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HOUSE BILL 874

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Nora Espinoza

AN ACT

RELATING TO PUBLIC SCHOOLS; REQUIRING THE PUBLIC EDUCATION
DEPARTMENT OR OTHER SCHOOL GOVERNING BODY TO CRAFT STANDARDS
FOR A DRUG TESTING POLICY FOR TRUANTS AND HABITUAL TRUANTS;
DEFINING DRUG TESTING.

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:

"[NEW MATERIAL] DRUG TESTING POLICY FOR TRUANTS AND
HABITUAL TRUANTS.--

A. The department shall establish a model drug
testing policy for a school district or other governing body of
a school that includes:

- (1) minimum accuracy standards;
- (2) descriptions of acts that may be used to

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1 find an individualized suspicion of illegal drug use; and

2 (3) adequate safeguards against false positive
3 results in a drug test.

4 B. The department shall provide by rule a means to
5 cooperate with the district's nearest juvenile probation
6 department in drug testing of a truant or habitual truant while
7 protecting individually identifiable student information."

8 Section 2. Section 22-1-2 NMSA 1978 (being Laws 2003,
9 Chapter 153, Section 3, as amended) is amended to read:

10 "22-1-2. DEFINITIONS.--As used in the Public School Code:

11 A. "academic proficiency" means mastery of the
12 subject-matter knowledge and skills specified in state academic
13 content and performance standards for a student's grade level;

14 B. "adequate yearly progress" means the measure
15 adopted by the department based on federal requirements to
16 assess the progress that a public school or school district or
17 the state makes toward improving student achievement;

18 C. "commission" means the public education
19 commission;

20 D. "department" means the public education
21 department;

22 E. "drug testing" means an analysis of blood, hair
23 or urine administered under the auspices of a juvenile
24 probation office to screen for the presence of an illegal
25 substance;

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1 ~~[E.]~~ F. "forty-day report" means the report of
2 qualified student membership of each school district and of
3 those eligible to be qualified students but enrolled in a
4 private school or a home school for the first forty days of
5 school;

6 ~~[F.]~~ G. "home school" means the operation by the
7 parent of a school-age person of a home study program of
8 instruction that provides a basic academic educational program,
9 including reading, language arts, mathematics, social studies
10 and science;

11 ~~[G.]~~ H. "instructional support provider" means a
12 person who is employed to support the instructional program of
13 a school district, including educational assistant, school
14 counselor, social worker, school nurse, speech-language
15 pathologist, psychologist, physical therapist, occupational
16 therapist, recreational therapist, interpreter for the deaf and
17 diagnostician;

18 ~~[H.]~~ I. "licensed school employee" means teachers,
19 school administrators and instructional support providers;

20 ~~[I.]~~ J. "local school board" means the policy-
21 setting body of a school district;

22 ~~[J.]~~ K. "local superintendent" means the chief
23 executive officer of a school district;

24 ~~[K.]~~ L. "parent" includes a guardian or other
25 person having custody and control of a school-age person;

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1 ~~[H.]~~ M. "private school" means a school, other than
2 a home school, that offers on-site programs of instruction and
3 that is not under the control, supervision or management of a
4 local school board;

5 ~~[M.]~~ N. "public school" means that part of a school
6 district that is a single attendance center in which
7 instruction is offered by one or more teachers and is
8 discernible as a building or group of buildings generally
9 recognized as either an elementary, middle, junior high or high
10 school or any combination of those and includes a charter
11 school;

12 ~~[N.]~~ O. "school" means a supervised program of
13 instruction designed to educate a student in a particular
14 place, manner and subject area;

15 ~~[O.]~~ P. "school administrator" means a person
16 licensed to administer in a school district and includes school
17 principals and central district administrators;

18 ~~[P.]~~ Q. "school-age person" means a person who is
19 at least five years of age prior to 12:01 a.m. on September 1
20 of the school year and who has not received a high school
21 diploma or its equivalent. A maximum age of twenty-one shall
22 be used for a person who is classified as special education
23 membership as defined in Section 22-8-21 NMSA 1978 or as a
24 resident of a state institution;

25 ~~[Q.]~~ R. "school building" means a public school, an

1 administration building and related school structures or
2 facilities, including teacher housing, that is owned, acquired
3 or constructed by the school district as necessary to carry out
4 the functions of the school district;

5 [R.] S. "school bus private owner" means a person,
6 other than a school district, the department, the state or any
7 other political subdivision of the state, that owns a school
8 bus;

9 [S.] T. "school district" means an area of land
10 established as a political subdivision of the state for the
11 administration of public schools and segregated geographically
12 for taxation and bonding purposes;

13 [F.] U. "school employee" includes licensed and
14 nonlicensed employees of a school district;

15 [U.] V. "school principal" means the chief
16 instructional leader and administrative head of a public
17 school;

18 [V.] W. "school year" means the total number of
19 contract days offered by public schools in a school district
20 during a period of twelve consecutive months;

21 [W.] X. "secretary" means the secretary of public
22 education;

23 [X.] Y. "state agency" or "state institution" means
24 the New Mexico military institute, New Mexico school for the
25 blind and visually impaired, New Mexico school for the deaf,

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1 New Mexico boys' school, girls' welfare home, New Mexico youth
2 diagnostic and development center, Sequoyah adolescent
3 treatment center, Carrie Tingley crippled children's hospital,
4 New Mexico behavioral health institute at Las Vegas and any
5 other state agency responsible for educating resident children;

6 ~~[Y.]~~ Z. "state educational institution" means an
7 institution enumerated in Article 12, Section 11 of the
8 constitution of New Mexico;

9 ~~[Z.]~~ AA. "substitute teacher" means a person who
10 holds a certificate to substitute for a teacher in the
11 classroom;

12 ~~[AA.]~~ BB. "teacher" means a person who holds a
13 level one, two or three-A license and whose primary duty is
14 classroom instruction or the supervision, below the school
15 principal level, of an instructional program or whose duties
16 include curriculum development, peer intervention, peer
17 coaching or mentoring or serving as a resource teacher for
18 other teachers;

19 ~~[BB.]~~ CC. "certified school instructor" means a
20 teacher or instructional support provider; and

21 ~~[CC.]~~ DD. "certified school employee" or "certified
22 school personnel" means a licensed school employee."

23 Section 3. Section 22-2-2 NMSA 1978 (being Laws 1967,
24 Chapter 16, Section 5, as amended) is amended to read:

25 "22-2-2. DEPARTMENT--GENERAL DUTIES.--The department

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1 shall:

2 A. properly and uniformly enforce the provisions of
3 the Public School Code;

4 B. determine policy for the operation of all public
5 schools and vocational education programs in the state,
6 including vocational programs that are part of a juvenile
7 construction industries initiative for juveniles who are
8 committed to the custody of the children, youth and families
9 department;

10 C. supervise all schools and school officials
11 coming under its jurisdiction, including taking over the
12 control and management of a public school or school district
13 that has failed to meet requirements of law or department rules
14 or standards, and, until such time as requirements of law,
15 standards or rules have been met and compliance is ensured, the
16 powers and duties of the local school board and local
17 superintendent shall be suspended;

18 D. prescribe courses of instruction to be taught in
19 all public schools in the state, requirements for graduation
20 and standards for all public schools, for private schools
21 seeking state accreditation and for the educational programs
22 conducted in state institutions other than the New Mexico
23 military institute;

24 E. provide technical assistance to local school
25 boards and school districts;

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1 F. assess and evaluate public schools for
2 accreditation purposes to determine the adequacy of student
3 gain in standards-required subject matter, adequacy of student
4 activities, functional feasibility of public school and school
5 district organization, adequacy of staff preparation and other
6 matters bearing upon the education of the students;

7 G. assess and evaluate all state institutions and
8 those private schools that desire state accreditation;

9 H. enforce requirements for home schools. Upon
10 finding that a home school is not in compliance with law, the
11 department may order that a student attend a public school or a
12 private school;

13 I. require periodic reports on forms prescribed by
14 it from all public schools and attendance reports from private
15 schools;

16 J. determine the qualifications for and issue
17 licenses to teachers, instructional support providers and
18 school administrators according to law and according to a
19 system of classification adopted and promulgated by rules of
20 the department;

21 K. deny, suspend or revoke a license according to
22 law for incompetency, moral turpitude or any other good and
23 just cause;

24 L. approve or disapprove all rules promulgated by
25 an association or organization attempting to regulate a public

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1 school activity and invalidate any rule in conflict with any
2 rule promulgated by the department. The department shall
3 require an association or organization attempting to regulate a
4 public school activity to comply with the provisions of the
5 Open Meetings Act and be subject to the inspection provisions
6 of the Public Records Act. The department may require
7 performance and financial audits of an association or
8 organization attempting to regulate a public school activity.
9 The department shall have no power or control over the rules or
10 the bylaws governing the administration of the internal
11 organization of the association or organization;

12 M. review decisions made by the governing board or
13 officials of an organization or association regulating a public
14 school activity, and any decision of the department shall be
15 final in respect thereto;

16 N. require a public school under its jurisdiction
17 that sponsors athletic programs involving sports to mandate
18 that the participating student obtain catastrophic health and
19 accident insurance coverage, such coverage to be offered
20 through the school and issued by an insurance company duly
21 licensed pursuant to the laws of New Mexico;

22 O. establish and maintain regional centers, at its
23 discretion, for conducting cooperative services between public
24 schools and school districts within and among those regions and
25 for facilitating regulation and evaluation of school programs;

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1 P. approve education curricula and programs offered
2 in all two-year public post-secondary educational institutions,
3 except those in Chapter 21, Article 12 NMSA 1978, that lead to
4 alternative licenses for degreed persons pursuant to Section
5 22-10A-8 NMSA 1978 or licensure for educational assistants;

6 Q. establish a model drug testing policy for a
7 school district or other governing body of a school, including
8 minimum accuracy standards, actions that justify individualized
9 suspicion and adequate safeguards against false positive
10 results;

11 [~~Q-~~] R. withhold program approval from a college of
12 education or teacher preparation program that fails to offer a
13 course on teaching reading that:

14 (1) is based upon current scientifically based
15 reading research;

16 (2) aligns with department-adopted reading
17 standards;

18 (3) includes strategies and assessment
19 measures to ensure that beginning teachers are proficient in
20 teaching reading; and

21 (4) was designed after seeking input from
22 experts in the education field;

23 [~~R-~~] S. annually, prior to December 1, prepare and
24 publish a report on public and private education in the state
25 and distribute the report to the governor and the legislature;

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1 [~~S-~~] T. solicit input from local school boards and
2 school districts in the formulation and implementation of
3 department rules; and

4 [~~F-~~] U. report to the legislature or any of its
5 committees as requested and report findings of any educational
6 research study made with public money to the legislature
7 through its appropriate interim or standing committees."

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

10 "22-12-7. ENFORCEMENT OF ATTENDANCE LAW--HABITUAL
11 TRUANTS--PENALTY.--

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

17 B. To initiate enforcement of the provisions of the
18 Compulsory School Attendance Law against an habitual truant, a
19 local school board or governing body of a charter school or
20 private school or its authorized representatives shall give
21 written notice of the habitual truancy by certified mail to or
22 by personal service on the parent of the student subject to and
23 in noncompliance with the provisions of the Compulsory School
24 Attendance Law.

25 C. If unexcused absences continue after written

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1 notice of habitual truancy as provided in Subsection B of this
2 section has occurred, the student shall be reported to the
3 probation services office of the judicial district where the
4 student resides for an investigation as to whether the student
5 shall be considered to be a neglected child or a child in a
6 family in need of services because of habitual truancy and thus
7 subject to the provisions of the Children's Code. In addition
8 to any other disposition, the children's court may order the
9 habitual truant's driving privileges to be suspended for a
10 specified time not to exceed ninety days on the first finding
11 of habitual truancy and not to exceed one year for a subsequent
12 finding of habitual truancy.

13 D. Continued absence after a written notice of
14 habitual truancy may constitute individualized suspicion
15 sufficient to justify drug testing. A student who fails to
16 submit to drug testing pursuant to this subsection may be
17 suspended or expelled.

18 [~~D.~~] E. If, after review by the juvenile probation
19 office where the student resides, a determination and finding
20 is made that the habitual truancy by the student may have been
21 caused by the parent of the student, then the matter will be
22 referred by the juvenile probation office to the district
23 attorney's office or any 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 court,
2 magistrate court or district court.

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

20 ~~[F-]~~ G. The provisions of this section shall apply
21 beginning July 1, 2004."

22 Section 5. Section 22-12-9 NMSA 1978 (being Laws 2004,
23 Chapter 28, Section 1, as amended) is amended to read:

24 "22-12-9. UNEXCUSED ABSENCES AND TRUANCY--ATTENDANCE AND
25 DRUG TESTING POLICIES.--

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1 A. As used in this section and Sections 22-12-7 and
2 22-12-8 NMSA 1978:

3 (1) "habitual truant" means a student who has
4 accumulated the equivalent of ten or more unexcused absences
5 within a school year;

6 (2) "truant" means a student who has
7 accumulated five unexcused absences within any twenty-day
8 period; and

9 (3) "unexcused absence" means an absence from
10 school or a class for which the student does not have an
11 allowable excuse pursuant to the Compulsory School Attendance
12 Law or rules of the local school board or governing authority
13 of a charter school or private school.

14 B. Each school district and charter school shall
15 maintain an attendance policy that:

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

21 (2) uses withdrawal as provided in Section
22 22-8-2 NMSA 1978 only after exhausting efforts to keep students
23 in educational settings; [and]

24 (3) requires that class attendance be taken
25 for every instructional day in every public school or school

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1 program in the school district; and
2 (4) provides for drug testing a truant or an
3 habitual truant in conformance with a state model drug testing
4 policy.

5 C. School districts and charter schools shall report
6 truancy and habitual truancy rates to the department in a form
7 and at such times as the department determines and shall
8 document efforts made to keep truants and habitual truants in
9 educational settings. Locally chartered charter schools shall
10 provide copies of their reports to the school district."

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