

# 2021 Legislative Session: What Do Board Members Need to Know?

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## Today's Agenda – Key Legislation

- General School Bills
- Student Bills
- Personnel Bills
- New Mexico Civil Rights Act
- Funding Bills
- Other Recent State and Federal Court Decisions and Regulations



## GENERAL SCHOOL BILLS



### HB 43 Black Education Act

- ❑ Establishes a new section of the Public School Code, in part to address the issues identified in the *Yazzie-Martinez* order.
- ❑ Creates a Black Education Advisory Council to the Secretary of Public Education. Appointed by the Secretary, and composed primarily of educators, parents, and students, to:
  - Advise PED and districts on improving education for Black students, increasing parent involvement and community engagement in the education of Black students, and increasing the number of successful Black high school graduates.
- ❑ Also creates a Black Education Liaison within PED to advise the Secretary and the Council. Duties of the Liaison include:
  - Maintaining a separate website, for among other things, links to a state hotline for reporting "racially charged incidents."
  - Acting as a resource for districts in providing equitable and culturally relevant educational environments and opportunities.
  - Supporting districts in recruiting parents for district committees that represent the ethnic diversity of the community.



## HB 43 Black Education Act

- Together, the Liaison and Council will:
  - Identify best practices for strengthening educational outcomes for Black students.
  - Recommend curricula and instructional materials on the history of Black people in New Mexico, the nation, and worldwide.
  - Provide research and best practices on addressing discrimination and racism in schools.
  - Provide mechanisms for parents, schools, and policymakers to work together to improve educational opportunities for Black students.
  - Develop or recommend anti-racism and cultural sensitivity training and professional development programs for all school personnel.



## HB 43 Black Education Act

- **To Do:** By June 18, 2021, Districts must:
  - Define and include in discipline policies a specific prohibition against “racialized aggression” involving a student or school personnel.
    - Racialized aggression is not defined in the bill; NMSBA policy services has created a definition, but PED may define the term through regulation at a later time.
  - Provide links to the statewide hotline to report racially-charged incidents or racialized aggression.
  - Ensure that all school personnel annually successfully complete an online or in-person anti-racism, racial awareness, and sensitivity training or professional development approved by PED.



## HB 52 Bilingual Multicultural Ed Advisory Council

- ❑ Replaces the existing ad-hoc Bilingual Education Advisory Committee and creates a Bilingual Multicultural Education Advisory Council.
- ❑ Council will be appointed by PED, to advise PED on the effective implementation of the Bilingual Multicultural Education Act and support of bilingual multicultural education students.
- ❑ The Council will study the needs of bilingual learners and English language learners, and advise PED in the areas of curriculum, instruction, assessment, teacher preparation, teacher evaluation, professional development, licensure, and student family services.
- ❑ The bill adds the term “bilingual learner” to the Bilingual Multicultural Education Act; defined as a student whose bilingualism is emerging through the development of English and a language other than English.
  - **To Do:** Review policy and regulations as this is likely a much broader definition than is currently contemplated in district bilingual programs.



## SB 40 K-5 Plus & Extended Learning at All Schools

- ❑ Allows K-5 Plus and Extended Learning Time programs at all public schools for the 2021-2022 school year.
  - The bill struck the mandate that all public schools provide either K-5 Plus or Extended Learning Time Programs to all students in FY 22.
  - Schools that previously offered a K-5 Plus program, and will continue to do so, can simply notify PED with no formal application process required.



## SB 40 K-5 Plus & Extended Learning at All Schools – K-5 Plus

- Each K-5 Plus school must:
  - Provide no less than 205 instructional days per school year or 25 additional instructional days per school year (whichever would add the fewest number of instructional days) to all elementary school students enrolled in the school;
    - For districts on a four-day week: no less than 175 instructional days per school year or 20 additional instructional days per school year (whichever would add the fewest number of instructional days)
  - Provide a good-faith attempt to keep students with the same teacher and cohort of students during K-5 plus and the regular school year, and minimize mid-year transfers to only those that are in the best interest of the student;
  - Include additional professional development for teachers in how young children learn to read; and
  - Consider its schedule an extended school calendar for all students at the school.



## SB 40 K-5 Plus & Extended Learning at All Schools – K-5 Plus

- In approving schools for participation in K-5 Plus, PED will prioritize elementary schools:
  - In which 80% or more of the students are eligible for free or reduced-fee lunch;
  - That are low-performing; and
  - That meet other criteria established by PED.



## SB 40 K-5 Plus & Extended Learning at All Schools – ELT

- A school district or charter school is eligible for additional program units if it establishes a PED-approved, school-wide **Extended Learning Time** program with:
  - A minimum of 190 instructional days per school year or 10 additional instructional days per year (whichever would add the fewest number of instructional days), with at least 5½ instructional hours per day for grades K-6 and at least 6 instructional hours per day for grades 7-12;
    - For four-day week districts: minimum of 160 instructional days per school year or 8 additional instructional days per year (whichever would add the fewest number of instructional days), with at least 6½ instructional hours per day for grades K-6 and at least 7 instructional hours per day for grades 7-12;
  - After-school program opportunities for academic learning, extracurricular, or enrichment programming for students that do not supplant federally funded programs; and
  - At least 80 non-instructional hours per school year for professional development for instructional staff.



## SB 40 K-5 Plus & Extended Learning at All Schools – ELT

- An elementary school that qualifies for Extended Learning Time program units AND that also has a qualifying K-5 Plus program may provide the additional instructional days by extending the total number of instructional hours by no fewer than 55 additional instructional hours, if approved by PED.
- The additional instruction must be implemented for all students in a participating school and it will be considered an extended school calendar for those students.
- If the district qualified for ELT program units in the prior fiscal year, it is not required to add more instructional days than in the prior school year if it provides the same or more total instructional days and total instructional hours than was provided in the prior school year.

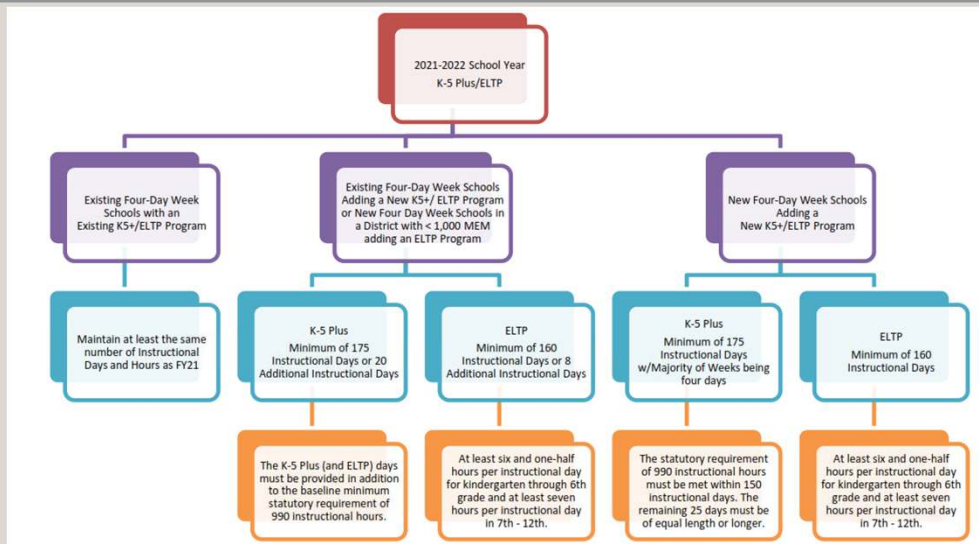


## K-5 Plus & Extended Learning Time Programs & Hybrid Learning – PED Memo 5/14/21

- PED issued a memorandum to Superintendents, Charter School Leaders, and Finance Directors that:
  - 1) set out the requirements for participation in K-5 Plus and ELT programs if a district or charter school operates a four-day school week for the 2021-2022 school year; and,
  - 2) provided considerations for districts looking to offer hybrid learning through a calendar/schedule that includes both in-person and virtual instruction as part of a comprehensive school-directed program.



## Plus & Extended Learning Time Guidelines for 4-Day Week Schools



## Innovative Scheduling/Calendars for Hybrid Learning – PED Memo 5/14/21

- ❑ If the District will have a calendar for 2021-2022 that includes both in-person and virtual instruction as part of a comprehensive school-directed program, the memo sets out “recommendations” for developing such a calendar and related requirements.



## SB 271 Purple Star Public School Program

- ❑ Directs PED to develop a “purple star public schools program” to help students of military families transition to schools and to celebrate military service.
- ❑ Separate components for schools with, and without, students from active-duty military families.
- ❑ Participation and designations are not mandatory.





## SB 271 Purple Star Public School Program

- To be designated as a “purple star school,” a school that has students from active duty military families may apply to PED by:
  - Submitting a resolution to the local Board of Education supporting military students and the school’s application to become a purple star public school;
  - Designating a point of contact for military-related students and their families and for the military;
  - Providing professional development for point-of-contact staff;
  - Including a page on the school website that features resources and information for military families; and
  - Describing the academic, social, and emotional supports available to assist transitioning military students.



## SB 271 Purple Star Public School Program

- A school that does not have students from active duty military families may apply to PED for designation as a “purple star school” by:
  - Submitting a resolution to the local Board supporting students of military families and the school’s application to become a purple star public school;
  - Emphasizing the importance and honor of military service;
  - Recognizing the service to the country and accomplishments of veterans, active-duty and reserve military and the national guard in their committees;
  - Sponsoring special events recognizing military service; and
  - Celebrating students who have committed to serving in the military.



## SB 272 Military Family Early School Enrollment

- ❑ **To Do:** Amend enrollment policy
- ❑ Mandatory starting in the 2021-2022 school year, new enrollment priorities:
  - Adds to the highest level of priority for school enrollment those students who *will be* residing within a school district, *if* the student is in a military family that will be attending a district school during the upcoming school year.
  - Requires districts to allow military families that will be relocating to a military installation in New Mexico due to an official military order to enroll their children in school prior to their physical presence in the district.
    - Parents must provide proof of residency within 45 days of the arrival date on the official military documents.
    - Can use any address related to the move.
  - The district must accept electronic applications for enrollment and provide the applicant with materials about academic courses, electives, or sports, if requested.



**STUDENT BILLS**

**WG**

## HB 29/SB 80 No School Discrimination for Hair

- ❑ Effective July 1, 2021.
- ❑ **To do:** review and revise policies and regulations.
- ❑ The two bills generally prohibit discipline, discrimination, or disparate treatment based on an individual's race, religion, or culture, or because of the use of "protective hairstyles" or cultural or religious headdresses.



## HB 29/SB 80 No School Discrimination for Hair

- ❑ Definitions under the new law:
  - **Race:** includes traits historically associated with race, including hair texture, length of hair, protective hairstyles, or cultural or religious headdresses
  - **Cultural or religious headdresses:** hijabs, head wraps, or other headdresses used as part of an individual's personal cultural or religious beliefs
  - **Protective hairstyles:** braids, locs, twists, tight coils or curls, cornrows, Bantu knots, afros, weaves, wigs, or head wraps
- ❑ These new definitions are added to both the Public School Code AND the Human Rights Act, so the law applies to personnel too.



## HB 222 Special Education Ombud Act

- ❑ Establishes the Office of the State Special Education Ombud within the Developmental Disabilities Planning Council.
- ❑ The Office will be headed by the State Special Education Ombud, who will be appointed by the Developmental Disabilities Planning Council.
- ❑ This is expected to significantly impact special education complaints and disputes as it creates a new state process, outside of the existing due process hearing procedures.



## HB 222 Special Education Ombud Act

- ❑ The newly created State Special Education Ombud will:
  - Identify, investigate, and resolve “concerns” relating to special education services “communicated by or on behalf of” students and parents.
  - Assist students and parents in protecting the educational rights of students, which may include assisting parents and students in IEP meetings or other IDEA proceedings.
  - Identify any “patterns of concerns” regarding special education services and educational rights, and recommend strategies for improvement to PED.
  - Collaborate with PED to ensure dispute resolution processes are available to parents and students.
  - Recommend changes to and facilitate public comment on proposed changes to laws, rules, policies, and actions relating to the special educational rights of students.



## HB 222 Special Education Ombud Act

- ❑ With consent from the student's parent or 18+ year old student, the Office of the State Special Education Ombud may request access to the student's education records from PED, a school district, or a public school.
- ❑ Any school employee, volunteer or contractor that does not comply with the provisions of this Act will be reported to PED.
- ❑ **To Do:** Every public school that provides special education services must:
  - Conspicuously post a notice in the school containing information about the services provided by the Office of the State Special Education Ombud and the name, phone number, and address of the Office. This information must also be posted on the school's website, if one exists. The notice must be approved by the Ombud's Office.
  - Provide information about the State Special Education Ombud at the beginning of each school year, and provide the information as part of the annual IEP process.



**PERSONNEL BILLS**

**WG**

## REMINDER: HB 29/SB 80 No School Discrimination for Hair

- ❑ **To Do:** Some provisions of these bills apply to personnel, so be sure to review and revise relevant personnel policy and regulation.
- ❑ Effective July 1, 2021.
- ❑ Prohibits discipline, discrimination, or disparate treatment based on an individual's race, religion, or culture, or because of the use of "protective hairstyles" or cultural or religious headdresses.
  - Race: includes traits historically associated with race, including hair texture, length of hair, protective hairstyles, or cultural or religious headdresses;
  - Cultural or religious headdresses: hijabs, head wraps, or other headdresses used as part of an individual's personal cultural or religious beliefs; and
  - Protective hairstyles: braids, locs, twists, tight coils or curls, cornrows, Bantu knots, afros, weaves, wigs, or head wraps.



## HB 128 School Personnel Background & Training

- ❑ Bill became effective on June 18, 2021, and implements the recommendations of the PED task force on school ethical misconduct.
- ❑ Has two main components:
  - 1) Criminal history/background checks and self-reporting by applicants for employment, volunteers, and contractors;
  - 2) New and expanded PED reporting requirements related to child abuse and neglect and ethical misconduct.



## HB 128 School Personnel Background & Training

- To Do: This new legislation requires school boards to:
  - adopt policies and procedures to require background checks on an applicant who has been offered employment or who applies to be a school volunteer or contractor or a contractor's employee *and who may have unsupervised contact with children or students on school premises.*
  - adopt policies that:
    - Track internal child abuse reports mandated by the new law;
    - Specify measures that will be taken to protect the identity of alleged victim; and
    - Do not relieve any person of reporting obligations.



## HB 128 School Personnel Background & Training – New Definitions

- The bill adds several new terms and definitions to the School Personnel Act, including:
  - Applicant\*
  - Child Abuse
  - Contractor
  - Ethical Misconduct\*
  - Moral turpitude
  - School volunteer
  - Unsupervised contact with children or students



## HB 128 School Personnel Background & Training – “Applicant” and “Ethical Misconduct”

- ❑ “Applicant” means not only an applicant for employment but also an applicant to be a contractor, contractor’s employee, or a school volunteer.
- ❑ “Ethical misconduct” includes:
  - Discrimination based on race, age, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, mental or physical disability, marital status, religion, citizenship, domestic abuse reporting status, or serious medical condition;
  - Sexual misconduct or any sexual offense prohibited by the Sexual Exploitation of Children Act or the Criminal Code involving an adult or child, regardless of a child’s enrollment status;
  - Fondling a child or student, including touching private body parts; and
  - Any other behavior, including licentious, enticing, or solicitous behavior, that is reasonably apparent to result in inappropriate sexual contact with a child or student or to induce a child or student into engaging in illegal, immoral, or other prohibited behavior.



## HB 128 School Personnel Background & Training – Applications for Employment

- ❑ District must contact applicant’s current and former school employers or other employer’s that involved unsupervised contact with children or students.
- ❑ District must request from those current and former employers:
  - Applicant’s dates of employment.
  - Written statement describing whether the applicant:
    - Has ever been under investigation for, or found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, unless the allegations were false or unsubstantiated, or
    - Has ever been under investigation for, or found to have violated, any ethical rule or policy of a former employer, unless the allegations were false or unsubstantiated, or
    - Has ever had a professional license or certificate denied, suspended, surrendered, or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation.





## HB 128 School Personnel Background & Training – Application for Employment (cont.)

- ❑ During the review of the applicant’s employment history with the current and former school employers or that involved unsupervised contact with children or students.
  - The current and former employer can also disclose any other information it “deems pertinent to the prospective employee’s suitability for employment in a position that includes unsupervised contact with children or students.”
  - Potential employing district must document efforts to verify the information provided from the applicant’s current or former out-of-state employer.
- ❑ A district may terminate an individual’s employment or contract, or rescind an applicant’s offer of employment or contract, if information regarding the applicant’s history of child abuse or ethical misconduct is determined to disqualify the applicant from employment.
- ❑ An applicant who provides false information or willfully neglects to disclose information may be subject to discipline, including termination, denial of employment, or action to deny, suspend, or revoke a license.



## HB 128 School Personnel Background & Training – Report of Ethical Misconduct

- ❑ A new section to the School Personnel Act requires *any school district personnel, school employee, contractor, or contractor’s employee who knows or has reasonable suspicion* that a child or student has been subject to ethical misconduct by school district personnel, a school employee, a school volunteer, a contractor, or a contractor’s employee *to report the matter immediately to the superintendent or PED.*
- ❑ Superintendent’s reporting obligations remain the same, but this law expands the range of employees with reporting obligations, and adds contractors/contractor employees as well.



## HB 128 School Personnel Background & Training – Obligations Upon Receipt of Report

- ❑ After receiving a report of ethical misconduct towards a student or child, a District must take *immediate steps* to ensure:
  - Prompt investigation of the report;
  - Protection of the health or welfare of the child/student; and
  - Safety of enrolled students.
- ❑ After receiving a report of ethical misconduct, PED must:
  - Immediately notify law enforcement if the allegation is criminal in nature; and
  - Notify a tribal law enforcement or social services agency for any Indian child residing in Indian country.
- ❑ The new law gives an investigating law enforcement agency access to any records related to the alleged ethical misconduct.



## HB 128 School Personnel Background & Training – Failure to Report

- ❑ The Secretary of Public Education may initiate action to suspend, revoke, or refuse to renew the license of:
  - A superintendent who fails to report child abuse, child neglect, or ethical misconduct.
  - Any licensed school employee who fails to report child abuse, child neglect, or ethical misconduct.



## HB 128 School Personnel Background & Training – Training

- ❑ All school district personnel, school employees, school volunteers, *contractors*, and *contractors' employees* are required to complete training in the detection and reporting of child abuse and neglect, ethical misconduct, professional responsibilities, sexual abuse and assault, and substance abuse within the first year of employment.
- ❑ The training must include:
  - Reporting requirements
  - Trauma-informed instruction
  - Identification of indicators of likely abuse or inappropriate behaviors
  - Ethical misconduct
  - Professional responsibilities
  - Investigations and procedures
  - Relevant legal and regulatory definitions



## HB 188 Secondary Computer Science Teacher License

- ❑ Creates the opportunity for a secondary computer science license endorsement for all teachers with a valid license and who demonstrate sufficient content knowledge in computer science.



## HB 266 Special Education Teacher Licenses

- ❑ Effective July 1, 2021.
- ❑ Changes requirements for an alternative Level 1 teaching license for special education teachers. Intended in part to make training of special education teachers more robust, and improve quality programs for special needs students, per *Yazzie-Martinez*.
- ❑ In addition to meeting educational and assessment requirements, a person seeking an alternative Level 1 special education license must also serve a 15-week apprenticeship under a Level 3-A special education teacher while taking related coursework at a post-secondary educational institution.
- ❑ Anyone holding an alternative Level 1 special education license on July 1, 2022, will not be required to apply for a new license.



## HB 22 Grow Your Own Teachers Act Scholarships

- ❑ Effective July 1, 2021.
- ❑ The Grow Your Own Teachers Act Scholarships provide awards to education assistants who may want to attend a public post-secondary educational institution in New Mexico to earn a bachelor's degree in education.
- ❑ For purposes of 21-21A-1 NMAC, Educational Assistance, the bill expands eligibility for the scholarships by defining "school employee" as someone who:
  - Is a resident of New Mexico authorized to work in the U.S.;
  - Has been employed by a public school and directly worked with students for at least 2 years;
  - Is in good standing with the district; and
  - Is enrolled in or accepted by an undergraduate teacher preparation program at a regionally accredited public post-secondary educational institution in New Mexico.



## HB 22 Grow Your Own Teachers Act Scholarships

- ❑ A school employee who wants to become a teacher may petition the school to grant professional leave for college classes, exams, and practice teaching.
- ❑ The school must grant professional leave *if* the employee is a recipient of a Grow Your Own Teachers scholarship, and the professional leave minimizes disruption to the school day.
  - **To Do:** Consider defining what would be acceptably minimized disruption to the school day.
- ❑ The school may require school employees to make up hours in exchange for any hours missed during the school day.
  - What would that look like?



## HB 22 Grow Your Own Teachers Act Scholarships

- ❑ If a school employee is accepted into or enrolled in a teacher preparation program offered by a regionally accredited public post-secondary educational institution in New Mexico, but does not live within a reasonable distance of the institution's campus, the school must allow the employee to use the district's distance education resources to take classes.



## SB 42 Increase Ed Retirement Contributions

- ❑ Increases employer contributions to ERB by 1% in each of the next two years according to the following schedule:
  - From July 1, 2021 through June 30, 2022 = 15.15% of the annual salary of each member employed by the local administrative unit.
  - On and after July 1, 2022 = 16.15% of the annual salary of each member employed by the local administrative unit.
  - An amendment to HB2, Section 8 provides \$34 million to DFA to distribute to schools and universities to increase the employer contribution rate for FY22.
- ❑ Extends the return-to-work program for retired ERB members from January 1, 2022 to January 1, 2024.



## HB 2 (Special Session) Cannabis Regulation Act

- ❑ Effective June 29, 2021, the Cannabis Regulation Act legalizes and regulates cannabis use and possession by persons 21 years of age or older.
- ❑ Creates a new Cannabis Control Division (CCD) within the Regulation and Licensing Department.
- ❑ By January 1, 2022, the CCD must promulgate rules for licensing and regulating commercial cannabis.
- ❑ Sales to start no later than April 1, 2022.



## HB 2 (Special Session) Cannabis Regulation Act

- ❑ Prohibits possession or distribution on the premise of a school, unless allowed for a person who is a “qualified patient, primary caregiver or reciprocal participant” under the Lynn and Erin Compassionate Use Act.
- ❑ Public, private and parochial schools, or property used for a school purpose, are designated under the bill as a “drug free school zone.”
  - A violation in a drug-free school zone is a felony.



## HB 2 (Special Session) Cannabis Regulation Act

- ❑ Unless there is an agreement between the employer and employee, the law does not:
  - Restrict an employer’s ability to prohibit or take adverse employment action against an employee for impairment by or possession or use of intoxicating substances at work or during work hours;
  - Require an employer to commit any act that would cause the employer to be in violation of federal law or regulations or that would result in the loss of a federal contract or federal funding; or
  - Prevent or infringe upon the rights of an employer to adopt and implement a written zero-tolerance policy regarding the use of cannabis products.



## HB 2 (Special Session) Cannabis Regulation Act

- ❑ Nothing in the Act will invalidate, diminish, or otherwise interfere with any collective bargaining agreement or with any party's power to collectively bargain.



**NEW MEXICO CIVIL RIGHTS ACT**

**WG**



## HB 4 New Mexico Civil Rights Act

- ❑ Enacted the New Mexico Civil Rights Act, effective July 1, 2021.
- ❑ Allows any person to bring a claim against a public school district or person acting on behalf of or under the authority of a district for "deprivation of any rights, privileges, or immunities secured pursuant to the bill of rights of the Constitution of New Mexico."
- ❑ The NM Bill of Rights includes things such as:
  - Right to bear arms
  - Freedom from unreasonable searches and seizures
  - Freedom of religion
  - Right not to be subject to cruel and unusual punishment
  - Freedom of laws restraining speech or the press
  - Right to due process, equal protection of the laws, and equality of rights based on sex



## HB 4 New Mexico Civil Rights Act

- ❑ Prohibits the defense of qualified immunity in claims brought under the Act.
  - Qualified immunity is a federal doctrine that grants government officials performing discretionary functions immunity from civil suits unless a plaintiff shows that the official violated "clearly established statutory or constitutional rights of which a reasonable person would have known."
- ❑ Gives a court discretion to award attorney fees to a prevailing plaintiff.
- ❑ 3-year statute of limitations.
- ❑ Limits recovery to \$2 million, "per occurrence" per claimant, including costs and attorney fees.
- ❑ District employees cannot use the New Mexico Civil Rights Act to pursue a claim arising from that individual's district employment.



## HB 4 New Mexico Civil Rights Act

- ❑ A judgment awarded against a person acting on behalf of, under color of, or within the course and scope of the authority of a public body must be paid by the public body.
- ❑ The public body must also pay all litigation costs for the public body or for any person acting on behalf of, under color of, or within the course or scope of authority of the public body, including attorney fees.
- ❑ NMPSIA says it “reasonably anticipates” more claims due to this legislation, which could result in a premium increase on districts.



**FUNDING BILLS**

**WG**

## HB 2 General Appropriations Act

- ❑ Public school general fund appropriations of \$3.39 billion for FY22, a 5.5% increase from FY21.
- ❑ \$110 million for extended learning, including K-5 plus and Extended Learning Time.
  - Prioritizes Pre-K awards to districts with K-5 plus programs.
  - Special appropriation awards are also prioritized for districts with K-5 plus programs.
- ❑ Targeted funding of \$20 million to at-risk schools through the family income index, another \$20 million for community schools, plus \$692,000 for food and nutrition programs.
- ❑ Contains a 1.5% pay increase for public school employees.
- ❑ Eliminates credit for local revenue (impact aid).



## HB 2 General Appropriations Act

- ❑ An HB 2 line-item veto by the Governor means districts can implement a four-day calendar for the 2021-2022 school year, even if they did not already have such a schedule.
  - Remember: NMAC 6.10.5 sets out the required procedures for setting a “condensed year” or four-day calendar. PED approval not needed, but those regulatory steps must be followed before the Board votes on the change.
- ❑ HB 2 includes a provision that PED will not approve the operating budget of any district that does not offer employees working in a school, office, or other in-person setting the same paid sick leave or expanded family and medical leave for COVID-19 related reasons as was under the FFCRA.



## HB 6 State Equalization Guarantee Distributions

- ❑ Eliminates local and federal credits when determining the state equalization guarantee distribution.
- ❑ Changes the phase two formula value calculation when determining the local and state match for capital outlay projects under Section 22-24-5 of the Public School Capital Outlay Act.
- ❑ LESC believes the changes made by this this bill could have a “dis-equalizing effect” on districts’ operational funding.



## HB 285 Capital Outlay Projects

- ❑ Provides contingent authorization to PED to request budget increases for certain capital expenditures.
  - Appropriates \$3.492 million from the public school capital outlay fund to PED to purchase, replace, and equip school buses for school districts statewide during FY21 through FY25, contingent upon approval by the Public School Capital Outlay Council.
  - Appropriates \$4 million from the public school capital outlay fund to the Public School Facilities Authority to plan, design, construct, renovate, and equip infrastructure improvements for pre-K facilities statewide during FY21 through FY25.



## HB 331 School District 2022 Transportation Hold Harmless

- ❑ Holds districts harmless in FY22 funding formula calculations to account for the impact that COVID-19 had on their transportation expenditures.
- ❑ For FY22 transportation distributions, the State Transportation Director will make calculations based on the average numbers reported from each district on the 2<sup>nd</sup> and 3<sup>rd</sup> reporting dates of FY20.



## SB 17 Family Income Index Act

- ❑ Adds the Family Income Index to the Public School Code.
- ❑ Now, PED must calculate a Family Income Index for each public school site.
- ❑ The calculation uses the percentage of student households for each public school in the following income categories, based on information from the Taxation and Revenue Department, the Human Services Department, and census information:
  - Extremely low income
  - Very low income
  - Low income
  - Moderate income
  - Above average income
- ❑ PED ranked all public schools in the state from lowest to highest family income index, and provided for funding distributions based on these index ratings.



## SB 17 Family Income Index Act

- Districts must use Family Income Index Act funds on this basis:
  - At least 1/3 for evidence-based, structured literacy interventions;
  - At least 1/3 for evidence-based mathematics instruction and interventions, including educational programming intended to improve career and college readiness of at-risk students, dual or concurrent enrollment, and career and technical education; and
  - No more than 1/3 on the following interventions:
    - Case management, tutoring, and after-school and summer enrichment programs;
    - Culturally relevant professional and curriculum development;
    - Whole school interventions (i.e., social and emotional learning programs, student nutrition programs, community schools, etc.);
    - Instructional resources and materials; or
    - Services to engage and support parents and families in students' education.



## SB 17 Family Income Index Act

- The distributions may be used to expand or improve services provided as part of a school's existing academic program, but cannot be used to replace existing services.
- To allow public schools with smaller awards more flexibility, a school with an award of less than \$40,000 does not have to meet the one-third requirements for structured literacy or evidence-based mathematics. Instead, a school with a smaller award could choose to concentrate their funds in one area.



## SB 43 Funding of Demolition of Abandoned Schools

- ❑ Allows allocations from the Public School Capital Outlay Fund to fully fund the demolition of abandoned district facilities.
- ❑ To do so, it must be shown that:
  - The costs of continuing to insure the abandoned facility outweigh any potential benefit when and if a new facility is needed by the district, and
  - There is no practical use for the abandoned facility without substantial renovation costs.



## SB 144 Remote Education Technology Infrastructure

- ❑ Requires the Public School Capital Outlay Council (PSCOC) to develop guidelines for a statewide education technology infrastructure network that integrates regional hub locations for network services and the installation and maintenance of equipment
- ❑ Amends the definition of “education technology infrastructure” in the Public School Capital Outlay Act to the physical hardware and services used to interconnect students, teachers, school districts, and school buildings necessary to support broadband connectivity and remote learning.
- ❑ This new definition includes the physical hardware and educational resources needed to establish broadband connectivity among teachers and students, whether at schools or during remote learning.



## SB 144 Remote Education Technology Infrastructure

- ❑ PSCOC may fund projects or items it determines are in accordance with its guidelines and necessary to education for:
  - Students
  - School buses
  - Internet connectivity within a district
  - A multi-district regional education network
  - A statewide education network



## SB 345 Per Diem & Mileage Act Changes

- ❑ Changes the current definition of "attend" to "the act of being present, either physically or through a virtual platform that is approved by the entity responsible for determining attendance."
- ❑ Changes per diem reimbursement rates for in-state travel for non-salaried public officers to:
  - \$45.00 if the officer physically attends the board or committee meeting for less than 4 hours;
  - \$45.00 if the officer attends a virtual meeting of any duration during a single calendar day; and
  - \$90.00 if the officer physically attends the board or committee meeting for 4 hours or more during a single calendar day





## SB 377 General Appropriations & Expenditures

- ❑ Appropriated \$250,000 to the Early Childhood Education and Care Department to provide additional public and private pre-kindergarten placements.
- ❑ Makes an appropriation of \$25 million from the public education reform fund to plan, design, engineer, construct, purchase, and equip broadband infrastructure for public schools statewide.



**OTHER STATE AND FEDERAL ISSUES**

**WG**

## Recent Yazzie/Martinez Technology Ruling

- ❑ On April 30, 2021, a state judge found that computer and technology access are essential to a sufficient education, and ordered New Mexico to provide computers and high-speed internet access to “at-risk” students who lack such tools to access remote learning.
- ❑ According to the order, the state must:
  - Determine which at-risk students and their teachers do not have a dedicated digital device and immediately provide one or ensure that one is provided to each of these students and their teachers.
  - Determine which at-risk students do not have access to high-speed internet that will allow them to work from home and immediately provide them with access to a high-speed service and when necessary, transportation to access it.
  - Provide school districts with funding for sufficient qualified IT staff to support and maintain digital devices, cellular hotspots, and community Wi-Fi locations, and other remote learning needs.
- ❑ To that end, PED has already conducted a survey of districts.



## Supreme Court’s Mahanoy Area School District v. B.L. Decision

- ❑ On June 23, 2021, the U.S. Supreme Court issued a decision that:
- ❑ Limits district’s ability to discipline students for off-campus misconduct outside of a school setting.
  - Includes disciplinary consequences in extracurricular activities.
- ❑ CAN discipline students for off-campus misconduct that is a “disruption of learning-related activities or [would require] the protection of those who make up a school community”:
  - Harassment, bullying, or cheating;
  - A threat to others; or,
  - Legitimate disruption to school.
- ❑ **To Do:** Review and revise policies, regulations, and extracurricular handbooks



## Dental Exams for Students

- ❑ During the 2019 legislative session, HB 308 was signed into law, requiring students to obtain or opt out of dental examinations prior to annual school enrollment.
- ❑ That law goes into effect this year.
- ❑ Beginning July 1, 2021, NMAC 6.12.13 requires schools to verify student records of a dental examination within the past year prior to initial enrollment in the district or charter school.
- ❑ If the student has not had a dental examination within the past year, the parent or guardian may sign a Student Dental Examination Waiver indicating their understanding of the risks associated with the student not receiving a dental examination.
- ❑ **To Do:** Ensure enrollment policies and practices are updated.



## Federal Sick and Family Leave Tax Credits

- ❑ New IRS rules allow governmental employers to claim refundable tax credits that reimburse for the cost of providing paid sick and family leave to their employees due to COVID-19, including leave taken by employees to receive or recover from COVID-19 vaccinations.
- ❑ The tax credits are available to eligible employers that provided paid FFCRA-like sick and family leave from April 1, 2021, through September 30, 2021.
- ❑ Government employers can claim the credits on the Form 941 (quarterly federal tax return).



## Expect New Title IX Regulations

- ❑ On April 6, 2021, the U.S. Department of Education announced that the Office for Civil Rights launched a comprehensive review of Title IX regulations to fulfill President Biden's Executive Order guaranteeing an educational environment free from sex discrimination.
- ❑ As part of the review, OCR held a public hearing in June to review oral comments and written submissions on the regulations.
- ❑ OCR anticipates publishing a notice of proposed rulemaking.
- ❑ In mid-June, OCR sent to Districts a letter stating that Title IX must be interpreted to ensure nondiscrimination based on sexual orientation and gender identify.
- ❑ Formal changes to Title IX regulations can be expected.



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The information in this presentation was prepared by Walsh Gallegos Treviño Kyle & Robinson P.C. It is intended to be used as general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.

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