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**AGENCY BILL ANALYSIS
2021 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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and

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{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:
Original **Amendment**
Correction **Substitute**

Date 1/26/2021
Bill No: HB43

Sponsor: Rep. Sheryl Williams Stapleton
Short Title: BLACK EDUCATION ACT

Agency Name and Code PED - 924
Number: _____
Person Writing John Sena
Phone: 505-570-7816 **Email** John.Sena@state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
NFI	\$200.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	Unknown	Unknown	Unknown	Unknown	PED operating budget

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act: N/A

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 43 (HB43) creates a new section of the public school code entitled the Black Education Act. The bill details the sections within the proposed act to include, among other things: (1) creation of the Black Education Advisory Council (BEAC or council); (2) BEAC’s meeting requirements and duties; (3) creation of the Black Education Liaison (Liaison), along with the prescribed Liaison’s duties, within PED; (4) requirement for PED to submit a Black Education Statewide Status Report (BESSR) annually; (5) requirement that school discipline policies define and include a specific prohibition against racialized aggression involving a student or school personnel; (6) requirement that every school district and charter school have a hotline to report racially charged incidents or racialized aggression; and (7) requirement for all school personnel to successfully complete an anti-racism and racial sensitivity training or professional development approved by PED.

FISCAL IMPLICATIONS

HB43 would appropriate \$200,000 from the general fund to the PED for expenditure in FY22 and FY23 to carry out the purposes of the Black Education Act. Any unexpended or unencumbered balance remaining at the end of FY23 shall revert to the general fund.

After FY23, assuming the Black Education Act is enacted and the legislature does not appropriate additional funds to PED, the department would be required to cover all costs related to provisions of the Black Education Act.

The appropriation is not sufficient to cover all costs associated with carrying out the provisions of the Black Education Act. It is unclear what specific costs would be required to carry out the provisions of the Black Education Act in FY22 and FY23. However, it is clear that additional employees, possibly four to five, would need to be hired to assist with the requirements of HB43.

In FY22 and FY23, the appropriation could be utilized to cover the following costs, among other things: (1) BEAC expenditures, including per diem and mileage; (2) funding the salary and benefits of at least one full-time staff – Liaison; (3) potentially covering the funding related to a part-time staff who could assist the Liaison with implementing the provisions of the Black Education Act; (4) funds to award to school districts and charter schools related to the required hotline; (5) funds to potentially develop a curriculum or professional development related to the statewide, mandatory anti-racism and racial sensitivity training; and (6) funds to potentially deliver, through PED personnel or a third-party consultant, the anti-racism and racial sensitivity

training annually for all school personnel in the state.

Under HB43, BEAC members may be eligible to receive per diem and mileage. PED would be required to cover the costs related to per diem and mileage after FY23, assuming an additional appropriation is not received. Other advisory councils attached to PED differ in the costs associated with each advisory council. For example, current Bilingual Multicultural Education Advisory Council (current council was previously referred to as the State Bilingual Advisory Council) members may receive per diem if traveling, with an option to request reimbursements for their time committed to the advisory council based on approval by the Department of Finance and Administration. As such, only three advisory council members requested reimbursement in FY20 for a total of approximately seven hundred dollars (\$700). The costs could have been higher if more advisory members had chosen to seek reimbursement for per diem or hotels. On the higher end of associated costs, for example, the Indian Education Advisory Council (IEAC), which has less council members than the BEAC under the proposed language of HB43, received almost 11 thousand dollars (\$11,000) in reimbursements for per diem, mileage, and hotels for all meetings attended in FY20.

SIGNIFICANT ISSUES

Black Education Advisory Council

Specifically, HB43 would create the BEAC as an advisory council to the PED secretary. The secretary is required to appoint no more than 23 members who are knowledgeable about and interested in the education of Black students, including representatives from:

- public schools;
- post-secondary education and teacher preparation programs;
- parents;
- the Office on African American Affairs;
- Black cultural, community, and business organizations;
- other community and business organizations; and
- other interested persons.

BEAC members serve on the council at the pleasure of the PED secretary. Additionally, BEAC members are required to elect a chair and other officers as necessary. The council is required to meet at least twice annually, with the option to schedule additional meetings if necessary. BEAC members are entitled to receive per diem and mileage, but are prohibited from receiving any other compensation, perquisite, or allowance for their service on the council.

Regarding council duties, the BEAC would be required to advise the PED secretary, school districts, and charter schools on matters related to improving public school education for Black students, increasing parent involvement and community engagement in the education of Black students, and increasing the number of Black high school graduates who succeed in post-secondary academic, professional, or vocational education.

Black Education Liaison [see additional comment below under “Alternates” related to the position title of “Black Education Liaison”]

Under HB43, the Liaison, located within PED, would be required to do the following:

- focus on issues related to Black education and advise the PED secretary and the BEAC on the development and implementation of public policy related to the education of Black students;

- advise PED and the commission [see **additional comment below under “Technical Issues” related to the word choice of “commission”**] on the development and implementation of the five-year strategic plan for public elementary and secondary education in the state as the plan relates to Black student education;
- assist and be assisted by other staff from PED and the Higher Education Department (HED) to improve elementary, secondary, and post-secondary educational outcomes for Black students;
- maintain and update information on PED’s website or a separate website that includes: (1) links to school district and charter school hotlines for reporting racially charged incidents, (2) links to PED’s Black education research (including white papers), and (3) information on and links to Historically Black Colleges and Universities (HBCUs);
- serve as a resource to enable school districts and charter schools to provide equitable and culturally relevant learning environments, educational opportunities, and culturally relevant instructional materials for Black students enrolled in public schools;
- support and consult with the BEAC; and
- support school districts and charter schools to recruit parents to serve on site-based and school district committees that represent the ethnic diversity of the community.

Additional Duties of the BEAC and Liaison

Moreover, under HB43, the Liaison and BEAC would be required to study and prepare white papers on current research on methods and practices that will improve educational outcomes and school experiences for Black students by:

- identifying best practices for strengthening educational outcomes for Black students;
- addressing the Black student achievement gap in a holistic and systemic manner that result in substantially improved graduation rates, college or career readiness, and higher education completion rates at undergraduate and graduate levels;
- combating discrimination and racism in the public school system;
- recommending curricula and instructional materials that include the history and culture of Black people in the United States; and
- providing mechanisms for parents, community and business organizations, public schools, public post-secondary educational institutions, and state and local policymakers to work together to improve educational opportunities for Black students.

Additional duties for the Liaison and BEAC would include the following requirements:

- (1) develop or recommend anti-racism and cultural sensitivity training and professional development programs for all school personnel;
- (2) establish a formal cooperative relationship between the PED, the HED, and public post-secondary educational institutions in the state to help improve the education of Black students in K-16 educational system, including the recruitment and retention of Black teachers, educational support providers, faculty, and educational and administrative leaders in the system and improve teacher preparation programs by recruiting Black students and including curricula that demonstrate cultural awareness and sensitivity to matters of race and promote anti-racism; and
- (3) submit white papers to the PED secretary, the commission, the governor, the legislature, school districts, charter schools, HED, public post-secondary educational institutions, and interested persons. [see **additional comment below under “Technical Issues” related to the word choice of “commission”**]

Black Education Statewide Status Report

The PED, in collaboration with the HED, would be required to submit the BESSR no later than November 15 annually to the governor and the legislature.

The BESSR would include the following information, disaggregated by ethnicity, related to Black Education in:

- (1) K-12 school districts and charter schools: ethnicity by grade by school, number and type of bilingual and multicultural programs in each school district and charter school, attendance and truancy for all grades, student achievement by ethnicity at all grades measured by a statewide test approved by PED, and graduation rates by ethnicity; and
- (2) post-secondary educational institutions: enrollment by institution and by main or branch campus (if applicable), student retention by class, student completion rates, degrees or certificates earned by ethnicity, faculty hired in tenure-track positions by ethnicity, adjunct faculty hired by ethnicity, number of tenured faculty by ethnicity, and faculty or administration leadership positions by ethnicity.

School Discipline Policies and Anti-Racism Training/Professional Development

Under HB43, all school discipline policies would be required to define and include a specific prohibition against racialized aggression involving a student or school personnel. In addition, every school district and charter school would be required to have a hotline to report racially charged incidents or racialized aggression. [see **additional comment below under “Technical Issues” related to the word choice of “commission”**]

Finally, HB43 creates a new section of the School Personnel Act to require annually that all school personnel successfully complete an online anti-racism, racial awareness, and sensitivity training or professional development approved by PED that addresses race, racism, and racialized aggression and demonstrates how to create and foster an equitable and culturally responsive learning environment for students of color.

Black Students in New Mexico

Based on data from the first reporting date for the 2020-2021 school year, there are a total of 7,336 Black students, or 2.3 percent of the total enrollment, in New Mexico public schools.

There exist persistent, substantial gaps in academic achievement and overall graduation rates between Black students and non-Black students in the state. For example, Table 1, below, shows data indicating some differences in academic performance between Black and non-Black students:

Table 1: Comparison of 2019 School Performance in New Mexico for Black and Non-Black Students

Subject	Black Students	Hispanic Students	Native American Students	Caucasian Students	Asian Students
Reading, Proficiency and Above	30%	30%	25%	48%	52%
Math, Proficiency and Above	15%	16%	12%	34%	42%

Science, Proficiency and Above	31%	30%	20%	57%	54%
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Source: PED – Proficiencies Webfiles, State, District, School 2019 (All Assessments, All Students 2019)

Furthermore, Black students lag behind their non-Black student peers related to overall graduation rates. For instance in 2018, the four-year graduate rate for Black students was 69.2 percent, compared to the rate of Hispanic students, 73.12 percent; Caucasian students, 79.3 percent; and Asian students, 86 percent. The four-year overall graduation rate for Black students in 2018 was the second lowest among racial groups, second only to the Native American students' four-year graduation rate of 65.8 percent.

According to the HED's 2018 Annual Report, the percent of Black students enrolled at post-secondary educational institutions in New Mexico during the 2017-2018 academic school year, are reported in Table 2, below:

Table 2: Total Enrollment of Black Students in Post-Secondary Educational Institutions

Type of Post-Secondary Educational Institutions	Black Students	Overall Student Enrollment
Independent Community Colleges	2.83%	46,445
Branch Community Colleges	1.27%	23,086
Comprehensive Universities and Colleges	4.95%	13,727
Research Universities	1.91%	43,011

Source: HED 2018 Annual Report

According to data obtained from the HED, Table 3, below, depicts the number of Black post-secondary students who completed post-secondary degree or certificate in the 2019-2020 academic school year:

Table 3: New Mexico Post-Secondary Academic Year (AY) 2019-2020 Degree Production by Black Post-Secondary Students

Awards of less than 1 AY	Awards of at least 1 year but less than 2 years	Associate's degree	Awards of at least 2 years but less than 4 years
67	181	219	*
Bachelor's degree	Master's degree	Post master's certificate	Graduate certification program
208	96	*	14
Education specialist degree	Doctorate degree	Professional degree	Total Degrees and Overall Percent
*	*	*	806 total degrees 2.7%

*Denotes counts less than 10

Source: HED, Data Reports, Degree and Graduation Rates AY2019-2020

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

Under HB43, the department would be responsible for, among other things, the following requirements:

- fund the BEAC with the appropriation until FY23, and after FY23, completely funding the BEAC through internal operational funds;
- ensure BEAC completes required duties annually;
- hire a Liaison to oversee the implementations of the bill;
- submit a BESSR annually to the governor and legislature;
- ensure all school discipline policies reflect requirements to define and expressly prohibit racial aggression in school;
- ensure each school district and charter school has a hotline pursuant to the bill;
- create or contract for an anti-racism and racial sensitivity training/professional development for school personnel;
- ensure all school personnel take this required training annually;
- collaborate and establish a formative cooperative relationship with internal and external stakeholders related to provisions of the bill;
- ensure school districts and charter schools have supports to comply with provisions of the bill; and
- ensure research is conducted internally and submitted to external stakeholders to improve education outcomes and school experiences for Black students.

Additionally, the Liaison would assist and be assisted by other staff from PED and the Higher Education Department (HED) to improve elementary, secondary, and post-secondary educational outcomes for Black students. The provisions of the bill do not specify in what capacity the HED staff will assist in the process.

HB43 would also result in additional administrative duties for school districts and charter schools. In order to meet the requirement of a hotline, it is reasonable that school districts and charter schools would need additional personnel to operate the hotline, as well as respond to reports of racially charged incidents or racialized aggression.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

On line 25 of page 3 and on line 21 of page 6, it is unclear who the “commission” is as referenced. If the “commission” is the BEAC, the sponsor may wish to use “council” or the specific name for consistency purposes.

On line 6 of page 6, it is unclear who “all school personnel” include who are required to take the anti-racism and cultural sensitivity training and professional development. The sponsor may wish to specify what school personnel this includes as this is unclear if it includes only licensed school personnel or if it includes all licensed and unlicensed school personnel.

On lines 23-25 on page 9 and lines 1-2 on page 10, the proposed amendment includes language

for “[a]ll school discipline policies” and “every charter school”; however, the section of statutory language that is being amended is specifically for “local school boards.” Under Section 22-1-2(H) NMSA 1978, which is the definition section for the public school code, “local school board” is defined as “the policy-setting body of a school district.” Under Section 22-8B-2(G) NMSA 1978, which is the definitions section for the Charter Schools Act, “governing body” is defined as “the governing structure of a charter school as set forth in the [charter] school’s charter.” As such, the definition for “local school board” does not include the “governing body” of a charter school; it is within another section of law specifically for charter schools. Thus, since governing bodies of charter schools are guided by the requirements of the Charter Schools Act, the sponsor may wish to amend the Charter Schools Act to ensure the requirements for all school discipline policies to define and prohibit racialized aggression as well as a hotline to report such incidents are reflected in the Charter Schools Act.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

PED anticipates the costs of implementing the provisions of the bill will most likely cost significantly more than the appropriation that is included in the bill. If an increase to the appropriation is not possible, PED would suggest including only the requirements for the BEAC, as an alternative, within the provisions of the bill. As such, PED would be committed to ensuring the creation, establishment, and operation of the BEAC.

Under HB43, the sponsor may wish to allow school districts and charter schools to operate a regional or collaborate on a statewide hotline that could be utilized by all school districts and charter schools to fulfill this requirement within the bill.

Additionally, under the bill, the “Black Education Liaison” position title throughout the bill is not commensurate with the title of similarly appointed individual(s) (i.e. Assistant Secretary of Indian Education, etc.). The sponsor may wish to amend the position title to reflect this change.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS

N/A