

A REVIEW OF THE 54TH NEW MEXICO LEGISLATURE'S REGULAR SESSION - 2019

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On Today's Agenda – Key Legislation

- General School Bills
- New Election Laws
- Personnel and Student Bills
- Curricular Issues



General School Bills



HB 5: Public Education Changes

SB 1: Public Education Changes

HB 5 and SB 1 made changes to the Public School Code, and the school funding formula, mainly in response to the Martinez/Yazzie court decisions.

- These laws:
 - Defined school age student;
 - Created K-5 plus;
 - Amended public school finance;
 - Changed size adjustment and added rural population adjustment;
 - Defined and increased at-risk index and extended learning time programs;
 - Increased teacher and principal salaries; and
 - Created an Education Reform Fund.



HB 5: Public Education Changes

SB 1: Public Education Changes

- School Age Person** – A person who has not yet received a high school diploma and who has not turned 22 by the first day of the school year.
- Rural Population Rate** – A school district with a rural population rate – as defined by the US census – over 40% or a charter school chartered before July 1, 2018, located in a school district with a rural population rate of over 40% is eligible for additional program units. .03, .06, .09, .12, .15 (2019-2024)
- Size Adjustment** – Recognized charter schools, phases out small schools in large district by 2024, and maintains adjustment for small schools in small districts and small school districts.
- Education Plan** – Must include instruction time and days; frequency of early release days; services provided in extended learning, K-5 Plus, BMEA, IEA, HEA and SPED; and Performance Based Budget.

HB 5: Public Education Changes

SB 1: Public Education Changes

- K-5 Plus:
 - Districts (or charter schools) can apply to participate, and if selected will be eligible for additional funding.
 - Schools in which 80% or more of the students receive free or reduced-fee lunches, low-performing elementary schools, and that participated in the 2018 K-3 Plus or K-5 Plus program will be prioritized.
 - Must add at least 25 instructional days before the start of the school year.

HB 5: Public Education Changes

SB 1: Public Education Changes

- Extended Learning Time
 - An optional program, eligible for a new funding formula.
 - A minimum of 190 instructional days per year, with an instructional day of at least 5.5 hours for Kindergarten through sixth grade, and at least 6 hours per day for seventh through 12th grade.
 - Schools operating a four-day week, a minimum of 160 instructional days per year, with an instructional day of at least 6.5 hours for Kindergarten through sixth grade, and at least 7 instructional hours per day for seventh through 12th grade.
 - After-school extracurricular and academic learning opportunities that do not supplant federally-funded programs.



HB 205: Baby Changing Facilities

- ❑ HB 205: Requires baby changing stations to be included in the new construction of all restrooms available for public use in a place of public accommodation.
- ❑ “Public accommodation” includes a “nursery, elementary, secondary, undergraduate or postgraduate school or other place of education.”
- ❑ Does not apply if the restroom is not available for public use, or if there is clear signage indicating where a restroom with a baby changing station is located on the same floor.

HB 388: Gender-Free Restrooms Act

- ❑ Any single-user toilet facility that exists or is built on or after July 1, 2019, in a public accommodation, must be made available to any person regardless of gender identity or sex.
- ❑ “Public accommodation” is described as “any establishment that provides or offers its services, facilities, accommodations or goods to the public...”
- ❑ “Single-user toilet facility” is a “single occupancy restroom with an outer door that can be locked by the occupant.”
- ❑ The single-user toilet facility must be identified with gender-neutral signage.

HB 236: Attendance for Success Act

- ❑ Bill shifts districts' focus from habitual truancy to chronic absenteeism, consistent with national trends under the Every Student Succeeds Act (ESSA).
- ❑ New definitions and new attendance policies that must be reviewed and approved by each local school board.
- ❑ Effective 2020-2021 - Public schools must develop and implement an absence prevention strategy to be reported to the PED as part of the school's ESSA plan.
- ❑ Also requires attendance to be taken for every instructional class as well as for school days.
- ❑ Eliminates driver's license suspension.

HB 236: Attendance for Success Act

- ❑ Under the new law, the Board must have an attendance policy that establishes an early warning system to help identify students who are at risk of being chronically absent.
- ❑ Early warning systems will have to focus on restorative measures to combat chronic or excessive absenteeism by keeping students in an educational setting, and prohibiting out-of-school suspension or expulsion as punishment for absences.
- ❑ Also, the legislation requires the development of “attendance teams,” a group of school-based administrators, teachers, staff, other school personnel, and community members who are to collaborate to implement an attendance improvement plan.

HB 236: Attendance for Success Act

- School Board may admit as students school-age persons who do not live within the school district to the public schools within the school district when there are sufficient school accommodations to provide for them.
- School boards may allow students to transfer to a public school outside the student's attendance zone, but within the school district when there are sufficient school accommodations to provide for them.
- School boards shall charge a tuition fee for the right to attend public school within the school district to those school-age persons who do not live within the state. The tuition fee shall not exceed the amount generated by the public school fund for a student similarly situated within the school district for the current school year.

HB 236: Attendance Improvement Plan

- Plan must be included with 2020-2021 School Improvement Plan;
- Plan must include tiered interventions, including “whole school prevention” (absence prevention for all students);
- “Individualized prevention” (targeted intervention for students missing between 5% and 10% of school for any reason);
- “Early intervention” (interventions for students missing between 10% and 20% of school); and
- “Intensive support” (interventions for students missing over 20% of school).

HB 236: Attendance Improvement Plan

- Schools must accurately track the number of absences, as well as identify the specific type of absence. For chronically absent students, the school must document attempts to notify parents of absences, attempts to improve attendance by speaking with the student and identifying barriers, and intervention strategies implemented to support the student, including additional educational opportunities.
- Each public school shall provide a copy of the school attendance policy to all parents of students in that school, as well as post the policy on the school's website.
- At the end of each school year, each school district must report on the progress made on its attendance improvement plan to the public and on the district's website.

HB 589: Community School Framework

- ❑ A “community school” is a public school that partners with families and the community, including tribal partners, nonprofit community-based organizations, and local businesses to provide well-rounded educational opportunities and support for student success through the implementation of a community school framework.
- ❑ Amends the definition of a community school framework to include early childhood services and voluntary public pre-kindergarten.
- ❑ If receiving funding for three or more public school sites, the district must employ a community schools director or manager.

HB 589: Community School Options

- ❑ The “community school framework” is a set of strategies that include culturally and linguistically responsive instruction, programs and services and restorative practices focusing on building and maintaining relationships.
- ❑ Title I funds may be used for the community school initiative. There are also planning, implementation, and renewal grants available through the community schools fund.

SB 229: School Support and Accountability Act

- Repeals the A-B-C-D-F School Rating Act
- Creates a “School Support and Accountability System” at PED
- PED to provide a technology platform for a dashboard to provide school and student information to stakeholders.
- PED will ensure that the local school board prioritizes the resources of schools given the designation of targeted support, comprehensive support, or more rigorous intervention toward improving student performance using evidence-based programs and a continuous improvement plan.

SB 329: Opening or Closing Public Schools on Tribal Land

- ❑ When a school district or charter school is considering opening or closing a public school on tribal land, it must consult with tribal leaders, members, and families of students.

Consultation for opening a school must include:

- ❑ Meetings in which the local school board or superintendent explain how and why they chose to approach the tribe about opening a public school on tribal land,
- ❑ The level of commitment to improving educational outcomes for Indian students, and
- ❑ How this commitment will be manifested through:
- ❑ Culturally and linguistically responsive school policies;
- ❑ Rigorous and culturally meaningful curricula and instructional materials;
- ❑ Sensitivity to the tribe's calendar of religious and tribal obligations; and
- ❑ Professional development for school personnel to ensure that the best practices used in teaching, mentoring, counseling and administration are culturally and linguistically responsive to students.



SB 329: Opening or Closing Public Schools on Tribal Land

- Consultation regarding closing a school must include:
 - Meetings in which the local school board or Superintendent explain:
 - The reasons for closing the public school;
 - The reasons why the local school board has not or cannot provide additional resources to keep the school open;
 - Locations of other public schools in the area and the plan to transport students to these schools;

SB 329: Opening or Closing Public Schools on Tribal Land

- How the public schools that will receive the students will consult with tribal leaders and members and families of students regarding culturally and linguistically responsive policies, rigorous and culturally meaningful education, and best educational practices;
- How the educational outcomes for Indian students will be improved by attending another public school;
- Plans for the public school buildings that will be left empty by the closure; and
- Anything else the local school board believes provide an adequate explanation of the reasons for closing the public school on tribal lands.

New Election Laws



HB 407: Election Laws – 50 Year Tune-Up

- ❑ In 2018, HB 98 set all local elections to occur in November of odd-numbered years.
- ❑ This year's HB 407 allows school districts to compensate for financial impact of the new election dates, in 2019 and 2021, by delaying the mailing of property tax bills so there is no delay in funding if a levy is to be imposed for 2019 or 2021.

SB 407: Upcoming Election Actions

- ❑ Between 120 - 150 days before the next regular local election, each local government must notify the county clerk of all local government positions that are to be filled at the next regular local election (those dates were June 8, 2019, through July 8, 2019).
 - ❑ Each county clerk must inform the secretary of state of all positions to be filled no later than 112 days before the election (this date is July 16, 2019).
- ❑ For tax levies to be collected in 2019, the Board of Education must pass a resolution to place the measure on the November ballot. That resolution must then be filed with the County Clerk and the Local Government Division of the Department of Finance Administration no later than July 15, 2019.

SB 407: Upcoming Election Actions

- ❑ To place other questions on a regular local election ballot, including bond or mill levies for taxes for collection in 2020, the board must adopt a resolution to place the ballot question on the regular local election ballot. That resolution must be filed with the County Clerk of each county containing voting precincts no later than August 26, 2019, for the November, 2019 election.
- ❑ Candidates for positions to be filled at a local election must file a declaration of candidacy on the 70th day before the date of the regular local election (this date is August 27, 2019).

Personnel and Student Bills



HB 47: Shortened Probationary Period for Some Personnel

- ❑ Reduces the probation period for both non-licensed school employees and licensed educational assistants from three years to one year.
- ❑ Non-licensed school employees and licensed educational assistants who have been employed for more than one year may not be terminated without just cause.
- ❑ The law also clarifies that other licensed school employees, who have not been offered and accepted the third consecutive contract, can be terminated for any reason the district deems sufficient.



HB 129: Armed School Security Personnel

- Provides that only a local school board or governing body of a charter may authorize school security personnel to carry a firearm on school premises. This authorization decision must be made in an open meeting and be formalized as a policy of the board.
- “School security personnel” means retired or formerly certified and commissioned law enforcement officers employed by the school district and authorized to carry a firearm on school premises.
- Armed school security personnel may not carry a firearm on school premises if doing so would violate state or federal law.

HB 129: Armed School Security Personnel

- The law does not apply to school resource officers.
- Training will be required for armed public school security personnel.
 - The school security personnel and firearms trainings must be approved by the department of public safety and the public school insurance authority.

HB 129: Who Can't Be Armed School Personnel?

- School security personnel may not perform any job other than school security, by title or duty, while carrying a firearm.
- Individuals cannot be employed as armed public school personnel if they have:
 - Committed a criminal offense, including a felony or misdemeanor “involving moral turpitude that has bearing on the job of school security personnel.”
 - Faced formal discipline for the use of excessive force.
 - Committed misconduct or crimes such as inappropriate touching, sexual harassment, sexual assault, sexual abuse, discrimination, behavior intended to induce a child into engaging in illegal, immoral, or other prohibited behavior, crimes against children and dependents, or sexual exploitation of children.
 - Committed negligent or illegal use of a firearm.

HB 227: Use of Attendance in Teacher Evaluations

- ❑ “The use of personal leave, and up to ten (10) days of sick leave, shall not affect a teacher’s annual performance evaluation, as long as that leave is used consistent with school board or charter policy.
- ❑ However, the annual evaluation may reflect the lowest score for teacher attendance for a teacher who has used sick days in a manner inconsistent with school board or charter policy, administrative regulation and/or collective bargaining agreements.

HB 431: “Ethical Misconduct” & Background Checks

- ❑ Background checks are required, not only for all applicants offered employment, but also for contractors, contractors’ employees, and volunteers who may have unsupervised access to students on school premises.
- ❑ The district must pay for an applicant’s background check, but volunteers, contractors, and contractor’s employees may be required to pay for their own background checks.

HB 431: “Ethical Misconduct” & Background Checks

- ❑ The term “ethical misconduct” now applies to school employees, school volunteers, contractors, contractors’ employees (previously only applied to licensed school employees).
- ❑ Ethical misconduct “means unacceptable behavior or conduct...and includes unlawful discriminatory practice; sexual harassment, sexual assault or sexual abuse involving an adult or child, regardless of a child's enrollment status; and behavior intended to induce a child into engaging in illegal, immoral or other prohibited behavior”
- ❑ Note that it includes sexual assault or abuse involving an adult or a child, regardless of the child’s enrollment status.

HB 431: “Ethical Misconduct” & Background Checks

- ❑ Superintendents must investigate all allegations of ethical misconduct about any school employee who resigns, is being discharged or fired, or who otherwise leaves after an allegation is made.
- ❑ If the investigation results in findings of ethical misconduct, and the employee is licensed, the Superintendent must report the investigation findings to PED and the employee.
- ❑ Allegations of sexual assault or sexual abuse involving any school employee, volunteer, or contractor, or contractor’s employee must be reported to the appropriate law enforcement agency.

HB 431: Impact on Employment Actions

Notification of Reemployment or Termination:

- Changes the notification of reemployment or termination from the last day of the school year of the contract to fifteen (15) working days before the last day of the school year.
- Notification must be served by the Superintendent rather than the school board.
- Notification of reemployment or termination does not apply to licensed employees filling the position of an employee entering military service, licensed school administrators and unlicensed employees.

HB 431: Impact on Employment Actions

Discharge of employees:

- ❑ Superintendents may now recommend the discharge of an employee to the school board. Licensed employees recommended for discharge now have ten working days to exercise the right to a hearing before the school's governing authority (previously five). Extends the time for an employee to request an appeal of the decision of the hearing to ten days.

HB 431: Impact on Employment Actions

Definitions: HB 431 adds and amends many definitions in the School Personnel Act.

- “employed for three consecutive school years” means a licensed school employee has been offered and accepted in writing a notice of reemployment for the third consecutive school year.
- Regional Education Cooperatives are now included in the definition of “public school.”
- “School premises” reflects the definition from the criminal code.

SB 123: Caregiver Leave Act

- ❑ Public Employees who are provided with sick leave to treat their own illness will now be able to use that sick leave to care for their family members, with the same terms and procedures that the public school imposes for any other use of sick leave by eligible employees.
- ❑ “Family member” includes a spouse or domestic partner, or, by blood, marriage, or adoption, a parent, grandparent, great-grandparent, child, foster child, grandchild, great-grandchild, brother, sister, niece, nephew, aunt, or uncle.

SB 437: Increase in Minimum Wage

- After October 1, 2019, minimum wage increases to \$9.25/hour
- After April 1, 2020, minimum wage will be \$10.00/hour
- Exception for secondary students working outside of school hours, they can be paid \$8.50/hour



SB 48: Student Diabetes Management Act

- The parent or guardian of each student with diabetes who seeks diabetes care while at school shall submit to the school a diabetes medical management plan.
- Each school that receives a diabetes medical management plan shall review and implement the plan.
- Students with diabetes must be allowed to attend the school they would attend if they did not have diabetes, and the required school-based diabetes care will be provided at the student's school.

SB 48: Student Diabetes Management Act

- The Board is to ensure that all students with diabetes receive appropriate and needed diabetes care as specified in students' diabetes medical management plans.
- In accordance with the request of a parent or guardian of a student with diabetes and the student's diabetes medical management plan, a school nurse or, in the absence of a school nurse, diabetes care personnel shall perform diabetes care functions.
- A school shall not require or pressure parents or guardians of students with diabetes to provide care for a student with diabetes at school or during school-related activities.

SB 48: Student Diabetes Management Act

Training for Employees

- Annual diabetes training programs must be provided for all school nurses and diabetes care personnel.
- Training shall be provided by a school nurse if the school has a nurse; otherwise, by a health care practitioner with expertise in diabetes.
- The school board shall not require that diabetes care personnel be health care practitioners.

SB 48: Student Diabetes Management Act

- Each school board shall require that the training is attended by at least two employees at each school with a student with diabetes. If fewer than two employees, per school, are available for the training, the Principal or other school Administrator shall distribute written notice to all staff stating that the school is seeking volunteers to serve as diabetes care personnel.
- Each school board shall ensure that training is provided yearly to:
 - 1) All personnel who are primarily responsible for supervising a student with diabetes, and
 - 2) Bus drivers responsible for the transportation of a student with diabetes.

SB 48: Student Diabetes Management Act

Reporting: By October 15, 2020, and each October 15 thereafter, school governing bodies must provide PED with a report stating how many students with diabetes are attending schools in each school district, and providing documentation demonstrating the school district's compliance with the Student Diabetes Management Act.

Complaints / Dispute Resolution: Students with diabetes and their parents/guardians may file an administrative complaint with PED against any school or governing body failing to meet the obligations of staff training, providing diabetes care, or allowing self-management of diabetes under the act. These complaints do not limit or alter remedies available through the IDEA, ADA, or Section 504.

SB 204: Medical Cannabis in Schools

- ❑ Effective June 14, 2019.
- ❑ District must adopt policies and procedures for the possession, storage, and administration of medical cannabis to qualified students by parents/guardians or authorized school personnel.
- ❑ A district is not obligated to implement these policies if it reasonably determines that it would lose or has lost federal funding as a result of implementing these policies, and the school's determination is appealable by any parent to the Secretary of Education, based on rules established by the PED.
- ❑ PED has proposed rules for implementing this new law, with comments being taken at a July 26, 2019 hearing from 9am – 11am, and written comments being taken from Tuesday, June 25, 2019 to Friday, July 26, 2019 at 5:00 pm (MST).

SB 204: Medical Cannabis in Schools

- ❑ Under the statute, the school board must authorize the “possession, storage and administration of medical cannabis by parents and legal guardians, or by designated school personnel, to qualified students for use in school settings.”
- ❑ The board may also adopt policies that: restrict the type of school personnel that may administer medical cannabis; establish parameters regarding the administration of medical cannabis; and ban student possession, use, sale, distribution, or being under the influence of cannabis in a manner inconsistent with the law and the district’s medical cannabis policies.
- ❑ A District may not discipline or deny eligibility to a student who is a qualified student based on the student requiring medical cannabis as a reasonable accommodation needed to attend school or a school-sponsored activity, nor may they discipline a school employee who refuses to administer medical cannabis.

SB 204: Medical Cannabis

- ❑ Participation in a medical cannabis program does not relieve the qualified patient or primary caregiver from: (1) criminal prosecutions or civil penalties for activities not authorized by the Lynn and Erin Compassionate Care Act; (2) liability for damages or criminal prosecution resulting from operation of a vehicle while under the influence of cannabis; or (3) criminal prosecution or civil penalties for the use of cannabis in the workplace of the qualified patient or primary caregiver's employment, public park, recreation center, youth center, or other public place.
- ❑ The proposed PED rules will provide exemption from criminal liability and would require parents to sign a waiver of district/employee liability. It's unclear if PED has authority to provide such immunity.

SB 204: Medical Cannabis

- The statute says a district may be exempt from the administration of medical cannabis on school property if it “reasonably determines” it would or has lost federal funding, but the proposed PED rules would require a district to provide the Department a “written communication from the federal government that implementation would result in federal education funding being withheld or withdrawn.”

SB 288: Safe Schools for All Students Act

- ❑ This bill repealed section 22-2-21 NMSA 1978, and created new requirements to develop and implement bullying prevention policies and programs.
- ❑ By January 1, 2020, each school board must adopt and enforce policies to:
 - ❑ Prevent bullying on its property, in electronic communications on school property, at school-sponsored functions, and during transportation to and from school.
 - ❑ Prohibit electronic communication with students or intended to be seen by students that interfere with the student's ability to participate in and benefit from school services, activities, or privileges provided by the district.

SB 288: Bullying Policies Must Include

- A statement prohibiting bullying, and a statement prohibiting retaliation against those who report or witness bullying
- A list of consequences for identified incidents of bullying, including progressive discipline approaches.
- Procedures for reporting and investigating bullying.

SB 288: The District's Obligations

- ❑ Each school board will have control of its bullying prevention policies.
- ❑ Bullying prevention policies and procedures for reporting bullying, including cyberbullying, must be included in student handbooks, and the policies must also be disseminated in “appropriate languages for any school district where a substantial portion of students speak a language other than English at home.”
- ❑ Documentation of reports and investigations of incidents of bullying must be maintained by the school for at least four years.
- ❑ Each school board must establish policies to report annually to PED aggregate incidents of bullying and cyberbullying and their investigations.

SB 288: Additional District Obligations

- ❑ Annual training: Public schools must establish an annual bullying prevention program for students included in the state's health education content standards and provide all employees and volunteers who have significant contact with students with annual training on bullying prevention.
- ❑ Publicizing: Schools must develop a plan to publicize their anti-bullying policy, including making this policy available on public websites, identifying a point of contact for bullying-related concerns, and informing parents and students about the policy at least annually.
- ❑ Reporting Requirements: During or as part of the school's annual accountability report, schools must report on the implementation of the anti-bullying program.

HB 250: Native American Education Student Needs Assessment

- ❑ Historically-defined Indian-impacted school districts are required to conduct a needs assessment to determine the supports needed in the public school, at home, and in the community to help Indian students succeed in school, graduate, and be prepared for either post-secondary education or the workplace.
- ❑ After conducting the assessment, the school district must meet with the local tribes to prioritize the needs to be addressed. Schools will prioritize meeting the needs of Indian students and closing the achievement gap between Indian students and all other student groups.

HB 250: Native American Education Student Needs Assessment Cont.

- The school district will develop and publish a systemic framework for improving educational outcomes for Indian students in collaboration with school employees, tribal leaders, Indian students and families, social services providers, and community and civic organizations. This systemic framework may include academic and other programs, culturally-related activities, and services to be provided.
- School districts must apply for all appropriate funds to help carry out the obligations of this act.
- When approving budgets, PED will consider whether the budget presented accomplishes the prioritized set by the student needs assessment.

HB 250: Native American Education Student Needs Assessment Cont.

- At least twice per school year, the school district or charter will hold a public meeting with members of the Indian students' tribal leaders, parents, and the Indian education division, to report on the needs assessment and evaluation of progress.



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