child psychologists and early childhood educators,
3. Requirement that bathroom privileges could never be disallowed, and that other privileges could not be withdrawn on the basis of a perception of inappropriate bathroom use
4. Define appropriate "incremental and respectful" intervention to be used if school staff perceived an inappropriate use of bathroom privileges by a student.

FISCAL IMPLICATIONS

The Public Education Department is asked to promulgate regulations on appropriate bathroom use policies, but states that "SB 26 would not appear to have any fiscal implications for the New Mexico Public Education Department (PED), although it would require current staff to devote time to the promulgation of rules, research appropriate practices and recommendations, and communicate the rule requirements to school districts and charter schools."

SIGNIFICANT ISSUES

PED comments on the relationship between the requirements of SB 26 and the federal Americans with Disabilities Act:

SB26 mandates that all public schools have standardized bathroom use policies to ensure equal access for all students, including students of varying "age, special needs, psychological and physical abilities and impairments." Student bathroom use is an inevitable action during the school day, and it is important that all students have appropriate access to perform this bodily function. The fact that students with special needs and impairment are included in this legislation is important and in accordance with the Americans with Disabilities Act (ADA) which prohibits discrimination on the basis of disability and ensures "that programs, services, activities, and facilities are accessible." It's important to note that SB26 also requires timely permission be given to use the restroom once a child requests to go. Depending on student age and physical abilities, lack of immediate access may result in an accident which could in turn cause emotional and social distress for the student affected.

Source: <https://www.hhs.gov/civil-rights/for-individuals/disability/index.html>

And NMSBVI notes that its campus is already compliant with all aspects of the proposed regulations.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

There would continue to be variation in schools' practices regarding bathroom use and perceived abuse of bathroom privileges, possibly exposing children to abuse and loss of dignity.

LAC/gb/al