

LFC Requester:	Sunny Liu
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original _____ **Amendment** _____
Correction _____ **Substitute** _____

Date Prepared: Eli Fresquez
Bill No: HB 296

Sponsor: Rep. Duncan, Montoya,
Townsend, Martinez,
Armstrong, etc.

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Short Title: Parents Bill of Rights Act

Person Writing Analysis: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

HB 296, "Parental Bill of Rights Act," adds new sections to the Public School Code aimed at transparency and promoting an active parental role in various aspects of public education.

HB 296, Section 2, mandates the Public Department of Education (PED) to publish any changes to the state’s academic standards on its website in English and Spanish and to disseminate this information to the public. 296, Section 3, requires school districts to ensure transparency and parental engagement by posting key educational information online, including curricula, budgets, and engagement plans. It mandates notifications to parents about their child's reading levels, school events, and any significant changes in programs or policies. Districts must also facilitate parent reviews of educational materials, allow parental input in policy developments, and ensure all communications are available in English and Spanish. Section 4 lists parental rights in education, allowing them to review curricula, school budgets, and library materials and receive updates on school safety and program changes. It ensures parental involvement in policy development, provides updates on academic progress, and mandates feedback opportunities. Section 5 includes actions that school districts are prohibited from taking without parental notice and/or consent, such as acting as an agent for parental consent in technology use or vaccinations, selling student information, administering medical examinations without consent, and using personal information for marketing purposes.

FISCAL IMPLICATIONS

HB 296 does not contain an appropriation.

Fiscal impacts could include PED and school districts' increased costs related to IT and communication for updating websites, higher administrative workloads for public reporting, expenses for making educational materials accessible to parents, and additional oversight to ensure compliance with new requirements.

SIGNIFICANT ISSUES

HB 296: Parents' rights intersect with children's rights, necessitating an analysis and balancing of

the different rights and interests. The United States Supreme Court has held that the Due Process Clause of the Fourteenth Amendment safeguards parents' inherent rights to make decisions regarding the upbringing, custody, and management of their children (*Troxel v. Granville*, 530 U.S. 57, 66 (2000); U.S. Const. amend. XIV). The New Mexico Supreme Court also supports this viewpoint, recognizing a wide array of parental rights and obligations (*Tue Thi Tran v. Bennet*, 2018-NMSC-009, ¶ 25, 411 P.3d 345). Nonetheless, the state of New Mexico places a significant emphasis on the child's best interest. Judicial decisions such as *In re Guardianship of Victoria R.* (201 P.3d 169, 173, 177 (N.M. Ct. App. 2008)) and *Williams v. Williams* (201 P.3d 169, 173, 177 (N.M. Ct. App. 2008)) illustrate instances where the courts have prioritized the welfare of the child, occasionally bypassing the stringent scrutiny typically applied to parental rights.

These legal precedents highlight the complex balance between protecting children's rights and well-being and honoring parents' rights, especially in matters of education.

For example, issues could arise regarding parental consent for medical actions. HB 296 Section 5B prohibits schools from acting as *agents* for parental consent for vaccinations, which could intersect with state laws on health care consent for minors, such as in emergencies or exigent circumstances (e.g., NMSA 1978, § 24-10-2 and NMSA 1978, § 24-5-3 which allows for some treatments without parental consent under certain conditions). Additionally, the use of the term agent could conflict with 32A-6A-15(C), which states that “A clinician or other mental health and developmental disabilities professional shall promote the healthy involvement of a child’s legal custodians and family members in developing the child’s treatment plan, including appropriate treatment for children fourteen years of age or older.”

HB 296 Section 5D requires parent consent for medical examinations or screenings; however, this provision could conflict with NM Stat § 24-7A-6.2 (2021) and NM Stat § 32A-6A-15, which enables minors aged 14 and above to independently consent to various medical, mental, and behavioral health services, stating “A child fourteen years of age or older is presumed to have the capacity to consent to treatment without consent of the child's legal custodian, including consent for individual psychotherapy, group psychotherapy, guidance counseling, case management, behavioral therapy, family therapy, counseling, substance abuse treatment or other forms of verbal treatment that do not include aversive interventions...”

HB 296 Section 3R of the bill mandates school districts to disclose information from students' education records upon parental request. Other provisions of the bill include but are not limited to the disclosure of information from student records, parental access to educational materials, and notification requirements about violent incidents or cyberattacks. These provisions must align with the Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g), stipulations on the disclosure of personally identifiable information from education records. This includes ensuring that disclosures do not infringe on the rights of students (when they reach the age of majority or attend a post-secondary institution) and are conducted in a manner that protects the confidentiality and security of the information disclosed, consistent with both federal and state legal frameworks.

HB 296’s emphasis on parental involvement, such as in Sections 3A and 4C, where parents have the right to review curricula and meet with teachers, must be examined to comply with the requirements for parental participation in the IEP process for students with disabilities. See. Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq.) Although the bill does not explicitly address the rights of students with disabilities, any changes to curricula or educational standards (as mentioned in Sections 2 and 4) must comply with IDEA's mandates for providing free appropriate public education (FAPE) to students with disabilities and ensuring parental involvement in the IEP process. Additionally, HB 296’s impact on specific New Mexico special education laws may need to be examined, including Special Education Rule NMAC 6.31.2, Standards for Excellence NMAC 6.29.1, and Student Rights and Responsibilities NMAC 6.11.2.

HB 296’s Sections 4P and 4Q discuss parental rights regarding information about gender identity participation in athletics and the use of restrooms and changing rooms. These sections could raise Title IX considerations related to discrimination based on sex or gender identity. See. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681–1688). The New Mexico Human Rights Act New Mexico Human Rights Act is NM Stat § 28-1-1 (2023) and has recently been amended to include protections against discrimination for LGBTQ+ individuals, ensuring equal rights in employment, housing, and public accommodations. Similarly, the New Mexico Civil Rights Act further reinforces the state's commitment to preventing discrimination and upholding civil liberties for all residents, including those related to gender identity.

HB 296’s sections regarding education standards and curricula transparency in Sections 2 and 3A will need to be examined for compliance with state regulations and on curricula development and transparency.

HB 296’s rights to inspect educational materials in section 3F, which allows parents to inspect school library materials, touches on the balance between parental rights and educational content selection, possibly implicating academic freedom and censorship concerns. The Supreme Court case Board of Education, Island Trees Union Free School District No. 26 v. Pico, 457 U.S. 853 (1982), addressed the removal of books from school libraries, focusing on First Amendment rights.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

Although HB 296 includes English and Spanish in its reporting and communication, it should be noted that other languages may also be required to comply with language access requirements under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.; 45 C.F.R. § 80.1 et seq.; and 28 C.F.R. § 42.101–42.112) This will also include Section 9-1-5 NMSA 197 and language access requirements for state agencies.

HB 296 extensive reporting requirements and communication, including publishing on websites, must comply with the Title II of the Americans with Disabilities Act of 1990 (“ADA:” 42 U.S.C. § 12132) and Web Content Accessibility Guidelines (WCAG) 2.1 Level AA.

A review and updates to the New Mexico Public Education Code, N.M. Stat. Ann. §§ 22-1-1 to 22-34-9 (2021), and other New Mexico laws related to children will also likely need to be

updated, including but not limited to New Mexico’s Children’s Code, see N.M. Stat. Ann. § 32A-1-1 et seq. and New Mexico Administrative Code (NMAC). Additionally, HB 296 potential impact on the state’s Indian Family Protection Act and the federal Indian Child Welfare Act (ICWA) should also be examined.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

The term “parent” is used throughout HB 296, and it should be noted that “parent” includes a guardian or other person having custody and control of a school-aged person, NM Stat § 22-1-2 (2021).

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A