

1 HOUSE BILL 456

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Mary Helen Garcia

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9  
10 AN ACT

11 RELATING TO PUBLIC EDUCATION; ADDING TO THE PUBLIC SCHOOL CODE  
12 AN EARLY IDENTIFICATION AND NOTIFICATION AND IMMEDIATE  
13 INTERVENTION SYSTEM TO PREVENT UNEXCUSED ABSENCES, HABITUAL  
14 TRUANCY AND WITHDRAWAL FROM SCHOOL; PROVIDING FOR THE  
15 SUSPENSION OR POSTPONEMENT OF DRIVING PRIVILEGES OF SCHOOL-AGE  
16 PERSONS IN VIOLATION OF THE COMPULSORY SCHOOL ATTENDANCE LAW  
17 UPON A HEARING BY THE MOTOR VEHICLE DIVISION OF THE TAXATION  
18 AND REVENUE DEPARTMENT.

19  
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

21 SECTION 1. Section 22-12-2 NMSA 1978 (being Laws 1967,  
22 Chapter 16, Section 170, as amended by Laws 2007, Chapter 307,  
23 Section 6 and by Laws 2007, Chapter 308, Section 6) is amended  
24 to read:

25 "22-12-2. COMPULSORY SCHOOL ATTENDANCE--WITHDRAWAL

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1 REQUIREMENTS--RESPONSIBILITY.--

2           A. Except as otherwise provided, a school-age  
3 person shall attend public school, private school, home school  
4 or a state institution until the school-age person is at least  
5 eighteen years of age unless that person has graduated from  
6 high school or received a general educational development  
7 certificate. [~~A parent may give written, signed permission for~~  
8 ~~the school-age person to leave school in case of hardship~~  
9 ~~approved by the local superintendent.~~]

10           B. A school-age person subject to the provisions of  
11 the Compulsory School Attendance Law shall attend school for at  
12 least the length of time of the school year that is established  
13 in the school district in which the person is a resident or the  
14 state-chartered charter school in which the person is enrolled,  
15 and the school district or state-chartered charter school shall  
16 not excuse a student from attending school except as provided  
17 in that law or for parent-authorized medical reasons.

18           C. Any parent of a school-age person subject to the  
19 provisions of the Compulsory School Attendance Law is  
20 responsible for the school attendance of that person.

21           D. A school-age person who is subject to the  
22 provisions of the Compulsory School Attendance Law shall not  
23 withdraw from a public school unless:

24                   (1) the parent of the school-age person  
25 provides written documentation of the person's enrollment in

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1 another public school or a private school or a home school  
2 operated pursuant to the provisions of Section 22-1-2.1 NMSA  
3 1978;

4 (2) the school receives:

5 (a) written documentation of the school-  
6 age person's illness;

7 (b) written documentation of a financial  
8 hardship causing the school-age person to be employed full time  
9 to support the person's family; or

10 (c) an order by a court that has  
11 jurisdiction over the school-age person; or

12 (3) at an exit interview:

13 (a) the school-age person, the parent of  
14 the school-age person and the principal meet to discuss the  
15 intention to withdraw from school;

16 (b) the school-age person and the parent  
17 of the school-age person sign a written acknowledgment that a  
18 withdrawal from school is likely to diminish the future  
19 earnings and long-term employment prospects of the school-age  
20 person; and

21 (c) the principal agrees to the  
22 withdrawal and signs the written acknowledgment signed by the  
23 school-age person and the parent of the school-age person.

24 E. Starting with the 2014-2015 school year, a  
25 school-age person in grade eight through twelve who withdraws

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1 from a public school without meeting the requirements in  
2 Subsection D of this section may be certified as a school-age  
3 person in violation of the Compulsory School Attendance Law by  
4 the department and referred to the motor vehicle division of  
5 the taxation and revenue department for a hearing to determine  
6 the suspension or postponement of driving privileges. The  
7 motor vehicle division may suspend or postpone driving  
8 privileges until the person is no longer of school age or the  
9 department certifies to the motor vehicle division that the  
10 school-age person is in compliance with the Compulsory School  
11 Attendance Law, whichever occurs first.

12           ~~[D-]~~ F. Each local school board and each governing  
13 body of a charter school or private school shall enforce the  
14 provisions of the Compulsory School Attendance Law for students  
15 enrolled in their respective schools."

16           **SECTION 2.** Section 22-12-7 NMSA 1978 (being Laws 1967,  
17 Chapter 16, Section 175, as amended) is amended to read:

18           "22-12-7. ENFORCEMENT OF ATTENDANCE LAW--HABITUAL  
19 TRUANTS--PENALTY.--

20           A. Each local school board and each governing body  
21 of a charter school or private school shall initiate the  
22 enforcement of the provisions of the Compulsory School  
23 Attendance Law for students enrolled in their respective  
24 schools.

25           B. To initiate enforcement of the provisions of the

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1 Compulsory School Attendance Law against ~~[an]~~ a student who is  
2 a habitual truant, a local school board or governing body of a  
3 charter school or private school or its authorized  
4 representatives shall give written notice of the habitual  
5 truancy by mail to or by personal service on the parent of the  
6 student subject to and in noncompliance with the provisions of  
7 the Compulsory School Attendance Law. The notice shall include  
8 a date, time and place for the parent to meet with the local  
9 school district, charter school or private school to develop  
10 intervention strategies that focus on keeping the student in an  
11 educational setting.

12 C. If unexcused absences continue after written  
13 notice of habitual truancy as provided in Subsection B of this  
14 section has occurred, the student shall be reported to the  
15 juvenile probation ~~[services]~~ office of the judicial district  
16 where the student resides for an investigation as to whether  
17 the student shall be considered to be a neglected child or a  
18 child in a family in need of services because of habitual  
19 truancy and thus subject to the provisions of the Children's  
20 Code. The juvenile probation ~~[services]~~ office may send a  
21 written notice to a parent of the student directing the parent  
22 and student to report to the juvenile probation ~~[services]~~  
23 office to discuss services for the student or the family. ~~[In~~  
24 ~~addition to any other disposition, the children's court may~~  
25 ~~order the habitual truant's driving privileges to be suspended~~

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1 ~~for a specified time not to exceed ninety days on the first~~  
2 ~~finding of habitual truancy and not to exceed one year for a~~  
3 ~~subsequent finding of habitual truancy.]~~

4 D. If, after review by the juvenile probation  
5 office where the student resides, a determination and finding  
6 is made that the habitual truancy by the student may have been  
7 caused by the parent of the student, then the matter [~~will~~]  
8 shall be referred by the juvenile probation office to the  
9 district attorney's office or any law enforcement agency having  
10 jurisdiction for appropriate investigation and filing of  
11 charges allowed under the Compulsory School Attendance Law.  
12 Charges against the parent may be filed in metropolitan court,  
13 magistrate court or district court.

14 E. A parent of the student who, after receiving  
15 written notice as provided in Subsection B of this section and  
16 after the matter has been reviewed in accordance with  
17 Subsection D of this section, knowingly allows the student to  
18 continue to violate the Compulsory School Attendance Law [~~shall~~  
19 ~~be~~] is guilty of a petty misdemeanor. Upon the first  
20 conviction, a fine of not less than twenty-five dollars  
21 (\$25.00) or more than one hundred dollars (\$100) may be  
22 imposed, or the parent of the student may be ordered to perform  
23 community service. If violations of the Compulsory School  
24 Attendance Law continue, upon the second and subsequent  
25 convictions, the parent of the student who knowingly allows the

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1 student to continue to violate the Compulsory School Attendance  
2 Law [~~shall be~~] is guilty of a petty misdemeanor and shall be  
3 subject to a fine of not more than five hundred dollars (\$500)  
4 or imprisonment for a definite term not to exceed six months or  
5 both.

6 F. [~~The provisions of this section shall apply~~  
7 ~~beginning July 1, 2004.~~] Starting with the 2014-2015 school  
8 year, a student in grade eight through twelve who is an  
9 habitual truant may be certified as a student in violation of  
10 the Compulsory School Attendance Law by the department and  
11 referred to the motor vehicle division of the taxation and  
12 revenue department for a hearing to determine the suspension or  
13 postponement of driving privileges. The student's driving  
14 privileges shall be suspended or postponed until the student is  
15 no longer of school age or the department certifies to the  
16 motor vehicle division that the student is in compliance with  
17 the Compulsory School Attendance Law, whichever occurs first."

18 SECTION 3. Section 22-12-8 NMSA 1978 (being Laws 1985,  
19 Chapter 104, Section 1, as amended) is amended to read:

20 "22-12-8. EARLY IDENTIFICATION AND NOTIFICATION AND  
21 IMMEDIATE INTERVENTION SYSTEM FOR UNEXCUSED ABSENCES AND  
22 [TRUANCY] WITHDRAWAL RISK FACTORS.--[Notwithstanding the  
23 provisions of Section 22-12-7 NMSA 1978, if a student is in  
24 need of early intervention, the school district, charter school  
25 or private school shall contact the student's parent to inform

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1 ~~the parent that the student has unexcused absences from school~~  
2 ~~and to discuss possible interventions. The provisions of this~~  
3 ~~section do not apply to any absence if the parent has contacted~~  
4 ~~the school to explain the absence.]~~

5 A. The department shall develop, and school  
6 districts shall implement, an early identification and  
7 notification and immediate intervention system pursuant to this  
8 section to minimize unexcused absences and prevent habitual  
9 truancy and withdrawal from school.

10 B. When a student accumulates five unexcused  
11 absences, the school shall request in writing a meeting and  
12 meet with the student's parent to discuss:

13 (1) the reasons for the unexcused absences;

14 (2) immediate interventions to prevent further  
15 unexcused absences;

16 (3) parental involvement in preventing further  
17 unexcused absences; and

18 (4) the potential consequences of habitual  
19 truancy.

20 C. For each student who demonstrates any risk  
21 factor that may lead to withdrawal from school, each school  
22 shall provide to the student immediate interventions aligned to  
23 the student's next step plan pursuant to Section 22-13-1.1 NMSA  
24 1978 and the risk factors demonstrated by the student.

25 D. For a student who demonstrates any risk factor

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1 for withdrawing from school, the school shall maintain and  
2 provide to the student's parent and the school district a  
3 record of each risk factor and immediate intervention taken.

4 E. As used in this section, a "risk factor"  
5 includes:

- 6 (1) multiple discipline referrals;
- 7 (2) third grade reading scores below the  
8 proficiency level;
- 9 (3) habitual truancy in grades six through  
10 nine;
- 11 (4) failing in a course in grades six through  
12 nine; or
- 13 (5) a grade point average of 1.5 or below in  
14 grade nine."

15 SECTION 4. Section 22-12-9 NMSA 1978 (being Laws 2004,  
16 Chapter 28, Section 1, as amended) is amended to read:

17 "22-12-9. UNEXCUSED ABSENCES [~~AND~~], TRUANCY AND  
18 WITHDRAWAL--ATTENDANCE POLICIES.--

19 A. As used in this section and Sections 22-12-7 and  
20 22-12-8 NMSA 1978:

21 (1) "habitual truant" means a student who has  
22 accumulated the equivalent of ten days or more of unexcused  
23 absences within a school year;

24 [~~(2) "student in need of early intervention"~~  
25 ~~means a student who has accumulated five unexcused absences~~

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1 ~~within a school year;~~ and

2 [~~(3)~~] (2) "unexcused absence" means an absence  
3 from school or classes for which the student does not have an  
4 allowable excuse pursuant to the Compulsory School Attendance  
5 Law or rules of the local school board or governing authority  
6 of a charter school or private school.

7 B. An unexcused absence of two or more classes up  
8 to fifty percent of an instructional day shall be counted as  
9 one-half day absence, and the unexcused absence of more than  
10 fifty percent of an instructional day shall be counted as one  
11 full-day absence.

12 C. Each school district and charter school shall  
13 maintain an attendance policy that:

14 (1) provides for an early identification ~~[of~~  
15 ~~students with unexcused absences, students in need of early~~  
16 ~~intervention and habitual truants and provides intervention~~  
17 ~~strategies that focus on keeping students in need of early~~  
18 ~~intervention in an educational setting and prohibit out-of-~~  
19 ~~school suspension and expulsion as the punishment for unexcused~~  
20 ~~absences and habitual truancy]~~ and notification and immediate  
21 intervention system, pursuant to Section 22-12-8 NMSA 1978, for  
22 keeping in an educational setting, without out-of-school  
23 suspension or expulsion as a punishment, students who have five  
24 or more unexcused absences, students who are habitual truants  
25 and students who demonstrate risk factors for withdrawing from

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1 school;

2 (2) [~~uses~~] allows withdrawal [~~as provided in~~  
3 ~~Section 22-8-2 NMSA 1978~~] only after exhausting intervention  
4 efforts to keep students in educational settings;

5 (3) requires that class attendance be taken  
6 for every instructional day in every public school or school  
7 program in the school district; and

8 (4) provides for schools to document the  
9 following for each student identified as an habitual truant:

10 (a) attempts of the school to notify the  
11 parent that the student had unexcused absences;

12 (b) attempts of the school to meet with  
13 the parent to discuss intervention strategies; and

14 (c) intervention strategies implemented  
15 to support keeping the student in school.

16 D. The department shall review and approve school  
17 district and charter school attendance policies.

18 E. School districts and charter schools shall  
19 report unexcused absences and habitual truancy rates to the  
20 department in a form and at such times as the department  
21 determines and shall document intervention efforts made to  
22 keep students in need of early intervention and habitual  
23 truants in educational settings. Locally chartered charter  
24 schools shall provide copies of their reports to the school  
25 district.

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1           F. Once per semester, each school shall report to  
2 the school district, and once per school year, each school  
3 district shall report to the department, the number of  
4 students who:

- 5                   (1) accumulated five unexcused absences;
- 6                   (2) accumulated ten unexcused absences;
- 7                   (3) withdrew from school pursuant to the  
8 provisions of Subsection D of Section 22-12-2 NMSA 1978:

- 9                           (a) with an exit interview; or
- 10                           (b) without an exit interview;
- 11                   (4) stopped attending school during a  
12 semester; or

- 13                           (5) failed to return to school after a  
14 school break.

15           G. The department shall compile school district  
16 and charter school reports on rates of unexcused absences  
17 [~~and~~], habitual truancy and withdrawals and require school  
18 districts and charter schools to certify that the information  
19 is being reported consistently."

20           SECTION 5. Section 66-5-30 NMSA 1978 (being Laws 1978,  
21 Chapter 35, Section 252, as amended) is amended to read:

22           "66-5-30. AUTHORITY OF DIVISION TO SUSPEND OR REVOKE  
23 LICENSE.--

24           A. The division is authorized to suspend the  
25 instruction permit, driver's license or provisional license

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1 of a driver without preliminary hearing upon a showing by its  
2 records or other sufficient evidence, including information  
3 provided to the state pursuant to an intergovernmental  
4 agreement authorized by Section 66-5-27.1 NMSA 1978, that the  
5 licensee:

6 (1) has been convicted of an offense for  
7 which mandatory revocation of license is required upon  
8 conviction;

9 (2) has been convicted as a driver in an  
10 accident resulting in the death or personal injury of another  
11 or serious property damage;

12 (3) has been convicted with such frequency  
13 of offenses against traffic laws or rules governing motor  
14 vehicles as to indicate a disrespect for traffic laws and a  
15 disregard for the safety of other persons on the highways;

16 (4) is an habitually reckless or negligent  
17 driver of a motor vehicle;

18 (5) is incompetent to drive a motor vehicle;

19 (6) has permitted an unlawful or fraudulent  
20 use of the license;

21 (7) has been convicted of an offense in  
22 another state or tribal jurisdiction that if committed within  
23 this state's jurisdiction would be grounds for suspension or  
24 revocation of the license;

25 (8) has violated provisions stipulated by a

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1 district court in limitation of certain driving privileges;

2 (9) has failed to fulfill a signed promise  
3 to appear or notice to appear in court as evidenced by notice  
4 from a state court or tribal court, whenever appearance is  
5 required by law or by the court as a consequence of a charge  
6 or conviction under the Motor Vehicle Code or pursuant to the  
7 laws of the tribe;

8 (10) has failed to pay a penalty assessment  
9 within thirty days of the date of issuance by the state or a  
10 tribe; or

11 (11) has accumulated seven points, but less  
12 than eleven points, and when the division has received a  
13 recommendation from a municipal or magistrate judge that the  
14 license be suspended for a period not to exceed three months.

15 B. Upon suspending the license of a person as  
16 authorized in Subsection A of this section, the division  
17 shall immediately notify the licensee in writing and upon  
18 [~~his~~] the licensee's request shall afford [~~him~~] the licensee  
19 an opportunity for a hearing as early as practicable within  
20 not to exceed twenty days, not counting Saturdays, Sundays  
21 and legal holidays, after receipt of the request in the  
22 county wherein the licensee resides unless the division and  
23 the licensee agree that the hearing may be held in some other  
24 county; provided that the hearing request is received within  
25 twenty days from the date that the suspension was deposited

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1 in the United States mail. The director may, in [~~his~~] the  
2 director's discretion, extend the twenty-day period. Upon  
3 the hearing, the director or [~~his~~] the director's duly  
4 authorized agent may administer oaths and may issue subpoenas  
5 for the attendance of witnesses and the production of  
6 relevant books and papers and may require a reexamination of  
7 the licensee. Upon the hearing, the division shall either  
8 rescind its order of suspension or, good cause appearing  
9 therefor, may continue, modify or extend the suspension of  
10 the license or revoke the license.

11 C. The division is authorized to suspend or  
12 postpone the granting of an instruction permit, driver's  
13 license or provisional license to a school-age person or  
14 student certified and referred by the public education  
15 department as being in violation of the Compulsory School  
16 Attendance Law, following a hearing to be held within twenty  
17 days of the division's receipt of the certification and in  
18 the county where the school-age person or student resides.  
19 The twenty-day period shall not include Saturdays, Sundays  
20 and legal holidays. The director may, in the director's  
21 discretion, extend the twenty-day period. Upon the hearing,  
22 the director or the director's duly authorized agent may  
23 administer oaths and issue subpoenas for the attendance of  
24 witnesses and the production of relevant books and papers and  
25 may require an examination of the school-age person or

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1 student. Upon the hearing, the division may suspend or  
2 postpone driving privileges until the school-age person or  
3 student is no longer of school age or the public education  
4 department certifies to the division that the school-age  
5 person or student is in compliance with the Compulsory School  
6 Attendance Law."

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