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## FISCAL IMPACT REPORT

**SPONSOR** Chasey **ORIGINAL DATE** 2/13/15  
**LAST UPDATED** 3/12/15 **HB** 271/aHEC

**SHORT TITLE** CYFD & PED Information Sharing **SB** \_\_\_\_\_

**ANALYST** Chavez/Kludt

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Minimal				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Public Education Department (PED)
- Children, Youth and Families Department (CYFD)
- Administrative Office of the Courts (AOC)
- Attorney General’s office (AGO)

### SUMMARY

#### Synopsis of HEC amendment

The proposed House Education Committee amendment to House Bill 271 changes references to children in the state’s “care” to being in the state’s “legal custody”. The term “legal custody” is defined in the Children’s Code, and refers to “a legal status created by order of the court or other court of competent jurisdiction or by operation of statute...” Legal custody signifies “the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline the child and to provide the child with food, shelter, personal care, education and ordinary and emergency medical care,” and other legal responsibilities. The previous use of a child in the state’s “care” was broader, and is not defined in statute. The amendment has the effect of clarifying which children may be subject to data sharing under the bill.

#### Synopsis of Original Bill

House Bill 271 creates a new section of the public school code that requires the Children, Youth and Families Department (CYFD) to provide information on the identity, placement, contact information, and home school of children in the state’s care to the Public Education Department

(PED) on a monthly basis. It requires PED to provide the information to local schools or to allow CYFD access to PED's data system and to issue an annual report on the aggregated educational status of students in the state's care, including their academic achievement, graduation and truancy rates, special education eligibility rates by category of special education eligibility, and suspension, expulsion and dropout rates. PED is required to promulgate rules for school district sharing of educational records with staff at CYFD. Finally, the bill amends the children's code to allow CYFD to share records of children subject to neglect or abuse records with PED.

## **FISCAL IMPLICATIONS**

There is no appropriation in this bill and neither CYFD nor PED report any significant fiscal impact to operating expenditures at this time.

## **SIGNIFICANT ISSUES**

In 2012, New Mexico was awarded \$37.5 million during the second phase of the Top-Early Learning Challenge discretionary grant (RTT-ELC) providing for development of data-sharing systems to connect student achievement data with prevention and intervention service data. The systems will connect data on services provided to students through CYFD, the Department of Health (DOH), and PED, and allow for the departments to analyze the impact of early childhood service participants' educational outcomes and allow collaboration between the departments on how to better assist and target at-risk children and families. The data sharing agreements between CYFD and PED abide by federal and state regulations, including the federal Family Education Rights and Privacy Act. PED believes putting this type of data sharing in statute may hinder existing efforts by reducing flexibility to address particular data needs.

PED also reports the agency is limited by the federal Family Educational Rights and Privacy Act ("FERPA") at 20 U.S.C. 1232g and implementing regulations at 34 CFR Part 99 from sharing student personally-identifiable information (PII) from a student's educational records.

This bill requires PED to implement sharing arrangements between school districts and CYFD to improve educational outcomes for children in the state's custody. There is no federal law preventing direct sharing between CYFD and the schools of children in its custody, and PED reported no issues in releasing aggregate data on the educational outcomes of children in the state's care; however PED reports the agency cannot share PII with CYFD and should not become a repository of individual educational records of children in the state's care.

FERPA permits PED to release PII to authorized representatives of the Comptroller General of the United States; the Attorney General of the United States; the secretary of education or to state and local educational authorities—not to a state agency that is charged not only with care of children who fall under neglect and abuse statutes but also with punishing children through the juvenile justice system. PED believes sharing PII with CYFD is illegal under federal law and doing so may risk the misuse of information. However, school districts may share educational records of former students in certain circumstances, such as directly releasing records of law enforcement unit including PII from students since such records are not defined as educational records. See 34 CFR 99.3. Finally, PED states CYFD can more accurately share that information directly with school districts and PED is not needed as an intermediary.

CYFD reports that while this bill allows for access to the larger scale PED data system, the bill does not address the local school district's data (i.e. PowerSchool accounts). The agency believes PED data system may benefit CYFD on a broader scale, in particular the data may be more beneficial to a child in the legal custody of CYFD by allowing the agency to have access to the data systems of each local school district.

CYFD also noted this bill does not address or require any particular action on the part of CYFD or PED with the information gathered. The agency states that the sharing of data may not have any material effect on the outcomes for students in the state's care, if there is no mandate regarding what is to be done with the information.

AOC reports data and information sharing on both the aggregate and individual levels is essential to ensure the educational success of children in the state's care. Without such an exchange the child welfare, education, and judicial systems run the risk of operating at cross purposes.

### **TECHNICAL ISSUES**

This bill defines "students in the state's care" in a way that may be inconsistent with the definition in the Children's Code. See NMSA 1978 §32A-1-4(O) defining legal custody. **The proposed HEC amendment changes the term "care" to "legal custody" as defined in the Children's Code.**

### **OTHER SUBSTANTIVE ISSUES**

PED strongly cautions against mandating sharing of educational information such as truancy and disciplinary records that could be used to sentence children subject to discipline under the Children's Code.

### **AMENDMENTS**

PED recommends the deletion of the provision allowing CYFD access to the PED data system and requiring PED to make rules requiring school districts to share such information.

CYFD recommends using the definition of legal custody already in existing statute. **The proposed HEC amendment changes this definition.**

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