



LFC Requester: Liu

**PUBLIC EDUCATION DEPARTMENT
BILL ANALYSIS
2025 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

Check all that apply:

Original Amendment
Correction Substitute

Date Prepared: 02/21 /25

Bill No: HB558

Agency Name and Code: PED - 924

Sponsor: Block/Dow

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Short Title: NO SEXUALLY EXPLICIT MATERIAL IN SCHOOLS

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SECTION II: FISCAL IMPACT

(Parenthesis () Indicate Expenditure Decreases)

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY26 | FY27 | | |
| None | None | N/A | NFA |

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY26 | FY27 | FY28 | | |
| None | None | None | N/A | NFA |

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY26 | FY27 | FY28 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|------|------|-------------------|---------------------------|---------------|
| Total | None | None | None | None | N/A | NFA |

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 558 (HB558) would create a new section in the Public School Code to prohibit sexually explicit materials in public schools used for instruction or extracurricular activities. The bill requires the Public Education Department (PED) to promulgate rules for local school boards and charter schools to enforce the provisions of the bill and be required to discipline licensed and unlicensed employees that violate these provisions and collect a \$500 fine per incident from a school district or charter school that violates the provisions of the bill. HB558 would also amend Section 30-37-5 NMSA 1978, which provides for exclusions and defenses to the criminal charges of selling, delivering, or otherwise providing sexually oriented materials to minors, in order to modernize statutory references and gendered references to individuals.

The bill has an effective date of July 1, 2025.

FISCAL IMPLICATIONS

HB558 does not contain an appropriation.

SIGNIFICANT ISSUES

According to the [World Health Organization](#), sexual health is dependent on:

- having access to comprehensive, good-quality information about sex and sexuality
- knowledge about the risks they may face and their vulnerability to adverse consequences of unprotected sexual activity
- ability to access sexual health care
- living in an environment that affirms and promotes sexual health

Additionally, sexual health-related issues are wide-ranging, and encompass sexual orientation and gender identity, sexual expression, relationships, and pleasure.

At this time 41 states have banned “sexually explicit” material in schools to some degree. In numerous cases this has resulted in books bans that disproportionately depict characters that are LGBTQ, and people of color. Conceptually, this is contradictory to the high value that our state places on inclusivity and culturally responsive instructional materials.

Additionally, the ACLU of Missouri is challenging a state law that bans sexually explicit material from schools, arguing it is unconstitutional. The law, effective since August 2023, criminalizes providing minors with sexually explicit visual material, putting librarians at risk of jail time or fines. The lawsuit contends that the law violates First Amendment and due process rights due to vague language. As a result, schools have removed hundreds of books, many by or about LGBTQ individuals and people of color.

The School Personnel Act and PED rule already contain some protection against students being exposed to inappropriate sexual material. Section 22-10A-5.2 NMSA 1978 requires submission by an applicant to work in the public schools of a written statement and follow-up review relative to the applicant’s work history describing whether the applicant has ever been under

investigation for a number of offenses, including those related to supplying minors with sexually explicit material. The definition of “ethical misconduct” in the School Personnel Act includes any behavior which is reasonably apparent to result in inappropriate sexual contact with a child or to induce them to engage in immoral or other prohibited behavior.

The standards of educator professional conduct, located in Rule 6.60.9 NMAC, prohibit any display or distribution of sexually oriented materials where students may see them. Failure to comply with any part of the code of conduct may result in the department taking adverse licensure action against a licensed employee who fails to so comply. Rule 6.68.3 NMAC requires the director of the Licensure Bureau to take action against a license or certificate held by licensed school employee when it appears grounds may exist to do so from a willful violation of department rules prescribing standards of conduct, or for convictions involving moral turpitude.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

The bill directs PED to promulgate rules for: the termination and discharge of employees who violate the terms of the bill; adverse licensure actions against licensed school employees who violate the terms of the bill; and revocation of privileges of access to schools for contractors or volunteers who violate the bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to:

- House Bill 27, Librarian Protection Act
- House Bill 517, Free Condoms for Certain Students
- Senate Bill 258, Human Sexuality Education
- Senate Bill 552, Protection of School Library Materials

TECHNICAL ISSUES

Section 1, Subsection E of the bill directs the PED to seek a fine of not more than \$500 per incident from a school district or charter school that violates Subsection B, C, or D of the bill. The language of those subsections, however, make that assignment of that penalty somewhat problematic. Subsection B indicates that explicit materials shall be prohibited, and not be used by employees, contractors, or volunteers. The school realistically may prohibit such materials in the schools, but cannot completely prevent the possibility of violations by those other individuals. The prohibited action is expressed passively and would be less ambiguous if school districts and charter schools were actively directed to prohibit such materials.

The prohibition in Subsection C, however, lies only against the employee, contractor, or volunteer (“a school employee...contractor, or volunteer shall not knowingly provide...”). There is nothing in that subsection for a school, as an institution, to violate.

Subsection D, Paragraphs 1 and 2, direct PED to promulgate rules for local schoolboards and

charter schools to enforce the provisions of the bill by rendering school employees “subject to termination and discharge pursuant to the School Personnel Act,” and licensed school employees subject to adverse licensure action.” The proposed statute already does both of these things, and rulemaking emphasizing it creates no additional obligations on schools to actually terminate, discharge, or begin actions to terminate or discharge. Further, local school districts and schools are not responsible for undertaking licensure action. Paragraph 3, however, indicates a contractor or volunteer who violates the section shall have their school-access privileges revoked. Subsection D, Paragraph 3, thus, actually presents school districts and charter schools with an action they can undertake, though it is expressed in the passive voice, rendering it slightly ambiguous.

Taken together, the requirement of Subsection E of a \$500 fine for school districts and charter schools that violate Subsection B, C, or D creates only two actionable obligations for them that might lead to fines: prohibit explicit materials in the public schools (Subsection B) and revoke school-access privileges of contractors and volunteers who violate the provisions of the bill (Subsection D, Paragraph 3), both of which are expressed passively.

OTHER SUBSTANTIVE ISSUES

The bill proposes to remove schools from exceptions to violations of Chapter 30, Article 37; current language exempts schools – like museums and public libraries – from guilt associated with violating that Article and extends that protection to persons acting in their capacity as employees of a school. This change effectively would render school employees subject to job-termination, loss of licensure, and criminal liability.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None.

AMENDMENTS

The sponsor may wish to consider amending the bill to remove irrelevant references to Subsections B and C, and Paragraphs 1 and 2 of Subsection D of Section 1 of the bill, found in proposed Subsection E mandating fines against local school districts and charter schools.