

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See fiscal implications	See fiscal implications	See fiscal implications	See fiscal implications	Recurring	LEA and charter school general funds, local law enforcement, CYFD, and juvenile justice budgets

(Parenthesis () Indicate Expenditure Decreases)

Relates to: SB467, School Treatment of Students with Disability
 Duplicates/Relates to Appropriation in the General Appropriation Act: None as of 3/4/19

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 567 House Consumer and Public Affairs Committee Substitute (HB567HCPAC), also known as “Michael’s Law” creates new sections of the Public School Code. “Michael’s Law” includes definitions pertaining to students who would be protected under the law such as students experiencing adverse childhood experiences, at-risk students, students in need of an accommodation and students with disabilities. HB567HCPAC requires schools to develop student supports plan for those students in need of an accommodation and local school boards to develop first response policies and procedures for students in need of an accommodation and to limit the use of restraint and seclusion. HB567HCPAC amends the Children’s Mental Health and Development Disabilities Act to allow the parents of students fourteen years or older to have temporary consent to participate in the development of the student support plan when the student is at risk for referral to the juvenile justice department.

FISCAL IMPLICATIONS

There would be moderate fiscal implications on the Public Education Department (PED) in FY19 and the beginning of FY20. Prior to the beginning of the 2019-2020 school year, the PED would need to update the [Student Rights and Responsibilities](#) at 6.11.3 NMAC regarding the use of seclusion and restraint, development of student supports plan and preventative plans of action. In addition, the PED would need to update the current guidelines pertaining to the use of restraint and seclusion, in accordance with 22-5-4.12 NMSA, 1978, on the use of restraint and seclusion [Staff Use of Restraint and Seclusion Techniques with Students](#) and the [Planning for Safe Schools in New Mexico Guide](#).

HB567HCPAC would require all local education agencies (LEAs) to adopt a “student supports plan”, which is not defined in the bill, for students in need of accommodation from violations of their rights under state and federal laws. The “student supports plan” mandates training for local law enforcement officers and school employees who would respond to situations involving students in need of accommodation in order to protect the students’ rights under state and federal laws. The plan is to include a plan for restorative, preventative and intervention services which

are agreed upon by the student and student's parents.

There are multiple types of training required under "Michael's Law". While the frequency of training is not specified, the cost of the training would fall upon the LEAs. HB567HCPAC does not provide an appropriation for the new requirements of the Public School Code; however it has an immediate and future fiscal impact on LEAs and local law enforcement agencies.

HB567HCPAC also requires LEAs to develop first-response policies and procedures for students who have committed a first offense (as defined by the school code of conduct and discipline as determined by the local school board) which includes a requirement that before any arrest is made or referral for services is undertaken, the student, student's parent or guardian and school administrators meet to discuss the events surrounding the offense. The policies and procedures would require the LEA to complete a needs assessment, a behavioral health screening and completion of a supports screening to determine whether prevention services could deter escalation and repetition of the student's offense. The LEA would be responsible for the cost of the needs assessment and screenings, the cost of which, both in the short- and long-term is indeterminate.

HB567HCPAC requires that after a student's first offense or within 30 days of exiting juvenile justice custody, the student, student's parent or guardian and school officials develop a prevention plan of action that shall be documented in writing. The prevention plan shall include: reports from any crisis intervention, behavioral health screenings or needs assessment; identification of goals for optimizing the student's well-being; recommendations and considerations related to achieving student goals; positive reinforcement and behavior support services; in-home and community-based models to address social and behavioral skills; parent training, involvement and support; any needed physical, speech or occupational therapy services; and social skills support among others. The LEA would be responsible for both the implementation and funding of these requirements, the cost of which, both in the short- and long-term is indeterminate.

SIGNIFICANT ISSUES

Section D 22-1-1.1 NMSA 1978 finds that discipline in the schools is essential to provide an atmosphere conducive to effective learning. §22-5-4.3 NMSA 1978 requires local school boards to establish student discipline policies that establish rules of conduct governing areas of student and school activity, detail specific prohibited acts and activities and enumerate possible disciplinary sanctions.

HB567HCPAC requires that all LEAs adopt a "student supports plan", which is not defined, for students in need of accommodation in order to protect their rights under state and federal laws. Under the Individuals with Disabilities Act (IDEA) and Section 504 of the Rehabilitation Act, students with disabilities already have federal procedural safeguards and rights. See the IDEA rights at [Parent and Child Rights in Special Education](#). Accommodations can be addressed through the student's 504 Plan or Individualized Education Program (IEP). Under the IDEA, students with disabilities must have a manifestation determination in accordance with 34 CFR §300.530(e) within 10 days of any decision to change the placement of a student with a disability, including out-of-school suspension and expulsion, because of a violation of a code of conduct. The LEA, the student's parent and relevant members of the IEP team must review all relevant information in the student's file and IEP to determine if the conduct in questions was caused by the student's disability or if the conduct in question was the direct result of the LEA's

failure to implement the IEP

As of June 16, 2017, all LEAs were required to comply with §22-5-4.12 NMSA 1978, which requires that school policies on the use of restraint and seclusion techniques must contain the following:

- A school may permit the use of restraint or seclusion on a student only if both of the following two conditions apply: (1) the student's behavior presents an imminent danger of serious physical harm to the student or others (students, staff, visitors, substitute teachers, contractors, etc.); and (2) less(er) restrictive intervention(s) appear insufficient to mitigate the imminent danger of serious physical harm.
- Restraint and seclusion techniques shall only be used and applied by school employees who are trained in the safe and effective use of restraint and seclusion unless an emergency situation does not allow sufficient time to summon those trained.
- Schools are required to establish reporting and documentation procedures that must be followed when a restraint or seclusion technique has been used with a student.
- Schools shall review strategies used to address a student's behavior if restraint or seclusion are used with individual students two or more times during any thirty-calendar-day period.

PERFORMANCE IMPLICATIONS

None as of 3/4/19

ADMINISTRATIVE IMPLICATIONS

HB567HCPAC requires the development of a “student supports plan”, which is not defined, for a student in need of an accommodation. HB567HCPAC requires a behavioral health screening as part of the first-response policy and procedures. Since LEAs have limited access to mental health records, one administrative impact to the LEAs would include the development of a system for making this determination, including working with internal staff, law enforcement, various state agencies, community mental health providers and the student's parent or guardian.

HB567HCPAC also requires multiple trainings for local law enforcement officers and school employees in responding to situations involving students in need of accommodation. LEAs would need to determine how to provide the trainings, and, if necessary, what state agency(ies) or community-based organizations to collaborate with in the development and implementation of this training.

Under the “student supports plan” provision, HB567HCPAC requires schools to develop protocols for using crisis interventions teams, mobile crisis teams, assertive community treatment teams and behavioral health providers. The protocols require training in health, social emotional learning, trauma informed care, and mental health first aid.

HB567HCPAC includes a provision to protect a student against unlawful search and seizure. Parents shall be notified and provided notice to be present unless being present poses a substantial threat. LEAs and schools may need to update their policies and procedures and work with local law enforcement on the changes.

The Preventative Plans of Action section of HB567HCPAC requires local school boards to develop first response policies and procedures for students who have committed a first offense as

defined by the school code of conduct. The policies and procedures are prescriptive including a meeting with the student, parent(s) and school principal to discuss the issue prior to an arrest or a referral to juvenile justice division of the Children, Youth and Families Department. The student or student's parent has a right to have an advocate attend the meeting. Unless a student has committed a violent crime or there is a present danger or a threat to school safety, any referral to the juvenile justice division shall be delayed pending the completion of supports screenings to determine whether or not preventative supports are needed.

This provision may be difficult for LEAs and schools since violent crime, present danger and threat to school safety are not defined in HB567HCPAC.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB567HCPAC relates to SB 467, School Treatment of Students with Disability

TECHNICAL ISSUES

Page 4, line 2 defines "IEP" as an "individual education plan". It is recommended to change the definition to align with state and federal laws to "individualized education program."

OTHER SUBSTANTIVE ISSUES

HB567HCPAC requires that "student supports plans" include provisions on the rights of students against unlawful search and seizure. Subsection B of 6.11.2.10 NMAC already defines the parameters of search and seizure, including a notice of a search policy, when a search is permissible, who may search and the seizure of illegal items.

ALTERNATIVES

None as of 3/4/19.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Schools will continue to follow current state and federal laws, including but not limited to, the IDEA, Section 504 of the Rehabilitation Act, §22-5-4.12 NMSA 1978 and 6.11.3 NMAC, providing protections for students in need of accommodation with regard to disciplinary procedures, the use of restraint and seclusion techniques, and notice to parents and guardians.

AMENDMENTS

None as of 3/4/19.