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

Bill Number *SB171 **Sponsor** Gallegos/Kernan/Munoz

Tracking Number .219204.1 **Committee Referrals** SEC/SJC

Short Title On-Campus Ed. in Public Health Emergency

Analyst Bedeaux, Juliani **Original Date** 2/5/21
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BILL SUMMARY

Synopsis of Bill

Senate Bill 171 (*SB171) establishes a legislative finding that in-person learning has benefits over remote education, and authorizes school boards and governing boards of charter schools to confer with school personnel and health officials to determine when schools may open for in-person instruction. Local boards must base their reentry decisions on federal Centers for Disease Control and Prevention (CDC) recommendations. Once a decision is reached, local boards are required to communicate to parents the number of days students are expected to be on campus and any other pertinent information regarding school reentry. *SB171 prohibits discrimination against either school personnel or students who opt for virtual learning while a state public health emergency order is in effect.

*SB171 has an emergency clause. If the bill receives a two-thirds vote in both chambers, it will take effect immediately on signature by the governor. If the bill passes by a simple majority, the bill will be effective June 18, 2021.

FISCAL IMPACT

*SB171 does not contain an appropriation.

School districts that opt to open for in-person instruction under *SB171 will incur additional costs to ensure students and staff are safe and healthy. According to the School Superintendents Association and the Association of School Business Officials International, school district operational costs may increase by approximately \$486 thousand per 1,000 students, mostly to cover additional janitorial and maintenance personnel, cleaning supplies, personal protective equipment, and transportation costs.

The New Mexico Public Schools Insurance Authority (NMPSIA) explains school districts and charter schools receiving Covid-19 liability claims are covered under NMPSIA liability insurance. NMPSIA's analysis of *SB171 indicates if school districts and charter schools see an increase in the number of claims filed and settled, insurance premiums may increase by an amount dependent on the number and severity of legal actions filed.

SUBSTANTIVE ISSUES

Faced with no other option to slow the spread of Covid-19, the governor and the state’s Public Education Department (PED) made the difficult decision of prioritizing the health and safety of students and staff over in-person learning time, closing physical school sites at the end of the 2019-2020 school year and into the 2020-2021 school year. PED’s initial response to the pandemic relied on school districts and charter schools to author local “continuous learning plans” describing how they would continue to provide education services remotely. As a result, differences in local decision-making and remote instruction infrastructure may have widened the achievement gap between New Mexico’s economically disadvantaged students and their more affluent peers. The achievement gap was also exacerbated by New Mexico’s expansive digital divide; at the onset of the pandemic, a survey by the Public School Facilities Authority (PSFA) found approximately one in five New Mexico students lacked home Internet access, with many of these students in rural areas or low-income urban areas of the state.

In general, the second round of school district Covid-19 response plans suggested school districts were far more prepared to provide remote instruction in the fall 2020 and spring 2021 semesters. According to a review of all school district reentry plans by LESC and Legislative Finance Committee (LFC) staff, a greater proportion of school districts were prepared to monitor student attendance and engagement in a remote setting, provide synchronous Internet-based instruction, address students who were falling behind, and monitor student social and emotional health. Many school district plans target extended learning time and tutoring services to students who are falling behind and provide direct access to counselors and social workers to address student mental health needs. Moreover, state agencies including PED, PSFA, and the Department of Information Technology, organized a “Homework Gap Team” to help connect disconnected students to high-speed Internet at home, assisting school districts with the acquisition of Wi-Fi hotspots and other devices, partnering with Internet service providers to provide subscription subsidies for low-income families, and rolling out a grant program for critical broadband infrastructure projects in high-needs rural areas of the state.

Regardless of school districts’ preparedness for remote instruction, legislative staff lacks actual academic performance data to understand the severity of student learning loss. At the end of the 2019-2020 school year, PED cancelled the state’s standardized assessment, the New Mexico Measures of Student Success and Achievement (NM-MSSA). PED rolled out an interim version of NM-MSSA designed to track students’ progress on meeting academic content standards over time; while 27 school districts and five charter schools have administered the interim NM-MSSA in fall 2020, legislative staff has not been provided with the results.

Learning Loss due to Covid-19. Evidence from national studies can be extrapolated to estimate the impact of remote instruction on New Mexico’s students. For example, research from the Northwest Evaluation Association indicates most students experienced a 30 percent learning loss in reading and a 50 percent learning loss in math during the spring 2020 school closures. A study from Brown University’s Annenberg Institute similarly projected students would likely return in fall 2020 with as little as 63 percent of the progress expected relative to a typical school year. A statistical model by McKinsey and Company indicated if schools returned to in-person learning in January 2021, a timeline already revealed to be impossible, most students would be approximately seven months behind a typical in-person cohort, but Hispanic students will be nine months behind, African American students will be 10 months behind, and low-income students will be as much as one and a half years behind.

Social and Emotional Well-Being. Peer interaction is critical for student learning and social and emotional development but is difficult to meaningfully achieve in a remote setting. Evidence has begun to suggest limited access to peers is affecting students’ mental health. In a national survey of teenage students during the spring 2020 school closures, one-quarter of respondents reported feeling disconnected from their classmates and entire school communities. Research from *The Lancet* medical journal concluded prolonged lack of in-person contact with classmates, friends, and teachers has problematic and enduring effects on the mental health of students. These effects were found to be greater for children and adolescents who had preexisting mental health issues, with approximately 83 percent of these students indicating that their conditions worsened since the Covid-19 school closures. A May 2020 United Nations policy brief conveyed similar findings for school-age children in Italy, Spain, and Great Britain, citing lack of social connections as a key factor in these students’ declining states of mental and emotional health.

In addition, the Social Science Research Network, an organization devoted to the dissemination of research in the social sciences, estimated 200 thousand unreported allegations of child maltreatment nationally during Covid-19-related school closures, illustrating the critical role school personnel play in reporting cases of child abuse and neglect. New Mexico data from the initial school closures during spring 2020 corroborate these national findings, with the Children, Youth, and Families Department confirming a 49 percent drop in reports of child maltreatment in April 2020 and a 39 percent decline in May 2020, exceeding the 30 percent decline typical over the summer.

Safely Reopening Schools During the Covid-19 Pandemic. Many federal health experts have recently concluded schools that adhere to Covid-safe practices can safely open for in-person instruction without putting children, teachers, and the broader community at risk. The World Health Organization explains school-age children, especially young children, face significantly less risk of severe sickness from the virus and schools alone contribute far less to community transmission than businesses where people congregate, such as bars and restaurants.

Schools have only proved to be safe when staff and students adhere to evidence-based Covid-safe practices, like mask-wearing and social distancing. A recent CDC study of 17 rural Wisconsin schools where mask-wearing was prevalent found incidence of Covid-19 among staff and students (3,453 cases per 100 thousand inhabitants) was lower than in the county overall (5,466 cases per 100 thousand inhabitants). Only 3.7 percent of cases, all of which were among students, were linked to in-school spread.

*SB171 requires local school boards and charter school governing bodies to base their means and methods of school reopening on CDC recommendations. CDC guidance includes instructions for a multitude of topics, including mask-wearing in schools, screening students and staff for symptoms, cleaning and disinfecting, and protecting staff. However, despite these precautions, *SB171 does not include a mechanism requiring schools to close if they fail to meet a minimum safety standard or begin to experience an outbreak. As a result, *SB171 may place communities at risk of increasing the spread of Covid-19.

*SB171 would require local school boards to confer with school personnel and health officials to determine when schools may safely reopen. However, use of the word “confer” does not mean the three entities will have a shared power in making the final determination, but rather suggests local boards are only required to discuss the matter with school personnel and health officials and may make a decision contrary to their opinions. School boards should ensure they give serious

consideration to the recommendations of appropriate health officials, rather than make a determination based on public opinion.

Authority to Close and Reopen Schools. Enforcement of school closures due to Covid-19 have been the subject of legal controversy between school officials and PED. The New Mexico School Superintendents Association sent a letter in September 2020 to PED Secretary Ryan Stewart asking the secretary to include superintendents in the development of guidance that places a higher priority on in-person learning. That same month, the U.S. Department of Justice challenged Governor Lujan Grisham’s authority to limit capacity of private schools, alleging orders establishing separate standards for private and public schools infringed on parents’ right to choose. A class action lawsuit filed in September 2020 alleged the PED orders violated students’ constitutional right to an equal education. Gallup-McKinley County Schools, wishing to prioritize in-person learning for low-income students and students with insufficient Internet access, filed a lawsuit in October 2020 alleging the PED did not have the authority to enforce aspects of the Covid reentry guidance.

The New Mexico Supreme Court issued an opinion in November that the governor has the authority to enforce public health orders during Covid-19 pursuant to the Public Health Emergency Response Act. Section 12-10A-5 NMSA 1978 allows the governor to declare a public health emergency, list the political subdivisions affected by the order, and specify provisions necessary to implement the executive order. If *SB171 is enacted, it is unclear whether an executive order could supersede its provisions during a public health emergency if the governor deems school closures “necessary to implement the executive order.”

ADMINISTRATIVE IMPLICATIONS

The bill does not include provisions requiring schools to comply with any particular standards, nor does the bill authorize any agency to monitor school reopening efforts. As a result, NMPSIA expects school districts and charter schools to create liabilities if they deviate from evidence-based best practices for reopening. While NMPSIA is offering coverage to its members under the Tort Claims Act, there are many claims and issues with grounds for litigation in the case of school exposure.

Analysis from the Environment Department (NMED) indicates the agency has insufficient staff to investigate the increased complaints filed by school personnel that may result from *SB171. NMED regulates workplaces under the Occupational Health and Safety Act and has jurisdiction over conditions affecting the health and safety of employees, including teachers and other staff, in both public and private schools. NMED noted it currently has a single FTE investigating discrimination complaints and indicated this staff member would not be able to investigate an influx of allegations regarding working during a public health emergency. Additionally, according to NMED’s analysis, the agency only investigates conditions that may cause harm to workers and cannot investigate conditions that endanger students.

OTHER SIGNIFICANT ISSUES

*SB171 requires school boards to confer with public health officials and school personnel but does not require engagement of students, parents, and other community members who may be affected by a lack of in-person learning or the potential increased spread of Covid-19. The bill also does not include consultation with teachers’ unions.

TECHNICAL ISSUES

The sponsors may wish to consider consolidating two identical subsections, Section 1, Subsection A and Section 2, Subsection D, into a single subsection.

RELATED BILLS

Duplicates *HB182, Evaluate On-Campus Learning.

SOURCES OF INFORMATION

- LESC Files
- New Mexico Environmental Department (NMED)
- New Mexico Public Schools Insurance Authority (NMPSIA)

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