

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: SB 393

52nd Legislature, 1st Session, 2015

Tracking Number: .198613.2

Short Title: Safe Schools for All Students Act

Sponsor(s): Senator William P. Soules

Analyst: Kevin Force

Date: February 27, 2015

Bill Summary:

SB 393 proposes to enact the *Safe Schools for All Students Act*. A section-by-section synopsis of the bill follows.

Section 1 gives the short title of the act.

Section 2 provides definitions of terms used in the act, including:

- “bullying,” which means any severe, pervasive act that targets a student physically, verbally, or electronically, that:
 - may be based on students’:
 - perceived race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, handicap, or any other distinguishing characteristic; or
 - association with a person, or group that includes a person, who possesses any of the actual or perceived distinguishing characteristics; and
 - can reasonably be predicted to:
 - place a student in reasonable fear of harm;
 - cause a substantial detrimental effect on a student’s health;
 - substantially interfere with a student’s academic performance or attendance;
 - substantially interfere with a student’s ability to participate in services or activities provided by an agency, educational institution, or grantee;
- “cyberbullying,” which means any bullying that takes place through an electronic communication;
- “electronic communication,” which means a communication transmitted through an electronic device;
- “gender identity,” which means a person’s self-perception, or perception by another, of the person’s identity as male or female, based on the person’s appearance, behavior or physical characteristics, either in accord, or not, with the person’s anatomy, chromosomal sex, or birth sex;

- “local school board,” which means the governing body of either a school district or charter school;
- “physical or mental handicap,” which means a physical or mental impairment that substantially limits any of a person’s major life activities;
- “progressive discipline,” which means disciplinary action other than suspension or expulsion, designed to address the basic causes of a student’s misbehavior, or restorative school practices to repair the harm done by the student’s misbehavior, including:
 - meeting with the student’s parent;
 - reflective activities, such as the composition of an essay about the student’s misbehavior;
 - counseling, and anger management;
 - health and mental health counseling;
 - participation in skill-building and resolution activities;
 - community service; and
 - in-school detention or suspension; and
- “sexual orientation,” which means heterosexuality, homosexuality, or bisexuality, whether actual or perceived.

Section 3 addresses the adoption and enforcement of bullying prevention policies, and:

- requires all local school boards to adopt and enforce policies by July 1, 2016, to:
 - prevent bullying, including electronic bullying, on school property, at school functions, during travel to and from the school; and
 - prohibit electronic communication intended to be seen by or disclosed to a student and that substantially interferes with the student’s participation in school services and activities;
- stipulates that local school boards control the contents of their policies, provided that they include:
 - the definitions of the act;
 - statements prohibiting both bullying, as well as retaliation against individuals who report such bullying;
 - a list of consequences associated with bullying, including progressive discipline, that are designed to:
 - correct the bullying behavior;
 - prevent further occurrence of bullying or retaliation;
 - protect the target of bullying;
 - be flexible in application, and tailored to the individual incident of bullying, based upon the nature of the incident, the developmental age of the person bullying, as well as any history of problematic behavior of the person bullying; and
 - for cyberbullying incidents, use the least restrictive means necessary to address the student’s ability to participate in the school;

- a procedure for reporting bullying that includes:
 - oral reports in the student’s preferred language;
 - anonymous reporting; and
 - a method for parents to file written reports of suspected bullying;

- a procedure for prompt investigation of violations of the policy and complaints of bullying, including:
 - designation of a school administrator to promptly investigate all reports of bullying;
 - a procedure for notifying the parents of students who are bullied and who are alleged to have bullied;
 - a requirement that school employees who witness bullying report the incident to the designated administrator within two days;
 - an appeals process for both the alleged victims and perpetrators; and
 - the development of a student safety support plan to address safety measures to protect target students from further bullying;

- a requirement that local school boards submit their bullying prevention policies to the Public Education Department (PED) within 30 days of passage, as well as any subsequent amendments or revisions;
- a requirement that local school boards include bullying prevention policies and procedures in student handbooks, available in languages appropriate to the majority of students in the school district;
- a requirement that each public school document reports and investigations of bullying, and maintain them for at least four years; and
- a requirement that local school boards establish procedures for public schools to report aggregate incidents of bullying under any applicable state or federal law, including responses to the incidents, and that school boards annually report this information to PED.

Section 4 addresses the establishment of bullying prevention programs, including:

- following the adoption of bullying prevention policies, requirements that local school boards:
 - establish an annual bullying prevention program for students, to be included in New Mexico health education content standards;
 - provide annual training to employees and volunteers; and
 - incorporate information on bullying prevention into new employee training; and

- a requirement for school districts and public schools to develop a plan for the publication of the policies, including:
 - making the policies available on public websites, in developmentally, culturally and linguistically appropriate variants;
 - identification of a point of contact for bullying-related concerns; and
 - annually informing parents and students about the policy;

Section 5 establishes the duties of PED under the provisions of the act, including:

- issuing guidance for bullying prevention programs and policies, according to the provisions of the act;
- reviewing adopted policies, for compliance with the act, within 120 days of submission by local school boards;
- within 180 days of the effective date of the act (July 1, 2015):
 - promulgation of rules for a model policy on bullying prevention for the benefit of local school boards; and
 - provision of guidance to local school boards relating to effective forms of progressive discipline, and to bullying prevention programs, to reduce bullying and other forms of school violence; and
- by February 2016, and annually thereafter, submit a report to the Legislative Education Study Committee (LESC) on the status of its implementation of the provisions of the act, which is to be made publicly available, and which shall include:
 - the aggregate number of incidents of bullying in New Mexico, as well as incidents of harassment under any applicable state or federal law;
 - the aggregate number of responsive actions taken by the public schools, according to the type of action;
 - a tabulation of the number of incidents associated with each distinguishing characteristic enumerated in Section 2 of the *Safe Schools for All Students Act*; and
 - PED's evaluation of the sufficiency of funding for bullying prevention programs, as well as recommendations for changes to improve bullying prevention in New Mexico.

Section 5 also permits PED to convene a group of experts to assist with the implementation of the provisions of the act, which may:

- include parents, teachers, administrators, local school board members, school mental health professionals, persons experienced in dealing with the issue of youth violence prevention, and direct service providers and advocates;
- assist with the development of a model policy in accordance with the provisions of the act;
- compile and make available to local school boards a list of free or low-cost bullying prevention programs from federal or private sources; and
- assist in the development of resources and events to inform all interested parties about the requirements of the *Safe Schools for All Students Act*.

Section 6 repeals Section 22-2-21 NMSA 1978 (*Bullying and Cyberbullying Prevention Programs*), which directs PED to establish guidelines for bullying and cyberbullying prevention policies, to have been promulgated by local school boards.

Fiscal Impact:

SB 393 does not contain an appropriation.

Fiscal Issues:

The Legislative Finance Committee (LFC), in its Fiscal Impact Report indicates that:

- school boards may incur additional costs to meet the requirements of the act to develop bullying prevention policies and procedures, as well as to identify an administrator to oversee each school board's anti-bullying program;
- the costs associated with the adaptation of low-cost programs and resources to assist in the development of the required programs, and with the dissemination of information to schools are undetermined but may be substantial; and
- the bill includes no allocation of funding for PED's oversight of the *Safe Schools for All Students Act*.

PED notes that the department has received a grant from the US Department of Education¹ that would allow for a full-time employee to oversee bullying prevention programs throughout the state, the annual cost of which would be \$ 72,660. This funding, however, is limited to just one 18-month period, expiring on March 31, 2016, after which there is no allocation of funding to support this position.

Technical Issues:

The analysis from PED suggests that the sponsor may wish to add language allowing guardians other than parents to meet with school administrators, according to the definition of "progressive discipline," in Section 2 of the act.

The Human Services Department notes that, while SB 393 would repeal § 22-2-21, NMSA 1978 (*Bullying and Cyberbullying Prevention Programs*) as of the bill's effective date of July 1, 2015, the provisions of the bill require school districts to adopt and enforce new bullying prevention programs and policies by July of 2016, potentially leaving a gap of one full year during which there may be no bullying statute in force. The provisions of the bill are unclear as to whether local school boards' policies that were adopted according to the provisions of § 22-2-21 would remain effective until July 1, 2016.

There may also be issues with the bill's treatment of charter schools:

- Section 3 requires each local school board, including charter school governing boards, to submit its bullying prevention policy to PED (see page 7, lines 22-25);
- Section 4, however, requires PED to review the policies "submitted by school districts" and to "provide written approval of each district's policy" (see page 9, line 25 through page 10, lines 1-4); and
- the term "school district" does not imply either a charter school or its governing board. Therefore, to avoid the potential for confusion or inconsistency, the sponsor may wish to change "school district" to "local school board," the term that is used elsewhere in Section 4.

¹ Public Education Department Grant to Support School Emergency Management

Substantive Issues:

According to the analysis by PED:

- public schools currently are required to implement bullying prevention programs and processes as defined in department rule,² which requires each school to adopt a policy addressing bullying that must include:
 - definitions;
 - an absolute prohibition against bullying and cyberbullying;
 - staff training on the issue of cyberbullying;
 - a method to ensure annual dissemination of the anti-bullying policy to all students, parents, teachers, administrators and all other school or school district employees;
 - procedures for reporting incidents of bullying and cyberbullying that ensure confidentiality to those who report bullying, as well as protection from reprisal, retaliation or false accusation against victims, witnesses or others with information regarding a bullying incident; and
 - consequences for bullying and cyberbullying that include:
 - compliance with state and federal IDEA requirements;
 - consequences for knowingly making false reports about bullying incidents;
 - procedures for investigation of bullying incidents by school administrators; and
 - a requirement that teachers and other school staff report any incidents of bullying;
- school districts within New Mexico currently utilize “progressive discipline matrices” as a strategy to reduce bullying and harassment, which:
 - provide recommended guidelines in the disposition of disciplinary situations;
 - allow flexibility in the manner of response to incidents of bullying, depending upon the circumstances of behavior or level of educational attainment of the involved student; and
 - align with PED’s Response to Intervention (RtI) framework;³
- the *Safe Schools for All Students Act* complements the coursework of school health education in New Mexico;
- while the act requires PED to provide guidance to school districts and charter schools on effective strategies to reduce bullying and other forms of school violence, PED currently maintains a website devoted to bullying prevention, which could accommodate the inclusion of model bullying prevention policies as required by the act;⁴ and
- many of the requirements of SB 393 are aligned with the goals of New Mexico’s Grant to Support School Emergency Management, and could be incorporated into training and guidance during the 18-month period covered by the grant (see “Fiscal Issues,” above).

In its analysis, the Department of Health (DOH) notes that:

- nearly 30 percent of American youth are estimated to be involved in bullying, either as a bully, a target of bullying, or both;

² 6.12.7 NMAC, “Bullying Prevention”

³ Please see, http://ped.state.nm.us/ped/RtI_index.html.

⁴ Please see, <http://ped.state.nm.us/ped/PEDAnti-Bullying.html>.

- a national survey of students in grades 6-10 found that:⁵
 - 13 percent of respondents reported bullying others;
 - 11 percent reported being bullied; and
 - 6.0 percent reported both being bullied and bullying others;
- according to other national statistics on the impact of bullying, particularly its heightening of the risk of adolescent suicide:
 - in 2011, approximately 28 percent of students aged 12 to 18 reported being bullied at school during the school year;⁶
 - also in 2011, approximately 9.0 percent of students aged 12 to 18 reported being cyber-bullied during the school year;⁷
 - approximately 30 percent of students are either bullies or victims of bullying, and 160,000 kids stay home from school every day because of fear of bullying;
 - suicide is the third leading cause of death among young people, resulting in approximately 4,400 deaths per year, as noted by the CDC:⁸
 - for every suicide among youth, there are at least 100 suicide attempts;
 - more than 14 percent of high school students have considered suicide, and approximately 7.0 percent have attempted it; and
 - victims of bullying are between two to nine times more likely to consider suicide than non-victims;⁹ and
 - there appears to be a strong relationship between bullying and experiencing legal and criminal problems later in life.¹⁰

According to the analysis offered by the Administrative Office of the District Attorney, SB 393 includes language that is open to subjective interpretation, such as “reasonable fear,” “substantial detrimental effect,” “substantially interfere,” and “intent,” which may lead to parental or student challenge of an official’s or an administrator’s interpretation of a potentially bullying act. However, it should be noted that the term “reasonable fear” is invocative of the “reasonable person standard” utilized in both tort and criminal law, wherein “reasonable fear” is said to lie where the threatened action would induce the apprehension of injury in the mind of a reasonable person. Moreover, this standard considers the status of the victim, so that a threat to a child, or to a person of diminished mental capacity, might be sufficient to produce the necessary apprehension of injury, while an identical threat to an adult, or a person of normal mental capacity, might not suffice.¹¹

⁵ See: Nansel, Overpeck, Pilla, Ruan, Simons-Morton, & Scheidt, *Bullying Behaviors Among US Youth: Prevalence and Association With Psychosocial Adjustment*, 2001

⁶ Please see, the National Center for Education Statistics, Indicators of School Crime and Safety, 2012, at: <http://nces.ed.gov/mwg-internal/de5fs23hu73ds/progress?id=Jo8+KufyH2>.

⁷ Id.

⁸ See, e.g.: Bullying Statistics, at: <http://www.bullyingstatistics.org/content/bullying-and-suicide.html>.

⁹ Id.

¹⁰ Please see, Olweus D., *Bullying at School: What we know and What we can do*, Wiley-Blackwell, 1993.

¹¹ See, e.g.: <http://legal-dictionary.thefreedictionary.com/assault>.

Background:

According to the New Mexico Youth Risk and Resiliency Survey (YRRS), 9.7 percent of New Mexico students were in a fight and 18.2 percent were bullied on school property within 30 days prior to participating in the survey.¹²

A number of other findings from the YRRS pertain to the attention in SB 393 to the terms “gender identity” and “sexual orientation” and related behaviors:¹³

- in 2013, 9.0 percent of New Mexico students identified as lesbian, gay, or bisexual (LGB), including 5.7 percent of males, and 12.7 percent of females, or about 12,500 young people;
- 14.9 percent of New Mexico LGB youth missed school due to feeling unsafe, compared with 4.9 percent of their straight peers;
- 32.3 percent of LGB youth reported being bullied on school property, as opposed to 16.2 percent of straight students;
- 27.6 percent of LGB young people reported being electronically bullied, compared with 10.9 percent of their straight peers;
- 38.3 percent of LGB students experience suicidal ideation in the year prior to the survey, while 12.7 percent of their straight counterparts experienced these feelings;
- 35.4 percent of LGB students made a suicide plan in the past year, as opposed to 10.6 percent of straight students;
- 28.5 percent of LGB youth actively attempted suicide in the year prior to the survey, compared with 7.0 percent of their straight peers; and
- 11.1 percent of LGB young people attempted suicide resulting in healthcare treatment, while 2.1 percent of straight students did so.

Committee Referrals:

SEC/SJC

Related Bills:

SB 381 *Carlos Vigil Memorial Act & Bullying*
SM 83 “PFLAG Day”

¹² The New Mexico Youth Risk and Resiliency Survey is a tool to assess the health behaviors and resiliency factors of New Mexico’s middle and high school students, jointly conducted by the Public Education Department, the Department of Health, and the UNM School of Medicine Prevention Research Center as part of the national Centers for Disease Control Youth Risk Behavior Surveillance System. See, generally: <http://www.youthrisk.org>. See, also: “Overview of New Mexico LGBT Health Data,” for the Legislative Health Services Committee, by James Padilla, pp.7-8, at: <http://www.nmlegis.gov/lcs/handouts/LHHS%20112414%20Item%205%20James%20Padilla,%20Epidemiologist%20DOH,%20Overview%20of%20NM%20LGBT%20Health%20Data.pdf>.

¹³ Id.