

LFC Requester:	Sunny Liu
-----------------------	------------------

**AGENCY BILL ANALYSIS
2017 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

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 <input type="checkbox"/>	Amendment <input checked="" type="checkbox"/>	Date <u>3/11/2016</u>
Correction <input type="checkbox"/>	Substitute <input type="checkbox"/>	Bill No: <u>HB427/aHEC</u>

Sponsor: <u>Rep. Monica Youngblood</u>	Agency Code: <u>924</u>
Short Title: <u>PROHIBIT HAZING AT SCHOOLS</u>	Person Writing: <u>Aguilar/Ortiz</u>
	Phone: <u>827-6519</u> Email: <u>PaulJ.Aguilar@state.nm.us</u>

SECTION II: FISCAL IMPACT

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General

Relates to HB200 and SB115

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis of Amended House Bill 427:

The House Education Committee amendment to House Bill 427 (HB427/aHEC) revises the definition of the term, “hazing” in two locations, page 4, line 10 and page 7, line 18, creating a more congruent and inclusive definition as a general reference of an act that can be committed by any person, not just a student.

Significant Issues of Amendment to HB427:

HB427/aHEC makes one change, which in essence broadens the definition of the term, “hazing,” to be a “reckless act committed by a person” rather than just a student. This change indicates that any act of hazing that is in violation of an educational institution’s policy, regardless of whether or not the perpetrator is a student, may be considered a violation and acted upon by the institute according to its policy. The institution’s internal disciplinary actions towards an organization, student or member of staff remain unchanged within the bill, based on a validated infraction of its anti-hazing policy. However, with this change does not come any specific

recommended course of action as to how an educational institute may, or should respond to a person who is not associated with the institution, who commits such an act of hazing. Although reporting to law enforcement any violation of the institution's hazing prevention policy is mentioned, it is unclear what constitutes such a violation to be a criminal act or how this may be done in the case of a hazing violation, committed by a person outside of the school.

Again, HB427/aHEC provides no further revision to the original HB427 that would build upon the existing bullying prevention and anti-hazing code and requirements already in place for NM schools.

Substantive Issues of HB427heca:

HB427/aHEC, much like the original bill, provides no detail in the process or recommended mechanism by which an educational institution should report to law enforcement a violation of the school's anti-hazing policy. This is further complicated by the addition of a potential infraction of the policy by a person, who is not a student, teacher or member of staff within that institution.

Synopsis of Original House Bill 427:

House Bill 427 (HB427) enacts new statutory provisions that amend the public school code (Chapter 21, NMSA 1978), requiring specific prohibition against hazing. HB427 further defines hazing acts and proposes that every educational institution in New Mexico adopt, post and enforce a hazing prevention policy with guidelines and specific penalties, involving students, teachers and other staff. HB427 specifically excludes acts that are customary to athletic events, contests or competitions that are legitimate and sponsored by an educational institution.

FISCAL IMPLICATIONS

HB427 does not appropriate funding to the New Mexico public education department (PED) or to school districts, state-chartered or locally chartered charter schools, or post-secondary schools to implement the provisions of this bill.

The PED would need to make changes to the public school code (Chapter 21, NMSA 1978) in reference to new language on hazing and to provide information about this rule change to all schools, using existing resources.

SIGNIFICANT ISSUES

Significant Issues of Original HB427:

Since 2007 public schools and local and state charter schools have been required to implement bullying prevention programs and processes as per the New Mexico Administrative Code (NMAC). Bullying Prevention as defined in 6.12.7 NMAC is any "repeated and pervasive written, verbal or electronic expression, physical act or gesture, or a pattern thereof, that is intended to cause distress upon one or more students in the school, on school grounds, in school vehicles, at a designated bus stop, or at school activities or sanctioned events." Currently existent within 6.12.7 NMAC is a definition for bullying that includes hazing, harassment, intimidation or menacing acts of a student, which may be based on the student's race, color, sex, ethnicity, national origin, religion, disability, age or sexual orientation. The PED promulgates comprehensive guidance to all schools for developing these policies, inclusive of a Safe School Plan to be written and submitted to the PED every three years from every public and state

chartered charter school. (See *Planning for Safe Schools in New Mexico: School Guide* <http://ped.state.nm.us/sfsb/safeschools/2016/PlanningForSafeSchoolsNM2016.pdf>.)

The code requires each New Mexico 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, inclusive of hazing, 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 Individuals with Disabilities in Education Act (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.

The provision of local adaptation, posting and enforcement of a hazing prevention policy compliments the current requirement of the schools' safety planning and further reinforces expectations within health education course standards and benchmarks in all New Mexico schools. The act being required through HB427 would specifically align with Content Standard 1, Benchmarks 4 and 6, which require performance standards for all NM students in identifying, analyzing, preparing a plan of action, and negotiating and risk avoidance strategies on the topic of bullying, which is inclusive of hazing.

According to the *Prevention through Education* website, New Mexico is one of only 6 states that do not have an anti-hazing law.

<http://www.stophazing.org/university-college-policies/states-with-anti-hazing-laws/>

Further information on individual state's anti-hazing laws, which vary from state to state and may include definitions of hazing and/or penalties for breaking anti-hazing law, may be found at: http://c.ymcdn.com/sites/www.kappaalphapsi1911.com/resource/resmgr/docs/state_hazing_laws.pdf

HB427 requires that every educational institution adopt, post and enforce a hazing prevention policy, inclusive of a requirement to print the policy in every student handbook and distribute these handbooks to students and parents. HB427 also excludes certain activities from being assessed under such a policy, including athletic events, contests or competitions that are sponsored by the educational institute and that promote advancement of legitimate education goals. HB427 requires an institution to define hazing, subsequent to the definition provided in Paragraph 1 of Subsection D and to include clear policies that hazing is prohibited, inclusive of solicitation, aiding, abetting, or consenting to hazing.

The procedures must include reporting, investigating and penalizing, as well as an appropriate appeals process for violation of the hazing policy. Additionally, HB427 also includes in its

charge to educational institutions, an anti-hazing policy that is inclusive of a non-matriculating student who is applying to or has been accepted in the institution, and who will attend the educational institution within a 12 month period.

While defined within the bill, examples of what constitute hazing and the specific penalties for violating this policy are left to the local authority of the individual educational institution. This is similar to how districts and schools are currently required to set school safety policy, inclusive of anti-bullying requirements.

HB427 does not specify any potential criminal act associated with violations of a hazing prevention policy. However, the bill does require educational institutions to describe circumstances under which a violation of the policy must be reported to a law enforcement agency. Within the PED's Student Teacher Accountability Reporting System (STARS), schools are required to record student infractions and dispositions, including those infractions where the disposition results in the referral to law enforcement and/or the juvenile justice system. Current assault laws, of which hazing may be considered as one, are defined in New Mexico as one of three different behaviors: attempting to commit a battery upon someone else; threatening or displaying menacing conduct, which causes the alleged victim to reasonably believe that he or she will be subject to battery; or using assaulting language to another which might harm his honor or his reputation.

In general, assault is considered a petty misdemeanor and carries a potential 6 months in jail and fines reaching \$500. <http://www.assaultandbattery.org/new-mexico/>

PERFORMANCE IMPLICATIONS

HB427 may support the PED's strategic lever, "Ready for Success," by providing a safe and supportive learning environment for students. HB427 may also develop an extended policy, based on hazing, one of several terms that are relegated under the definition of bullying; it may also be duplicative of existing efforts.

ADMINISTRATIVE IMPLICATIONS

The PED would be required to revise 6.12.7 NMAC: Bullying Prevention, to reflect the changes as outlined in HB427 that prohibits hazing, 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 chartered charter schools. The PED may need to revise its current 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 in order to ensure that these are also inclusive of the new rule. However, as no specific timetable is provided in HB427, it is difficult at this time to determine when the newly revised code would be required for schools.

The PED would be required to make changes to the policy section of the Wellness Policy and

Guidance Document (Fall 2016) and to communicate these changes to school districts and state charter schools.

http://ped.state.nm.us/sfsb/tools/2017/PED-WellnessPolicyGuidanceDocument_1.19.2017.pdf

The PED's Information Technology (IT) Division would need to aggregate the data as captured in the Student Teacher Accountability Reporting System (STARS) in relation to the modified definitions, incidents, and disposition of hazing as a separate incident from bullying.

The PED may also be required to provide technical assistance and guidance to local school boards related to progressive discipline, as a means of reducing bullying, hazing and harassment, and effective bullying prevention programs to reduce hazing and other forms of school violence. 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.

The PED may need to collaborate with the New Mexico Higher Education Department to ensure that the rule change is consistently communicated with post-secondary schools.

The PED may be required to develop and provide technical assistance and guidance to local schools in relation to the involvement of law enforcement in cases of hazing, differentiating for age, grade and developmentally appropriate application of the law.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB427heca relates to HB200 and SB115

OTHER SUBSTANTIVE ISSUES

Substantive Issues of Original HB427:

HB427 does not detail the process, mechanisms, or onus for reporting an incident of hazing in the school setting or the process or mechanism by which a school administrator would involve and report to local law enforcement. Such processes would need to be developed at the local level and may likely take on different methods per each educational institution.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If HB427 is not enacted, the disposition of incidences of bullying, inclusive of hazing, would continue to be addressed by school districts and state chartered charter schools through existing New Mexico Administrative Code and local policies and processes and reported through the current STARS system.