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

Bill Number	<u>SJR17</u>	Sponsor	<u>Pope</u>
Tracking Number	<u>.218690.2</u>	Committee Referrals	<u>SRC/SJC</u>
Short Title	<u>Right to Quality Education, CA</u>		
Analyst	<u>Bedeaux</u>	Original Date	<u>3/4/21</u>
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BILL SUMMARY

Synopsis of Joint Resolution

Senate Joint Resolution 17 (SJR17) proposes to add a new section to Article 12 of the New Mexico Constitution establishing that public school students have a right to a high-quality public education. The constitutional amendment would prohibit school districts or the state from creating disparities in student academic outcomes measured against uniform achievement standards without taking responsible and effective steps to address the disparities. The constitutional amendment also prohibits the state or any school district from subordinating the educational interests of all students or of a class of students to any other interests. Any law that is found to violate students' right to a high-quality education will be declared invalid unless it can be shown to be narrowly tailored to achieve a compelling government interest.

The constitutional amendment requires a simple majority vote in both chambers and ratification by a majority of voters at an upcoming general or special election.

FISCAL IMPACT

Joint resolutions do not contain appropriations.

The Secretary of State and the Legislative Finance Committee estimate the administrative costs of proposing a constitutional amendment to be between \$150 thousand and \$200 thousand. Under Section 1-16-13 NMSA 1978 and the New Mexico Constitution, the Secretary of State is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state. The Secretary of State is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. In addition to the cost of the ballot, there will be added time for processing voters to vote and would mean additional ballot printing systems would be required to avoid having lines at voting convenience centers.

By establishing an affirmative constitutional right to a high-quality education, the state would likely become subject to additional litigation related to student performance. A student whose right

to a high-quality education has been violated may have grounds to bring a lawsuit against a school district or the State of New Mexico, potentially increasing the cost of litigation each year. PED received appropriations totaling approximately \$1.2 million per year to litigate the *Martinez-Yazzie* sufficiency lawsuit.

Based on the outcome of litigation, the state may require additional education appropriations to bring the state to the bar of “high quality.” For example, following the 2018 ruling in the *Martinez-Yazzie* lawsuit, the Legislature and the executive collaborated on a “moonshot” investment in public schools. For FY20, appropriations for public schools increased by more than \$448 million, an increase of 16 percent over FY19.

SUBSTANTIVE ISSUES

The proposed constitutional amendment in SJR17 is slightly redundant with the New Mexico Constitution’s current sufficiency clause, though arguably establishes a higher standard than sufficiency. Providing a high quality education likely requires a more concerted statewide effort than providing a sufficient education. The *Martinez* and *Yazzie* consolidated lawsuit was litigated on the grounds of Article 12, Section 1, of the New Mexico Constitution, which states

“A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.”

Plaintiffs in the consolidated lawsuit argued the state has failed to provide a sufficient education for its most at-risk students, including economically disadvantaged students, Native American students, English learners, and special education students. In July 2018, the 1st Judicial Court ruled in favor of the plaintiffs, citing both inadequate implementation of the Hispanic Education Act and the Indian Education Act, as well as dismal educational outcomes for at-risk students, including proficiency rates and graduation rates.

SJR17 establishes a legal calculus to determine whether a school district or the state has infringed on a student’s right to a high-quality education. A law or policy would infringe on a student’s right to a high quality education if it can be proven to

- 1a. Create disparities in academic outcomes compared against “uniform achievement standards,” **AND**
- 1b. The state or the public school fails to take responsible and effective steps to reduce the disparities

OR

2. Subordinate the educational interests of all students or a class of students to other interests.

Any policy found in violation of these rules will be declared invalid unless it can meet a “strict scrutiny” test to show it is narrowly tailored to achieve a compelling government interest.

Uniform Achievement Standards. SJR17 would require the Legislature or the Public Education Department (PED) to establish “uniform achievement standards” for all students. These standards would likely be developed as the result of a great amount of deliberation between the Legislature, PED, and other stakeholders but may take the form of proficiency thresholds, graduation requirements, or some other demonstration of competency. Any student who fails to meet the

“uniform achievement standards” may have grounds to bring a lawsuit against the state or the public school district. Plaintiffs bringing a lawsuit would have to prove a causal relationship between a particular law or policy and disparities in academic outcomes, and then also prove the state or school district has not taken “responsible and effective” steps to reduce disparities. Ultimately, courts would be asked to decide whether disparities exist, and whether the steps taken by the defendant are “responsible and effective.” Compared nationally, New Mexico consistently ranks among the lowest states in terms of academic achievement. Establishing achievement standards that are “uniform” with national benchmarks would require a significant statewide effort to bring students to parity with the standards.

Subordinating Educational Interests. Another pathway to a remedy for plaintiffs would be to show that a particular policy or law subordinates the educational interests of all students or a class of students to other interests. This standard appears to require a court to adopt a standard for what constitutes subordination of a student’s educational interests; it is unclear whether this standard has appeared in court cases in other states. Analyses by PED and the Attorney General do not provide examples of what this standard may entail.

Strict Scrutiny. The state could avoid an unfavorable ruling in litigation resulting from SJR17 if it can show the law or policy violating a student’s right to high-quality education is “narrowly tailored to achieve compelling government interest.” This standard, known as “strict scrutiny,” is the highest standard of review in cases of alleged discrimination by the government. Strict scrutiny requires a government to prove an interest is compelling, perhaps by preserving national security interests or protecting the lives or liberties of a large number of individuals, and is narrowly tailored, or specifically designed to address the compelling interest.

According to the Attorney General, including this clause in the New Mexico Constitution removes the authority of a court to determine what level of scrutiny to apply to a case. Instead, the court would be compelled to apply strict scrutiny regardless of the severity of the case. According to the Office of the Attorney General, “no other constitutional rights within the New Mexico Constitution are entitled to such a level of scrutiny by their own terms without judicial analysis, placing the rights proposed by SJR17 in a unique and rarefied position.”

RELATED BILLS

Related to SB233, Student Bill of Rights, which establishes guarantees that students have access to certain information, services, and programs and can attend schools within a safe and supportive learning environment.

Related to HB85, Yazzie Lawsuit Response Funding, which makes several appropriations to address deficiencies identified in the *Martinez-Yazzie* consolidated lawsuit.

SOURCES OF INFORMATION

- LESC Files
- Legislative Finance Committee (LFC)
- Public Education Department (PED)
- Office of the Attorney General

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