



CUDDY & McCARTHY, LLP
Attorneys at Law

2023 SCHOOL LAW CONFERENCE

LEGISLATIVE, JUDICIAL AND REGULATORY UPDATES

DAN CASTILLE

JACQUELYN ARCHULETA-STAEHLIN

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NM STATE LEGISLATION – 2023



HB 2/ GENERAL APPROPRIATIONS ACT

- **Makes a public school appropriation of \$4.12 billion, up 8% from FY23, or about \$302 million**
- **Includes \$252 million in the SEG for extended learning, \$15 million for EA's, \$32 million for at-risk students, and \$40 million nonrecurring for career technical education.**
- **Public school employees receive 5% salary increases and minimum salaries for EA's of \$25k.**
- **Also provides a 1% education pension contribution increase and provides parity with state employees for educator health insurance coverage.**

HB 4 VOTING RIGHTS PROTECTIONS

- Adds a provision to Section 22-2-8.1 NMSA, which addresses “School Year– Length of School Day— Minimum to add:
 - F. Every general election and regular local election shall be a school holiday for students and staff at each public school in this state.”
(Effective January 1, 2024)
- Also adds a provision to the Election Code to allow a political subdivision of the state, including a school district, to request one or more “monitored secured containers” (for receiving ballots) on or near the boundaries of the political subdivision.

HB 7 REPRODUCTIVE AND GENDER-AFFIRMING HEALTH CARE FREEDOM ACT

- Prohibits school districts and other public bodies, and individuals acting for them, from discriminating against a person based on that person’s “use of or refusal to use reproductive health care or gender-affirming health care services.” (terms defined in Act)**
- Or denying, restricting, or interfering with a person’s ability to access or provide reproductive health care or gender-affirming health care within the medical standard of care.**
- Or depriving, through punishment or other means, a person’s ability to act or not act during pregnancy based on the potential, actual, or perceived effect on the pregnancy.**

HB 7 REPRODUCTIVE AND GENDER-AFFIRMING HEALTH CARE FREEDOM ACT, CONT'D.

- **Does not require an entity or provider to provide care:**
 - **that they don't otherwise have a legal duty to provide**
 - **that is against the medical judgment of a provider acting within the standard of care.**
- **Enforcement provisions:**
 - **Civil Penalties: \$5k or actual damages from each violation, whichever is greater**
Private right of action: actual/punitive damages, attorneys' fees.

HB 207 EXPAND HUMAN RIGHTS ACT SCOPE

- Adds “governmental entities,” which includes school districts, to the definition of “public accommodation.”
- Adds an entirely new section specific to governmental entities and public contractors (any person who receives public funds as a result of contracting with a governmental entity).
- Changes or adds definitions for the characteristics that are protected from discrimination, primarily related to sex, gender, and gender identity.
- The NMHRA amendments do not appear to change any of the existing exemptions, including that nothing in the NMHRA shall “apply to public restrooms, public showers, public dressing facilities or sleeping quarters in public institutions, where the preference or limitation is based on sex.” NMSA 1978 § 28-1-9 (so probably not a “bathroom bill” but see Title IX and Equal Protection Clauses of state and federal constitutions).

HB 207 IMPORTANT DEFINITIONS

As used in the Human Rights Act:

- A. “person” means one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustees, receivers, or the state and all of its political subdivisions;
- H. “public accommodation” means any governmental entity or any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not include a bona fide private club or other place or establishment that is by its nature and use distinctly private;
- R. “sex” means a person's categorization as male, female or intersex based on biology, physiology and physical characteristics;
- S. “sexual orientation” means a person's physical, romantic or emotional attraction to persons of the same or a different gender or the absence of any such attraction;
- T. “gender identity” means a person's self-perception, based on the person's appearance, behavior or physical characteristics, that the person exhibits more masculinity or femininity or the absence of masculinity or femininity whether or not it matches the person's gender or sex assigned at birth;
- U. “gender” means an individual or societal expectation or perception of a person as masculine or feminine based on appearance, behavior or physical characteristics;
- DD. “services” means any function, program, activity or benefit.
- BB. “governmental entity” means the state or any public body;
- CC. “public body” means a state or local government, an advisory board, a commission, an agency or an entity created by the constitution of New Mexico or any branch of government that receives public funding, including political subdivisions, special tax districts, school districts and institutions of higher education

HB 207 GOVERNMENTAL ENTITY AS PUBLIC ACCOMMODATION

It is an unlawful discriminatory practice for:

- F. any person in any public accommodation to make a distinction, directly or indirectly, in offering or refusing to offer its services, facilities, accommodations or goods to any person because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation or physical or mental disability; provided that the physical or mental disability is unrelated to a person's ability to acquire or rent and maintain particular real property or housing accommodation**

HB 207 NEW PROVISION SPECIFIC TO GOVERNMENTAL ENTITIES.

It is an unlawful discriminatory practice for:

M. a governmental entity or a public contractor to refuse or otherwise limit or put conditions on services to a person because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, physical or mental disability, serious medical condition or spousal affiliation; provided that nothing in this subsection shall be construed to require a governmental entity or a public contractor to provide services or programs beyond services or programs to the specific populations that the governmental entity or public contractor is tasked with serving.

HB 127 EDUCATION ASSISTANT SALARY INCREASE

Amends NMSA 22-10A-17.1 to state:

The minimum annual salary for licensed educational assistant shall be twenty-five thousand dollars (\$25,000) effective in the 2023-2024 school year

HB 130 K-12 PLUS PROGRAM

- Requires all schools, except ½ day kindergarten, to provide **1,140** instructional hours per year (up from 990 in elementary and 1080 in secondary).
- An instruction hour is a period at school during which students receive instruction aligned to academic and performance standards which includes:
 - Statutorily required subjects and graduation requirements but also:
 - Enrichment programs that focus on problem solving and cognitive skills development;
 - Content that provides technical knowledge, skills and competency-based applied learning
 - Research based social, emotional or academic interventions;
 - Instruction that occurs during breakfast in accordance with breakfast after the bell or federal requirements.
- **Purpose:** Increase learning time, student engagement, academic performance, improve teaching profession and recognizing professional work

Effective July 1, 2023

HB 130 K-12 PLUS PROGRAM, CONT'D.

- **Up to 60 instructional hours/year in elementary and up to 30 instructional hours/year in secondary may be used for professional work hours which may be embedded in the day**
- **A "professional work hour" means time during which a teacher participates in professional work aligned to challenging academic content and performance standards, including:**
 - **(1) home visiting or parent-teacher conferences; (2) educator training or professional development; and (3) mentorship, coaching and collaboration between school employees.**
- **HB130 also amends the Public School Finance Act to state that budgets won't be approved that don't comply with minimum instructional hours requirements .**

HB 130 K-12 PLUS PROGRAM, CONT'D.

- **Any school on a five-day school week that provides more than 180 days of instruction, and any school on a four-day school week that provides more than 155 days of instruction, will be considered a K-12 Plus school. Each K-12 Plus school will generate program units in the state equalization guarantee (SEG) equal to the school's membership as follows:**
 - **A factor of 0.012 for days between 181 and 190 (156 and 165 for four-day weeks); and**
A factor of 0.016 for days between 191 and 205 (166 and 175 for four-day weeks).

HB 134 MENSTRUAL PRODUCTS IN SCHOOL BATHROOMS

- **A. Menstrual products shall be provided at no charge to students in:**
 - **(1) each women's bathroom and gender-neutral bathroom and at least one men's bathroom in every public middle school, junior high school, secondary school and high school; and**
 - **(2) at least one women's bathroom, one men's bathroom and one gender-neutral bathroom in every public elementary school.**
- **B. For the purpose of this section, "menstrual product" means a sanitary pad or tampon."**

HB 148 EARLY CHILDHOOD DEPT. TRIBAL AGREEMENTS

- Amends the duties of the PED in NMSA 9-29-8 to add that PED shall:
 - **P. upon a request from an Indian nation, tribe or pueblo located in whole or in part in New Mexico, enter into an intergovernmental agreement with the Indian nation, tribe or pueblo, or a tribal organization authorized by the Indian nation, tribe or pueblo by tribal resolution, to plan, conduct, disburse funding to and administer one or more early childhood education and care programs...with the Indian nation, tribe or pueblo, or authorized tribal organization, using its own culturally and linguistically relevant standards, assessments and evaluations."**

HM 181 NATIONAL BOARD CERTIFIED PROGRAM UNITS

- **Amends Section 11-8-23.4 of the Public School Finance Act to provide program units for licensed school employees (not just teachers) certified by the national board for professional teaching standards**

HB 198 CAREER TECH FUNDS FOR INDIAN ED SCHOOL

- Amends NMSA 22-1-12 and 13 which created the Career Technical Education pilot project, and its corresponding fund (the career technical education fund), to include secondary schools funded by the federal Bureau of Indian Education (BIE). The bill would allow secondary schools funded by the BIE to be eligible applicants for the pilot project and for these schools to also be eligible recipients of grants from the career technical education fund.**

HB 199 INCREASE SCHOOL AT-RISK INDEX

- **House Bill 199 (HB199) modifies the SEG to increase the cost differentials used to calculate program units for at-risk students, fine arts education programs, and minimum compensation for school administrators.**
- **Increases the at-risk factor from 0.30 in FY23 to 0.33 in FY24, increase the fine arts factor from 0.05 in FY23 to 0.055 in FY24, and increase each of the administrative responsibility factors by 0.05.**

HB 226 INSTRUCTIONAL MATERIALS & PROCUREMENT CODE

- **Adds “Instruction Materials” to the existing list of exemptions from the Procurement Code.**
- **"Instructional materials" means school textbooks and other educational media that are used as the basis for instruction, including combinations of textbooks, learning kits, supplementary materials and electronic media."**

HB 232 DISCLOSURE OF CERTAIN INFO

Adds a new exceptions to IPRA for:

J. information concerning information technology systems, the publication of which would reveal specific vulnerabilities that compromise or allow unlawful access to such systems; provided that this subsection shall not be used to restrict requests for:

(1) records stored or transmitted using information technology systems;

(2) internal and external audits of information technology systems, except for those portions that would reveal ongoing vulnerabilities that compromise or allow unlawful access to such systems; or

(3) information to authenticate or validate records received pursuant to a request fulfilled pursuant to the Inspection of Public Records Act;

HB 280 AMERICAN INDIAN ED TECH ASSISTANCE CENTERS

- **Requires the Higher Ed. Dept. to establish 2 American Indian education technical assistance centers in geographically diverse areas of the state to provide technical assistance and support for tribal education departments and communities, with a primary focus on American Indian students education and success. This includes working with PED and ECECD to support:**
 - **(1) culturally relevant and linguistically appropriate curriculum and instructional materials;**
 - **(2) career pathways for American Indian educators;**
 - **(3) professional development opportunities for school employees in culturally and linguistically relevant pedagogy;**
 - **(4) education policy developments and capacity building for tribal communities;**
 - **(5) collaboration with state education agencies on tribal-related programs**
 - **(6) collaboration with institutions serving American Indian students, including school districts, charter schools, early childhood centers and programs, BIE schools and public and tribal higher education institutions; and**
 - **(7) additional responsibilities or duties related to American Indian education or vocational support determined by consultation among the various stakeholders.**

HB 342 EDUCATION SAVINGS PLAN USES

- **Expands the state law that allows a tax deduction for payments to an educational trust fund to align with Section 529 of the Internal Revenue Code and expand eligible uses.**
- **May now be used for:**
 - **Up to \$10 thousand a year for tuition in kindergarten through 12th grade;**
 - **Transfers up to \$15 thousand a year to an ABLE account—accounts for individuals with disabilities—for the beneficiary;**
 - **Apprenticeship expenses; and**
 - **Up to \$10 thousand for student loan repayment.**
- **Additional Qualified Educational Expenses. According to The Education Plan, funds in a 529 account can currently be used for a variety of educational expenses, including:**
 - **Tuition and fees;**
 - **Books and supplies;**
 - **Room and board for beneficiaries attending on at least a half-time basis;**
 - **Computer technology, equipment, internet access; and**
 - **Expenses for educational special needs services.**


HB 401 RENAME TECHNOLOGY FOR EDUCATION ACT

- Renames the Technology for Education Act the “Digital Equity in Education Act (NMSA 22-15A-1 *et seq.*)
- Requires districts and charters to submit education technology plans for using educational technology that includes:
 - **(1) how digital equity is being addressed for students; (2) the replacement and repair process for devices issued to students, teachers and families; (3) internet service connectivity support, including access to internet services for at-risk students; (4) information technology support available to students, teachers and parents; (5) professional development provided to teachers regarding digital citizenship; (6) cybersecurity protection provided for the devices and applications issued to teachers and students; and (7) identity protection provided to teachers and students**

HB 481 ALIGN SCHOOL READING MATERIALS

- **Amends the reading materials fund in the Instructional Materials Law to specify that money in the fund must be used for elementary structured literacy core, intervention, or supplementary instructional materials.**
- **to be able to apply for funding from the reading materials fund, that the school district have an established literacy professional development plan that includes a detailed framework for structured literacy training; existing law also requires that a school district must select no more than two comprehensive published core reading programs to be eligible.**

HB 505 CAPITAL OUTLAY PROJECTS

- **Makes appropriations for state agencies, higher education, and statewide public school priorities including:**
 - **\$16,015 million to the public education department for bus cameras and school bus replacements;**
 - **\$121.015 million for CTE, Pre-K and School Security Systems.**
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HB 533 SCHOOL GROUP INSURANCE CONTRIBUTIONS

- **Effective July 1, 2023, increases amount school districts and charter schools contribute to group health insurance as follows:**
 - **(1) at least eighty percent of the cost of the insurance of an employee whose annual salary is less than fifty thousand dollars (\$50,000);**
 - **(2) at least seventy percent of the cost of the insurance of an employee whose annual salary is fifty thousand dollars (\$50,000) or more but less than sixty thousand dollars (\$60,000); and**
 - **(3) at least sixty percent of the cost of the insurance of an employee whose annual salary is sixty thousand dollars (\$60,000) or more.**

SB 3 FAMILY INCOME INDEX DISTRIBUTIONS FLEXIBILITY

- **Amends the Family Income Index Act (see Section 22-8F NMSA 1978) to remove some restrictions on how funding for the act must be used by schools, and adds language to specify instructional resources and materials purchased with the family income index allocations must be evidence-based and high-quality.**

SB 4 HEALTHY UNIVERSAL SCHOOL MEALS

- **Amends Section 22- 13C-1 NMSA 1978 to create the “Healthy Hunger-Free Students’ Bill of Rights Act” which expands free meals to all public and charter school students attending schools that are operating the national school breakfast and lunch programs, and allows tribally controlled schools and private schools operating the national school breakfast and lunch programs to opt in, to offer free, high-quality meals, regardless of family income.**

SB 20 EDUCATIONAL RETIREMENT BOARD CHANGES

- **Amends Educational Retirement Act to align the age at which distribution of pension benefits begins to the federal law (“retirement benefits shall be distributed in accordance with Section 401(a)(9) of the federal Internal Revenue Code of 1986, as amended, and the regulations thereunder....”**

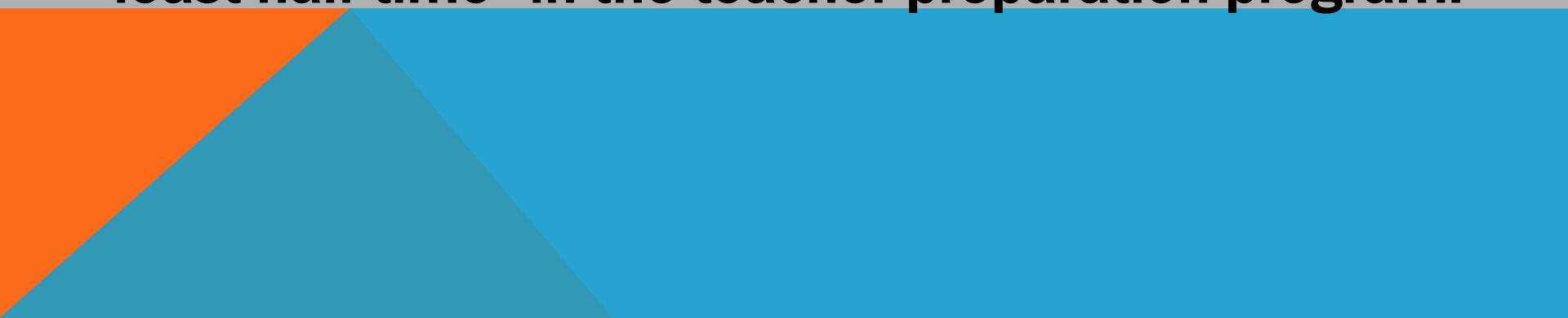
SB 120 OPEN ENROLLMENT FOR MILITARY CHILDREN

- **Amends 22-1-4. Free Public Schools—Exceptions—Withdrawing and Enrolling– Open Enrollment to give second priority enrollment status, on par with students who previously attended the school, to students who:**
 - **“are the children of a military family living in temporary housing and are assigned, awaiting placement or pending a move to permanent housing in a different attendance area where the students' family seeks enrollment of the students in either their current school attendance area or the school attendance area of the permanent housing.”**

SB 131 PUBLIC SCHOOL CAPITAL OUTLAY FUNDING CHANGES

- **Amends Public School Capital Outlay Act to:**
 - **Allow the PSFA budget to be based on a 5 year (instead of 3) average;**
 - **Forgive outstanding offsets for direct legislative appropriations and eliminates offsets for future direct legislative appropriations.**
 - **Temporarily reduces “local match” by 1/3 and 1/2 for districts with less than 200 MEM**
- Eliminates the Impact Aid “credit”**

SB 307 LICENSED TEACHER PREP AFFORDABILITY

- **The Teacher Preparation Affordability Act provides for need-based scholarships for students pursuing a teaching degree from a NM public-post secondary institution.**
 - **SB 307 expands eligibility to include licensed teachers pursuing a graduate degree in education or related to their teaching specialty and removes from eligibility requirement that student be enrolled “at least half-time” in the teacher preparation program.**
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HB 309 CAPITAL OUTLAY REAUTHORIZATIONS

- **Reauthorizes projects originally appropriated between 2019 and 2022 including appropriations to PED for school bus cameras and to purchase, replace and equip school buses.**

SB 378 SEVERANCE TAX FUND MINIMUM DISTRIBUTION

- To ensure bonding capacity for public schools is held harmless and remains at a level consistent with projections in the most recent Board of Finance estimates of severance tax bonding capacity.

SB 383 PUBLIC EDUCATION BACKGROUND CHECK PROCESS

- Amends Definitions section of School Personnel Act to add certain categories of licensed employees to the definition of “instructional support provider.”**
- Amends 22-10A-3, which provides for a licensure or certificate requirement for certain employees to make clear that applicants to PED for various licenses and certificates must undergo a criminal history background check at their expense and that the criminal history will not be shared by PED unless permitted by federal law.**
- Amends 22-10A-5 to require applicants for licensure from PED and applicants for employment with a school to undergo state and federal criminal history checks. School must pay for criminal history check for applicant who is offered employment. Makes clear that criminal history records check is not a public record.**
- Amends 22-10A-17 to required that ISP be licensed by PED and, if a professional license is required (e.g., nurses) , that the professional license be maintained.**

SB 397 SCHOOL BASED HEALTH CENTERS

- **Adds a new section to the Public Health Act for school based-health centers (SBHC).**
- **SBHCs that receive NMDOH funding are regulated by NMDOH.**
- **May be operated by licensed health care providers, including hospitals, federally qualified health centers, the department's public health nurses and other qualified health care providers.**
- **School-based health centers shall provide services through licensed providers, including: (1) primary health care; (2) preventive health care, including (3) treatment of minor, acute and chronic conditions; (4) mental health care; (5) substance use disorder assessments, treatment and referral; (6) crisis intervention; or (7) referrals as necessary for additional treatment, including inpatient care, specialty care, emergency psychiatric care, oral health care and vision health care services.**

SB 417 TEACHER VOCATIONAL ED LICENSURE TRACK

- **Creates an additional Vocational Education Licensure track for teachers.**
- **Spells out additional pathway to received level-one license and to progress to level two and level three licenses.**
- **Exempts vocational education teachers from minimum salary requirements for other teachers at each licensure level.**

SB 450 SCHOOL COACH CPR & AED TRAINING

- **Adds a section to the Public School Code to require licensed coaches to have current certification in cardiopulmonary resuscitation (CPR) which includes training regarding the use of automated external defibrillators (AED).**

SB 474 SCHOOL DISTRICT IN-LIEU-OF-TAXES PAYMENTS

- Amends the Industrial Revenue Bond Act and the County Industrial Bone Act regarding how payment-in-lieu-of-taxes payments are distributed among school districts.**
- PILOT (or PILT) will be in aggregate amount equal to the amount received by the municipality/county multiplied by the percentage determined by dividing the average of all of the mills imposed by the school districts in the county, including the operating, capital improvement, building improvement, education technology and bond mills imposed by the school districts in the county [and] plus state debt service mills**
- If more than one school district in municipality or county in which industrial revenue bond project the PILOT is allocated: 50 percent allocated equally among the school district in which the project is located; • 40 percent allocated in proportion to the area of each school district within the municipality; and • 10 percent allocated in proportion to the school district's MEM (enrollment).**


N.M. LEGISLATURE MEMORIALS AND JOINTS MEMORIALS



HJM 7 STUDY SCHOOL VENTILATION & AIR CONDITIONING

- **Requests that the public school capital outlay oversight task force study public school heating, ventilation and air conditioning systems and recommend a sustainable funding mechanism for the assessment, repair, adjustment and replacement of heating, ventilation and air conditioning systems**

HM 22 PURPLE STAR SCHOOLS PROGRAM DEVELOPMENT

- **In 2021, a law was enacted directing PED to develop a purple star school program to help ease transition for student in military families into new schools and provide them support.**
 - **Requests PED to assess and report the status, oversight, implementation and effectiveness of the program in NM Schools.**
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HM 44 COMMUNITY SCHOOLS FUNDING TASK FORCE

- Requests PED to convene a Community Schools Funding Task Force to study the issue of sustainable funding for community schools, to develop criteria for certifying community schools, to recommend funding based on certification of community schools, and to develop a community schools strategic plan.
- (the Community Schools Act is NMSA 22-32-1 *et seq*)

HM 51 STUDENT PUBLIC SCHOOL FUNDING FORMULA

- **Request the Legislative Education Study Committee (LESC), together with the Legislative Finance Committee (LFC), the Public Education Department (PED), and the Public School Capital Outlay Council to complete a comprehensive analysis of the public school funding formula and whether it is meeting the state constitutional requirement to provide a uniform system of free public schools sufficient for the education of all school age children in the state. The memorial requests relevant findings and recommendations be presented to the Legislature before the 2025 legislative session.**

HM 56 STUDY HIGH SCHOOL START TIMES

- **Requests the LESC to study high school start times. LESC is requested to work with high school students, PED, and staff from New Mexico school districts and charter schools to conduct this study and to develop a recommendation on a statutory high school start time. The memorial requests that the LESC publish a report of its research and recommendations by December 31, 2023.**
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SJM 14 REDUCE SCHOOL REPORTING REQUIREMENTS STUDY

- Notes that districts and charters comply with 240 data collections and application narratives across 24 different units of PED.**
- Notes that the total annual time that districts and charters spend on these reports is 10,500 hours, or the work of about 5 full time employees for each district and charter.**
- Requests that PED, LESC, LFC, NMCEL, NMSBA, and Public Charter Schools convene a working group to student all state and federal reporting requirements to identify nonessential, redundant, and unnecessarily burdensome reports and recommend a plan to reduce requirements with a goal of reducing reporting requirements by at least 25%.**

SCHOOL LAW CASES

CARSON V. MAKIN (USSC 2022)

Issue: Does a state violate the Religion Clauses or Equal Protection Clause of the United States Constitution by prohibiting students participating in an otherwise generally available student-aid program from choosing to use their aid to attend schools that provide religious, or "sectarian," instruction

Note: The Court, 6-3, held: "Maine's 'nonsectarian' requirement for otherwise generally available tuition assistance payments violates the Free Exercise Clause." The Chief Justice concluded that "[t]he principles applied in *Trinity Lutheran* and *Espinoza* suffice to resolve this case." "A State need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious."

KENNEDY V. BREMERTON SCHOOL DISTRICT (USSC 2022)

Issues: (1) Whether a public-school employee who says a brief, quiet prayer by himself while at school and is visible to students is engaged in government speech that lacks any First Amendment protection; (2) Whether, assuming that such religious expression is private and protected by the free speech and free exercise clauses, the establishment clause nevertheless compels public schools to prohibit it

Note: The Court, 6-3, held: The Free Exercise and Free Speech Clauses of the First Amendment protect an individual engaging in a personal religious observance from government reprisal; the Constitution neither mandates nor permits the government to suppress such religious expression.

LUNA PEREZ V. STURGIS PUB. SCH (USSC 2023)

- Student, who is deaf, attended schools in Sturgis School District (Sturgis) from ages 9 through 20. When Sturgis announced that it would not permit student to graduate, he and his family filed an administrative complaint with the Michigan Department of Education alleging (among other things) that Sturgis failed to provide him a free and appropriate public education as required by the Individuals with Disabilities Education Act (IDEA).
- They claimed that Sturgis supplied student with unqualified interpreters and misrepresented his educational progress. The parties reached a settlement in which Sturgis promised to provide the forward-looking relief student sought, including additional schooling. Student then sued in federal district court under the Americans with Disabilities Act (ADA) seeking compensatory damages. Sturgis moved to dismiss. It claimed that 20 U.S.C. § 1415(*I*) barred Mr. Perez from bringing his ADA claim because it requires a plaintiff “seeking relief that is also available under” IDEA to first exhaust IDEA's administrative procedures. The district court agreed and dismissed the suit, and the Sixth Circuit affirmed.

Held: IDEA's exhaustion requirement does not preclude Mr. Perez's ADA lawsuit because the relief he seeks (*i.e.*, compensatory damages) is not something IDEA can provide.

C1.G on behalf of C.G. v. Siegfried (10th Cir. 2022)

- First online, off-campus speech case to reach a federal appellate court since Mahanoy v. B.L. (2022).
- Friday night, at the thrift store... C.G. took a picture of his friends wearing wigs and hats, including “one hat that resembled a foreign military hat from the World War II period.” He posted that picture on the social media platform Snapchat and captioned it, “Me and the boys bout [sic] to exterminate the Jews.” He deleted the post a few hours later, and posted an apology and that it was meant to be a joke.
- Police called and they found no threat. A parent brought it to the attention of the school, indicating that it caused concern to many in the community, and referencing prior anti-Semitic activity (presumably in the District). C.G. expelled for one year for hate speech targeting the Jewish community.
- Using Tinker standard, District court held that it was foreseeable that post could cause substantial disruption at school and interfere with the rights of others. Dismissed the student’s case and upheld the District’s discipline of the student.
- 10th Circuit waited to hear the appeal until Mahanoy decided in the Supreme Court.

C1.G on behalf of C.G. v. Siegfried (10th Cir. 2022), Cont'd.

- Student argued that the First Amendment limits school authority to regulate off-campus student speech, particularly speech unconnected with a school activity and not directed at the school or its specific members.
- 10th Circuit stated that speech was not a true threat, fighting words, or obscenity, which would have made it not protected by the First Amendment.
- Court applied the Tinker standard but as limited by Mahanoy for off-campus speech. Schools may restrict student speech only if it “would substantially interfere with the work of the school or impinge upon the rights of other students.” (Tinker). A school can also regulate student speech where it reasonably forecasts such disruption. “[S]pecial characteristics call for special leeway when schools regulate speech that occurs under its supervision
- But in considering student speech that occurs off campus and is unconnected to any school activity, a school: (1) can “rarely stand in loco parentis”; (2) “will have a heavy burden to justify intervention” when political or religious speech is involved; and (3) must especially respect “an interest in protecting a student's unpopular expression.”

C1.G on behalf of C.G. v. Siegfried (10th Cir. 2022), Cont'd.

- C.G spoke outside of school hours from a location outside the school; (2) did not identify the school in his post or target any member of the school community with vulgar or abusive language; and (3) transmitted his speech through a personal cellphone, to an audience consisting of his private circle of Snapchat friends. These characteristics of C.G.'s speech, while risking transmission to the school itself, nonetheless diminish the school's interest in punishing his utterance.
- Court held that facts didn't support a reasonable forecast a substantial disruption. Post did not include weapons, specific threats, or speech directed toward the school or its students. For the initial suspension, District only provided an email chain with one family as evidence that it was reasonable to forecast substantial disruption. Court said Principal needed more to show why he felt the learning environment would be impacted.
- Later, the district received four more emails from parents, there were news reports about the incident, and the school devoted an advisory period to a discussion about the post. The Court held that these were not evidence of actual disruption. "These facts fall short of Tinker's demanding standard."
- 10th Circuit held that because school officials cannot stand *in loco parentis* for this off-campus speech, and because there was no reasonable forecast of disruption or actual disruption, the student had a plausible 1st Amendment case and reversed the dismissal.

ANTICIPATED FEDERAL REGULATIONS



PROPOSED/EXPECTED NEW TITLE IX REGULATIONS

- **Clarifies that TIX prohibition on sex discrimination includes discrimination based on sexual orientation, gender identity, sex stereotypes, and pregnancy.**
- **Expands one of the definitions of sexual harassment: unwelcome sex-based conduct that is sufficiently severe or pervasive that, based on the totality of the circumstances and evaluated subjectively and objectively, it denies or limits a person's ability to participate in or benefit from the recipient's education program or activity.**
- **Would cover some conduct that occurs outside of the district's educational program or activity or outside of the U.S.**

PROPOSED/EXPECTED NEW TITLE IX REGULATIONS CONT'D.

- Require district to take prompt and effective action to end any prohibited sex discrimination and remedy its effects, and not just when the district has “actual knowledge.”**
- Would require all employees to report sex discrimination and more transparency on complaint procedures.**
- Would apply the TIX sexual harassment grievance process to all complaints of sex discrimination. Decision-maker could be same person as TIX coordinator/investigator; Dismissals permitted in some situations but not mandatory.**
- Would require reasonable accommodations for pregnancy or related conditions, reasonable break time for employees for lactation, and lactation space for both students and respondents.**
- Over 240,000 comments received on proposed rule-making; Anticipated date of October 2023 for final rule.**

PROPOSED/EXPECTED NEW TITLE IX REGULATIONS RELATED TO GENDER IDENTITY AND SCHOOL ATHLETICS

- **Proposed rule would:**
 - **Prohibit schools from categorically banning transgender students from participating on sports teams consistent with their gender identity.**
 - **Allow schools to develop policies that limit transgender students' participation on teams consistent with their gender identity through eligibility criteria that protect students from being denied equal athletic opportunity. Such eligibility criteria must:**
 - **serve important educational objectives, such as ensuring fairness in competition or preventing sports-related injury;**
 - **account for the nature of the sport, level of competition, and grade/education level to which they apply;**
 - **not be premised on disapproval of transgender students or a desire to harm a particular student; and**
minimize harms to students whose opportunity to participate on a male or female team consistent with their gender identity would be limited or denied.
- **Over 150,000 comments received; Anticipated date of final rule October 2023**

NEW MEXICO REGULATIONS

- **Repeal and Replace 6.63.11 NMAC, Licensure in Rehabilitation Counseling. (Effective 9/27/22).**
- **New 66.63.18 NMAC Licensure for Behavioral Health Counselors (11/29/22).**
 - **Creates a pathway to licensure to help districts bill Medicare for counseling, including for students without an IEP.**
- **Amendment to 6.31.2 NMAC, Children with Disabilities/Gifted Children (Effective July 1, 2023)**
 - **Purpose to provide more definite timelines and requirements for districts throughout the identification, initial evaluation, and reevaluation procedures for children with disabilities from MLSS and initial evaluation to the eligibility determination and initial individualized education program (IEP) meetings. Additionally, the rule was amended to explicitly include current IDEA requirements; address requirements when a student receives a regular high school diploma or exceeds the age of eligibility for special education services; and preclude the use of the severe discrepancy model as a method of evaluating for specific learning disabilities. The subsection regarding initial evaluations and reevaluations was also reorganized and amended to better clarify the requirements for evaluation and reevaluation.**

NEW MEXICO REGULATIONS

- **6.60.6 NMAC, Continuing Licensure for Licensed Educators in New Mexico (Effective January 18, 2023)**
- **Amendment to 6.60.7 NMAC, Educator Licensure Application Fee (Effective January 18, 2023)**
- **Repeal of 6.69.4 NMAC, Performance Evaluation System Requirements for Teachers (Effective January 18, 2023)**
- **Repeal of 6.69.5 NMAC, Performance Evaluation System Requirements for Librarian-Teachers (Effective January 18, 2023)**
 - **purpose of the proposed rulemaking is to establish an educator licensure advancement pathway that phases out the professional development dossier and implements an advancement program comprising a series of five micro-credentials – classroom environment, multi-layered system of supports, assessment literacy, culturally and linguistically responsive instruction, and family engagement – that align with the department-approved educator evaluation system, Elevate NM.**

NEW MEXICO REGULATIONS

- **6.19.8 NMAC, School Improvement Designations (May 23, 2023)**
 - **The purpose of this rule is to update criteria for determining school improvement designations and required actions for improvement as required by ESEA as authorized by ESSA. Adopted on an emergency basis pursuant to PED finding that non-emergency rule-making procedures would cause PED to violate ESEA and ESSA.**

NEW MEXICO PROPOSED REGULATIONS

- Public hearing for the following proposed rulemaking on Wednesday, June 21, 2023:
 - Amendment to 6.29.5 NMAC, English Language Development;
 - Amendment to 6.32.2 NMAC, Guidelines for Implementing Bilingual Multicultural Education Programs;
 - Repeal and replace of 6.63.8 NMAC, Licensure in Athletic Coaching, 7-12; and
 - New rule 6.2.9 NMAC, Public Education Commission State Charter School Procedures
 - Repeal and replace of 6.2.8 NMAC, Operational Bylaws of the Professional Practices and Standards Council
- <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>,

NEW MEXICO PROPOSED REGULATIONS

- **Public hearing for the following proposed rulemaking on Wednesday, June 21, 2023:**
 - **New Rule 6.31.3 NMAC, Gifted and Talented Students**
 - **Amendment to 6.31.2 NMAC, Children with Disabilities/Gifted Children**
 - **Amendment to 6.29.1 NMAC, General Provisions**
 - **Repeal and replace of 6.19.7 NMAC, Demonstration of Competencies for High School Graduation**
 - **Amendment to 6.12.15 NMAC, COVID-19 School Requirements**
- **<https://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rulemaking/rule-notification/>**

CONTACT INFORMATION



R. Daniel Castille

(505) 988-4476

dcastille@cuddymccarthy.com

Jacquelyn Archuleta-Staehlin

(505) 988-4476

JStaehlin@cuddymccarthy.com

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