

According to PED in a prior year analysis, the fiscal implications of this proposed amendment could be substantial, but cannot be calculated at this time. PED notes that costs would be incurred to determine what rules or regulations fall into the categories that require new funding and costs to determine what constituted sufficient new funding. Additionally, there is a potential loss of federal funding if required rules and regulations are not enacted and implemented.

SIGNIFICANT ISSUES

In response to nearly identical legislation in 2017, PED indicated the language in Article X is vague, and when applied to school districts and charter schools, it could be problematic. PED provided the following information:

PED has been delegated broad authority over school districts and charter schools, in New Mexico. Any rule or regulation enacted by the PED would need to be evaluated to determine if it falls within a category of requiring school districts or charter schools to “engage in any new activity, to provide any new service or to increase any current level of activity, or to provide any service beyond that required by existing law.” The proposed amendment does not establish a process for identifying or determining which new rules or regulations fall within these categories. Rules and regulations that could potentially fall into these categories would be broad and numerous. A few examples are: any rules or regulations relating to addressing student threats or bullying, rules or regulations requiring that certain health records follow a student who transfers to another school, rules or regulations requiring the implementation of changes to student codes of conduct and rules or regulations relating to training for administration of medicine in schools.

In addition to there being no mechanism to determine whether or not a rule or regulation falls into one of the above-mentioned categories, there is no established mechanism to determine whether or not there would be any additional cost to a school district or charter school even if a new rule or regulation could be deemed to fall into one of the listed categories, or to determine what that cost would be. There is also no definition of what constitutes “new funding.” There is no specific written exception for those rules or regulations that may fall into the listed categories, but that, for a variety of reasons, including possibly the cessation of another requirement, would not lead to increased overall cost to a school district or charter school.

The amended provision does not provide an exception for rules and regulations that would be required to be enacted or implemented in order to be in compliance with federal law or regulations. This may lead to a situation in which PED, and therefore the State, could lose federal funding if PED was unable to enact rules and regulations, with the force of law, required by various federal laws or authorities, including, but not limited to, the United States Department of Education, IDEA, ESSA, USDA, FERPA. While some of these issues may eventually be addressed by accompanying legislation, in the event that the joint resolution was passed and voters approved the amendment, the language of the provision itself would remain vague.