

LFC Requester:	Becerra
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**AGENCY BILL ANALYSIS
2021 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:
Original **Amendment** _____
Correction _____ **Substitute** _____

Date 2/9/2021
Bill No: SB233

Sponsor: Sen. Linda M. Lopez
Short STUDENT BILL OF RIGHTS
Title: _____

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	N/A	N/A	N/A

(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	Minimal	Minimal	Minimal	Recurring	School districts' and charter schools' operating budgets

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB4, New Mexico Civil Rights Act; HB29, No School Discrimination for Hair; HB93, Limit Out-of-School Suspensions; HB227, Ethnic Studies Definition; SB80, No School Discrimination for Hair; SB210, Ethnic Studies Education; and SB319, School Use of Restraint.

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Bill 233 (SB233) would add a new section to the Public School Code granting public school students rights in relation to their public education and their learning environment. SB233 would give public school students the right to a learning environment in which discrimination in all forms is not tolerated, but instead promotes, among other things, anti-racism and cultural sensitivity training. SB233 would give students and their families the right to feel safe and comfortable in their school environments. Students would have the right to special plans, such as individualized educational plans, and the right to information, resources, and support to prepare them for life after high school. SB233 would also give students the right to extracurricular and after-school programs, affordable, nutritious, and culturally appropriate food in the school environment, and bilingual education. SB233 would also provide student rights in relation to disciplinary measures, including giving students the right to a learning environment free of cruel and unusual punishment. The bill would give students the right to access gang and violence prevention, peer-based mediation and intervention programs, and mental health services.

SB233 would also require students to be given the means to participate in public school in times of emergencies, including an epidemic or pandemic, in the way deemed necessary by the state and school district that ensures the physical safety of students.

FISCAL IMPLICATIONS

SB233 does not contain an appropriation.

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.

SIGNIFICANT ISSUES

While SB233 would grant public school students rights in relation to their public education and their learning environment, some of the rights in SB233 are already granted through the United States Constitution or federal or state statute. The U.S. Constitution includes freedom of speech, freedom of the press, freedom from unreasonable searches and seizures, and the right to petition and peacefully assemble. The federal Individuals with Disabilities Education Act ensures children with disabilities are entitled to a free appropriate public education to meet their unique needs, which includes individualized educational plans and other accommodations. Statute also grants some of the rights outlined in SB233 (see Attachment 1). It appears certain issues in SB233 – such as anti-racism, allowing students access to gender-assigned bathrooms they feel most comfortable using, and granting students restorative justice practices as alternatives to suspension and expulsion – are not specifically addressed in statute.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

The Public Education Department would need to promulgate rules to ensure implementation of the provisions of SB233.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB233 relates to HB4, New Mexico Civil Rights Act; HB29, No School Discrimination for Hair; HB93, Limit Out-of-School Suspensions; HB227, Ethnic Studies Definition; SB80, No School Discrimination for Hair; SB210, Ethnic Studies Education; and SB319, School Use of Restraint.

TECHNICAL ISSUES

On page 3, line 23, students are granted the right to “small” classroom sizes and, on lines 24 and 25, students are granted the right to buildings, technology, and materials that are “current” and in “good” condition. It is unclear what the sponsor of the bill means by “small,” “current,” and “good.” The sponsor of the bill may want to define or clarify these terms.

OTHER SUBSTANTIVE ISSUES

State statute, specifically [Section 13C-1 NMSA 1978, Hunger-Free Students’ Bill of Rights Act](#), addresses students’ rights to a meal, requiring schools to provide meals to students who request one unless a student’s parent or guardian has specifically provided written permission to the school to withhold a meal.

Additionally, state statute, specifically [Section 28-11C-1 NMSA 1978, Deaf and Hard-of-Hearing Children’s Educational Bill of Rights](#), addresses the rights children who are deaf and hard-of-hearing have. The purpose of the statute is to encourage the development of a communication-driven and language-driven educational delivery system in New Mexico for children who are deaf or hard-of-hearing.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

N/A

AMENDMENTS

N/A

Statute Sections Relevant to SB233 Sections

Section	Section Language	Statute Section(s) Relevant to Bill Section
A	Public school students have the right to a learning environment in which discrimination in all forms, including discrimination due to disability, sexual orientation, gender, race, ethnicity, age or class, is not tolerated by the school district or public school administration; school security personnel, school police or school resource officers; or students.	<ul style="list-style-type: none"> • 22-8B-4 NMSA 1978 requires charter schools be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, physical or mental handicap, serious medical condition, race, creed, color, sex, gender identity, sexual orientation, spousal affiliation, national origin, religion, ancestry or need for special education services. • 22-8E-4 NMSA 1978 requires a charter to be subject to all state and federal laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services. • 22-13C-5 NMSA 1978 prohibits schools from discriminating against students who cannot pay for a meal or who owes a meal debt. • 22-31-2 NMSA 1978 requires each public school to operate an athletics program in a manner that does not discriminate against students or staff on the basis of gender.
B	Students have the right to an environment in which 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 sensitive manner and supports a multicultural, multilingual and culturally relevant curriculum that includes access to bilingual education and ethnic studies.	<ul style="list-style-type: none"> • 22-1-1.2 NMSA 1978 states the Legislature finds the key to student success in New Mexico is to have a multicultural education system, including one that integrates the cultural strengths of its diverse student population into the curriculum. • 22-1-9.1 NMSA 1978 established the state seal of bilingualism-biliteracy on a New Mexico diploma of excellence. • 22-2B-7 NMSA 1978 addresses culturally and linguistically diverse student populations. • 22-23-1 NMSA 1978, the Bilingual Multicultural Education Act, supports bilingual multicultural education.

Section	Section Language	Statute Section(s) Relevant to Bill Section
C	<p>Students and their families have the right to feel safe and comfortable in their school environments. In furtherance of that right:</p> <ol style="list-style-type: none"> 1) public schools shall provide access to translation and interpretation for students and their families in educational settings; 2) students shall have access to the gender-assigned bathrooms they feel most comfortable using and access to those bathrooms when needed shall not be denied; and 3) students shall be addressed by the gender pronouns and name that is self-indicated in educational settings. 	<ul style="list-style-type: none"> • May possibly be covered under 28-1-4(B)(4), which allows the Human Rights Commission to work in cooperation with the Labor Relations Division of the Workforce Solutions Department, the Public Education Department, and local boards of education to require encouragement of an educational program for all residents of the state, calculated to eliminate prejudice, its harmful effects and its incompatibility with principles of fair play, equality, and justice.
D	<p>Students have the right to have their teachers and other school personnel follow special plans that affect their educational settings, such as individualized educational plans, Section 504 plans pursuant to the federal Rehabilitation Act of 1973 or other accommodations as directed by the school assistance team or implemented pursuant to a doctor's orders.</p>	<ul style="list-style-type: none"> • 22-13-5 NMSA 1978 requires school districts to provide special education and related services appropriate to meet the needs of students requiring special education and related services, including accommodations.
E	<p>Students have the right to extracurricular and after-school programs and the means and support to access those programs and the right to request the formation of new clubs that fit their interests, because these programs and activities are important mechanisms through which students prepare for life after high school, including improving their ability to access higher education and otherwise develop their minds, talents and perspectives.</p>	<ul style="list-style-type: none"> • 22-8-23.10 NMSA 1978 allows a school district or charter school to be eligible for additional program units if it establishes an extended learning time program, which includes after-school program opportunities for academic learning or extracurricular enrichment to students. • 22-8C-8 NMSA 1978 allows charter school students in grades seven through 12 to participate in school district extracurricular activities sanctioned by the New Mexico Activities Association.

Section	Section Language	Statute Section(s) Relevant to Bill Section
F	<p>Students have the right to information, resources and support to prepare them for life after high school, including the encouragement to pursue higher education and to not be discouraged from pursuing higher education based on any discriminatory factors. Students who choose to pursue college shall have access to college readiness counselors to assist them in their transition into higher education, and students who choose vocational education or to enter the workforce shall have access to vocational counselors to assist them in their transition to further vocational education or the workforce, including information, training and job placement assistance, to make that transition.</p>	<ul style="list-style-type: none"> • 22-2-8.1 allows up to twelve hours of grades seven through twelve programs to be used to consult with parents to develop next step plans for students, which are personal, written plans developed to target the student's postsecondary interests, and set forth the studies the student will complete during high school to be on track for graduation. The student reviews and updates the next step plan annually.
G	<p>Students have the right to equitable school and classroom environments, in which:</p> <ol style="list-style-type: none"> (1) classroom sizes are small; (2) buildings, technology and materials are current and in good condition; (3) creative approaches to teaching are encouraged; (4) respect and open communication among parents, teachers, community organizations and students are encouraged; (5) building strong intergenerational relationships is valued; and (6) public schools are fully funded in order to achieve these goals. 	<ul style="list-style-type: none"> • 22-23A-1 NMSA 1978, the Indian Education Act, states the purpose of the Indian Education Act is to ensure equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for American Indian students enrolled in public schools. • 22-1-4 NMSA 1978 addresses class size. • 22-10A-20 NMSA 1978 addresses class load and teaching load. • 22-24-1 NMSA 1978, the Public School Capital Outlay Act, established a mechanism for funding public school capital outlay and a process for distributing funds.

Section	Section Language	Statute Section(s) Relevant to Bill Section
H	Students have the right to affordable, nutritious and culturally appropriate food in the school environment, because proper nutrition is essential to the development of physical, emotional and intellectual well-being.	<ul style="list-style-type: none"> • 22-13C-1 NMSA 1978, the Hunger-Free Students' Bill of Rights Act, requires schools to provide meals to students who request them, unless the student's parent or guardian specifically provides written permission to the school to withhold a meal.
I	Students have the 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 so that they may become fluent speakers and thinkers in the languages important to their development as fully rounded human beings who are able to excel in their cultural, familial and economic environments.	<ul style="list-style-type: none"> • 22-23-1 NMSA 1978, the Bilingual Multicultural Education Act, supports bilingual multicultural education.
J	Students have the right to a learning environment that is free of cruel and unusual punishment, including: <ol style="list-style-type: none"> 1) the use of excessive force by school security personnel, school police, school resource officers or other law enforcement officers; 2) freedom from over-policing in school; 3) freedom of speech and of the press; and 4) the right to petition and peacefully assemble with the purpose of improving the school, classroom and learning environments. 	<ul style="list-style-type: none"> • 22-5-4.3 NMSA 1978 addresses school discipline policies and prohibits corporal punishment. • 22-10A-40 addresses school security personnel, and requires the Public Education Department to promulgate rules pertaining to persons prohibited from employment as school security personnel, including formal discipline for the use of excessive force.

Section	Section Language	Statute Section(s) Relevant to Bill Section
K	<p>Students have the right to:</p> <ol style="list-style-type: none"> 1) due process and to be considered innocent until proven guilty; 2) transparency within the discipline process; and 3) freedom from searches of personal property by school security, school police, school resource officers or other school personnel without reasonable cause and to have their parents notified if such searches do occur. 	<ul style="list-style-type: none"> • 22-5-4.7 NMSA 1978 addresses allowing parent or guardian of a student placed in an alternative educational setting to request a due process hearing.
L	<p>Students have the right to public schools that:</p> <ol style="list-style-type: none"> 1) seek alternatives to a police presence, whether by school security, school resources or other law enforcement officers; 2) are free of immigration enforcement; 3) are free from the criminalization of youth; and 4) seek alternatives to suspension and expulsion policies in which students are given a clean slate each year in alignment with restorative justice practices. 	<p>Not found in current statute.</p>
M	<p>Students have the right to access gang and violence prevention, peer-based mediation and intervention programs on campus.</p>	<ul style="list-style-type: none"> • 22-2D-1 NMSA 1978, the Family and Youth Resources Act, allows a family and youth resources program to be created in any public school, to provide an intermediary for students and their families at public schools to access social and health care services. The goal of the program is to forge mutual long-term relationships with public and private agencies and community-based, civic and corporate organizations to help students attain high academic achievement by meeting certain nonacademic needs of students and their families.

Section	Section Language	Statute Section(s) Relevant to Bill Section
N	Students have the right and the opportunity to organize themselves and be represented by their peers in important school decision-making processes.	Not found in current statute.
O	Students have the right to: 1) self-representation in school district or charter school meetings, whether through a committee or a self-started group, without being tokenized or dismissed due to their youth; and 2) notification of school district or charter school and school personnel meeting times and places and to organize collectively when issues arise that affect students and their families.	Not found in current statute.
P	Students have the right to adequate access to and are encouraged to use mental health services in educational settings, including access to social workers, therapists and school counselors, and to be given resources to other mental health support services outside of the school when needed.	<ul style="list-style-type: none"> 22-2D-1 NMSA 1978, the Family and Youth Resources Act, allows a family and youth resources program to be created in any public school, to provide an intermediary for students and their families at public schools to access social and health care services. The goal of the program is to forge mutual long-term relationships with public and private agencies and community-based, civic and corporate organizations to help students attain high academic achievement by meeting certain nonacademic needs of students and their families.
Q	Students have the 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.	Not found in current statute.

Section	Section Language	Statute Section(s) Relevant to Bill Section
R	<p>In times of emergencies, such as an epidemic or pandemic, natural disaster, national security threat or other unforeseen event, students shall be given the means to participate in public school in the way it is deemed necessary by the state and the school district that ensures the physical safety of students. Students shall have the access and means they need to participate in education, including quality access to internet and technology for online learning. Students shall not be graded, failed or penalized for lack of participation during these times. The public school shall maintain quality access to necessary services normally provided by the school, including mental health services, nutritional services and college or career readiness support.</p>	<p>Not found in current statute.</p>
S	<p>In furtherance of the rights provided for in this section, public schools are encouraged to:(1) become sanctuary schools and ensure the safety of undocumented communities; and(2) seek out restorative justice or alternative practices instead of punitive punishments carried out by security, school resource officers and other school personnel.</p>	<p>Not found in current statute.</p>
T	<p>Students have the right to access a copy of the school district's or charter school's student bill of rights and to seek public school- or school-district-specific changes to those rights when such changes will improve the learning environment.</p>	<p>Not found in current statute.</p>