

LFC Requester:	Sunny Liu
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**AGENCY BILL ANALYSIS
2017 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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:

Original **Amendment** _____ **Date** 2/27/17
Correction _____ **Substitute** _____ **Bill No:** SB397

Sponsor: Senator Linda M. Lopez **Agency Code:** 924
Short Title: SCHOOL PROTECTIONS FOR CERTAIN STUDENTS **Person Writing:** Aguilar/Koscielniak
Title: _____ **Phone:** 827-6519 **Email:** PaulJ.Aguilar@state.nm.us

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	None	Unknown see fiscal implications	Unknown see fiscal implications	Unknown see fiscal implications	Recurring	LEA, charter school, local and state law enforcement, CYFD and Juvenile Justice budgets

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB 75/Limit School Use of Restraint & Seclusion
Relates to: SB115/Safe Schools for All Student Act; HB200/Anti-Hazing Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Bill 397 (SB 397) also known as “Michael’s Law” creates new sections of the Public School Code including definitions of various types of restraints, discipline measures, adverse childhood events and student in need of an accommodation. HB 397 requires the

development of prevention plans for students in need of an accommodation, creation of first-response policies and procedures for students who have committed a first offense, and mandating the training of state and local law enforcement officers and school personnel responding to students in need of an accommodation and limiting the use of restraint and seclusion.

FISCAL IMPLICATIONS

SB397 does not provide an appropriation for the new requirements of the Public School Code. The fiscal implications for local education agencies (LEAs), state charter schools, local law enforcement agencies and the Department of Public Safety cannot be quantified at this time.

SB 397 requires all school districts and charter schools to adopt “student supports plan”, which is not defined in the bill, for students in need of an accommodation from violations of their rights under state and federal laws. According to the bill, a student in need of an accommodation includes a student diagnosed as having a serious mental illness or emotional disturbance, behavioral health condition, experienced an adverse childhood event at least twice, or diagnosed with an intellectual or developmental disability. The “student supports plan” mandates provisions to include training for state and local law enforcement and school employees who would respond to students in need of accommodation in order to minimize aversive intervention. The onus for the costs for the training would fall upon the school district or state chartered-charter school. It is unclear as to frequency of subsequent trainings and associated costs. The plan must also include recognizing common characteristics and behaviors associated with students in need of an accommodation, experiential realities of students in need of accommodation and how they affect their interactions with others, and how to communicate with students in need of an accommodation.

LEAs and charter schools are required to develop first-response policies and procedures for students who have committed a first offense as defined by the school code of conduct and discipline as determined by the local school board. Policies and procedures must include a requirement that before any arrest is made or referral for services, the student, student’s parent or guardian and school administrators meet to discuss the events surrounding the first offense. The policies and procedures require a needs assessment, a behavioral health screening and completion of a supports screening, for students not committing violent crimes, to determine whether prevention services could deter escalation and repetition of the offense. The LEA or charter school will be responsible for the cost of the needs assessment and screenings.

After a student’s first offense as defined by the school code of conduct and discipline as determined by the local school board or within 30 days of exiting juvenile justice custody, the student, student’s parent or guardian and school officials shall develop a prevention plan of action. The plan has multiple components and shall include reports from screenings, identification of goals for optimizing the student’s well-being, positive reinforcement and behavior support services, in-home and community-based models to address social and behavioral skills, parent training involvement and support, any needed physical, speech or occupational therapy services. The LEA or charter school would be responsible for funding these requirements, without any additional funding being provided to them.

The services identified in the prevention plan of action shall not detract from a student’s education. It is unclear if this means that service are provide outside of school time, on or off campus, and SB 397 states that the school is ultimately responsible for the implementation of the prevention plan of action. Students referred for a prevention plan shall be provided services free

of charge with students with disabilities being provided services free of charge in accordance with the individual education plan (individualized education program).

SIGNIFICANT ISSUES

Section D 22-1-1.1 NMSA 1978 finds that discipline in the schools is essential to provide an atmosphere conducive to effective learning. 22-5-4 NMSA 1978 establishes that one of the duties of local school boards is to develop educational policies for the school district.

22-5-4.3 NMSA 1978 requires local school boards to establish student discipline policies. The discipline policy shall establish rules of conduct governing areas of student and school activity, detail specific prohibited acts and activities and enumerate possible disciplinary sanctions. However, a school within a school district may establish a school discipline policy provided that parents, school personnel, and students are involved in its development. The school policy must be submitted to the local school board for approval.

22-5-4.7 NMSA 1978, weapon-free schools, requires school districts to adopt a policy providing for expulsion from school, for a period of not less than one year, of any student who is determined to knowingly brought a weapon to school. A weapon is defined as any firearm that is designed to, may readily be converted to or will expel a projectile by the action of an explosion; and any destructive device that is an explosive or incendiary device, bomb, grenade, rocket having a propellant charge. Students with disabilities under the Individuals with Disabilities Education Act (IDEA) have procedural safeguards protections and are entitled to a Free Appropriate Public Education (FAPE) in an alternative setting.

SB 397 requires that, unless the student is alleged to have committed a violent crime or there is a present danger, any referral to juvenile justice authorities be delayed pending a supports screening. The bill does not define a violent crime and it is unclear if bringing a weapon or destructive device to school, and not necessarily using it or having its use being stopped, would meet that definition and possibly conflict with state statute and federal law regarding weapons-free schools.

Without violent crime being defined, it will be unclear in some circumstances when the first-response policy and procedures for a first time offense be applied for example sale of illegal or prescription drugs, physical assault and battery, hazing and sexual assault. This may also cause school districts and charter schools to not report alleged crimes and notify parents or guardians of alleged victims. New Mexico's data on sexual assault is highlighted below:

SCHOOL_YEAR	count_sexual_assault
2009-06-30	431
2010-06-30	466
2011-06-30	466
2012-06-30	362
2013-06-30	244
2014-06-30	285
2015-06-30	158
2016-06-30	175

SB 397 requires that all school districts and charter school adopt a “student supports plan”, which is not defined, for students in need of an accommodation in order to protect their rights under state and federal laws. Students with disabilities under the IDEA and Section 504 of the Rehabilitation Act have procedural safeguards protection or rights. See the IDEA rights at <http://ped.state.nm.us/ped/SEBdocuments/forms/Parent%20and%20Child%20Rights%20Procedural%20Safeguard%20Notice%20-%20March%202014.pdf>. Accommodations can be addressed through the student 504 plan or Individualized Education Program (IEP). Students not identified as having a disability under IDEA or Section 504 can be provided through a Student Assistance Team (SAT) plan that can include conducting a Functional Behavioral Assessment and the development of a behavioral intervention plan, see [http://ped.state.nm.us/ped/RtIdocs/RtI%20Manual%20most%20updated%20\(2.15\).pdf](http://ped.state.nm.us/ped/RtIdocs/RtI%20Manual%20most%20updated%20(2.15).pdf) and <http://ped.state.nm.us/RtI/dl10/Addressing%20Student%20Behavior%20Guide%202010.pdf>.

Students with disabilities under the IDEA must have a manifestation determination in accordance with 34 CFR § 300.530(e) within 10 days of any decision to change the placement of a student with a disability, including out-of-school suspension and expulsion, because of a violation of a code of conduct. The LEA, the parent and relevant members of the IEP team must review all relevant information in the student’s file and IEP to determine if the conduct in questions was caused by the student’s disability or if the conduct in question was the direct result of the LEA’s failure to implement the IEP, see <http://ped.state.nm.us/ped/SEBdocuments/technical/StudentDiscipline.pdf>.

A student who has not yet been determined eligible for special education and related services under the IDEA who has engaged in behavior that violated a code of conduct, may assert procedural safeguards protections in accordance with 34 CFR § 300.534. The LEA must be deemed to have knowledge that a student is a student with a disability before the behavior that precipitated the disciplinary action occurred.

SB 397 requires that after a student’s first offense, a prevention plan of action be developed. One of the items to be required in the prevention plan is goal setting and assistance for reaching goals, such as college and career preparatory guidance. This is duplicative of federal and state laws requirements regarding the IEP transition plan and the Next Step Plan.

SB 397 prohibits a school from referring a child thirteen years of age or younger to the juvenile justice division of the children, youth and families department. It is unclear if this includes crimes such as gun or weapons use.

ADMINISTRATIVE IMPLICATIONS

SB 397 requires that a student in need of an accommodation have a “student supports plan”, which is not defined, developed. A student in need of an accommodation can include a student who has suffered at least two adverse childhood events. Since LEAs have limited access to records, LEAs would need to develop a system for making this determination including working with law enforcement, various state agencies and the student’s parent or guardian.

SB 397 requires a behavioral health screening as part of the first-response policy and procedures. LEAs would need to work with internal staff or external agencies to determine how this will be conducted including parental/guardian consent.

SB397 requires LEAs to include provisions for training state and local law enforcement officers and school employees in responding to situations involving students in need of accommodation. LEAs would need to determine how to provide the trainings and, if necessary, what state agency(ies) or community-based organizations to collaborate with in the development and implementation of the training.

As part of the LEA's development of first-response policies and procedures, SB 397 mandates a review of the student's disciplinary records to examine formal and informal offenses and any measures taken to address the offense. LEAs will need to develop a system for this review and any agreement for exchanging and sharing of records between LEAs or agencies.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Some of Section 2 (definitions) and all of Section 4 within SB 397 conflict with HB 75 regarding the use of restraint and seclusion.

TECHNICAL ISSUES

Page 14, lines 18 and 19 includes a parents and guardians right to action. However, this is not defined in the bill.

OTHER SUBSTANTIVE ISSUES

This Act may implicate the Equal Protection Clause of the United States Constitution. Without providing a thorough legal review and analysis, it is worth noting that there are some sections of the proposed Act that may be of concern, in this regard. The proposed legislation draws a distinction between those students who commit a "first offense" (vaguely defined), who are a "student in need of accommodation" and those who commit a first offense, who are not a "student in need of accommodation." A student can meet the definition of a "student in need of accommodation", pursuant to Section 2(N) of the proposed Act, in one of three ways; (1) either having been diagnosed as having a serious mental illness, serious emotional disturbance or other behavioral health condition, (2) having received an adverse childhood events screening (it isn't clear in the Act who conducts this or how it is conducted), and having been identified, by such, as having experienced at least two adverse childhood events, or (3) having been diagnosed as having an intellectual or developmental disability. Students in the first and third category would currently be covered by a system of other applicable laws and regulations. The definition of a "student in need of accommodation" is much broader, under the proposed Act, and therefore creates a broader category of students who would need accommodations relating to discipline, than exists now under other laws protecting students. Existing laws providing similar accommodations arguably focus more on a student's diagnosed physical, mental or intellectual status rather than on their socio-economic background. Review of the list of "adverse childhood events" and its potential application, could lead to a high correlation between treating students differently based on class distinctions. Even if, applying equal protection standards, this proposed Act, was only required to meet a rational basis standard of review, there may be some legitimate equal protection concerns.

The "student supports plan" in SB 397 shall include provisions on the rights of students against unlawful search and seizure. Subsection B of 6.11.2.10 of the NMAC already defines the parameters of search and seizure including a notice of a search policy, when a search is permissible, who may search and the seizure of illegal items.

The student's prevention plan shall include evidence and information relating to any child protective services involvement. Much of this information is considered confidential and is not shared with school personnel. Section 3(F), at a minimum, should include language clearly indicating that the prevention plan will only include such "evidence" when it has been obtained and released in accordance with applicable confidentiality and privacy laws.

Section 2(A) provides a list of adverse childhood events. Section 2(A)(6) includes "violence against the student's mother or stepmother." It isn't clear why any violence against a household resident by any other household resident in the student's household, wouldn't be equally an adverse childhood event.