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

<b>Bill Number</b>	<u>SB233</u>	<b>Sponsor</b>	<u>Lopez</u>
<b>Tracking Number</b>	<u>.218920.1</u>	<b>Committee Referrals</b>	<u>SEC/SJC</u>
<b>Short Title</b>	<u>Student Bill of Rights</u>		
<b>Analyst</b>	<u>Juliani</u>	<b>Original Date</b>	<u>2/6/2021</u>
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**BILL SUMMARY**

Synopsis of Bill

Senate Bill 233 (SB233) enacts a new section of the Public School Code, establishing a student bill of rights guaranteeing students have access to certain information, services, and programs and can attend schools within a safe and supportive learning environment. The bill encourages schools to become sanctuary schools, ensuring the safety of undocumented communities, and to seek out restorative justice or other alternative non-punitive practices.

**FISCAL IMPACT**

SB233 does not contain an appropriation.

School districts and charter schools would not require additional staff or incur any cost related to training staff to comply with SB233. However, school districts and charter schools may incur costs in ensuring they are able to ensure provision of some of the student services outlined in the bill's list of student rights, such as access to college readiness counselors to assist students in their transition into higher education, access to gang violence prevention, peer-based mediation, intervention programs on campus, access to mental health services, nutritional services, and technology for online learning. In addition, students' right to "small" class sizes, buildings, technology, and materials in "good" condition, and "fully funded" schools would entail significant expense to the state, school districts, and charter schools in personnel, infrastructure, and operational funds, and if contested as insufficient, would lead to litigation costs for these entities. This language would also involve significant capital outlay costs to get and maintain school buildings to a "good" condition.

The New Mexico Public School Facilities Authority estimated a cost of \$5.8 billion for the state to bring all schools up to the statewide average facilities condition index (FCI). NMPSFA's analysis was based on the following factors:

- Current statewide average FCI of 53.84 percent;

- Industry-wide norms that facilities with an FCI over 70 percent are in poor condition and hence ready for replacement;
- Replacement cost calculated at a unit cost of \$308 per square foot;
- Industry-wide norms that facilities with an FCI of 70 percent or lower are in slightly better condition and more likely requiring renovation; and
- Renovation cost calculated at a unit cost of \$215 per square foot.

NMPSFA estimated the cost to replace schools with a campus average FCI over 70 percent to be \$1.9 billion, and the cost to renovate schools with a campus average FCI between 53.84 percent and 70 percent to be \$3.9 billion for a total of \$5.8 billion.

PED’s analysis noted school districts and charter schools may incur costs associated with implementing provisions of SB233, such as ensuring students have right to “small” classroom sizes and ensuring buildings, technology, and materials that are current and in good condition.

According to analysis from the Indian Affairs Department (IAD), SB233 would not result in any significant fiscal impact for IAD.

## SUBSTANTIVE ISSUES

**A Student Bill of Rights.** SB233 establishes a series of rights afforded students in an effort to promote and maintain a safe, supportive, and effective learning environment. The entirety of the bill consists of a list of rights extended to all students in all public schools.

This student bill of rights includes the following:

- Right to a learning environment in which discrimination in all forms, including based on disability, sexual orientation, gender, race, ethnicity, age or class, is not tolerated by the school district or public school administration, school police or security personnel, or students;
- Right to an environment where students and school personnel are encouraged and given the means to participate in anti-racism, cultural sensitivity, and tolerance training that promotes principles of equity, engages students in a culturally relevant curriculum, and supports a multicultural, multilingual, and culturally relevant curriculum, including access to bilingual education and ethnic studies;
- Right to feel safe and comfortable at school through:
  - access to translation and interpretation for students and their families in educational settings,
  - access to gender-assigned bathrooms they feel most comfortable using, and
  - being addressed by their self-indicated gender pronouns and name;
- Right to have teachers and other school personnel follow special plans that affect their educational settings, such as individualized educational plans, 504 plans, and other accommodations;
- Right to extracurricular and after-school programs and the means and access to these programs, and to request new clubs;
- Right to information, resources, and support to prepare them for life after high school, including access to college readiness counselors and vocational counselors;
- Right to equitable school and classroom environments where:
  - class sizes are small,
  - building, technology, and materials are current and in good condition,

- creative approaches to teaching are encouraged,
- respect and open communication are encouraged,
- strong intergenerational relationships are valued, and
- public schools are fully funded in order to achieve these goals;
- Right to affordable, nutritious, and culturally appropriate food;
- Right to bilingual education and bilingual after-school programs and to integrated multilingual classrooms and public schools that encourage students to speak their home languages while in school;
- Right to a school environment free from cruel and unusual punishment, including:
  - use of excessive force by security personnel and other law enforcement officers,
  - freedom from over-policing,
  - freedom of speech and of the press, and
  - the right to petition and peacefully assemble;
- Right to due process and to be considered innocent until proven guilty; transparency within the discipline process; and freedom from searches of personal property without reasonable cause;
- Right to public schools that seek alternatives to police presence; are free of immigration enforcement; are free from the criminalization of youth; and seek alternatives to suspension and expulsion policies and in which students are given a clean slate each year in alignment with restorative justice practices;
- Right to access gang violence prevention, peer-based mediation, and intervention programs on campus;
- Right and opportunity to organize themselves and be represented by their peers in important school decision-making processes;
- Right to self-representation in school district or charter school meetings and notification of school district or charter school meeting times and places and to organize collectively;
- Right to adequate access to and encouragement to use mental health services in educational settings, and be given resources to other outside mental health services;
- Right to engage in conversations with school personnel about aspects of their learning experience and to understand how the school budget works and is allocated;
- Right to have access and the means to participate in school during emergencies, such as an epidemic or pandemic, natural disaster, national security threat, or other unforeseen event, including access to technology for online learning, mental health services, nutritional services, and college or career readiness support; and
- Right to access a copy of the school district's or charter school's student bill of rights and to seek changes to those rights when such changes will improve the learning environment.

In addition, SB233 encourages schools to become sanctuary schools and ensure the safety of undocumented communities. The bill also urges schools to seek out restorative justice or alternative practices instead of punitive punishments carried out by security, school resource officers, and other school personnel.

**A Student Bill of Rights in Context.** Some of the rights contained within SB233 are already rights accorded to students as residents of the United States Constitution and have been adjudicated, including freedom of speech, freedom of the press, freedom from unreasonable searches and seizures, and the right to petition and peacefully assemble. In addition, the federal *Individuals with Disabilities Education Act* law requires teachers and other school personnel to follow instructional and behavioral plans for students identified as special education, such as individualized

educational plans, 504 plans, and other accommodations. SB233 would extend these rights currently reserved to special education students to all students on any type of instructional or behavioral plan without the authority of federal law.

The U.S. Supreme Court has ruled on many cases related to students' free speech and privacy rights, in sum, finding students do not forfeit their constitutional rights while in school, but these rights are extend into the schools, albeit with limitations. In *Tinker v. Des Moines Independent School District* (1969), the Court ruled school officials cannot silence student speech simply because they dislike it or it is controversial or unpopular. However, it did not grant students an unlimited right to self-expression, finding students' First Amendment guarantees must be balanced against a school's need to keep order. Students' acts of expression are protected as long as they do not disrupt classwork, interfere with school activities, or invade the rights of others. In *Hazelwood School District v. Kuhlmeier* (1988), the Court restricted student free-expression rights, finding school officials can regulate school-sponsored student expression, as long as the school officials show that they have a reasonable educational reason for their actions. However, the ruling encouraged schools to look closely at a student activity before imposing any restrictions and to balance the goal of maintaining high standards for student speech with students' right to free expression. Likewise, the Court has protected students' freedom from unreasonable searches and seizures, but with limits, ruling in *New Jersey v. T.L.O.* (1985), school officials may search a student's property if they have a reasonable suspicion that a school rule has been broken, or a student has committed or is in the process of committing a crime.

**Support for At-Risk Students.** While SB233's student bill of rights extends rights to all students and does not explicitly name any sub-groups of students, the bill does include rights applicable to certain student groups that may be considered at-risk or particularly vulnerable, such as transgender and undocumented students. In addition, the bill's support for students' rights to culturally relevant curriculum, bilingual education, and ethnic studies, as well as its expressions of support for principles of equity, including allocation of school budgets, are clear invocations of the court's findings in the consolidated *Martinez-Yazzie* lawsuit.

**Vague or Problematic Language.** SB233 uses a series of subjective terms related to equitable school environments, describing students' rights to such elements as "small" class sizes, buildings, technology, and materials in "good" condition, and schools "fully funded." Consideration may be given to using terms that are less relative and open to interpretation, or adding a section that defines these terms.

## **ADMINISTRATIVE IMPLICATIONS**

PED's analysis indicated the department would need to promulgate rules to ensure implementation of the provisions of SB233.

## **OTHER SIGNIFICANT ISSUES**

**A National Context.** Many colleges and universities throughout the United States have adopted student bills of rights. In addition, some states, including New York and Colorado have created in statute bills of rights for students enrolled in public post-secondary institutions, and numerous individual school districts have adopted similar documents outlining student rights. However, statewide bills of rights for elementary and secondary students are far less common. Some states have created in statute some form of a student bill of rights, including New Jersey, Oregon, and

Hawaii, which was the first state to adopt a statewide student bill of rights in 1974. These documents often are developed wholly or in part by students in an effort to address rights and freedoms they feel are not being acknowledged by their schools or state public educational system.

Conversely, six states—Alabama, Tennessee, Georgia, Missouri, New Hampshire, and Washington—are currently seeking to restrict transgender student athletes. Legislatures in these states are considering prohibiting public schools from participating in, sponsoring, or providing coaches for athletic events conducted under the authority of any athletic association that allows students whose birth certificates list them as male to participate in events conducted exclusively for so-called “biological females,” or allows students whose birth certificates show them to be female to participate in events conducted exclusively for so-called “biological males.” Also, counties, cities and other local government entities would be prohibited from letting their fields, stadiums, and other facilities be used for competitions that allow players to compete in events that conflict with their so-called “biological gender.”

According to the National Council of State Legislatures, 14 states—Arkansas, Illinois, Kansas, Kentucky, Minnesota, Missouri, Montana, New Jersey, New York, Oklahoma, South Dakota, Tennessee, Texas, and Virginia—have considered legislation limiting transgender students' rights at school. In each state, the proposed legislation failed. In addition, 16 states—Alabama, Arkansas, Illinois, Kansas, Kentucky, Minnesota, Missouri, Montana, New York, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, and Wyoming—have considered legislation restricting access to restrooms, locker rooms, and other sex-segregated facilities on the basis of a definition of gender consistent with sex assigned at birth or “biological gender.”

**Nonpunitive Discipline.** Many schools around the nation are moving away from punitive forms of discipline in favor of the use of nonpunitive or progressive disciplinary measures, 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.

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.

## **RELATED BILLS**

Relates to HB4, NM Civil Rights Act, which permits an individual to bring a claim against a public body for a violation against the individual's civil rights

Relates to HB29, No School Discrimination for Hair, which prohibits school districts and charter schools from imposing discipline, discrimination or disparate treatment against a student based on race or culture or due to a student's use of protective hairstyle or cultural headdresses.

Relates to SB80, No School Discrimination for Hair, which prohibits school districts and charter schools from imposing discipline, discrimination or disparate treatment against a student based on race or culture or due to a student's use of protective hairstyle or cultural headdresses.

Relates to HB93, Limit Out-of-School Suspensions, which requires school boards and governing bodies of charter schools to provide in their disciplinary sanctions the exhaustion of all interventions, such as restorative justice practices, before resorting to suspending or expelling a student from school.

Related to SB319, School Use of Restraint, which prohibits the use of seclusion in schools and creates requirements for schools to be able to use restraint.

Relates to SB210, Ethnic Studies Education, which requires ethnic studies instruction for kindergarten through 12<sup>th</sup> grade students.

Relates to HB227, Ethnic Studies Definition, which requires ethnic studies instruction for kindergarten through 12<sup>th</sup> grade students.

#### **SOURCES OF INFORMATION**

- LESC Files
- Indian Affairs Department (IAD)
- Public Education Department (PED)

**RJ/kh**