AN ACT

RELATING TO PUBLIC SCHOOL ATTENDANCE; ENACTING THE ATTENDANCE FOR SUCCESS ACT; PROVIDING FOR PREVENTION OF ABSENCES AND EARLIER INTERVENTION FOR STUDENTS WHO ARE ABSENT OR CHRONICALLY ABSENT; PROVIDING A PROCESS FOR PREVENTION OF ABSENCES, FOR EARLY INTERVENTION, FOR SPECIALIZED SUPPORTS AND FOR REFERRALS TO THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT; REQUIRING DATA COLLECTION AND USE; REPEALING THE COMPULSORY SCHOOL ATTENDANCE LAW.

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

SECTION 1. A new section of the Public School Code is enacted to read:

"SHORT TITLE.--Sections 1 through 14 of this act may be cited as the "Attendance for Success Act"."

SECTION 2. A new section of the Public School Code is enacted to read:

"DEFINITIONS.--As used in the Attendance for Success Act:

A. "absent" means not in attendance for a class or school day for any reason, whether excused or not; provided that "absent" does not apply to participation in interscholastic extracurricular activities;

B. "attendance improvement plan" means a tiered data-informed system for public schools and school districts
to identify students who are chronically or excessively absent and to aid public schools in developing whole-school prevention strategies and targeted interventions. Each of the tiers is defined as follows:

(1) "whole school prevention" means universal, whole-school prevention strategies for all students, including students who have missed less than five percent of classes or school days for any reason;

(2) "individualized prevention" means targeted prevention strategies for individual students who are missing five percent or more but less than ten percent of classes or school days for any reason;

(3) "early intervention" means interventions for students who are missing ten percent or more but less than twenty percent of classes or school days for any reason; and

(4) "intensive support" means interventions for students who are missing twenty percent or more of classes or school days for any reason;

C. "attendance team" means a group of school-based administrators, teachers, staff, other school personnel and community members who collaborate to implement an attendance improvement plan;

D. "chronic absence rate" means the percentage of students, in the aggregate and disaggregated by the subgroups
required for reporting pursuant to the federal Every Student Succeeds Act, in a public school and a school district who have been enrolled for at least ten days and who have missed ten percent or more of school days since the beginning of the school year;

E. "chronically absent" or "chronic absenteeism" means that a student has been absent for ten percent or more of classes or school days for any reason, whether excused or not, when enrolled for more than ten days;

F. "excessively absent" or "excessive absenteeism" means a student who is identified as needing intensive support and has not responded to intervention efforts implemented by the public school;

G. "excused absence" means absence from a class or school day for a death in the family, medical absence, religious instruction or tribal obligations or any other allowable excuse pursuant to the policies of the local school board;

H. "interscholastic extracurricular activities" means those activities sponsored by a public school or an organization whose principal purpose is the regulation, direction, administration and supervision of interscholastic extracurricular activities in public schools;

I. "local school board" includes the governing body of a charter school;
J. "medical absence" or "medically absent" means that a student is not in attendance for a class or a school
day for a parent- or doctor-authorized medical reason or the
student is a pregnant or parenting student;
K. "school day" means a portion of the school day
that is at least one-half of a student's approved program;
L. "school district" includes a charter school;
M. "school principal" includes the head
administrator of a charter school; and
N. "unexcused absence" means an absence from a
class or school day for which the student does not have an
allowable excuse pursuant to the Attendance for Success Act
or policies of the local school board."

SECTION 3. A new section of the Public School Code is
enacted to read:

"RIGHT TO EDUCATION.--A school-age person in the state
shall have a right to a free public education as follows:

A. except for a school-age person who is detained
in a state or local detention center or enrolled or residing
in a state institution, other than a school-age person
provided for in Subsection C of this section, a school-age
person has a right to attend public school within the school
district in which the school-age person resides;
B. except as provided in Subsection C of this
section, a state or local detention center or state
institution in which a school-age person is detained,
enrolled or residing shall be responsible for providing
educational services for the school-age person; and

C. a school-age person who is a client as defined
in Section 43-1-3 NMSA 1978 in a state institution under the
authority of the secretary of human services shall have a
right to attend public school in the school district in which
the institution in which the school-age person is a client is
located if the school-age person has been recommended for
placement in a public school:

(1) by the educational appraisal and review
committee of the school district in which the institution is
located; or

(2) as a result of the appeal process as
provided in the special education rules of the department."

SECTION 4. A new section of the Public School Code is
enacted to read:

"SCHOOL ATTENDANCE--RESPONSIBILITY--PRIVATE SCHOOL
ATTENDANCE POLICIES.--

A. Except as otherwise provided in the Public
School Code, a school-age person shall attend public school,
private school, home school or a state institution until the
school-age person is at least eighteen years of age unless
that school-age person has graduated from high school,
received a high school equivalency credential or withdrawn
from school on a hardship waiver. A parent may give written, signed permission for the school-age person to leave school between the ages of sixteen and eighteen in case of hardship approved by the local superintendent or private school.

B. A school-age person subject to the provisions of the Attendance for Success Act shall attend school for at least the length of time of the school year that is established in that school-age person's school district, charter school or private school. The school district or private school shall not excuse a school-age person from attending school except as provided in that act.

C. The parent of a school-age person subject to the provisions of the Attendance for Success Act is responsible for the school attendance of that school-age person.

D. Local school boards and private schools shall enforce the provisions of the Attendance for Success Act for students enrolled in their respective schools.

E. A private school in this state shall have an attendance policy that as closely as practicable follows the law for public schools. A school-age person attending a private school and the school-age person's parent shall be given a copy of the private school's attendance policy each year."

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

"PUBLIC SCHOOL ATTENDANCE.--

A. Local school boards may admit as students school-age persons who do not live within the school district to the public schools within the school district when there are sufficient school accommodations to provide for them.

B. Local school boards may allow students to transfer to a public school outside the student's attendance zone but within the school district when there are sufficient school accommodations to provide for them.

C. Local school boards shall charge a tuition fee for the right to attend public school within the school district to those school-age persons who do not live within the state. The tuition fee shall not exceed the amount generated by the public school fund for a student similarly situated within the school district for the current school year.

D. When the parent of a student not living in the state pays an ad valorem property tax for school purposes within a school district, the amount of the tuition payable for the school year shall be reduced by the district average ad valorem tax per student as determined by the ad valorem tax credit used in calculating the state equalization guarantee distribution."

SECTION 6. A new section of the Public School Code is
enacted to read:

"PUBLIC SCHOOL ATTENDANCE POLICIES--REPORTING.--

A. A public school shall maintain an attendance policy that:

(1) establishes an early warning system that includes evidence-based metrics to identify students at risk of chronic absenteeism or excessive absenteeism;

(2) provides for early identification of chronically absent and excessively absent students;

(3) employs an attendance improvement plan that focuses on:

   (a) keeping students in an educational setting;

   (b) prohibiting out-of-school suspension or expulsion as the punishment for absences;

   (c) assisting a student's family to remove barriers to the student's regular school attendance or attendance in another educational setting; and

   (d) providing additional educational opportunities to students who are struggling with attendance;

(4) limits the ability of a student to withdraw to only after all intervention efforts by the public school or the children, youth and families department to keep the student in an educational setting have been exhausted;

(5) requires that accurate class attendance
be taken for every instructional class and school day in a public school or school program;

(6) provides that a public school shall differentiate between different types of absences;

(7) requires a public school to document the following for each chronically or excessively absent student:

   (a) attempts by the public school to notify a parent that the student was absent from class or the school day;

   (b) attempts to improve attendance by talking to a student or parent to identify barriers to school attendance, identify solutions to improve the student's attendance behavior and discuss necessary interventions for the student or the student's family; and

   (c) intervention strategies implemented to support keeping the student in an educational setting, including additional educational opportunities offered to the student;

(8) requires a student or the parent of a student who intends to claim excused absence because of medical condition, pregnancy or parenting to communicate the student's status to the appropriate school personnel and to provide required documentation; and

(9) encourages and supports compliant data sharing, pursuant to the federal Family Educational Rights
and Privacy Act of 1974, between a public school and community-based organizations that provide services to students for the purpose of providing more personalized interventions and specialized supports as part of the public school's attendance improvement plan.

B. Local school boards shall review and approve their public school attendance policies.

C. School districts shall report absences, chronic absences and excessive absences data to the department at each reporting date and the end of the school year and shall document intervention efforts made to keep students in an educational setting. The department shall compile school district reports as provided in Section 13 of the Attendance for Success Act and require school districts to certify that the information is being reported consistently and correctly. The department shall share information from state-chartered charter schools with the commission.

D. A public school shall provide a copy of the public school's attendance policy to all parents of students in that school and publish the policy on the public school's website. The attendance policy shall include:

(1) the rights and obligations of parents and students pursuant to the Attendance for Success Act;

(2) the prevention strategies that will be implemented to ensure that students attend classes; and
(3) details about consequences of failing to adhere to the attendance policy.

E. A public school shall provide a parent, within five days of the parent's written request, with access to the attendance data of that parent's child, including information about any intervention strategies that have been employed to help the student improve the student's attendance.

F. Upon request, school districts shall provide the chronic absence rate from the most current reporting date or end-of-year report, in the aggregate and disaggregated by subgroups, for all its public schools."

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

"ENFORCEMENT OF ATTENDANCE FOR SUCCESS ACT--DISTRICT RESPONSIBILITIES--DIFFERENTIATION--DISTRICT PLAN--ADDITIONAL SUPPORT.--

A. School districts shall differentiate public schools based on their chronic absence rates into no fewer than four categories.

B. School districts shall differentiate student subgroups based on their chronic absence rates into no fewer than four categories.

C. Using the differentiation scheme pursuant to Subsections A and B of this section, a school district shall develop attendance improvement plans that include the
following elements:

(1) specific school district supports and resources available to public schools at each level to further the implementation of their attendance improvement plans;

(2) attendance improvement targets for public schools or subpopulations with chronic absence rates of ten percent or greater, developed in collaboration with each public school; and

(3) an attendance improvement target for school districts with chronic absence rates of ten percent or greater.

D. Each school district shall report its attendance improvement plan to the department no later than forty-five days after the beginning of the school year. The department may allow a school district to report its attendance improvement plan as part of the educational plan for student success.

E. At the end of each school year, each school district shall report to the local school board and to the public on the school district's website, the progress made on its attendance improvement plan, to include:

(1) a description of the supports and resources provided to public schools at each tier of the attendance improvement plan;
(2) the extent to which public schools with chronic absence rates greater than ten percent achieved their attendance improvement targets;

(3) the extent to which the school district achieved its attendance improvement targets;

(4) barriers and challenges to reducing chronic absence rates, as reported by the public school and school district personnel;

(5) effective school-based practices, as evidenced by decreased chronic absence rates; and

(6) recommendations for improvement during the next school year at both the public school and school district level.

F. Attendance teams may be formed in whole or in part from preexisting groups or teams within a public school or may be formed for the explicit purpose of improving school attendance. School districts shall reserve time for school personnel to collaborate as an attendance team.

G. School districts shall provide support and guidance to attendance teams on transportation and school scheduling options when these are identified as barriers to school attendance."

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

"ENFORCEMENT OF ATTENDANCE FOR SUCCESS ACT--ATTENDANCE"
IMPROVEMENT PLAN--PROCEDURES.--

A. A public school shall initiate the enforcement of the provisions of the Attendance for Success Act for its enrolled students. The enforcement policies of a public school shall focus on prevention and intervention.

B. Beginning in the 2020-2021 school year, a public school with five percent or greater of students with a chronic absence rate during the prior school year, or with five percent or greater of one or more subgroups of students with a chronic absence rate during the prior school year, shall develop an attendance improvement plan to be submitted to the department as part of the public school's educational plan for student success.

C. A public school, regardless of its chronic absence rate, shall develop and implement a whole-school absence prevention strategy to be reported to the department as part of the public school's educational plan for student success.

D. An attendance improvement plan shall include:

1. attendance data for each of the preceding two school years and the current school year, including:
   a. the public school's overall absence rate;
   b. chronic absence rates disaggregated
by student subpopulation;

(c) chronic absence rates disaggregated by grade level; and

(d) student attendance for every day of the school year;

(2) school-wide identification of potential root causes of chronic and excessive absenteeism through one or more of the following:

(a) national or local research;

(b) analysis of supportive factors and barriers;

(c) student surveys or focus groups;

(d) youth participatory research; or

(e) other appropriate school-based research methods;

(3) identification of strategies for each tier of the attendance improvement plan;

(4) identification of performance measures for each strategy; and

(5) a data-collection plan for performance measures.

E. A public school shall provide interventions to students who are absent or chronically absent, which may include:

(1) assessing student and family needs and
matching those needs with appropriate public or private
providers, including civic and corporate sponsors;
(2) making referrals to health care and
social service providers;
(3) collaborating and coordinating with
health and social service agencies and organizations through
school-based and off-site delivery systems;
(4) recruiting service providers and
business, community and civic organizations to provide needed
services and goods that are not otherwise available to a
student or the student's family;
(5) establishing partnerships between the
public school and community organizations, such as civic,
business and professional groups and organizations and
recreational, social and out-of-school programs;
(6) identifying and coordinating age-appropriate resources for students in need of:
   (a) counseling, training and placement
for employment;
   (b) drug and alcohol abuse counseling;
   (c) family crisis counseling; and
   (d) mental health counseling;
(7) promoting family support and parent
education programs; and
(8) seeking out other services or goods that
a student or the student's family needs to assist the student
to stay in school and succeed.

F. Beginning on the first day of school, a
classroom teacher or that teacher's adult designee shall be
responsible for taking accurate attendance for every class
and reporting absences to the attendance team."

SECTION 9. A new section of the Public School Code is
enacted to read:

"MEDICAL APPOINTMENTS--ILLNESS--SPECIAL
SITUATIONS--MAKE-UP WORK.--

A. A student may be excused for parent- or doctor-
authorized medical reasons. A public school shall provide
time for the student to make up the school work missed during
the absence.

B. A school district shall maintain an attendance
policy that:

(1) provides at least ten days of medical
absences during the school year for a student who provides
documentation of the birth of the student's child, and the
public school shall provide time for the student to make up
the school work missed during the absence; and

(2) provides four days of excused absences
for a student who provides appropriate documentation of
pregnancy or that the student is the parent of a child under
the age of thirteen needing care, and the public school shall
provide time for the student to make up the school work missed during the absence.

   C. A school district that has an alternative public school for, among others, pregnant and parenting students and that allows for off-site attendance through online education shall not count students as absent as long as the students are online with the public school or other appropriate virtual course and complete their class assignments.

   D. A student may, subject to the approval of the school principal, be absent from school to participate in religious instruction for not more than one class period per school day with the written consent of the student's parent at a time that is not in conflict with the academic program of the school. The public school shall provide time for the student to make up the school work missed during the absence. The school district or the public school shall not assume responsibility for the religious instruction of any student or permit religious instruction to be conducted on school property.

   E. A public school student, with the written consent of the student's parent and subject to the approval of the school principal, may be absent from school to participate in tribal obligations. The public school shall provide time for the student to make up the school work
missed during the absence."

SECTION 10. A new section of the Public School Code is
enacted to read:

"INTERSCHOLASTIC EXTRACURRICULAR ACTIVITIES--STUDENT
PARTICIPATION.--

A. A public school student shall have at least a
2.0 grade point average on a 4.0 scale, or its equivalent,
either cumulatively or for the grading period immediately
preceding participation, to be eligible to participate in any
interscholastic extracurricular activity. For purposes of
this section, "grading period" is a period of time not less
than six weeks. The provisions of this subsection shall not
apply to students receiving C or D level special education
services.

B. A student shall not be absent from school for
interscholastic extracurricular activities in excess of
fifteen days per semester, and no class shall be missed in
excess of fifteen times per semester for interscholastic
extracurricular activities.

C. The secretary may issue a waiver relating to
the number of absences for participation in any state or
national competition that is not an interscholastic
extracurricular activity. The secretary shall develop a
procedure for petitioning cumulative provision eligibility
cases, similar to other eligibility situations.
D. Student standards for participation in interscholastic extracurricular activities shall be applied beginning with a student's academic record in ninth grade."

SECTION 11. A new section of the Public School Code is enacted to read:

"PROGRESSIVE INTERVENTIONS FOR ABSENT, CHRONICALLY ABSENT AND EXCESSIVELY ABSENT STUDENTS.---

A. A public school shall provide interventions for students who are missing school, depending on the number of absences. The process for notification and interventions is:

   (1) for a student who has been identified as in need of individualized prevention, the attendance team shall:

      (a) for an elementary student, talk to the parent and inform the parent of the student's attendance history, the impact of student absences on student academic outcomes, the interventions or services available to the student or family and the consequences of further absences, which may include referral to the children, youth and families department for excessive absenteeism; and

      (b) for a middle or high school student, talk to the parent and the student about the student's attendance history and the impact of student absences on student academic outcomes, interventions or services available to the student or family and the
consequences of further absences, which may include referral to the children, youth and families department for excessive absenteeism;

(2) for a student who has been identified as in need of early intervention, the attendance team shall notify the parent in writing by mail or personal service on the parent of the student's absenteeism. The notice shall include a date, time and place for the parent to meet with the public school to develop intervention strategies that focus on keeping the student in an educational setting. The attendance team shall be convened to establish a specific intervention plan for the student that includes establishing weekly progress monitoring and a contract for attendance; and

(3) for a student who has been identified as in need of intensive support, the attendance team shall:

(a) give written notice to the parent, including a date, time and place for the parent to meet with the school principal and the attendance team;

(b) establish nonpunitive consequences at the school level;

(c) identify appropriate specialized supports that may be needed to help the student address the underlying causes of excessive absenteeism; and

(d) apprise the student and the parent of the consequences of further absences.
B. The school principal shall consult with a student's teacher and initiate meetings with the teacher, the student and the parent if the alleged cause of absence from class is teacher-student incompatibility."

SECTION 12. A new section of the Public School Code is enacted to read:

"EXCESSIVE ABSENTEEISM--ENFORCEMENT.--

A. Each local school board and each governing body of a charter school or private school shall initiate the enforcement of the provisions of the Attendance for Success Act for excessively absent students.

B. If unexcused absences continue after written notice of excessive absenteeism as provided in Section 11 of the Attendance for Success Act, the local school board or governing body of a charter school or private school, after consultation with the local superintendent or head administrator of a charter school or private school, shall report the excessively absent student to the probation services office of the judicial district in which the student resides for an investigation as to whether the student should be considered to be a neglected child or a child in a family in need of family services because of excessive absenteeism and, thus, subject to the provisions of the Children's Code. The record of the public school's interventions and the student's and parent's responses to the interventions shall
be provided to the juvenile probation services office. The local superintendent or head administrator of a charter school or private school shall provide the documentation to the juvenile probation services office within ten business days of the student being identified as excessively absent.

C. If the juvenile probation services office determines that the student is a child in a family in need of family services, a caseworker from the child or family in need of family services program shall meet with the family at the public school in which the student is enrolled to determine if there are other intervention services that may be provided. The meeting shall involve the school principal or other school personnel and, unless the parent objects in writing, appropriate community partners that provide services to children and families. The children, youth and families department shall determine if additional interventions, including monitoring, will positively affect the student's behavior."

SECTION 13. A new section of the Public School Code is enacted to read:

"REPORTING REQUIREMENTS.--

A. For each reporting date and at the end of the year, each school district shall report:

(1) the total number of days missed for excused and unexcused absences for each student in each
public school, the total number of days each student was
enrolled and in which tier each student with absences fell
during the reporting period, along with the student's
demographics; and

(2) the number of students at each public
school who were referred to the children, youth and families
department because of excessive absences, in the aggregate
and disaggregated by subgroups.

B. The department shall compile a report by public
school and school district that includes:

(1) the total number and percent of students
who were in each tier of chronic absenteeism or were
excessively absent at each public school and school district
in the aggregate for each public school and school district
and disaggregated by subgroups;

(2) the average number of excused and
unexcused absences per student for all students and
subgroups, not including interscholastic extracurricular
activities; and

(3) a calculated chronic absenteeism rate
for the school district for all students and for each
subgroup."

SECTION 14. A new section of the Public School Code is
enacted to read:

"TIMELY GRADUATION AND SUPPORT FOR STUDENTS WHO
EXPERIENCE DISRUPTION IN THE STUDENT'S EDUCATION.--

A. For purposes of this section, "a student who has experienced a disruption in the student's education" means a student who experiences one or more changes in public school or school district enrollment during a single school year as the result of:

(1) homelessness as defined in the federal McKinney-Vento Homeless Assistance Act and as determined by the public school or school district;

(2) adjudication:
   (a) as an abused or neglected child as determined by the children, youth and families department pursuant to the Abuse and Neglect Act;
   (b) as part of a family in need of court-ordered services voluntary placement pursuant to the Family Services Act; or
   (c) as a delinquent if the parent wishes to disclose the adjudication of delinquency; or

(3) placement in a mental health treatment facility or habilitation program for developmental disabilities pursuant to the Children's Mental Health and Developmental Disabilities Act or placement in treatment foster care.

B. When a student who has experienced a disruption in the student's education transfers to a new public school
or school district, the receiving public school or school
district shall communicate with the sending public school or
school district within two days of the student's enrollment.
The sending public school or school district shall provide
the receiving public school or school district with any
requested records within two days of having received the
receiving public school's or school district's communication.

C. A student who has experienced a disruption in
the student's education because of transferring to a new
public school as the result of circumstances set forth in
this section shall have:

(1) priority placement in classes that meet
state graduation requirements; and

(2) timely placement in elective classes
that are comparable to those in which the student was
enrolled at the student's previous public school or schools
as soon as the public school or school district receives
verification from the student's records.

D. For a student who has experienced a disruption
in the student's education at any time during the student's
high school enrollment, a school district and public schools
shall ensure:

(1) acceptance of the student's state
graduation requirements for a diploma of excellence pursuant
to the Public School Code;
(2) equal access to participation in sports and other extracurricular activities, career and technical programs or other special programs for which the student qualifies;
(3) timely assistance and advice from counselors to improve the student's college or career readiness; and
(4) that the student receives all special education services to which the student is entitled."

SECTION 15. Section 32A-3A-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 64, as amended) is amended to read: "32A-3A-2. DEFINITIONS.--As used in the Family Services Act:
A. "child or family in need of family services" means a family:
(1) whose child's behavior endangers the child's health, safety, education or well-being;
(2) whose child is excessively absent from public school as defined in the Attendance for Success Act;
(3) whose child is absent from the child's place of residence for twenty-four hours or more without the consent of the parent, guardian or custodian;
(4) in which the parent, guardian or custodian of a child refuses to permit the child to live with the parent, guardian or custodian; or
(5) in which the child refuses to live with
the child's parent, guardian or custodian; and

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

SECTION 16. Section 32A-3A-3 NMSA 1978 (being Laws
1993, Chapter 77, Section 65, as amended) is amended to read:

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

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

B. Any person, including a public or private
school principal, who has a reasonable belief that a child or
family is in need of family services may submit a referral to
the department.

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

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

SECTION 17. REPEAL.--Sections 22-12-1 through 22-12-10
NMSA 1978 (being Laws 1967, Chapter 16, Sections 169 and 170;
Laws 1986, Chapter 33, Section 27; Laws 1971, Chapter 238,
Section 1; Laws 2013, Chapter 198, Section 1; Laws 1978, Chapter 211, Section 10; Laws 1967, Chapter 16, Sections 172 and 175; Laws 1985, Chapter 104, Section 1; Laws 2004, Chapter 28, Section 1; and Laws 2017, Chapter 53, Section 1 and Laws 2017, Chapter 85, Section 1, as amended) are repealed.