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HOUSE BILL

**55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO EDUCATION; REQUIRING PUBLIC SCHOOLS AND PUBLIC AND PRIVATE POST-SECONDARY EDUCATIONAL INSTITUTIONS TO ADOPT POLICIES AND PROCEDURES ADDRESSING AFFIRMATIVE CONSENT AND PREVENTION OF SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, HARASSMENT AND STALKING; REQUIRING PUBLIC AND PRIVATE POST-SECONDARY EDUCATIONAL INSTITUTIONS TO CONDUCT BIENNIAL SEXUAL MISCONDUCT CLIMATE SURVEYS; AMENDING THE PUBLIC SCHOOL CODE TO INCLUDE A REQUIREMENT TO SET AFFIRMATIVE CONSENT AS THE STANDARD FOR SEXUAL ACTIVITY.

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

**SECTION 1.** [NEW MATERIAL] POLICIES ADDRESSING AFFIRMATIVE CONSENT AND PREVENTION OF SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, HARASSMENT AND STALKING REQUIRED--SEXUAL MISCONDUCT CLIMATE SURVEYS--REPORTING REQUIREMENTS--HIGHER

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1 EDUCATION DEPARTMENT DUTIES.--

2 A. A public or private post-secondary educational  
3 institution that receives state funds for student financial  
4 assistance shall adopt detailed, trauma-informed policies and  
5 trauma-informed responses for the investigation of allegations  
6 of sexual assault, domestic violence, dating violence and  
7 harassment or stalking involving a student, faculty member,  
8 employee, contractor or regent both on and off campus.

9 B. All policies and procedures shall:

10 (1) reference an affirmative consent standard  
11 in the determination of whether consent was given by all  
12 parties to sexual activity;

13 (2) confirm that it is the responsibility of  
14 each person involved in the sexual activity to ensure that the  
15 person has the affirmative consent of all other participants  
16 engaged in that sexual activity;

17 (3) confirm that affirmative consent:

18 (a) can never be given by a person who  
19 is asleep, unconscious, incapacitated due to the influence of  
20 drugs, alcohol or medication or unable to communicate due to a  
21 mental or physical condition;

22 (b) cannot be implied, assumed or  
23 inferred from silence or lack of protest or resistance; and

24 (c) can be revoked at any time; and

25 (4) confirm that the existence of a dating

1 relationship between the persons involved, or the fact of past  
2 sexual relations between them, shall never by itself be assumed  
3 to be an indicator of consent.

4 C. The standard to be used in determining whether  
5 the elements of the complaint against the responding party have  
6 been demonstrated is the preponderance of the evidence.

7 D. Policies shall include a:

8 (1) provision addressing how the institution  
9 will provide appropriate protections for the privacy of  
10 individuals involved, including confidentiality;

11 (2) provision that all parties and witnesses  
12 who participate as a complainant or witness in an investigation  
13 will not be subject to disciplinary sanctions for a violation  
14 of the school's student conduct policy at or near the time of  
15 the incident, unless the school determines that the violation  
16 was egregious, including an action that places the health or  
17 safety of any other person at risk or involves plagiarism,  
18 cheating or academic dishonesty;

19 (3) description of the role of the  
20 institutional staff supervision; and

21 (4) provision for a comprehensive, trauma-  
22 informed response training program for campus officials  
23 involved in investigating and adjudicating sexual assault,  
24 domestic violence, dating violence and harassment or stalking  
25 cases.

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E. Procedures shall include:

(1) an initial response by the institution's personnel to a report of an incident, including:

(a) providing written notification to the complainant about the availability of, and contact information for, on- and off-campus resources and services and coordination with law enforcement, as appropriate;

(b) providing information in writing to the complainant about the importance of preserving evidence;

(c) the identification and location of witnesses;

(d) response to stranger and non-stranger sexual assault;

(e) a preliminary complainant interview; and

(f) a comprehensive follow-up complainant interview, as appropriate;

(2) investigation of the complaint, including:

(a) contacting and interviewing the responding party;

(b) seeking the identification and location of witnesses;

(c) investigating allegations that alcohol or drugs were involved in the incident; provided that these allegations cannot be used against the complainant during

1 the process of investigating the complaint; and

2 (d) participation of complainant  
3 advocates and other support persons;

4 (3) confidential reporting by complainants and  
5 third parties; and

6 (4) evaluating complaints as appropriate.

7 F. Public or private post-secondary educational  
8 institutions that receive state funds for student financial  
9 assistance shall:

10 (1) enter into memoranda of understanding,  
11 agreements or collaborative partnerships with existing on-  
12 campus and community-based organizations, including rape crisis  
13 centers, to refer students for assistance or make services  
14 available to students, including counseling, health care,  
15 mental health care, complainant advocacy, legal assistance and  
16 resources for the responding party and the complainant at no  
17 cost; and

18 (2) implement comprehensive prevention and  
19 outreach programs that:

20 (a) include a range of prevention  
21 strategies, including empowerment programming, awareness-  
22 raising campaigns, primary prevention, bystander intervention  
23 and risk reduction;

24 (b) make students aware of the  
25 institution's policy on sexual assault, domestic violence,

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1 dating violence and harassment or stalking by contacting and  
2 informing the student body, campus organizations, athletic  
3 programs and student groups about the institution's policy, the  
4 practical implications of an affirmative consent standard and  
5 the rights and responsibilities of students under the policy;  
6 and

7 (c) are included as part of every  
8 incoming student's orientation.

9 G. Each post-secondary educational institution  
10 shall biennially conduct a sexual misconduct climate survey of  
11 all students attending the institution beginning with the  
12 spring semester of 2023. Each post-secondary educational  
13 institution's sexual misconduct climate survey shall include a  
14 base set of common questions approved by the secretary of  
15 higher education.

16 H. Each post-secondary educational institution  
17 shall be permitted to append its own institution-specific  
18 questions to the sexual misconduct climate survey; provided  
19 that the questions do not require the disclosure of any  
20 personally identifying information and are not unnecessarily  
21 traumatizing for victims of sexual violence.

22 I. All students must be offered an opportunity to  
23 fill out the sexual misconduct climate survey. The sexual  
24 misconduct climate survey shall collect anonymous responses,  
25 and the disclosure of identifying information on the sexual

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1 misconduct climate survey shall be prohibited.

2 J. Within ninety days after completion of a sexual  
3 misconduct climate survey, each post-secondary educational  
4 institution shall submit a summary of the results, accompanied  
5 by the anonymized raw data supporting the survey, to the  
6 secretary of higher education and shall also post a summary of  
7 the results on the post-secondary educational institution's  
8 website in an easily accessible manner with a link to the  
9 higher education department's statewide data on sexual  
10 misconduct climate surveys. The results shall not be presented  
11 in a manner that could identify specific students through  
12 demographic information.

13 K. The higher education department shall establish  
14 a data repository for all summaries of sexual misconduct  
15 climate surveys submitted by post-secondary educational  
16 institutions to the higher education department in accordance  
17 with this section. The secretary of higher education shall  
18 ensure that the sexual misconduct climate survey data submitted  
19 by all post-secondary educational institutions is available to  
20 the public in an easily accessible manner on the higher  
21 education department's website.

22 L. The secretary of higher education shall adopt  
23 rules, including deadlines for dissemination and collection of  
24 survey information, consistent with the purposes of this 2022  
25 act, and shall promote effective solicitation to achieve the

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1 highest practical response rate, collection and publication of  
2 statistical information gathered from post-secondary  
3 educational institutions.

4 M. For purposes of this section:

5 (1) "affirmative consent" means affirmative,  
6 conscious and voluntary agreement to engage in sexual activity;

7 (2) "complainant" means a student or employee  
8 who reports having experienced an incident of sexual assault,  
9 domestic violence, dating violence or harassment or stalking to  
10 the institution;

11 (3) "dating violence" means violence committed  
12 by a person:

13 (a) who is or has been in a social  
14 relationship of a romantic or intimate nature with the  
15 complainant; and

16 (b) where the existence of such a  
17 relationship shall be determined based on the length of the  
18 relationship, the type of relationship and the frequency of  
19 interaction between the persons involved in the relationship;

20 (4) "domestic violence" means domestic abuse  
21 as defined in Section 40-13-2 NMSA 1978 or crimes against  
22 household members described in Sections 30-3-12 through 30-3-16  
23 NMSA 1978;

24 (5) "harassment or stalking" means harassment,  
25 stalking and aggravated stalking as described in Sections

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1 30-3A-2 through 30-3A-3.1 NMSA 1978;

2 (6) "post-secondary educational institution"  
3 means a public, private, nonprofit or for-profit school  
4 chartered, incorporated or otherwise organized in this state  
5 that is legally authorized to award a vocational or technical  
6 certificate or a degree at an associate level or above with an  
7 established physical presence in this state;

8 (7) "responding party" means a student or  
9 employee who has been accused of an alleged incident of sexual  
10 assault, domestic violence, dating violence or harassment or  
11 stalking;

12 (8) "sexual assault" means sexual offenses  
13 described in Sections 30-9-11 through 30-9-14 and 30-9-14.3  
14 NMSA 1978;

15 (9) "student" means an individual who is  
16 enrolled in a credit-bearing program through a public or  
17 private degree-granting post-secondary educational institution,  
18 whether part-time, full-time or as an extension student or who  
19 has taken a leave of absence or has withdrawn from the  
20 institution due to being a victim of sexual assault, domestic  
21 violence, dating violence or harassment or stalking;

22 (10) "trauma-informed policy" means a program  
23 or system that considers the widespread impact of trauma and  
24 understands potential paths for recovery; recognizes the signs  
25 and symptoms of trauma in clients, families, staff and others

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1 involved with the system; responds by fully integrating  
2 knowledge about trauma into policies, procedures and practices;  
3 and seeks to actively resist retraumatization; and

4 (11) "trauma-informed response" means a  
5 response involving an understanding of the complexities of  
6 dating violence, domestic violence, sexual assault and  
7 harassment or stalking through training centered on the  
8 neurobiological impact of trauma, the influence of societal  
9 myths and stereotypes surrounding the causes and impacts of  
10 trauma with an understanding of perpetration methodology and  
11 how to conduct an effective investigation.

12 SECTION 2. A new section of Chapter 22, Article 2 NMSA  
13 1978 is enacted to read:

14 "[NEW MATERIAL] ADDITIONAL DEPARTMENT DUTIES--SEXUAL  
15 ASSAULT POLICIES.--

16 A. The department shall adopt detailed, trauma-  
17 informed policies and trauma-informed responses for the  
18 investigation of and disciplinary procedures addressing  
19 allegations of sexual assault, domestic violence, dating  
20 violence and harassment or stalking involving a student,  
21 faculty member, employee, school volunteer or contractor both  
22 on and off campus.

23 B. All policies and procedures shall:

24 (1) reference an affirmative consent standard  
25 in the determination of whether consent was given by all

1 parties to sexual activity;

2 (2) confirm that it is the responsibility of  
3 each person involved in the sexual activity to ensure that the  
4 person has the affirmative consent of all other participants  
5 engaged in that sexual activity;

6 (3) confirm that affirmative consent:

7 (a) can never be given by a person who  
8 is asleep, unconscious, incapacitated due to the influence of  
9 drugs, alcohol or medication or unable to communicate due to a  
10 mental or physical condition;

11 (b) cannot be implied, assumed or  
12 inferred from silence or lack of protest or resistance; and

13 (c) is ongoing throughout a sexual  
14 activity and can be revoked at any time; and

15 (4) confirm that the existence of a dating  
16 relationship between the persons involved, or the fact of past  
17 sexual relations between them, should never by itself be  
18 assumed to be an indicator of consent.

19 C. The standard to be used in determining whether  
20 the elements of the complaint against the respondent have been  
21 demonstrated is the preponderance of the evidence.

22 D. Policies shall include a:

23 (1) provision addressing how the school will  
24 provide appropriate protections for the privacy of individuals  
25 involved, including confidentiality;

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1 (2) provision that an individual who  
2 participates as a complainant or witness in an investigation  
3 will not be subject to disciplinary sanctions for a violation  
4 of the school's student conduct policy at or near the time of  
5 the incident;

6 (3) description of the role of the school  
7 staff supervision; and

8 (4) provision for a comprehensive, trauma-  
9 informed training program for school officials involved in  
10 investigating and adjudicating sexual assault, domestic  
11 violence, dating violence and harassment or stalking cases.

12 E. Procedures shall include:

13 (1) an initial response by the school's  
14 personnel to a report of an incident, including:

15 (a) written notification to the  
16 complainant about the availability of, and contact information  
17 for, on- and off-campus resources and services and coordination  
18 with law enforcement, as appropriate;

19 (b) providing information in writing to  
20 the complainant about the importance of preserving evidence;

21 (c) the identification and location of  
22 witnesses;

23 (d) response to stranger and non-  
24 stranger sexual assault;

25 (e) a preliminary complainant interview;

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1 and

2 (f) a comprehensive follow-up  
3 complainant interview, as appropriate;

4 (2) investigation of the complaint, including:

5 (a) contacting and interviewing the  
6 responding party;

7 (b) seeking the identification and  
8 location of witnesses;

9 (c) investigating allegations that  
10 alcohol or drugs were involved in the incident; provided that  
11 these allegations cannot be used against the complainant during  
12 the process of investigating the complaint; and

13 (d) participation of complainant  
14 advocates and other support persons;

15 (3) confidential reporting by complainants and  
16 third parties; and

17 (4) evaluating complaints and taking  
18 disciplinary action as appropriate.

19 F. Schools shall, to the extent feasible:

20 (1) enter into memoranda of understanding,  
21 agreements or collaborative partnerships with existing on-  
22 campus and community-based organizations, including rape crisis  
23 centers, to refer students for assistance or make services  
24 available to students, including counseling, health care,  
25 mental health care, complainant advocacy, legal assistance and

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1 resources for the responding party and the complainant at no  
2 cost; and

3 (2) implement comprehensive prevention and  
4 outreach programs addressing affirmative consent, sexual  
5 assault, domestic violence, dating violence and harassment or  
6 stalking that:

7 (a) include a range of prevention  
8 strategies, including empowerment programming, awareness-  
9 raising campaigns, primary prevention, bystander intervention  
10 and risk reduction;

11 (b) make students aware of the policy on  
12 sexual assault, domestic violence, dating violence and  
13 harassment or stalking by contacting and informing the student  
14 body, campus organizations, athletic programs and student  
15 groups about the school's sexual assault policy, the practical  
16 implications of an affirmative consent standard and the rights  
17 and responsibilities of students under the policy; and

18 (c) are included as part of every  
19 incoming student's orientation.

20 G. For purposes of this section:

21 (1) "affirmative consent" means affirmative,  
22 conscious and voluntary agreement to engage in sexual activity;

23 (2) "complainant" means a student or employee  
24 who reports having experienced an incident of sexual assault,  
25 domestic violence, dating violence or harassment or

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1 stalking to the institution;

2 (3) "dating violence" means violence committed  
3 by a person:

4 (a) who is or has been in a social  
5 relationship of a romantic or intimate nature with the  
6 complainant; and

7 (b) where the existence of such a  
8 relationship shall be determined based on the length of the  
9 relationship, the type of relationship and the frequency of  
10 interaction between the persons involved in the relationship;

11 (4) "domestic violence" means domestic abuse  
12 as defined in Section 40-13-2 NMSA 1978 or crimes against  
13 household members described in Sections 30-3-12 through 30-3-16  
14 NMSA 1978;

15 (5) "harassment or stalking" means harassment,  
16 stalking and aggravated stalking as described in Sections  
17 30-3A-2 through 30-3A-3.1 NMSA 1978;

18 (6) "responding party" means a student or  
19 employee who has been accused of an alleged incident of sexual  
20 assault, domestic violence, dating violence or harassment or  
21 stalking;

22 (7) "sexual assault" means sexual offenses  
23 described in Sections 30-9-11 through 30-9-14 and 30-9-14.3  
24 NMSA 1978;

25 (8) "trauma-informed policy" means a program

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1 or system that considers the widespread impact of trauma and  
2 understands potential paths for recovery; recognizes the signs  
3 and symptoms of trauma in clients, families, staff and others  
4 involved with the system; responds by fully integrating  
5 knowledge about trauma into policies, procedures and practices;  
6 and seeks to actively resist retraumatization; and

7 (9) "trauma-informed response" means a  
8 response involving an understanding of the complexities of  
9 dating violence, domestic violence, sexual assault and  
10 harassment or stalking through training centered on the  
11 neurobiological impact of trauma, the influence of societal  
12 myths and stereotypes surrounding the causes and impacts of  
13 trauma with an understanding of perpetration methodology and  
14 how to conduct an effective investigation."

15 SECTION 3. Section 22-13-1.1 NMSA 1978 (being Laws 1986,  
16 Chapter 33, Section 5, as amended) is amended to read:

17 "22-13-1.1. GRADUATION REQUIREMENTS.--

18 A. At the end of grades eight through eleven, each  
19 student shall prepare an interim next-step plan that sets forth  
20 the coursework for the grades remaining until high school  
21 graduation. Each year's plan shall explain any differences  
22 from previous interim next-step plans, shall be filed with the  
23 principal of the student's high school and shall be signed by  
24 the student, the student's parent and the student's guidance  
25 counselor or other school official charged with coursework

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1 planning for the student.

2 B. Each student must complete a final next-step  
3 plan during the senior year and prior to graduation. The plan  
4 shall be filed with the principal of the student's high school  
5 and shall be signed by the student, the student's parent and  
6 the student's guidance counselor or other school official  
7 charged with coursework planning for the student.

8 C. An individualized education program that meets  
9 the requirements of Subsections A and B of this section and  
10 that meets all applicable transition and procedural  
11 requirements of the federal Individuals with Disabilities  
12 Education Act for a student with a disability shall satisfy the  
13 next-step plan requirements of this section for that student.

14 D. A local school board shall ensure that each high  
15 school student has the opportunity to develop a next-step plan  
16 based on reports of college and workplace readiness  
17 assessments, as available, and other factors and is reasonably  
18 informed about:

19 (1) curricular and course options, including  
20 honors or advanced placement courses, dual-credit courses,  
21 distance learning courses, career clusters and career pathways,  
22 pre-apprenticeship programs or remediation programs that the  
23 college and workplace readiness assessments indicate to be  
24 appropriate;

25 (2) opportunities available that lead to

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1 different post-high-school options; and

2 (3) alternative opportunities available if the  
3 student does not finish a planned curriculum.

4 E. The secretary shall:

5 (1) establish specific accountability  
6 standards for administrators, counselors, teachers and school  
7 district staff to ensure that every student has the opportunity  
8 to develop a next-step plan;

9 (2) promulgate rules for accredited private  
10 schools in order to ensure substantial compliance with the  
11 provisions of this section;

12 (3) monitor compliance with the requirements  
13 of this section; and

14 (4) compile such information as is necessary  
15 to evaluate the success of next-step plans and report annually,  
16 by December 15, to the legislative education study committee  
17 and the governor.

18 F. Once a student has entered ninth grade, the  
19 graduation requirements shall not be changed for that student  
20 from the requirements specified in the law at the time the  
21 student entered ninth grade.

22 G. Successful completion of a minimum of twenty-  
23 three units aligned to the state academic content and  
24 performance standards shall be required for graduation. These  
25 units shall be as follows:

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1 (1) four units in English, with major emphasis  
2 on grammar and literature;

3 (2) three units in mathematics, at least one  
4 of which is equivalent to the algebra 1 level or higher;

5 (3) two units in science, one of which shall  
6 have a laboratory component; provided, however, that with  
7 students entering the ninth grade beginning in the 2005-2006  
8 school year, three units in science shall be required, one of  
9 which shall have a laboratory component;

10 (4) three units in social science, which shall  
11 include United States history and geography, world history and  
12 geography and government and economics;

13 (5) one unit in physical education;

14 (6) one unit in communication skills or  
15 business education, with a major emphasis on writing and  
16 speaking and that may include a language other than English;

17 (7) one-half unit in New Mexico history for  
18 students entering the ninth grade beginning in the 2005-2006  
19 school year; and

20 (8) nine elective units and seven and one-half  
21 elective units for students entering the ninth grade in the  
22 2005-2006 school year that meet department content and  
23 performance standards. Student service learning shall be  
24 offered as an elective. Financial literacy shall be offered as  
25 an elective. Pre-apprenticeship programs may be offered as

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1 electives. Media literacy may be offered as an elective.

2 H. For students entering the ninth grade beginning  
3 in the 2009-2010 school year, at least one of the units  
4 required for graduation shall be earned as an advanced  
5 placement or honors course, a dual-credit course offered in  
6 cooperation with an institution of higher education or a  
7 distance learning course.

8 I. The department shall establish a procedure for  
9 students to be awarded credit through completion of specified  
10 career technical education courses for certain graduation  
11 requirements, and districts may choose to allow students who  
12 successfully complete an industry-recognized credential,  
13 certificate or degree to receive additional weight in the  
14 calculation of the student's grade point average.

15 J. Successful completion of the requirements of the  
16 New Mexico diploma of excellence shall be required for  
17 graduation for students entering the ninth grade beginning in  
18 the 2009-2010 school year. Successful completion of a minimum  
19 of twenty-four units aligned to the state academic content and  
20 performance standards shall be required to earn a New Mexico  
21 diploma of excellence. These units shall be as follows:

22 (1) four units in English, with major emphasis  
23 on grammar, nonfiction writing and literature; provided that  
24 department-approved work-based training or career and technical  
25 education courses that meet state English academic content and

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1 performance standards shall qualify as one of the four required  
2 English units;

3 (2) four units in mathematics, of which one  
4 shall be the equivalent to or higher than the level of algebra  
5 2, unless the parent submitted written, signed permission for  
6 the student to complete a lesser mathematics unit; and provided  
7 that a financial literacy course or department-approved work-  
8 based training or career and technical education course that  
9 meets state mathematics academic content and performance  
10 standards shall qualify as one of the four required mathematics  
11 units;

12 (3) three units in science, two of which shall  
13 have a laboratory component; provided that department-approved  
14 work-based training or career and technical education courses  
15 that meet state science academic content and performance  
16 standards shall qualify as one of the three required science  
17 units;

18 (4) three and one-half units in social  
19 science, which shall include United States history and  
20 geography, world history and geography, government and  
21 economics and one-half unit of New Mexico history;

22 (5) one unit in physical education, as  
23 determined by each school district, which may include a  
24 physical education program that meets state content and  
25 performance standards or participation in marching band, junior

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1 reserve officers' training corps or interscholastic sports  
2 sanctioned by the New Mexico activities association or any  
3 other co-curricular physical activity;

4 (6) one unit in one of the following: a  
5 career cluster course, workplace readiness or a language other  
6 than English; and

7 (7) seven and one-half elective units that  
8 meet department content and performance standards. Career and  
9 technical education courses shall be offered as an elective.  
10 Student service learning shall be offered as an elective.  
11 Financial literacy shall be offered as an elective. Pre-  
12 apprenticeship programs may be offered as electives. Media  
13 literacy may be offered as an elective.

14 K. ~~[For students entering the eighth grade in the~~  
15 ~~2012-2013 school year]~~ A course in health education is required  
16 for each student prior to graduation. Health education may be  
17 required in either middle school or high school, as determined  
18 by the school district. ~~[Each school district shall submit to~~  
19 ~~the department by the beginning of the 2011-2012 school year a~~  
20 ~~health education implementation plan for the 2012-2013 and~~  
21 ~~subsequent school years, including in which grade health~~  
22 ~~education will be required and how the course aligns with~~  
23 ~~department content and performance standards]~~ Health education  
24 courses shall include:

25 (1) age-appropriate prevention and awareness

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1 of sexual abuse and assault [~~awareness and prevention~~] training  
2 that:

3 (a) meets department standards developed  
4 in consultation with the federal centers for disease control  
5 and prevention [~~that are~~];

6 (b) is based on evidence-based methods  
7 that have proven to be effective; and

8 (c) includes a standard of affirmative  
9 consent defined as an affirmative, conscious and voluntary  
10 agreement to engage in sexual activity and emphasizes that: 1)  
11 it is the responsibility of each person involved in the sexual  
12 activity to ensure that the person has the affirmative consent  
13 of all other participants engaged in that sexual activity; 2)  
14 affirmative consent cannot be implied, assumed or inferred from  
15 silence or lack of protest or resistance; 3) affirmative  
16 consent is ongoing throughout a sexual activity and can be  
17 revoked at any time; 4) the existence of a dating relationship  
18 between the persons involved, or the fact of past sexual  
19 relations between them, should never be assumed to be an  
20 indicator of consent; and 5) affirmative consent can never be  
21 given by a person who is asleep, unconscious, incapacitated due  
22 to the influence of drugs, alcohol or medication or unable to  
23 communicate due to a mental or physical condition; and

24 (2) lifesaving skills training that follows  
25 nationally recognized guidelines for hands-on psychomotor

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1 skills cardiopulmonary resuscitation training. Students shall  
2 be trained to recognize the signs of a heart attack, use an  
3 automated external defibrillator and perform the Heimlich  
4 maneuver for choking victims. The secretary shall promulgate  
5 rules to provide for the:

6 (a) use of the following instructors for  
7 the training provided pursuant to this paragraph: 1) school  
8 nurses, health teachers and athletic department personnel as  
9 instructors; and 2) any qualified persons volunteering to  
10 provide training at no cost to the school district that the  
11 school district determines to be eligible to offer instruction  
12 pursuant to this paragraph; and

13 (b) approval of training and  
14 instructional materials related to the training established  
15 pursuant to this paragraph in both English and Spanish.

16 L. For students entering the ninth grade in the  
17 2017-2018 school year and subsequent school years:

18 (1) one of the units in mathematics required  
19 by Paragraph (2) of Subsection J of this section may comprise a  
20 computer science course if taken after the student demonstrates  
21 competence in mathematics and if the course is not used to  
22 satisfy any part of the requirement set forth in Paragraph (3)  
23 of that subsection; and

24 (2) one of the units in science required by  
25 Paragraph (3) of Subsection J of this section may comprise a



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1 computer science course if taken after the student demonstrates  
2 competence in science and if the course is not used to satisfy  
3 any part of the requirement set forth in Paragraph (2) of that  
4 subsection.

5 M. Final examinations shall be administered to all  
6 students in all classes offered for credit.

7 N. Until July 1, 2010, a student who has not passed  
8 a state graduation examination in the subject areas of reading,  
9 English, mathematics, writing, science and social science shall  
10 not receive a high school diploma. The state graduation  
11 examination on social science shall include a section on the  
12 constitution of the United States and the constitution of New  
13 Mexico. If a student exits from the school system at the end  
14 of grade twelve without having passed a state graduation  
15 examination, the student shall receive an appropriate state  
16 certificate indicating the number of credits earned and the  
17 grade completed. If within five years after a student exits  
18 from the school system the student takes and passes the state  
19 graduation examination, the student may receive a high school  
20 diploma. Any student passing the state graduation examination  
21 and completing all other requirements within five years of  
22 entering ninth grade, including a final summer session if  
23 completed by August 1, may be counted by the school system in  
24 which the student is enrolled as a high school graduate for the  
25 year in which completion and examination occur.

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1           O. Beginning with the 2010-2011 school year, a  
2 student shall not receive a New Mexico diploma of excellence if  
3 the student has not demonstrated competence in the subject  
4 areas of mathematics, reading and language arts, writing,  
5 social studies and science, including a section on the  
6 constitution of the United States and the constitution of  
7 New Mexico, based on a standards-based assessment or  
8 assessments or a portfolio of standards-based indicators  
9 established by the department by rule. The standards-based  
10 assessments required in Section 22-2C-4 NMSA 1978 may also  
11 serve as the assessment required for high school graduation.  
12 If a student exits from the school system at the end of grade  
13 twelve without having satisfied the requirements of this  
14 subsection, the student shall receive an appropriate state  
15 certificate indicating the number of credits earned and the  
16 grade completed. If within five years after a student exits  
17 from the school system the student satisfies the requirements  
18 of this subsection, the student may receive a New Mexico  
19 diploma of excellence. Any student satisfying the requirements  
20 of this subsection and completing all other requirements within  
21 five years of entering ninth grade, including a final summer  
22 session if completed by August 1, may be counted by the school  
23 system in which the student is enrolled as a high school  
24 graduate for the year in which all requirements are satisfied.

25           P. As used in this section:

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1 (1) "career and technical education",  
2 sometimes referred to as "vocational education", means  
3 organized programs offering a sequence of courses, including  
4 technical education and applied technology education, that are  
5 directly related to the preparation of individuals for paid or  
6 unpaid employment in current or emerging occupations requiring  
7 an industry-recognized credential, certificate or degree;

8 (2) "career and technical education course"  
9 means a course with content that provides technical knowledge,  
10 skills and competency-based applied learning and that aligns  
11 with educational standards and expectations as defined in rule;

12 (3) "career cluster" means a grouping of  
13 occupations in industry sectors based on recognized  
14 commonalities that provide an organizing tool for developing  
15 instruction within the educational system;

16 (4) "career pathways" means a sub-grouping  
17 used as an organizing tool for curriculum design and  
18 instruction of occupations and career specialities that share a  
19 set of common knowledge and skills for career success;

20 (5) "final next-step plan" means a next-step  
21 plan that shows that the student has committed or intends to  
22 commit in the near future to a four-year college or university,  
23 a two-year college, a trade or vocational program, an  
24 internship or apprenticeship, military service or a job;

25 (6) "interim next-step plan" means an annual

1 next-step plan in which the student specifies post-high-school  
2 goals and sets forth the coursework that will allow the student  
3 to achieve those goals; and

4 (7) "next-step plan" means an annual personal  
5 written plan of studies developed by a student in a public  
6 school or other state-supported school or institution in  
7 consultation with the student's parent and school counselor or  
8 other school official charged with coursework planning for the  
9 student that includes one or more of the following:

10 (a) advanced placement or honors  
11 courses;

12 (b) dual-credit courses offered in  
13 cooperation with an institution of higher education;

14 (c) distance learning courses;

15 (d) career-technical courses; and

16 (e) pre-apprenticeship programs.

17 Q. The secretary may establish a policy to provide  
18 for administrative interpretations to clarify curricular and  
19 testing provisions of the Public School Code."

20 SECTION 4. APPLICABILITY.--The provisions of Section 3 of  
21 this act apply to students entering the ninth grade in the  
22 2022-2023 school year and subsequent school years. A student  
23 who took and passed a health education course prior to the  
24 implementation of this act shall be allowed to have that health  
25 education course count toward the student's graduation

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1 requirements.

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