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FISCAL IMPACT REPORT

ORIGINAL DATE 02/25/11
 SPONSOR Madalena LAST UPDATED 03/12/11 HB 321/aHJC
 SHORT TITLE Educational Data System Revisions SB _____
 ANALYST Gudgel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth & Families Department (CYFD)

Public Education Department (PED)

Higher Education Department (HED)

SUMMARY

Synopsis of HJC Amendment

House Judiciary Committee amendments change data system council membership from the directors of a 2 nonprofit organizations that have a demonstrated interest in educational outcomes for children to 2 community organizations that have a demonstrated interest in educational outcomes for children; establish that the 4 parents and 2 directors of community organizations will not have access to personally identifiable information; requires report of the number of days students were unable to attend their home school as a result of placement in a CYFD secure facility; and clarifies that the expanded report requirements are to be included in the 2012 report.

Synopsis of Original Bill

House Bill 321 amends the Public School Code, expanding membership in the data system council and expands the report requirements to include suspension, expulsion, arrest, citation and CYFD referral data.

FISCAL IMPLICATIONS

The Data Warehouse Council has applied for federal funding to support the creation of a prekindergarten through workforce data system, but to date has received no funding. HED indicates that the maintenance of such a system will probably require continued operating costs, especially as the scope of relevant student data collection expands. According to the Data Quality Campaign, it is difficult to estimate the cost of sufficiently creating, staffing, and maintaining a statewide longitudinal data system because each system varies in scope and design. States or districts also find it difficult to provide a cost estimate as so much of the process is absorbed into the current infrastructure without financial support from the state, as has been the case in New Mexico. The Data Quality Campaign, taking these caveats into consideration, estimates that a student identifier system can be built for between \$1 million and \$3 million.

SIGNIFICANT ISSUES

The “data system” is a unified pre-kindergarten through post-graduate education accountability system that collects, integrates and reports longitudinal student-level educator data required to implement federally or state-required education performance accountability measures, conduct research and evaluation regarding federal, state and local education and training programs at all levels, and audit and ensure compliance of those programs with applicable federal or state requirement.

The Data System Council is currently made up of 26 members, consisting of numerous cabinet secretaries, representatives from both two and four year colleges, and representatives of public schools. House Bill 321 adds to the Council:

- 4 parents of students in public schools from different areas of the state and representative of the state’s ethnic diversity, one of which must be a parent of a student with a disability; and
- The directors of 2 community organizations that have a demonstrated interest in educational outcomes for children.

The Data System Partners (Higher Education Department and Public Education Department) are mandated by statute to submit a data system status report to the Legislature and Governor by December 31 of each year. House Bill 321 expands the report to include the following:

- the number and percentage of students who have been suspended or expelled for each school and district, including duplicated and unduplicated instances of suspension and expulsion, disciplinary infractions leading to suspension and expulsion, and the length of suspension and expulsion. The report must contain the student’s age, grade, race, ethnicity, gender, eligibility category for special education, enrollment in an English language learner program, homeless student program or free and reduced-fee lunch program, and indicate students who have been retained a grade.

- The number and percentage of students who have been arrested, cited or referred to CYFD for an alleged delinquent act on school property, including the number of arrests, citations and referrals of students on school property and the number made by law enforcement officers, security guards, school resource officers and other school employees. The report must also contain the offense for which the student was arrested, cited or referred on school property, age, race, gender and eligibility category for special education, and the number of days the student was unable to attend their home school because they were in a detention or CYFD secure facility.

Both PED and HED indicate that the Council has discussed and supports broadening participation from non-state agency entities and stakeholders. PED, however, notes the following Family Educational Rights and Privacy Act (FERPA) issues:

One component of the Council’s duties in current law is to ensure that the educational system agencies represented on the Council have access to the data system. Based on the definition of education agencies in law, this would appear to exclude the parent and advocacy group representatives from having such access. Further, providing that access to them would likely violate FERPA.

With respect to the reporting of suspensions and expulsions, there would also be FERPA issues if parent and advocacy group representatives have access to personally identifiable student information. Should their access be to blind statistics, this would not violate FERPA.

With respect to students arrested, cited or referred to CYFD, the FERPA regulations exclude from the definition of “education records” the law enforcement unit of an education agency. 34 CFR Sec. 99.8(c)(2) states that educational records and personally identifiable information contained in education records do not lose their status as education records while in the possession of law enforcement units. In other words, law enforcement is an exemption. FERPA still applies, but law enforcement still has access to it.

ADMINISTRATIVE IMPLICATIONS

PED and HED will be required to develop administrative rules to address how non-state Data System Council representatives are identified and how data is collected. The data elements that are required to create the newly designated reports will require input from groups that are not members of the data system council (such as the police). PED indicates it is unclear how data would be collected from these groups that would relate to specific students via the State Unique ID numbers.

TECHNICAL ISSUES

CYFD indicates it is not clear from the language of the amendments as to whether the “number of days students were unable to attend their home school as a result of placement in a detention” would include those students adjudicated to a Juvenile Justice facility. Juvenile Justice Education serves several hundred students per year. These students would not be a part of the data system if the count is limited to students in detention centers only.

CYFD suggests the following amendment - amend page 11, 22-1-11K (13) (d) to read: “the number of day’s students were unable to attend their home school as a result of placement in a detention or Children Youth and Families Department secure facility”. This has been addressed by the HJC amendment.

OTHER SUBSTANTIVE ISSUES

CYFD indicates schools and districts already report the number of student suspensions and expulsions through the STARs reporting system. The bill will require the schools to collect additional information about students who are suspended or expelled as well as arrested for a delinquent act on school property. Students that are placed in a detention center are the responsibility of the school district in which the detention center is located. Staff from each school district would be responsible for reporting the additional data into STARs as well as this new data system. Juvenile Justice Education schools might not be required to report this data.

PED also notes the following issues:

Sharing behavioral data is a concern, particularly at the elementary level. The issue is should records on behavior follow a young child throughout his or her school experience. How do FERPA considerations impact with this bill’s intent?

Regarding information on arrests and citations, this would only be possible when school is in session during the day and may not be able to apply to summer when school is not in session. Further, a school cannot know what activities occur, including what students are arrested, on school property 24 hours a day, seven days a week, nor could this information be easily tracked.

HB 321 raises a number of questions, such as: How will the connection between CYFD, law enforcement and the local school or district be established and who will report the information and to whom? How will the council receive the information into STARs?

RSG/bym:svb