

1 HOUSE BILL 437

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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5 and John M. Sapien
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10 AN ACT

11 RELATING TO COMPULSORY SCHOOL ATTENDANCE; PROVIDING FOR EARLIER
12 AND MORE INTENSIVE INTERVENTION FOR STUDENTS WHO ARE ABSENT OR
13 TRUANT; REDEFINING TERMS; REQUIRING PUBLIC SCHOOLS TO PARTNER
14 WITH COMMUNITY RESOURCES TO ASSIST IN DROPPING TRUANCY RATES;
15 PROVIDING A PROCESS THAT PROGRESSES FROM INFORMAL INTERVENTION
16 THROUGH PARENTAL NOTIFICATION AND INTERVENTION TO REFERRAL TO
17 THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT AND EVENTUALLY TO
18 SUSPENSION OF DRIVER'S LICENSES FOR APPLICABLE STUDENTS;
19 REQUIRING DATA COLLECTION AND USE; PUTTING RECORDS OF ABSENCES
20 AND RESPONSES TO INTERVENTIONS INTO STUDENTS' CUMULATIVE
21 RECORDS SO THAT PUBLIC SCHOOLS CONTINUE TO PROVIDE ASSISTANCE
22 TO STUDENTS WHO HAVE TROUBLE ATTENDING CLASS OR SCHOOL AND TO
23 THEIR FAMILIES.
24

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

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1 SECTION 1. Section 22-12-2 NMSA 1978 (being Laws 1967,
2 Chapter 16, Section 170, as amended) is amended to read:

3 "22-12-2. COMPULSORY SCHOOL ATTENDANCE--RESPONSIBILITY.--

4 A. Except as otherwise provided, a school-age
5 person shall attend public school, private school, home school
6 or a state institution until the school-age person is at least
7 eighteen years of age unless that person has graduated from
8 high school or received a high school equivalency credential.
9 A parent may give written, signed permission for [~~the school-~~
10 ~~age person~~] a student to leave school in case of hardship
11 approved by the local superintendent or if the student is over
12 the age of sixteen and the public school and the children,
13 youth and families department, with their community partners,
14 have provided or offered intensive interventions that did not
15 change the student's attendance behavior and the parent gives
16 written, signed permission for the student to leave school
17 because the student is employed, living on the student's own
18 and appears to be doing well.

19 B. A school-age person subject to the provisions of
20 the Compulsory School Attendance Law shall attend school for at
21 least the length of time of the school year that is established
22 in the school district in which the person is a resident or the
23 [~~state-chartered~~] charter school or private school in which the
24 person is enrolled and the school district or [~~state-chartered~~]
25 charter school or private school shall not excuse a student

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1 from attending school except as provided in that law or for
2 parent-authorized medical reasons.

3 C. Any parent of a school-age person subject to the
4 provisions of the Compulsory School Attendance Law is
5 responsible for the school attendance of ~~[that]~~ the school-age
6 person.

7 ~~[D. Each local school board and each governing body
8 of a charter school or private school shall enforce the
9 provisions of the Compulsory School Attendance Law for students
10 enrolled in their respective schools.]~~

11 D. Each private school shall enforce student
12 attendance in accordance with its policies and procedures so
13 long as students meet the attendance requirements of the
14 Compulsory School Attendance Law."

15 SECTION 2. Section 22-12-2.1 NMSA 1978 (being Laws 1986,
16 Chapter 33, Section 27, as amended by Laws 1997, Chapter 239,
17 Section 1 and also by Laws 1997, Chapter 245, Section 1) is
18 amended to read:

19 "22-12-2.1. INTERSCHOLASTIC EXTRACURRICULAR ACTIVITIES--
20 STUDENT PARTICIPATION.--

21 A. A public school student ~~[shall]~~ must have at
22 least a 2.0 grade point average on a 4.0 scale, or its
23 equivalent, either cumulatively or for the grading period
24 immediately preceding participation, in order to be eligible to
25 participate in any interscholastic extracurricular activity.

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1 For purposes of this section, "grading period" is a period of
2 time not less than six weeks. The provisions of this
3 subsection shall not apply to [~~special education students~~
4 ~~placed in class C and class D programs~~] students receiving
5 moderate to maximum special education services.

6 B. No student shall be absent from school for
7 school-sponsored interscholastic extracurricular activities in
8 excess of fifteen days per semester, and no class may be missed
9 in excess of fifteen times per semester; provided that the
10 student maintains eligibility by making up the material covered
11 in the classes the student missed.

12 C. The provisions of Subsections A and B of this
13 section apply only to interscholastic extracurricular
14 activities.

15 D. The [~~state superintendent~~] secretary may issue a
16 waiver relating to the number of absences for participation in
17 any state or national competition. The [~~state superintendent~~]
18 secretary shall develop a procedure for petitioning cumulative
19 provision eligibility cases, similar to other eligibility
20 situations.

21 E. Student standards for participation in
22 interscholastic extracurricular activities shall be applied
23 beginning with a student's academic record in grade nine."

24 SECTION 3. Section 22-12-3 NMSA 1978 (being Laws 1971,
25 Chapter 238, Section 1, as amended) is amended to read:

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1 "22-12-3. RELIGIOUS INSTRUCTION OR TRIBAL OBLIGATIONS--
2 EXCUSAL.--A student may, subject to the approval of the school
3 principal, be excused from school to participate in religious
4 instruction or tribal obligations for not more than one class
5 period each school day with the written consent of the
6 student's [~~parents~~] parent at a time period that is not in
7 conflict with the academic program of the school [~~The local~~
8 ~~school board or governing body of a charter school, and its~~
9 ~~school employees~~] and the student's academic class schedule.
10 The school district or the public school shall not assume
11 responsibility for the religious instruction of any student or
12 permit [~~it~~] religious instruction to be conducted on school
13 property."

14 SECTION 4. Section 22-12-3.1 NMSA 1978 (being Laws 2013,
15 Chapter 198, Section 1) is amended to read:

16 "22-12-3.1. EXCUSED ABSENCES FOR PREGNANT AND PARENTING
17 STUDENTS CONSIDERED MEDICAL ABSENCE--

18 A. Each school district and charter school shall
19 maintain an attendance policy that:

20 (1) provides at least ten days of [~~excused~~]
21 medical absences for a student who provides documentation of
22 the birth of the student's child and provides [~~excused~~] medical
23 absences for any additional days missed by a pregnant or
24 parenting student for which a longer period of absence is
25 deemed medically necessary by the student's physician; provided

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1 that the student shall be allowed a time period to make up the
2 work that the student missed that equals the number of days the
3 student was medically absent for the birth of a child; and

4 (2) provides four days per semester of
5 [~~excused~~] medical absences, in addition to the number of
6 allowed absences for all students, for a student who provides
7 appropriate documentation of pregnancy or that the student is
8 the parent of a child under the age of thirteen needing care;
9 and allows the student a time period to make up the work that
10 the student missed that equals the number of days the student
11 was absent.

12 B. The pregnant or parenting student is responsible
13 for communicating the student's pregnancy and parenting status
14 to the appropriate school personnel if the student chooses to
15 disclose the information.

16 C. The school district or charter school shall
17 provide a copy of the pregnant and parenting student absence
18 policies to all students in middle, junior high and high
19 schools."

20 SECTION 5. Section 22-12-4 NMSA 1978 (being Laws 1978,
21 Chapter 211, Section 10) is amended to read:

22 "22-12-4. RIGHT TO EDUCATION.--All school-age persons in
23 the state shall have a right to a free public education as
24 follows:

25 A. except for school-age persons who are detained

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1 in a state or local detention center or detained, enrolled or
2 residing in state institutions other than those school-age
3 persons provided for in Subsection C of this section, [~~any~~] a
4 school-age person [~~shall have~~] has a right to attend public
5 school within the school district in which [~~he~~] the person
6 resides or is present;

7 B. except as provided in Subsection C of this
8 section, the state or local institution in which a school-age
9 person is detained, [~~or~~] enrolled or residing shall be
10 responsible for providing educational services for the school-
11 age person; and

12 C. [~~any~~] a school-age person who is a client as
13 defined in Section [~~34-2A-2 NMSA 1953~~] 43-1-3 NMSA 1978 in a
14 state institution under the authority of the secretary of [~~the~~]
15 health [~~and environment department~~] shall have a right to
16 attend public school in the school district in which the
17 institution in which [~~he~~] the person is a client is located if:

18 (1) the school-age person has been recommended
19 for placement in a public school by the educational appraisal
20 and review committee of the school district in which the
21 institution is located; or

22 (2) the school-age person has been recommended
23 for placement in a public school as a result of the appeal
24 process as provided in the special education [~~regulations~~]
25 rules of the [~~state board of education~~] department."

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1 SECTION 6. Section 22-12-5 NMSA 1978 (being Laws 1967,
2 Chapter 16, Section 172, as amended) is amended to read:

3 "22-12-5. PUBLIC SCHOOL ATTENDANCE.--

4 A. Local school boards may admit [~~school-age~~
5 ~~persons~~] students who do not live within the school district to
6 the public schools within the school district when there are
7 sufficient school accommodations to provide for them.

8 B. Local school boards may permit [~~school-age~~
9 ~~persons~~] students to transfer to a public school outside the
10 [~~child's~~] student's attendance zone but within the school
11 district when there are sufficient school accommodations to
12 provide for them.

13 C. Local school boards may charge a tuition fee for
14 the right to attend public school within the school district
15 only to those [~~school-age persons~~] students who do not live
16 within the state. The tuition fee shall not exceed the amount
17 generated by the public school fund for a [~~school-age person~~]
18 student similarly situated within the school district for the
19 current school year.

20 D. When the parent [~~or guardian~~] of a student not
21 living in the state pays an ad valorem property tax for school
22 purposes within the school district, the amount of the tuition
23 payable for the school year shall be reduced by the district
24 average ad valorem tax per pupil as determined by the ad
25 valorem tax credit [~~utilized~~] used in calculating state

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1 equalization guarantee distribution."

2 SECTION 7. Section 22-12-7 NMSA 1978 (being Laws 1967,
3 Chapter 16, Section 175, as amended) is repealed and a new
4 Section 22-12-7 NMSA 1978 is enacted to read:

5 "22-12-7. [NEW MATERIAL] DEFINITIONS.--As used in the
6 Compulsory School Attendance Law:

7 A. "absent" means a student is not in attendance
8 for a class or a school day and is identified as absent, with
9 or without an excuse, or is medically absent;

10 B. "habitual truant" means a student who is absent
11 for a total of ten classes or school days within a nine-week
12 period that are not related to the student's medical absences,
13 extracurricular activities or religious instruction or tribal
14 obligations, if any;

15 C. "medical absence" or "medically absent" means a
16 student is not in attendance for a class or a school day for a
17 parent- or doctor-authorized medical reason or the student is a
18 pregnant or parenting student;

19 D. "nine-week period" means a rolling calendar that
20 is not tied to a grading or other school-year period and that
21 does not allow for a certain period of time to begin or end
22 that would have the effect of restarting the counting of
23 absences;

24 E. "pattern of absences" means the identification
25 of a trend line of nonattendance by a student for medical

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1 reasons, extracurricular activities, religious instruction or
2 tribal obligations, other reasons or no reason;

3 F. "school day" includes a portion of the school
4 day that is more than two classes; and

5 G. "truant" means a student who is absent for more
6 than five classes or more than five school days in any nine-
7 week period, and the absences are not related to the student's
8 medical absences, extracurricular activities or religious
9 instruction or tribal obligations, if any."

10 SECTION 8. Section 22-12-8 NMSA 1978 (being Laws 1985,
11 Chapter 104, Section 1, as amended) is repealed and a new
12 Section 22-12-8 NMSA 1978 is enacted to read:

13 "22-12-8. [NEW MATERIAL] PUBLIC SCHOOL ATTENDANCE
14 POLICIES--REPORTING.--

15 A. Each public school shall maintain an attendance
16 policy that:

17 (1) provides for early identification of
18 students with absences and students in need of intervention,
19 and early identification of patterns of absences, before
20 truancy or habitual truancy begins;

21 (2) provides intervention strategies that
22 focus on:

23 (a) keeping students in an educational
24 setting;

25 (b) prohibiting out-of-school suspension

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1 and expulsion as the punishment for absences and truancy; and

2 (c) assisting the student's family to
3 remove barriers to the student's regular or alternative school
4 attendance;

5 (3) limits the use of withdrawal as provided
6 in Section 22-8-2 NMSA 1978 only after exhausting all
7 intervention efforts to keep students in educational settings;

8 (4) requires that class attendance be taken
9 for every instructional class and day in every public school or
10 school program; and

11 (5) provides for public schools to document
12 the following for each absent or truant student:

13 (a) a differentiation of medical
14 absence, religious instruction or tribal obligations and
15 interscholastic extracurricular activities for data purposes;

16 (b) attempts by the school to notify the
17 parent that the student was absent from class or the school
18 day;

19 (c) attempts to improve attendance
20 informally by talking to the student or parent and finding
21 solutions to barriers to school attendance or changes to the
22 student's attendance behavior;

23 (d) attempts of the school to meet
24 formally with the parent to discuss necessary interventions for
25 the student or the family; and

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1 (e) intervention strategies implemented
2 to support keeping the student in an educational setting.

3 B. The school district shall review and approve
4 public school attendance policies.

5 C. School districts and charter schools shall
6 report absences and truancy rates to the department in a form
7 and at such times as the department determines and shall
8 document intervention efforts made to keep students in an
9 educational setting. The department shall compile school
10 district and charter school reports on types of absences,
11 rates of absences and truancy and require school districts
12 and charter schools to certify that the information is being
13 reported consistently."

14 SECTION 9. Section 22-12-9 NMSA 1978 (being Laws 2004,
15 Chapter 28, Section 1, as amended) is repealed and a new
16 Section 22-12-9 NMSA 1978 is enacted to read:

17 "22-12-9. [NEW MATERIAL] ENFORCEMENT OF ATTENDANCE
18 LAW--PROCEDURES.--

19 A. Each public school shall initiate the
20 enforcement of the provisions of the Compulsory School
21 Attendance Law for its enrolled students. The enforcement
22 policies of each public school shall focus on prevention and
23 intervention.

24 B. Each traditional or locally chartered public
25 school shall provide attendance and truancy data to the

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1 school district and the department on a regular basis as
2 determined by the department. State-chartered charter
3 schools shall provide attendance and truancy data to the
4 charter schools division of the department and the commission
5 on the same regular basis.

6 C. Every public school shall have a family and
7 youth resources program as provided in Section 22-2D-3 NMSA
8 1978 to provide interventions to students who are absent or
9 truant. Public schools, alone or in concert with other
10 public schools, shall develop partnerships with public and
11 private agencies and community-based, civic, corporate and
12 professional organizations as provided in the Family and
13 Youth Resource Act.

14 D. Beginning on the first day of school, every
15 classroom teacher or the teacher's educational assistant
16 shall be responsible for taking accurate attendance for every
17 class and report absences to the person assigned by the
18 school principal to collect such data. That person, in
19 cooperation with the student's teacher, shall identify
20 patterns of behavior related to absences and report that
21 information to the school principal.

22 E. If a student is absent from class or the
23 school day more than three times in a nine-week period, the
24 school principal or the school principal's designee shall
25 talk to the student and notify the student's parent in person

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1 or by telephone to determine reasons for the student's
2 absences and whether the family and youth resources program
3 may help to keep the student in school and attending class.

4 F. If the student is absent from class or the
5 school day more than five times within a nine-week period,
6 the school principal shall notify the parent in writing. The
7 notification shall include the date and time of a meeting
8 between the school principal and the parent to determine
9 additional interventions needed to keep the student in
10 school, including in-school, after-school or weekend
11 interventions. For high school students, the school
12 principal may require an attendance contract signed by the
13 student, the parent and the school principal. The school
14 principal shall notify the parent that absences constitute
15 truancy and further absences will constitute habitual truancy
16 and the family shall be reported to the families in need of
17 services program of the children, youth and families
18 department.

19 G. The school principal shall consult with the
20 student's teacher and initiate meetings with the teacher and
21 the student if the alleged cause of absence from class is
22 teacher-student incompatibility.

23 H. If after the public school provides necessary
24 resources or provides the parent links to necessary
25 resources, or if the parent or family does not avail itself

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1 of community resources, or if the student continues to be
2 absent for a total of ten classes or school days, the student
3 shall be considered a habitual truant and the school
4 principal shall refer the student to the families in need of
5 services program of the children, youth and families
6 department within five days of the tenth absence. The record
7 of the public school's interventions and the student's and
8 parent's response to the interventions shall be provided to
9 the children, youth and families department and the public
10 education department."

11 SECTION 10. A new section of the Compulsory School
12 Attendance Law is enacted to read:

13 "[NEW MATERIAL] FAMILIES IN NEED OF SERVICES PROGRAM--
14 ADDITIONAL INTERVENTIONS--DETERMINATION OF IMPROVEMENT--
15 FAILURE TO IMPROVE ATTENDANCE BEHAVIOR--SUSPENSION OF
16 DRIVER'S LICENSE.--

17 A. The caseworker for the families in need of
18 services program of the children, youth and families
19 department shall meet with the family at the public school in
20 which the student is enrolled to determine if there are other
21 intervention services that may be provided. The meeting
22 shall involve the school principal or other school personnel
23 and appropriate community partners unless the parent objects.
24 The children, youth and families department shall determine
25 if additional interventions, including monitoring, will be

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1 worthwhile in changing the student's behavior.

2 B. If the student has a driver's license, the
3 caseworker assigned to the student shall notify the student
4 and the parent at the meeting provided for in Subsection A of
5 this section that if the families in need of services program
6 does not see behavioral improvements, including class or
7 school day attendance, the caseworker shall report the
8 student's noncompliance to the public education department
9 and the student's driver's license shall be suspended. The
10 notification provided for in this subsection serves as notice
11 for purposes of due process.

12 C. No later than thirty days after the meeting,
13 the caseworker shall notify the public school and the public
14 education department of the student's progress. If the
15 student has refused interventions, including placement in an
16 alternative educational setting, and the student's attendance
17 behavior has not improved, the families in need of services
18 program shall notify the motor vehicle division of the
19 taxation and revenue department that the student's driver's
20 license is suspended. The caseworker shall notify the public
21 education department and shall forward the student's record
22 to that department.

23 D. The motor vehicle division shall issue a
24 notice of suspension to the student. The student or the
25 student's parent may request an administrative hearing to

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1 oppose the suspension. Unless reinstatement is required as a
2 result of a hearing, a suspended license pursuant to this
3 section shall continue until:

4 (1) the families in need of services program
5 issues a written certificate of compliance to the student;

6 (2) the student presents the certificate of
7 compliance to the motor vehicle division; and

8 (3) the student pays the motor vehicle
9 division the reinstatement fee required by Section 66-5-33.1
10 NMSA 1978.

11 E. If a student turns eighteen and leaves school
12 during the period of suspension, the student's driver's
13 license shall be reinstated."

14 SECTION 11. A new section of the Compulsory School
15 Attendance Law is enacted to read:

16 "[NEW MATERIAL] TRUANCY--PARENTAL CAUSES--PENALTIES.--

17 A. If, after review by the families in need of
18 services program of the children, youth and families
19 department where the student resides, a determination and
20 finding are made that the habitual truancy by the student may
21 have been caused by the parent of the student, the matter
22 shall be referred by that department to the district
23 attorney's office or a law enforcement agency having
24 jurisdiction for appropriate investigation and filing of
25 charges allowed under the Compulsory School Attendance Law.

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1 Charges against the parent may be filed in metropolitan
2 court, magistrate court or district court.

3 B. A parent of the student who, after receiving
4 written notice as provided in Section 22-12-9 NMSA 1978 and
5 after the matter has been reviewed in accordance with that
6 section, knowingly allows the student to continue to violate
7 the Compulsory School Attendance Law shall be guilty of a
8 petty misdemeanor. Upon the first conviction, a fine of not
9 more than one hundred dollars (\$100) may be imposed, or the
10 parent of the student may be ordered to perform community
11 service. If violations of the Compulsory School Attendance
12 Law continue, upon the second and subsequent convictions, the
13 parent of the student who knowingly allows the student to
14 continue to violate the Compulsory School Attendance Law
15 shall be guilty of a petty misdemeanor and shall be subject
16 to a fine of not more than five hundred dollars (\$500) or
17 imprisonment for a definite term not to exceed six months, or
18 both."

19 SECTION 12. Section 32A-3A-2 NMSA 1978 (being Laws
20 1993, Chapter 77, Section 64, as amended) is amended to read:

21 "32A-3A-2. DEFINITIONS.--As used in the Family Services
22 Act:

23 A. "child or family in need of family services"
24 means:

25 (1) a family whose child's behavior

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1 endangers the child's health, safety, education or well-
2 being;

3 (2) a family whose child is absent or truant
4 from public school;

5 [~~(2)~~] (3) a family whose child is absent
6 from the child's place of residence for twenty-four hours or
7 more without the consent of the parent, guardian or
8 custodian;

9 [~~(3)~~] (4) a family in which the parent,
10 guardian or custodian of a child refuses to permit the child
11 to live with the parent, guardian or custodian; or

12 [~~(4)~~] (5) a family in which the child
13 refuses to live with [~~his~~] the child's parent, guardian or
14 custodian; and

15 B. "family services" means services that address
16 specific needs of the child or family."

17 SECTION 13. Section 32A-3A-3 NMSA 1978 (being Laws
18 1993, Chapter 77, Section 65, as amended) is amended to read:

19 "32A-3A-3. REQUEST FOR FAMILY SERVICES--WITHDRAWAL OF
20 REQUEST--PRESUMPTION OF GOOD FAITH.--

21 A. Any child or family member who has a
22 reasonable belief that the child or family is in need of
23 family services may request family services from the
24 department.

25 B. Any person, including a public or private

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1 school principal, who has a reasonable belief that a child or
2 family is in need of family services may submit a referral to
3 the department.

4 C. A family that requests or accepts family
5 services may withdraw its request for or acceptance of family
6 services at any time.

7 D. A person who refers a child or family for
8 family services is presumed to be acting in good faith and
9 shall be immune from civil or criminal liability, unless the
10 person acted in bad faith or with malicious purpose."