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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
56th Legislature, 1st Session, 2023

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|------------------------|--|----------------------------|------------------|
| Bill Number | <u>SB283/aSEC</u> | Sponsor | <u>Pope</u> |
| Tracking Number | <u>.223845.2SA</u> | Committee Referrals | <u>SEC/SJC</u> |
| Short Title | <u>Reducing Suspensions and Expulsions Act</u> | | |
| Analyst | <u>Condon</u> | Original Date | <u>2/9/2023</u> |
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BILL SUMMARY

Synopsis of SEC Amendment

The Senate Education Committee (SEC) amendment to Senate Bill 283 (SB283/aSEC) changes the provisions to go into effect beginning July 1, 2024 instead of January 1. Additionally, the amendment corrects a statute listed in Section 3 to reflect that enrolling entities can expel or suspend a student who has violated Section 30-7-2.1 NMSA 1978, which describes the unlawful carrying of a deadly weapon on school premises.

Synopsis of Original Bill

Senate Bill 283 enacts the “Reducing Suspensions and Expulsions Act” which prohibits expulsions and eliminates most out-of-school suspensions for children aged six weeks to eight years on a child care assistance contract, and provides exceptions and guidelines for warranted suspensions and expulsions.

SB283 defines an "enrolling entity" to mean any publicly funded community-based pre-kindergarten program, public school or charter school that provides educational services. An "enrolling entity" also includes any licensed child care facility in New Mexico that serves children aged six weeks through eight years and is paid for by the child care assistance programs operated by the Early Childhood Education and Care Department (ECECD).

SB283 requires data collection and reporting by enrolling entities, beginning August 15, 2025 and by August 15 of each year thereafter, and each enrolling entity must submit an annual report to ECECD and the Public Education Department (PED) that includes disaggregated data by each of the demographic categories identified in SB283.

FISCAL IMPACT

The bill does not contain an appropriation.

SUBSTANTIVE ISSUES

Child Care Assistance Contracts. SB283/aSEC prohibits expulsions and suspensions in licensed child care facilities only for children who are on a child-care assistance contract. ECECD’s child care assistance program subsidizes the cost of child care for families at or below 400 percent of the [federal poverty level](#) that are working, in school, or searching for employment. Graphic 1 shows the income levels, depending on persons in the household, that meet ECECD requirements for subsidized child care and enrolling children in a child care assistance contract. It is not clear how many children are currently served by these contracts.

Graphic 1: 2023 Poverty Guidelines

| Persons in Household | 100% | 400% |
|-----------------------------|-------------|-------------|
| 2 | \$19,720 | \$78,880 |
| 3 | \$24,860 | \$99,440 |
| 4 | \$30,000 | \$120,000 |
| 5 | \$35,140 | \$140,560 |
| 6 | \$40,280 | \$161,120 |

Pre-K To Second Grade Suspensions and Expulsions. In 2010, Yale Child Study Center researchers released findings that prekindergarten students are expelled at a rate more than three times that of children in grades kindergarten through 12th grade. The lowest rates of expulsion were reported by teachers who had an ongoing, regular relationship with a behavioral consultant. In classrooms where the teacher had no access to a behavioral consultant, students were expelled about twice as frequently. The [Foundation for Child Development](#) analyzed similar studies and data to understand the scope of preschool expulsions and suspensions, and reported that rates were highest for older preschoolers and African Americans, and boys were more than four and a half times more likely to be expelled than girls. The report found several characteristics of prekindergarten and child care programs, including both structural and process variables, which are associated with an increased likelihood of expulsion. Notably, a higher number of children per teacher predicts increased expulsion likelihood in state-funded prekindergarten programs, and of prekindergarten teachers who reported an elevated level of job stress, 14.3 percent reported an expulsion in the past year, compared to only 4.9 percent who reported low levels of job stress.

A [2018 report](#) by Growing Up New Mexico surveyed a variety of early childhood providers in New Mexico including home-based care, Head Start, early IDEA, licensed child care centers, CYFD prekindergarten and PED prekindergarten to understand early childhood suspension and expulsion practices in New Mexico. Key findings of the survey revealed that on average, 25 percent of preschoolers present challenging behaviors, about 33 percent of providers had a child disenrolled due to challenging behaviors in the last year, and 11 percent of providers reported expelling a child due to challenging behaviors in the last year. Key findings also highlighted the need to support child care providers with better training and support to work with children presenting challenging behaviors, and the report found that more than 66 percent of respondents said increased training on socio-emotional development would help, as would increase access to early childhood mental health consultation and increased support for families to access needed services. Most respondents had never received a consultation or coaching visit from an early childhood mental health professional. The report recommended getting better data that collects information on suspension and expulsion practices in early childhood services, including tracking where children end up after disenrollment, expanding early childhood mental health services, and increasing training opportunities to address challenging behaviors.

The U.S. Department of Education’s Office of Civil Rights makes estimations based on data collected from all of the nation’s school districts and schools—approximately 17,300 school districts and 96,300 schools. In addition to reporting on the number of preschool students receiving one or more out-of-school suspensions and expulsions, data also identifies students by race/ethnicity, disability status, and English proficiency. The [2017-2018](#) data reveals that 6 New Mexico students received one or more out-of-school suspensions. All suspended students were male, and none were students with disabilities served under IDEA nor were they English language learners. For the same time period, no expulsions were reported. In their agency analysis, PED reports that 942 children from six weeks to age 8 were suspended or expelled from school in 2022. Some young children were suspended for as long as 10 days. It is not clear if younger children that were suspended or expelled from school during this period were on a child care assistance contract.

Exemptions in SB283/aSEC. In addition to provisions of SB283/aSEC applying only to children on a child care assistance contract when in licensed child care programs, meaning that children of families paying full price or not on a child care assistance contract would not be protected by the provisions of SB283/aSEC, this bill provides several exemptions that would allow an enrolling entity to suspend or expel a child or student. SB283/aSEC allows out-of-school suspension if it is determined by the enrolling entity that the student or child has willfully caused or attempted to cause bodily injury or threatened serious bodily injury to another person, except in self-defense. Further, the bill does not prevent an enrolling entity from expelling or suspending a student who has been found to have violated Section 30-7-2.1 NMSA 1978.

Similar Legislation in Other States. Many states have passed legislation to reduce suspensions and expulsions for prekindergarten through second grade students with varied outcomes. Connecticut passed legislation in 2015 that narrowly defined when young children can be suspended from school and required that schools only suspend children in second grade or below if the child’s in-school behavior is “violent, endangers others or is of a sexual nature,” but state Education Department data shows more than 1,100 suspensions were issued to 670 students in prekindergarten through second grade in the 2019-2020 school year. Children of color made up about 70 percent of the suspensions.

In 2017, Texas passed HB674 which prohibits out-of-school suspensions in these early grades, with exceptions for very rare circumstances such as prekindergarten through second grade students bringing weapons or drugs to school. The law also outlines available strategies that effectively improve behavior while keeping children in class. While out-of-school suspensions decreased, in-school suspensions remained virtually the same, dipping slightly from 64.7 thousand in the 2015-2016 school year to 62.5 thousand in the 2017-2018 school year. In prekindergarten through second grade, districts also disproportionately suspended students in foster care, students in special education, Black students, and boys. The greatest disparity was among students in foster care, whom Texas school districts suspended more than three times as often as other students in prekindergarten through second grade.

In 2019, Colorado passed HB19-1194 to limit the suspensions and expulsions of children in grades preschool through second grade and requires districts to report on any children in these grades who are removed from class, suspended or expelled, and the incident that led to the disciplinary action. The school district, charter school or early childhood program may impose an out-of-school suspension or expel a student in preschool through second grade only if the conduct occurred on school grounds, in a school vehicle or school activity or sanctioned event that:

- Involves the possession of a dangerous weapon;
- Involves the use, possession or sale of a drug or controlled substance; or
- Endangers the health and safety of others.

The school district, charter school or early childhood program may suspend or expel a child if the school district, charter school or early childhood program determines that failure to remove the student from the school building would create a safety threat that cannot otherwise be addressed and considers the criteria above before suspending or expelling the student.

The National Center on Children in Poverty released a report in [2021](#) that looked at policies in all 50 states to understand the different approaches to reduce or eliminate expulsion and suspension from early care and education (ECE) settings. Among their findings, the report highlighted several key barriers to developing and implementing effective expulsion and suspension policy:

- Governance across more than one department: Developing common definitions of expulsion and suspension and designing specific policies, across all types of ECE programs is challenging.
- Lack of resources for supports: A lack of funding for professional development and early childhood mental health consultation makes it difficult for ECE programs to comply with policies that discourage or prohibit exclusionary practices. Simply banning expulsion does not help programs increase their capacity to respond to children’s challenging behaviors with new practices.
- Communication and provider buy-in: When a policy is established, it is challenging to make the policy known to all ECE providers and to secure their buy-in, especially if it does not include timely, effective supports.
- Guidance instead of regulation: Policy that is established in the form of guidance, or legislation that encourages rather than requires actions, is difficult to enforce.
- Collecting data on prohibited practices: It is challenging to develop and use methods for collecting data on expulsion and suspension because providers must self-report on actions that reflect non-compliance with the state policy.

The report highlights that while data collection is critical to understand the scope of the problem and provide support to students and teachers, it is one of the most difficult components of implementing policies meant to curb suspensions and expulsions. Twelve states require and 8 states encourage data collection to monitor the policy’s impacts on expulsion and suspension reduction and disparities in expulsion and suspension. However, follow-up discussions with survey participants indicated that states have made limited progress in developing effective methods for collecting this data, although several states continue to work on developing data reporting procedures. Arkansas is one state that does collect extensive data. It obtains information about program needs and whether expulsions are prevented in programs that receive assistance through a centralized warm-line; currently however, data are collected from programs that request assistance, not from all ECE programs in the state.

Child Care Sector Staff and Early Childhood Educators. With data demonstrating that teachers with higher stress levels expel their students at higher rates, consideration should be given to the support child care providers and early childhood teachers need to implement new requirements

effectively. Analysis of July 2022 employment numbers from the Bureau of Labor Statistics shows that the child care workforce remains 8.4 percent below the number employed in February 2020. ECECD reports that despite strong demand for early education and care in most New Mexico communities, many child care programs and service providers report understaffing as a major barrier to operating at capacity or expanding operations. A [2021](#) Annual Child Care Landscape Analysis looks deeper into the issues affecting the declining child care workforce, including increased stress since the Covid-19 pandemic and stagnantly low wages. According to data collected in May 2022, 34 percent of child care workers reported that their programs experienced staffing shortages prior to Covid-19, and 61 percent reported that their programs were currently experiencing shortages, which have led to many child care providers feeling more stressed, anxious and exhausted.

Early childhood teachers are also facing concerning rates of stress and burnout. A [2022](#) report utilizing nationwide survey results found that about half of early childhood educators are experiencing high levels of burnout and stress, and 43 percent say staffing shortages are affecting their stress level and 20 percent of early childhood educators said they are considering leaving the profession. Of that group, 40 percent cited mental health as their reason, and 43 percent said compensation is driving their decision.

Growing Up New Mexico's [2020](#) Early Childhood Workforce Survey Report outlines the salary and compensation levels for child care workers, and preschool and kindergarten teachers. The report finds that salaries in the early childhood workforce have decreased or stayed constant over time. According to the Occupational Employment Statistics produced by the U.S. Department of Labor, salaries have decreased by 17 percent between 2010 and 2018. This drop is attributed to the decrease in salary among education administrators of preschool and child care centers/programs who have seen a 42 percent decrease in their salary. Salaries for preschool and kindergarten teachers have increased over time but marginally. Preschool teachers have seen a 16 percent increase in their salary between 2010 through 2018 whereas kindergarten teachers have seen a 4 percent increase in salary.

The report found that the rural workforce fared slightly better in their compensation. Over half of the early childhood workforce (59 percent) in rural areas make less than \$30 thousand a year. In urban areas, 69 percent of the early childhood workforce makes less than \$30 thousand a year. About the same amount of the early childhood workforce make between \$30 thousand to \$44.9 thousand in urban (12 percent) and rural (15 percent) areas. On the higher end of the salary spectrum, individuals in rural areas are more likely to have higher salaries than in urban areas.

ADMINISTRATIVE IMPLICATIONS

ECECD did not note any administrative implications to their department in their agency analysis. PED would need to review and amend as needed rules pertaining to student discipline.

The requirements for enrolling entities to report data as established in SB283/aSEC would require education and training for staff of enrolling entities to ensure awareness of the new requirements and compliance in data submission.

RELATED BILLS

[SB367](#) School Attendance Changes, prohibits out-of-school suspension or expulsion as the punishment for absences.

SOURCES OF INFORMATION

- LESC Files
- Early Childhood Education & Care Department (ECECD)
- Public Education Department (PED)

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