

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 240

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

AN ACT

RELATING TO PUBLIC EDUCATION; ADDING AN EARLY WARNING SYSTEM TO
THE COMPULSORY SCHOOL ATTENDANCE LAW; PROVIDING FOR TRUANCY AND
DROPOUT PREVENTION COACHES; PROVIDING FOR THE SUSPENSION OR
POSTPONEMENT OF DRIVING PRIVILEGES OF SCHOOL-AGE PERSONS WHO
ARE IN VIOLATION OF THE COMPULSORY SCHOOL ATTENDANCE LAW.

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

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

"22-12-8. EARLY IDENTIFICATION [~~UNEXCUSED ABSENCES AND
TRUANCY~~]--EARLY WARNING SYSTEM.--

A. Notwithstanding the provisions of Section
22-12-7 NMSA 1978, if a student is in need of early
intervention to prevent habitual truancy, the school district,
charter school or private school shall contact the student's

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underscored material = new
[bracketed material] = delete

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

5 B. Starting with the 2016-2017 school year, each
6 school in a school district and each charter school shall
7 implement the department-developed early warning system that
8 uses data systems to identify students at risk of becoming
9 habitual truants or dropping out of school. Considerations for
10 identifying such students may include grades, absences and
11 behavior citations.

12 C. Starting with the 2016-2017 school year, for a
13 student who, in a school year, has accumulated:

14 (1) three or more unexcused absences, a school
15 district or charter school shall notify the parent about the
16 number and dates of the unexcused absences;

17 (2) five or more unexcused absences, a truancy
18 prevention team shall meet with the student and parent and
19 develop a written attendance plan that:

20 (a) prescribes benchmark goals to
21 improve student attendance; and

22 (b) includes intervention practices to
23 improve student attendance and, if applicable, programs in
24 which the student shall participate; and

25 (3) ten or more unexcused absences, a school

1 district or charter school shall notify the parent that the
2 student has become a habitual truant."

3 SECTION 2. Section 22-12-9 NMSA 1978 (being Laws 2004,
4 Chapter 28, Section 1, as amended) is amended to read:

5 "22-12-9. DEFINITIONS--UNEXCUSED ABSENCES AND TRUANCY--
6 ATTENDANCE POLICIES.--

7 A. As used in [~~this section and Sections 22-12-7~~
8 ~~and 22-12-8 NMSA 1978~~] the Compulsory School Attendance Law:

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

12 (2) "truancy prevention team" includes:

13 (a) a school administrator;

14 (b) a licensed school employee; and

15 (c) one or more of the following: 1) a
16 truancy and dropout prevention coach or another school employee
17 responsible for monitoring student attendance and addressing
18 unexcused absences; 2) a municipal, county, state, tribal or
19 federal official; or 3) a member of an organization supporting
20 students at risk of becoming habitual truants or dropping out
21 of school;

22 [~~2~~] (3) "student in need of early
23 intervention" means a student who has accumulated five
24 unexcused absences within a school year; and

25 [~~3~~] (4) "unexcused absence" means an absence

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1 from school or classes for which the student does not have an
2 allowable excuse pursuant to the Compulsory School Attendance
3 Law or rules of the local school board or governing authority
4 of a charter school or private school.

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

10 C. Each school district and charter school shall
11 maintain an attendance policy that:

12 (1) provides for early identification of
13 students with unexcused absences, students in need of early
14 intervention and habitual truants and provides intervention
15 strategies that focus on keeping students in need of early
16 intervention in an educational setting and prohibit out-of-
17 school suspension and expulsion as the punishment for unexcused
18 absences and habitual truancy;

19 (2) by July 1, 2017, through implementation of
20 the department-developed early warning system, identifies and
21 assists students with unexcused absences, students in need of
22 early intervention and habitual truants pursuant to the
23 provisions of Section 22-12-8 NMSA 1978;

24 [~~2~~] (3) uses withdrawal as provided in
25 Section 22-8-2 NMSA 1978 only after exhausting intervention

1 efforts to keep students in educational settings;

2 [~~(3)~~] (4) requires that class attendance be
3 taken for every instructional day in every public school or
4 school program in the school district; and

5 [~~(4)~~] (5) provides for schools to document the
6 following for each student identified as an habitual truant:

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

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

11 (c) intervention strategies implemented
12 to support keeping the student in school.

13 D. The department shall review and approve school
14 district and charter school attendance policies.

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

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1 consistently."

2 SECTION 3. A new section of the Compulsory School
3 Attendance Law is enacted to read:

4 "[NEW MATERIAL] TRUANCY AND DROPOUT PREVENTION COACH.--
5 Subject to the availability of funding, a truancy and dropout
6 prevention coach shall be employed by each public school that
7 has an habitual truancy rate of greater than ten percent of
8 enrolled students. The minimum duties of a truancy and
9 dropout prevention coach shall include:

10 A. developing and implementing truancy prevention
11 measures in accordance with the Compulsory School Attendance
12 Law, providing formal notices of habitual truancy and
13 conducting behavior intervention plan meetings with students
14 and parents;

15 B. identifying students in need of school
16 attendance interventions and developing and using programs
17 and systems to increase their engagement and improve their
18 attendance;

19 C. developing and implementing a tiered system of
20 support based on a student's level of need. Such support may
21 include preventative measures, targeted interventions,
22 attendance incentives, consequences for unexcused absences or
23 other actions to improve school attendance;

24 D. incorporating family involvement and
25 collaborating with community partners;

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1 E. monitoring the progress of students in the
2 school receiving truancy prevention services; and

3 F. identifying and documenting trends in
4 unexcused absences, truancy and suspension."

5 SECTION 4. Section 22-12-7 NMSA 1978 (being Laws 1967,
6 Chapter 16, Section 175, as amended) is amended to read:

7 "22-12-7. ENFORCEMENT OF ATTENDANCE LAW--HABITUAL
8 TRUANTS--PENALTY--SUSPENSION OR DENIAL OF DRIVING
9 PRIVILEGES--APPEAL TO SCHOOL DISTRICT, DEPARTMENT AND
10 DISTRICT COURT.--

11 A. Each local school board and each governing
12 body of a charter school or private school shall initiate the
13 enforcement of the provisions of the Compulsory School
14 Attendance Law for students enrolled in their respective
15 schools.

16 B. To initiate enforcement of the provisions of
17 the Compulsory School Attendance Law against [~~an~~] a student
18 who is a habitual truant, a local school board or governing
19 body of a charter school or private school or its authorized
20 representatives shall give written notice of the habitual
21 truancy by mail to or by personal service on the parent of
22 the student subject to and in noncompliance with the
23 provisions of the Compulsory School Attendance Law. The
24 notice shall include a date, time and place for the parent to
25 meet with the local school district, charter school or

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1 private school to develop intervention strategies that focus
2 on keeping the student in an educational setting.

3 C. If unexcused absences continue after written
4 notice of habitual truancy as provided in Subsection B of
5 this section has occurred, the student shall be reported to
6 the probation services office of the judicial district where
7 the student resides for an investigation as to whether the
8 student shall be considered to be a neglected child or a
9 child in a family in need of services because of habitual
10 truancy and thus subject to the provisions of the Children's
11 Code. The probation services office may send a written
12 notice to a parent of the student directing the parent and
13 student to report to the probation services office to discuss
14 services for the student or the family. In addition to any
15 other disposition, the children's court may order the
16 habitual truant's driving privileges to be suspended for a
17 specified time not to exceed ninety days on the first finding
18 of habitual truancy and not to exceed one year for a
19 subsequent finding of habitual truancy.

20 D. If, after review by the juvenile probation
21 office where the student resides, a determination and finding
22 is made that the habitual truancy by the student may have
23 been caused by the parent of the student, then the matter
24 will be referred by the juvenile probation office to the
25 district attorney's office or any law enforcement agency

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1 having jurisdiction for appropriate investigation and filing
2 of charges allowed under the Compulsory School Attendance
3 Law. Charges against the parent may be filed in metropolitan
4 court, magistrate court or district court.

5 E. A parent of the student who, after receiving
6 written notice as provided in Subsection B of this section
7 and after the matter has been reviewed in accordance with
8 Subsection D of this section, knowingly allows the student to
9 continue to violate the Compulsory School Attendance Law
10 shall be guilty of a petty misdemeanor. Upon the first
11 conviction, a fine of not less than twenty-five dollars
12 (\$25.00) or more than one hundred dollars (\$100) may be
13 imposed, or the parent of the student may be ordered to
14 perform community service. If violations of the Compulsory
15 School Attendance Law continue, upon the second and
16 subsequent convictions, the parent of the student who
17 knowingly allows the student to continue to violate the
18 Compulsory School Attendance Law shall be guilty of a petty
19 misdemeanor and shall be subject to a fine of not more than
20 five hundred dollars (\$500) or imprisonment for a definite
21 term not to exceed six months or both.

22 F. ~~[The provisions of this section shall apply~~
23 ~~beginning July 1, 2004.]~~ Starting with the 2017-2018 school
24 year, when a student in grades eight through twelve
25 accumulates ten or more unexcused absences in a school year

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1 and becomes an habitual truant:

2 (1) a school shall give to the student's
3 parent a notice of noncompliance with the Compulsory School
4 Attendance Law containing:

5 (a) the name, date of birth and
6 address of the student;

7 (b) a statement that the student is in
8 noncompliance with the Compulsory School Attendance Law due
9 to habitual truancy and the number and dates of unexcused
10 absences; and

11 (c) notice of the opportunity for the
12 student and the student's parent to request an optional
13 meeting with the school principal or head administrator
14 within two weeks to: 1) commit to the student returning to
15 school and complying with the Compulsory School Attendance
16 Law; 2) contest the occurrences and number of the student's
17 unexcused absences; 3) provide evidence that the student is
18 no longer subject to the Compulsory School Attendance Law; or
19 4) request a hardship waiver pursuant to department rule to
20 fulfill unavoidable employment or family medical caregiving
21 duties;

22 (2) a school district or charter school
23 shall give to the student's parent and the department, and
24 the department shall give to the motor vehicle division of
25 the taxation and revenue department, a state-provided

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1 certification of noncompliance with the Compulsory School
2 Attendance Law no less than thirty days after the notice of
3 noncompliance with the Compulsory School Attendance Law is
4 sent to the parent pursuant to Paragraph (1) of this
5 subsection if the student remains noncompliant, unless the
6 student has been granted a hardship waiver pursuant to Item
7 4) of Subparagraph (c) of Paragraph (1) of this subsection
8 prior to the issuance of a state-provided certification of
9 noncompliance;

10 (3) upon the motor vehicle division's
11 receipt of a state-provided certification of noncompliance
12 with the Compulsory School Attendance Law, the motor vehicle
13 division shall suspend or deny the issuance of an instruction
14 permit, provisional license or driver's license to a student
15 pursuant to the Motor Vehicle Code until the student reaches
16 the age of eighteen years; and

17 (4) following the suspension or denial of an
18 instruction permit, provisional license or driver's license,
19 the student may:

20 (a) request a meeting with the school
21 district or charter school to provide evidence supporting a
22 request that the school district or charter school provide to
23 the motor vehicle division a certification that the student
24 is in compliance with or is no longer subject to the
25 Compulsory School Attendance Law;

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1 (b) appeal the school district's or
2 charter school's determination by requesting a hearing and
3 final decision from the department pursuant to its rules; and

4 (c) appeal the department's final
5 decision to the district court for the county in which the
6 student resides pursuant to Section 39-3-1.1 NMSA 1978."

7 **SECTION 5.** A new section of the Public School Code is
8 enacted to read:

9 "[NEW MATERIAL] REPORTING.--No later than November 15,
10 2018 and each subsequent year, the department, in
11 collaboration with the motor vehicle division of the taxation
12 and revenue department and school districts and charter
13 schools, shall submit an annual statewide report to the
14 governor, the legislative education study committee and the
15 legislative finance committee on the implementation of the
16 Compulsory School Attendance Law. The annual statewide
17 report shall include to the extent available:

18 A. aggregate data for each middle school, high
19 school, school district and charter school regarding
20 implementation of Subsection F of Section 22-12-7 NMSA 1978
21 and Section 6 of this 2016 act, including:

22 (1) the number of students who accumulated
23 the equivalent of ten days or more of unexcused absences
24 within a school year;

25 (2) the number of state-provided

1 certifications of noncompliance issued pursuant to the
2 Compulsory School Attendance Law;

3 (3) the number of students who were denied
4 the issuance of or incurred the suspension of an instruction
5 permit, provisional license or driver's license due to
6 noncompliance with the Compulsory School Attendance Law and
7 the number of:

8 (a) students who had more than one
9 denial or suspension; and

10 (b) instruction permits, provisional
11 licenses or driver's licenses that were denied or suspended
12 and were subsequently granted or reinstated as a consequence
13 of compliance with the Compulsory School Attendance Law; and

14 (4) the number of hardship waivers granted
15 pursuant to Item 4) of Subparagraph (c) of Paragraph (1) of
16 Subsection F of Section 22-12-7 NMSA 1978; and

17 B. an evaluation of any improvement in academic
18 achievement attributable to implementation of the Compulsory
19 School Attendance Law, including, to the extent applicable,
20 for each middle school, high school, school district and
21 charter school:

22 (1) the students' mathematics assessment
23 scores;

24 (2) the students' English language arts
25 assessment scores;

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- 1 (3) the four-year cohort graduation rate;
2 and
3 (4) the most recent grade received under the
4 A-B-C-D-F Schools Rating Act."

5 SECTION 6. A new section of the Motor Vehicle Code is
6 enacted to read:

7 "[NEW MATERIAL] AUTHORITY OF DEPARTMENT TO SUSPEND
8 LICENSE OF SCHOOL-AGE PERSON.--

9 A. The department may:

10 (1) upon receipt of a state-provided
11 certification of noncompliance with the Compulsory School
12 Attendance Law, pursuant to Section 22-12-7 NMSA 1978, to
13 suspend or deny the granting of an instruction permit,
14 provisional license or driver's license, without a
15 preliminary hearing, of a school-age person as defined in
16 Section 22-1-2 NMSA 1978 until the school-age person reaches
17 the age of eighteen years; and

18 (2) upon receipt of a state-provided
19 certification that the school-age person is in compliance
20 with or is no longer subject to the Compulsory School
21 Attendance Law, to:

22 (a) reinstate a suspended instruction
23 permit, provisional license or driver's license of a school-
24 age person; or

25 (b) grant an instruction permit,

1 provisional license or driver's license to a school-age
2 person pursuant to the Motor Vehicle Code.

3 B. The division may adopt and promulgate rules to
4 implement the provisions of this section."

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underscoring material = new
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