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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**55th Legislature, 1st Session, 2021**

<b>Bill Number</b>	<u>HB93/aHSEIC/aHF1</u>	<b>Sponsor</b>	<u>Lara</u>
<b>Tracking Number</b>	<u>.218631.3</u>	<b>Committee Referrals</b>	<u>HEC/HSEIC</u>
<b>Short Title</b>	<u>Limit Out-of-School Suspensions</u>		
<b>Analyst</b>	<u>Juliani</u>	<b>Original Date</b>	<u>1/26/2021</u>
		<b>Last Updated</b>	<u>3/2/2021</u>

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**BILL SUMMARY**

Synopsis of House Floor Amendment

The House floor amendment to HB93 (HB93/aHSEIC/aHF1) adds language that clarifies schools are not required to exhaust appropriate interventions before suspending or expelling a student who brings a deadly weapon on campus or when a student presents a clear likelihood of committing great bodily harm to other students or school personnel. The amended bill defines “deadly weapon” and “great bodily harm.”

Synopsis of HSEIC Amendment

The House State Government, Elections and Indian Affairs Committee amendment to HB93 (HB93/aHSEIC) adds language which provides examples of appropriate interventions for schools to use before suspending or expelling a student, such as restorative justice practices and positive behavioral interventions and support. HB93/aHSEIC also includes amended language clarifying schools can suspend or expel a student only after determining such action is required for the safety of students or staff or by federal law.

Synopsis of Original Bill

House Bill 93 (HB93) amends the Public School Code to require local school boards and governing bodies of charter schools to exhaust other interventions, including restorative justice practices, before resorting to suspending or expelling students from school. In addition, in taking such last resort measures, schools must account for student homelessness, foster care placement, other adverse childhood experiences, and other circumstances in determining suspension or expulsion to be the only safe response. HB93 defines “adverse childhood experiences” and “restorative justice practices.”

**FISCAL IMPACT**

The bill does not contain an appropriation.

The Public Education Department's (PED) analysis indicated schools may incur costs associated with providing staff with professional development on restorative justice practices. Schools with students who have been identified as homeless can use funds from their federal McKinney-Vento subgrants to provide educators and instructional support staff with professional development to train staff in trauma-informed practices as they relate to and support homeless students.

The U.S. Department of Education awards McKinney-Vento funds to states by formula. The amount that a state receives in a given year is based on the proportion of funds allocated nationally that it receives under Title I, Part A of the Elementary and Secondary Education Act for that year. Each state educational agency awards McKinney-Vento subgrants to local educational agencies (LEAs) competitively on the basis of the need of the LEAs requesting assistance and the quality of their applications. In FY21, the state received \$829,092 in McKinney-Vento funds. PED awarded subgrants to 18 school districts and one charter school, totaling \$534,294. Awards averaged \$28,120 and ranged from \$2,188 to Monte del Sol Charter School to nearly \$67,700 each to Albuquerque Public Schools, Las Cruces Public Schools, and Santa Fe Public Schools.

McKinney-Vento funds return to the U.S. Treasury after five years and are available for a 27-month period of obligation. Thus, the FY21 funds allocated on July 1, 2021 are available for state and local education agency obligation through September 30, 2023, and drawdown by January 31, 2024.

The McKinney-Vento Act provides funding to states and LEAs to carry out activities exclusively for the purpose of facilitating the identification, enrollment, attendance, and success in school of homeless children and youth. One allowable expense is professional development and other activities for educators and specialized instructional support personnel designed to heighten the understanding and sensitivity to the needs of homeless children and youths.

Additionally, school districts and charter schools can use federal Title I funds for non-instructional costs, such as behavior supports, attendance programs, and community and parent engagement, if the activities are shown to help improve student achievement. In FY21, the state received \$115.9 million in Title I funds with an additional \$17.3 million in carry-over money from unspent FY20 funding.

School districts and charter schools can also use federal Title II funds for professional development to improve teacher quality when an LEA has been identified by the state as needing improvement. In FY21, New Mexico received \$14.2 million in Title II funds with an additional \$6.4 million in carry-over money from unspent FY20 funding.

The House Appropriations and Finance Committee substitute for House Bills 2 and 3 appropriates \$2.5 million to PED for professional development for principals and over \$2.8 million for teacher professional development that the department could also use to support schools in providing staff with training in trauma-informed and restorative justice practices, as required in HB93/aHSEIC/aHF1.

## **SUBSTANTIVE ISSUES**

**Nonpunitive or Progressive Discipline.** Schools around the nation recently have begun to focus on varying approaches to student discipline, bringing into contrast the long-standing use of punitive disciplinary measures, such as suspension and expulsion, with the adoption of nonpunitive or progressive methods designed to address the root causes of misbehavior while keeping the

student in school. A study from the American Institutes for Research indicated forms of punitive discipline negatively impact students’ social-emotional development and academic performance, while finding progressive discipline improves academic performance and reduces the likelihood of entering the juvenile justice system. Research from the Rand Corporation found progressive discipline to be most effective when embedded within a school’s culture.

Currently the only statutory support for nonpunitive discipline is the Safe Schools for All Students Act, which requires school districts and charter schools to adopt progressive discipline approaches, but only in the context of responses to bullying. The act defines progressive discipline as disciplinary action, other than suspension or expulsion from school, designed to correct and address the basic causes of a student's specific misbehavior while retaining the student in class or in school, including restorative school practices to repair harm done to relationships and other students from the student's misbehavior.

**PED Supports for Nonpunitive Disciplinary Practices.** PED’s only guidance to schools on implementation of nonpunitive discipline involves responses to bullying through implementation of the Safe Schools for All Students Act. The department indicates these measures may include meeting with the student and the student’s parents or guardians; reflective activities, such as requiring the student to write an essay about the student’s misbehavior; health counseling or intervention; participation in skill-building and resolution activities; community service; and in school detention or suspension. However, PED currently does not measure or monitor local implementation of such nonpunitive discipline practices, rendering an understanding of the effectiveness of local schools’ adoption of nonpunitive discipline difficult to gauge.

**Suspension and Expulsion Data.** PED’s data on the use of out-of-school suspension and expulsion indicate increasing rates of their application as disciplinary measures. While not disaggregated by such variables as race or ethnicity, the data shows a 48 percent rise in the use of

Statewide Rates of Out-of-School Suspension and Expulsion, FY18-FY20						
	Suspension			Expulsion		
	Number	Student Enrollment	Rate	Number	Student Enrollment	Rate
<b>FY18</b>	18,818	360,128	5.23%	80	360,128	0.02%
<b>FY19</b>	27,456	356,467	7.70%	154	356,467	0.04%
<b>FY20</b>	24,616	350,897	7.02%	64	350,897	0.18%

Source: PED Files

out-of-school suspension from FY18 to FY19 followed by a slight drop off for FY20. A similar trend is evident in the expulsion data, indicating a doubling in the use of expulsion as a disciplinary measure in FY19, followed by a similar sharp decline for FY20.

Perhaps not coincidentally, FY20 marked the first year of the Safe Schools for All Students Act and PED’s guidance to schools on implementing nonpunitive disciplinary practices. In addition, school closures due to the Covid-19 pandemic forced schools to move to remote learning from mid-March 2020 through the end of the school year, resulting in six less weeks that students were on campus, likely affecting the number of reported suspensions and expulsions. PED indicated the figures in the table above reflect the total number of annual disciplinary infractions leading to suspensions and expulsions and consequently include multiple students suspended more than once. Additionally, the enrollment data exceed the number of students enrolled in public schools from PED’s own 40th-day counts for each of the given years. However, PED staff stated the enrollment figures in the table are not based on 40th-day counts, but rather reflect all students enrolled in public schools at any time throughout each of the years listed.

**Restorative Justice.** HB93/aHSEIC/aHF1 requires schools to limit the use of suspension or expulsion from schools and apply these disciplinary measures only after the exhaustion of interventions, such as restorative justice practices and positive behavioral interventions and support. However, the bill exempts schools from this requirement when a student brings a deadly weapon on campus or is likely to commit great bodily harm to other students or school personnel. HB93/aHSEIC/aHF1 also specifies schools can only suspend or expel a student after making a determination that such action is required for the safety of students or staff or by federal law.

Restorative justice is a broad term describing a growing movement to institutionalize nonpunitive, relationship-centered approaches for addressing harm and resolving problems collaboratively. Inspired by indigenous philosophies to build community, respond to harm or conflict, and provide support, restorative justice is a set of principles and practices that provide, in the context of education, individual layers of support for students. Most school systems historically have followed a “retributive justice” model centering on the rule broken, perpetrator, and schools’ resulting punishment. In contrast, restorative justice focuses on the harm caused and how all affected should repair the harm caused. Restorative justice occurs in three tiers: community building, focusing on social-emotional skills and build relationships to create shared values; restorative processes, characterized by nonpunitive response to conflict; and re-entry, including 1-to-1 wraparound support to promote student achievement.

The existing research evaluating the efficacy of restorative justice is very limited, with most studies being qualitative or descriptive in nature or of very small samples sizes, making causal connections difficult to draw conclusively. The largest and most rigorous evaluative study found restorative justice practices to have positive effects on school climate and school safety and to have significantly reduced the number of days that students spent in out-of-school suspensions, in particular for African American students, low-income students, female students, and special needs students, resulting in a decrease in discipline disparities based on race and socioeconomic status. However, while finding no effect on students’ likelihood of being absent from school and rates of mobility (changing schools), it also found no statistically significant impact on student grade point averages or performance on math and reading assessments and even a reduction in math performance for elementary and middle school students, particularly African American students. The one definitive area of positive impact on student outcomes was a statistically significant increase in PSAT scores for 10th grade students.

Currently, no examples of districtwide implementation of a restorative justice program exist in New Mexico. Nationally, many school districts implementing restorative justice set districtwide implementation goals and have a support team to train educators, school leaders, and students. The Los Angeles Public School District committed \$10 million annually to implement restorative justice programs in all its schools over 10 years, and Chicago Public Schools recently implemented these practices districtwide and created a toolkit for school leaders.

**Impacts of Adverse Childhood Experiences.** HB93/aHSEIC/aHF1 requires schools to take into account student homelessness, foster care placement, or other adverse childhood experiences when determining whether to suspend or expel a student. Adverse childhood experiences (or ACEs) can affect a student’s learning and school performance in myriad ways.

Neuroscience research has shown the human brain develops differently depending on a number of factors, including age, predispositions, experiences, and environments. When the social, emotional, cognitive, and physical dimensions of a person’s world are not adequately nourished, brain development and consequently learning suffers. Emotional well-being boosts overall health,

brain development, and learning, while excessive stress, including threats to emotional safety and threats of belonging, affects neural functioning, inhibiting brain development and negatively impacting a person's cognitive performance. Research indicates learning and memory systems are developed based on instincts of arousal, stress, and fear. During times of extreme anxiety, learning, memory, and the management of emotions all become hindered and can cause students to "misbehave" or "lack motivation," resulting in decreased learning and emotional self-management. Moreover, these stresses, when recurrent, can change the brain's neural networks and promote a "fixed mindset" with decreased effort and motivation.

Research from the Center for Disease Control-Kaiser Permanente found experiencing three or more ACEs increases the risk for alcohol and drug abuse, smoking, depression, suicide attempts, intimate partner violence, sexual violence, multiple sexual partners, sexually transmitted diseases, unintended pregnancies, and poor academic achievement. Additionally, individuals with four or more ACEs were more likely to report health conditions and had shorter lifespans. A 2016 study found New Mexico to have some of the highest rates of children suffering from adverse childhood experiences, having 18 percent of children from birth to age 17 with three or more ACEs, significantly higher than the national average of 11 percent.

**Outcomes for Students Experiencing Homelessness and in Foster Care.** Section 22-1-4 NMSA 1978 requires a free public school education be made available to any school-age resident of the state, including homeless children. In FY20, 2.6 percent of New Mexico's public school students were identified as homeless. Research shows homeless students are more likely to miss school, repeat a grade, experience developmental delays, and be subjected to school disciplinary actions. Studies have linked student mobility and housing instability to lower educational outcomes, with students experiencing higher rates of mobility (defined as moving out or disenrolling from school for multiple reasons) performing worse on standardized testing, having lower grades, and higher truancy rates and likelihood of dropping out of school. Similarly, children in foster care are often subject to changes in placement, which may require a change in schools and can have a disruptive effect on academic outcomes. On average, children in foster care perform less well in school and score lower on standardized tests than other students. Students in foster care have higher rates of chronic absenteeism and suspension and graduate high school at lower rates than their peers.

## **ADMINISTRATIVE IMPLICATIONS**

PED's analysis noted the department would need to communicate the provisions of HB93/aHSEIC/aHF1 to school districts and charter schools, and schools would be required to amend their disciplinary policies and may need to train staff on restorative justice practices.

## **SOURCES OF INFORMATION**

- LESC Files
- Public Education Department (PED)

**RJ/mb**