

LFC Requester:	Sunny Liu
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**AGENCY BILL ANALYSIS
2019 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: Date 1/17/19
Original Amendment _____ Bill No: HB152
Correction Substitute _____

Sponsor: Rep. Patricio Ruiloba Agency Code: 924
Short EDUCATION FOR CHILDREN Person Writing Daniel Manzano
Title: IN FOSTER CARE Phone: 505-670-3820 Email Daniel.Manzano@state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
N/A	N/A		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
N/A	N/A	N/A		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate			Unknown

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 152 (HB152) amends 22-13-33 NMSA 1978 by providing clarification of the duties and responsibilities of the Children, Youth and Families Department (CYFD), the Public Education Department (PED), school districts and charter schools regarding the educational stability of students in foster care and students involved in the juvenile justice system. HB152 includes required professional development and training for staff who work with students in foster care and a dispute resolution process when parties have a disagreement or conflict regarding the student's school of origin and the cost of transporting a student in foster care. If parties are unable to resolve the conflict, the PED and CYFD Secretaries are required to meet within forty-eight (48) hours to make a final decision regarding the student.

FISCAL IMPLICATIONS

The PED and CYFD are required to provide training to points of contacts, caseworkers, school staff, foster parents, treatment foster care agencies and residential treatment centers on ensuring the educational stability of students in foster care. Training is to be consistent with state and federal laws. It is unclear how often this training is required or how new employees or foster parents are to be trained; therefore the cost of the training is indeterminate at this time.

SIGNIFICANT ISSUES

According to the New Mexico Children, Youth and Families Department FY 2019 Annual Report, the average number of children in foster care for a given month was 2,587 and the total number of children in foster care for any length of time was 4,650.

With the passage of the Every Student Succeeds Act (ESSA), students in foster care are to be provided educational stability and held to the same high standards as students who are not in foster care. Students in foster care are considered a subgroup population under the ESSA and the students' academic proficiency rates and graduation rates are to be measured and monitored at the state and local level. The high mobility rates of any students can have a significant impact on students' progress in school, school completion, attendance and socialization. Therefore, decisions including school placement and transportation, regarding students in foster care, must be made through the Best Interest Determination (BID) process. Information on the BID can be found [here](#).

The PED in partnership with the CYFD has developed guidelines for school districts and schools

on how to promote educational stability for students in foster care. The guidelines on Providing Educational Stability and Supporting Students in Foster Care are available [here](#) on the PED's website.

When disputes arise regarding students in foster care over the school of origin or the cost of transportation, and the disputes cannot be resolved at a lower level, HB152 requires the CYFD and PED Cabinet Secretaries along with the district superintendent or charter school director to review information on the students in foster care within forty-eight (48) hours or two weekdays and make a final determination. This quick turnaround for resolution could be problematic for the Cabinet Secretaries due to the high demands of their jobs and schedules, since a designee is prohibited.

The PED in partnership with CYFD has developed a dispute resolution procedure for educational decision makers, see [Dispute Resolution Procedures](#). These procedures provide an avenue for resolving disputes at a lower level with those parties most familiar with the needs of the student. In addition, the state has a formalized dispute resolution process under the New Mexico Administrative Code (NMAC), see [Formal Complaint Procedure](#).

The NMAC was recently updated to address the transportation requirements for students in foster care. A section of the rule provides for a dispute resolution process regarding transportation, see [Transportation Standards](#).

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

None

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

The wording on Page 3, lines 12-14 is confusing and if misinterpreted could conflict with the Every Student Succeeds Act (ESSA). HB152 indicates that if a student's foster care placement changes, the school of origin would then be considered the school in which the student is enrolled at the time of the placement change. This could be interpreted to mean that the school of origin is now the newly enrolled school with the new foster family.

Section 1111 of the ESSA indicates that a student remain in the school of origin unless a determination is made that it is not in the student's best interest to remain in the school of origin.

In order to provide clear direction and avoid any misinterpretation replace "would then be" on line 13 with "the school of origin remains the same."

OTHER SUBSTANTIVE ISSUES

Pages 12 and 13 indicate that students with disabilities are exempt from the dispute resolution process. This policy would limit students with disabilities due process rights by applying a different and a more stringent and formal standard than students without disabilities. Students in foster care that do not have disabilities are afforded a quicker turnaround and resolution within forty-eight (48) hours.

A due process hearing for students with disabilities under the Individuals with Disabilities Education Act (IDEA) must be fully adjudicated within 45 days unless both parties agree to an extension. A formal state-level complaint under the IDEA must be investigated and a determination made within 60 days. Having a separate system for students with disabilities with exceedingly longer dispute resolution timelines for school placement and transportation could be considered discriminatory.

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The educational decision makers and district/school staff will continue to use the already published guidelines and policies and the dispute resolution processes in the NMAC.

AMENDMENTS

None