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## FISCAL IMPACT REPORT

**SPONSOR** HJC **ORIGINAL DATE** 02/24/21  
**LAST UPDATED** 03/13/21 **HB** 128/HJCS/aSEC  
**SHORT TITLE** School Personnel Background & Training **SB** \_\_\_\_\_  
**ANALYST** Jorgensen

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with House Bill 96

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From (Original Bill)

Children, Youth and Families Department (CYFD)  
 Department of Public Safety (DPS)  
 New Mexico Public Schools Insurance Authority (NMPSIA)  
 Public Education Department (PED)

### SUMMARY

#### Synopsis of SEC Amendment

The Senate Education Committee amendment to the House Judiciary Committee substitute for House Bill 128 (HB128/HJCS) makes changes to the short title and strikes sections 1 through 8 of the bill and replaces them with sections largely similar to the House Judiciary Committee substitute for HB128. However, the SEC amendment removes sections of the bill amending the Children’s Code and reporting requirements originally included in the judiciary substitute. The sections removed would have required reporting child abuse committee by a nonparent, guardian, or custodian to CYFD.

The SEC amendment adds a duty to report ethical misconduct for school district personnel, a school employee, a contractor or a contractor’s employee to a superintendent or the Public Education Department (PED). The bill requires PED to report allegations to law enforcement agencies if the allegations are criminal in nature. Additionally, the amendment adds ethical misconduct to the list of reasons for which PED would be allowed to deny, suspend, or revoke a department issued license.

Synopsis of Bill

The House Judiciary Committee Substitute for House Bill 128 (HB128) proposes several preventative and responsive measures to address ethical and sexual misconduct by public school employees, including: background checks; disclosure requirements for applicants to public school employment and applicants' prior employers; training for school staff and volunteers on recognizing and reporting instances of abuse; support for investigations of abuse; cross-agency communication among law enforcement, the Children, Youth and Families Department (CYFD), and the Public Education Department (PED); and definitions of relevant terms.

HB128/HJCS makes the administration of background checks more explicitly related to ethical misconduct by school personnel. Under the provisions of HB128/HJCS applicants for employment at schools will have to provide a list of former employers and disclose whether the applicant has ever been under investigation for or found to have committed an offense related to child abuse or neglect, sexual misconduct, or any sexual offense. Additionally, applicants will be required to disclose whether they have ever been investigated or found to have violated any ethical rule of a previous employer or if they have ever had a professional license or certification denied, suspended, or revoked due to a finding of child abuse or ethical misconduct. If allegations were false or unsubstantiated, the applicant is not required to report them.

HB128/HJCS amends the School Personnel Act so that superintendents, state agency administrators, and local school boards or school governing authorities would no longer be prohibited from disclosing to the public reasons for termination actions taken against school personnel. Additionally, the bill permits a record to be made of termination proceedings and related appeals, which is currently prohibited under the act. Records of arbitration proceedings under appeals to termination decisions may be deemed an official transcript of such proceedings.

HB128/HJCS adds a number of definitions to the School Personnel Act, including definitions for "contractor," "moral turpitude," "school volunteer," and "unsupervised contact with children." "Ethical misconduct" is defined as discriminatory practice based on race, ethnicity, sex, and gender identity among other factors. Additionally, sexual misconduct is defined within ethical misconduct.

HB128/HJCS requires PED to maintain a list, updated monthly, of the names of persons reported to the department for convictions or allegations of ethical misconduct, as defined by the bill, and provide this list to a school governing authority upon request.

HB128/HJCS requires local school boards to adopt policies providing for the tracking and coordination of reports of child abuse made by school personnel, contractors, and volunteers, while protecting the identity of victims of abuse, and provides for the department to take licensure action against licensed school personnel who fail to report child abuse, neglect, or ethical misconduct as required. Additionally, all school personnel, including volunteers and contractors and their employees, are required to complete training in the detection and reporting of child abuse and neglect. The department is directed to develop or adopt these required training programs and coordinate with public schools, the Human Services Department (HSD), the Department of Health (DOH), the Early Childhood Educational and Care Department (ECECD), and the Children, Youth and Families Department (CYFD), as well as to promulgate rules for the administration of the required training.

HB128/HJCS allows a superintendent to designate a representative to act on their behalf in investigations of ethical and sexual misconduct. Superintendents include head administrators of charter schools, regional educational cooperatives, special schools, and state agencies.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

### **FISCAL IMPLICATIONS**

None of the responding agencies anticipated cost increases as a result of enactment of HB128/HJCS as amended. However, NMPSIA reports that sexual misconduct is a major cost driver for liability coverage. The agency reported recent claims payments of \$22.3 million related to misconduct by a single individual. Should the provisions of the bill reduce ethical and sexual misconduct, it may result in decreased claims, and ultimately to savings to school districts as insurance costs fall.

The SEC amendment removes provisions affecting the Children’s Code and CYFD. As a result, CYFD does not anticipate any costs associated with HB128/HJCS as amended. In their analysis of the provisions of HB128/HJCS, CYFD stated that redefining child abuse or neglect to include adults who are not a parent, guardian, or legal custodian of the child would result in additional investigations costing approximately \$7.3 million annually.

It is unclear if the requirements of HB128/HJCS as amended will increase costs for school districts. During discussions of this legislation during House Memorial 57 taskforce meetings, some taskforce members representing school districts raised concerns that certain expanded requirements related to tracking reports of child abuse and training in recognizing and reporting abuse might increase expenses to school districts and charter schools.

### **SIGNIFICANT ISSUES**

PED reports the following:

HB128 arises from the recommendations of the House Memorial 57 Taskforce Strategic Plan on Educator Ethical Misconduct. HM57 was passed in the 2019 Regular Legislative Session and required PED convene a taskforce to examine issues related to the investigation, reporting, and documentation of ethical misconduct involving moral turpitude, and to develop a strategic plan to ameliorate these concerns, with specific regard to hiring, training, and reporting practices and policies, as well as potentially related necessary legislative changes. The taskforce included representation from PED, CYFD, the New Mexico School Boards Association, the Coalition of Educational Leaders, the Attorney General’s Office, the Public Schools Insurance Authority, the Albuquerque Public School District, the New Mexico PTA, the New Mexico Coalition of Sexual Assault Programs, and Cooperative Educational Services. The taskforce met three times and made a number of recommendations, including suggested legislative changes, which were reported to the Legislative Education Study Committee at its November 2020 hearing. HB128 encompasses most of those recommendations.

The primary problem the bill seeks to curtail is the practice where a school employee who has been accused of or disciplined for abuse of a student or child leaves their current

place of employment to move to a new area and new employer that are unaware of the offense they have committed or allegations of abuse levied against them. The bill requires disclosure by prospective school employees or volunteers of all prior employment by schools or employment that involved unsupervised contact with children, as well any instances or allegations of child abuse, and any separation from employment related to such instances or allegations. The bill likewise requires similar disclosure of an applicant's history, within 30 days, by a prospective employee's relevant prior employers. The bill protects from liability former employers who report such information in good faith. These measures are based upon "SESAME" laws that have been enacted in a number of other jurisdictions, including Pennsylvania, Connecticut, New Jersey, Nevada, and Maryland.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB128/HJCS conflicts with HB96 which specifically disallows any board or other agency with jurisdiction over employment by the state or any of its political subdivisions from the use of the term "moral turpitude" in listing offenses which may result in disqualification from licensure.

CJ/al/sb/al