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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 1st Session, 2021

Bill Number	<u>HB142</u>	Sponsor	<u>Thomson</u>
Tracking Number	<u>.218227.3</u>	Committee Referrals	<u>HHHC/HEC</u>
Short Title	<u>School Task Force on Sexual Misconduct</u>		
Analyst	<u>Canada</u>	Original Date	<u>2/04/2021</u>
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BILL SUMMARY

Synopsis of Bill

House Bill 142 (HB142) requires public and private postsecondary educational institutions to adopt trauma-informed policies for the investigation of allegations of sexual assault, domestic violence, dating violence and harassment, or stalking involving students and employees. HB142 also requires public and private postsecondary educational institutions to enter into a contract with a community-based organization to provide free services for students. The bill requires these institutions to provide students with outreach and prevention programs, including at student orientation. HB142 requires the task force on sexual misconduct to administer a climate survey to all postsecondary education institutions and requires postsecondary institutions to conduct a sexual misconduct climate survey every two years beginning in the spring semester of 2023.

HB142 adds a new section to the Public School Code that requires the Public Education Department (PED) to adopt trauma-informed policies and trauma-informed responses for the investigation of and disciplinary procedures to address allegations of sexual assault, domestic violence, dating violence and harassment, or stalking involving a student, faculty member, employee, school volunteer or contractor. HB142 requires schools to the extent feasible to enter into memorandum of understanding agreements or collaborative partnerships with existing on-campus and community-based organizations to provide free services to students for counseling, health care, mental health care, among other services. The bills requires schools to implement prevention and outreach programs addressing affirmative consent, sexual assault, domestic violence, dating violence and harassment, or stalking.

HB142 changes the requirements of student health education courses, required for graduation, to include curriculum that addresses discussions of “affirmative consent,” among other concepts. These new requirements should apply to students entering the ninth grade in the 2021-2022 school year and subsequent school years.

HB142 creates a task force on sexual misconduct to include the Higher Education Department secretary, a federal civil rights coordinator, and postsecondary students in multi-cultural or diversity-focused organizations, a representative from a statewide sexual assault coalition, and a

researcher with expertise in developing climate surveys. The bill requires the task force to conduct sexual misconduct climate surveys and listen to the public on their sexual misconduct experiences.

This analysis focuses on the impacts to New Mexico public schools.

FISCAL IMPACT

The bill does not have an appropriation.

Costs to implement the provisions of HB142 are difficult to determine based on the availability of resources currently. Increased costs for school districts and charter school can be anticipated for expanded training and services provided to students.

It is unclear how the bill will impact the number of potential claims of sexual or ethical misconduct against school employees, volunteers, and contractors, which will impact the potential cost to school districts and charter schools. Increased attention and expansion of investigations and training requirements has the potential to increase the number of claims filed by exposing more instances of ethical or sexual misconduct.

The bill does not include additional funding for PED to develop new trainings, even though the bill requires PED to make expanded training provisions related to sexual assault and other instances. The New Mexico Public School Insurance Authority (NMPSIA) noted during recent task force meetings for House Memorial 57, passed during the 2019 legislative session that required the task force to look into similar topics and trainings, they would be willing to help develop new trainings related to expanded ethical misconduct knowledge. For HB142, PED could also potentially partner with NMPSIA in the development of these trainings. NMPSIA has paid an increasing amount to settle sexual abuse and molestation cases in recent years, which has driven up rates for coverage. NMPSIA reinsures large amounts of risk, but the large losses over the years related to these types of claims has driven up the cost of the rates they are able to secure, and premiums have become more expensive for school districts and charter schools. Between FY18 and FY21, liability risk premiums have increased by an average of 9 percent. The impact of added training on the amount of claims filed is unclear.

SUBSTANTIVE ISSUES

Sexual and Ethical Misconduct by School Employees. Research shows an estimated 10 percent of kindergarten through 12th grade students nationwide will be the victims of sexual abuse from a school employee by the time they graduate from high school. Additionally, it is estimated less than 11 percent of educators nationally will report misconduct by another employee. The New Mexico Public Schools Insurance Authority (NMPSIA) reports \$80 million in insurance pay-outs associated with claims of improper touching since 1987 and shares it receives an average of 9.5 claims per year from New Mexico public schools covered under NMPSIA.

Health Courses. HB142 requires middle or high school health education class currently required for high school graduation to include age-appropriate prevention and awareness of sexual abuse and assault training, including a specific standard for consent that is affirmative, conscious, and voluntary, similar to the content that would be required at postsecondary institutions. One in four teen girls every year are verbally or physically pressured into having sex. Additionally, one in three teens are a victim of sexual or other abuse by a dating partner each year.

Reporting of Sexual Assault and Other Ethical Misconduct. HB142 requires PED to adopt trauma-informed policies and trauma-informed responses for the investigation and disciplinary procedures for addressing allegations of sexual assault, domestic violence, dating violence and harassment, or stalking involving a student, faculty member, employee, school volunteer, or contractor, both on and off campus. The bill requires that policies must include how the school will ensure confidentiality for those involved, protection for individuals who are participating as a complainant or witness, and description of the role of the school staff supervisor, among other elements.

The bill adds a section to Chapter 2 of Section 22 NMSA 1978 to make these changes by expanding the duties of PED to develop sexual assault related policies related to investigation and disciplinary procedures. Currently, within the School Personnel Act, Section-10A-5 NMSA 1978, school districts, charter schools, and PED have responsibilities in investigating ethical misconduct, including sexual harassment and sexual assault. By not adding this related content to the School Personnel Act, implementing these changes to current investigations and reporting procedures may be confusing.

Free Student Services. HB142 requires schools to enter into memoranda of understandings with rape crisis centers and other on-campus and community-based organizations, to the extent feasible, to provide students with free services for counseling, healthcare, complainant advocacy, legal assistance, and resources for the responding party and complainant. Schools must also implement comprehensive prevention and outreach programs addressing affirmative consent, sexual assault, domestic violence, dating violence and harassment, or stalking. As a part of this effort, schools are required to educate the student body on the new policies developed by PED. It is unclear if this is a mandate for schools and what the repercussions of not adhering to these requirements would be.

School-based health centers are in 46 of New Mexico's 89 school districts, a little more than half of school districts statewide. Since these partnerships are already developed, schools can partner with school-based health centers to expand services to meet requirements of HB142. The bill does not include funding to school districts and charter schools to provide the expansion of these services, creating a potential barrier for schools that do not have a school-based health center and that are in rural areas of the state with less access to these services.

Training for School Employees. HB142 requires PED to create a comprehensive, trauma-informed training program for school officials involved in investigating sexual assault, domestic violence, dating violence, and harassment, or stalking cases. The bill adds a section to Chapter 2 of Section 22 NMSA 1978 to make these changes by expanding the duties of PED to develop sexual-assault-related trainings related to investigation and disciplinary procedures. Currently, within the School Personnel Act, Section-10A-32 NMSA 1978, PED is required to have a training program developed for all licensed school employees that includes elements that address the detection and reporting of child abuse and neglect and substance abuse. Not adding this related content to the School Personnel Act may cause confusion when implementing these changes to current investigations and reporting procedures.

RELATED BILLS

Relates to HB128, School Personnel Background and Training, which implements recommendations from PED's task force on school ethical misconduct as required by House Memorial 57 passed during the 2019 legislative session focused on hiring, training, and reporting practices related to ethical misconduct in the public school system.

SOURCES OF INFORMATION

- LESC Files

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