

<b>LFC Requester:</b>	<b>Sunny Liu</b>
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**AGENCY BILL ANALYSIS  
2017 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)

*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: Date 2/12/17  
**Original**     **Amendment**        **Bill No:** HB355  
**Correction**     **Substitute**   

**Sponsor:** Rep. Elizabeth "Liz" Thomson    **Agency Code:** 924  
**Short**    BULLYING &    **Person Writing**    Aguilar/Thompson  
**Title:**    CYBERBULLYING    **Phone:** 827-6519    **Email**    [PaulJ.Aguilar@state.nm.us](mailto:PaulJ.Aguilar@state.nm.us)  
PENALTIES

**SECTION II: FISCAL IMPACT**

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>			Significant	See "Fiscal Implications"	Recurring	CYFD & PED Operating Budgets

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to: SB115, Safe Schools for All Students Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: House Bill 355 (HB355) amends 22-2-21 NMSA 1978 by adding a section that mandates a minimum penalty for students who are confirmed to instigate bullying or cyberbullying and requires these students and their parents or guardians to be referred to the juvenile justice division of the Children Youth and Families Department (CYFD) for mandatory counseling for the remainder of the school year.

## **FISCAL IMPLICATIONS**

HB355 requires a change in the existing school district and state-chartered charter school discipline policies to include minimum penalties for bullying and cyber bullying. The Public Education Department (PED) is required to provide guidance and to work collaboratively with public and charter school districts statewide and the juvenile justice division of the CYFD to develop a framework that incorporates the mandatory penalty for bullying or cyberbullying instigators as part of every school's discipline policy. This change would also require the PED to further restructure its current, developmentally appropriate Positive Behavior and Intervention Supports (PBIS) in the Response to Intervention (RtI) system ([http://ped.state.nm.us/ped/RtI\\_index.html](http://ped.state.nm.us/ped/RtI_index.html)) to incorporate this penalty. No allocation is provided through HB355 for making changes to the system, revising statute and disseminating the information. Administrative costs to the PED would also have to be determined, based upon any oversight of school districts and state-chartered charter schools as to the implementation and compliance with this required penalty.

Costs to administer these changes would largely be borne by the CYFD or the families of those students who are referred for mandatory counseling.

## **SIGNIFICANT ISSUES**

Since 2007 public schools and local and state charter schools have been required to implement bullying prevention programs and processes as defined in 6.12.7 NMAC: Bullying Prevention. The PED provides comprehensive guidance to all schools for developing these policies and is now in a new three-year cycle for every school to revise and submit Safe School Plans to the PED for review. (See Planning for Safe Schools in New Mexico: School Guide: <http://ped.state.nm.us/sfsb/safeschools/2016/PlanningForSafeSchoolsNM2016.pdf>.)

The rule requires each school to develop and implement a policy that addresses bullying. The policy must include, but is not limited to:

- Definitions;
- An absolute prohibition against bullying (including cyberbullying as of the 2013-2014 school year);
- Staff training on cyberbullying;
- A method to ensure initial and annual dissemination of the anti-bullying and anti-cyberbullying policy to all students, parents, teachers, administrators and all other school or district employees;
- Procedures for reporting incidents of bullying and cyberbullying, which ensure confidentiality to those reporting bullying incidents and protection from reprisal, retaliation or false accusation against victims, witnesses or others with information regarding a bullying incident; and
- Consequences for bullying and cyberbullying which include consideration of compliance with state and federal IDEA requirements; consequences for knowingly making false reports pursuant to the anti-bullying policy; procedures for investigation by administration of incidents reported pursuant to the anti-bullying policy; and a requirement that teachers and other school staff report any incidents of bullying.

A number of school districts within New Mexico currently utilize progressive discipline matrices, which provide age-appropriate recommended guidelines in the disposition of discipline situations. The matrices allow for flexibility in responses, depending on the circumstances of the

behavior or education status of the student. A progressive discipline approach would be congruent with the PED's Response to Intervention (RtI) framework.

The PED currently has systems in place that address bullying prevention programs and strategies; it also maintains a website devoted to bullying prevention information, strategies and resources (<http://ped.state.nm.us/ped/PEDAnti-Bullying.html>). Resources already include training opportunities developed collaboratively by the U.S. Department of Education, Department of Justice, Department of Health and Human Services, and Substance Abuse and Mental Health Services Administration (SAMSHA) among others.

Both the PED's Wellness Policy Guidance Document and the Safe Schools Program, located in the Coordinated School Health and Wellness Bureau (CSHWB), provide oversight to the state's schools development and implementation of providing licensed counseling and bullying prevention. A full array of the programs resources can be found on the PED's website:

<http://ped.state.nm.us/sfsb/safeschools/2016/PlanningForSafeSchoolsNM2016.pdf>  
[http://ped.state.nm.us/sfsb/tools/2017/PED-WellnessPolicyGuidanceDocument\\_1.19.2017.pdf](http://ped.state.nm.us/sfsb/tools/2017/PED-WellnessPolicyGuidanceDocument_1.19.2017.pdf)

## **ADMINISTRATIVE IMPLICATIONS**

The provisions contained in HB355 are complicated, requiring substantial resources—both financial and human—to implement. Some financial implications may fall on CYFD to meet the requirement from the stand point of hiring licensed counselors and other associated costs to implement such a program. As such, any fiscal allocation may be more impactful if directed toward support of existing school counseling programs.

Also unclear are the provisions for costs affecting students and parents or guardians in complying with the provisions of this bill in many regards, including, but not inclusive of, transportation and availability of such counseling services. Additionally, further consequences may need to be enacted for students and their parents who do not follow through on the required referrals to counseling.

The PED would be required to revise 6.12.7 NMAC, Bullying Prevention, to reflect the changes as outlined in HB355, to inform school districts and state charter schools of the proposed changes to the rule, conduct public hearings on the proposed changes to the rule, summarize public comments, post the final rule, and communicate the changes after the rule has been posted.

Additionally, the PED would need to make further changes to the policy section requirements of the recently revised Planning for Safe Schools in New Mexico: School Guide (fall, 2016) to reflect changes in the bullying prevention component of the required school site-specific Safe Schools Plan submissions and communicate these changes to school districts and state charter schools. The PED would also need to revise its three-year timetable of Safe School Plan submissions to review approximately 600 Safe School Plans that are being assessed during the 2016-2017 and 2017-2018 school years.

The PED would also be required to provide technical assistance and guidance to local school boards so that local school boards and the governing body of every charter school could develop local policies and procedures. Guidance and technical assistance related, not only to progressive discipline as a means of reducing bullying and harassment and effective bullying prevention

programs to reduce bullying and school violence, but also in cooperation with the juvenile justice division of CYFD in creation and implementation of counseling strategies based on age and developmentally appropriate best practices would also be required. The above mentioned may be duplicative of existing strategies within both the PED's Safe Schools Program and Response to Intervention (RtI) framework endorsed by the PED and utilized by schools.

As HB355 does not have an allocation, the PED would need to absorb the above administrative processes with existing and limited resources.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB355 relates to SB115.

## **OTHER SUBSTANTIVE ISSUES**

Requiring a student, who may be a first-time offender of a bullying incident, in particular those of a young age, to be referred to CYFD's juvenile justice system may unfairly mark a child for increased negative consequences, potentially increasing his or her likelihood of becoming a subject of a punitive system as opposed to being educated through positive progressive discipline towards a more successful, age-appropriate and progressive response.

Page 3, line 3, requires counseling for the remainder of the school year. If a student is referred to counseling in September, as an example, he/she would receive counseling for approximately eight months and a student referred for counseling in May, as an example, would receive only two weeks of counseling.

It is unclear as to who will be responsible for paying for the counseling (e.g., schools, CYFD, and/or parents). It is also unclear as to when the counseling would take place. If the counseling is during the school day, it is unclear as to whether the counseling would occur on or offsite. If the counseling occurs offsite, it is unclear if this would constitute an excused absence.

If counseling occurs after school hours or on weekends, it is unclear how this would be monitored and reported.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

School district and state charter school requirements for bullying prevention would remain as defined in NMAC 6.12.7, Bullying Prevention and existing bullying prevention strategies, age-appropriate discipline strategies, and technical assistance opportunities would continue to remain in place.