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AN ACT

RELATING TO COMPULSORY SCHOOL ATTENDANCE; CHANGING TERMS AND NOTICE PROVISIONS; CLARIFYING HOW UNEXCUSED ABSENCES ARE DETERMINED; REQUIRING REPORTS.

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

Section 1. Section 22-8-2 NMSA 1978 (being Laws 1978, Chapter 128, Section 3, as amended) is amended to read:

"22-8-2. DEFINITIONS.--As used in the Public School Finance Act:

A. "ADM" or "MEM" means membership;

B. "membership" means the total enrollment of qualified students on the current roll of a class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawals of students, in addition to students formally withdrawn from the public school, include students absent from the public school for as many as ten consecutive school days; provided that withdrawals do not include students in need of early intervention and habitual truants the school district is required to intervene with and keep in an educational setting as provided in Section 22-12-9 NMSA 1978;

C. "basic program ADM" or "basic program MEM" means the MEM of qualified students but excludes the full-time-equivalent MEM in early childhood education and

1 three- and four-year-old students receiving special education  
2 services;

3 D. "cost differential factor" is the numerical  
4 expression of the ratio of the cost of a particular segment  
5 of the school program to the cost of the basic program in  
6 grades four through six;

7 E. "department" or "division" means the public  
8 education department;

9 F. "early childhood education ADM" or "early  
10 childhood education MEM" means the full-time-equivalent MEM  
11 of students attending approved early childhood education  
12 programs;

13 G. "full-time-equivalent ADM" or  
14 "full-time-equivalent MEM" is that membership calculated by  
15 applying to the MEM in an approved public school program the  
16 ratio of the number of hours per school day devoted to the  
17 program to six hours or the number of hours per school week  
18 devoted to the program to thirty hours;

19 H. "operating budget" means the annual financial  
20 plan required to be submitted by a local school board or  
21 governing body of a state-chartered charter school;

22 I. "program cost" is the product of the total  
23 number of program units to which a school district is  
24 entitled multiplied by the dollar value per program unit  
25 established by the legislature;

1           J. "program element" is that component of a public  
2 school system to which a cost differential factor is applied  
3 to determine the number of program units to which a school  
4 district is entitled, including but not limited to MEM,  
5 full-time-equivalent MEM, teacher, classroom or public  
6 school;

7           K. "program unit" is the product of the program  
8 element multiplied by the applicable cost differential  
9 factor;

10           L. "public money" or "public funds" means all  
11 money from public or private sources received by a school  
12 district or state-chartered charter school or officer or  
13 employee of a school district or state-chartered charter  
14 school for public use;

15           M. "qualified student" means a public school  
16 student who:

17                   (1) has not graduated from high school;

18                   (2) is regularly enrolled in one-half or  
19 more of the minimum course requirements approved by the  
20 department for public school students; and

21                   (3) in terms of age:

22                           (a) is at least five years of age prior  
23 to 12:01 a.m. on September 1 of the school year;

24                           (b) is at least three years of age at  
25 any time during the school year and is receiving special

1 education services pursuant to rules of the department; or

2 (c) has not reached the student's  
3 twenty-second birthday on the first day of the school year  
4 and is receiving special education services pursuant to rules  
5 of the department; and

6 N. "state superintendent" means the secretary of  
7 public education or the secretary's designee."

8 Section 2. 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  
18 the Compulsory School Attendance Law against an habitual  
19 truant, a local school board or governing body of a charter  
20 school or private school or its authorized representatives  
21 shall give written notice of the habitual truancy by mail to  
22 or by personal service on the parent of the student subject  
23 to and in noncompliance with the provisions of the Compulsory  
24 School Attendance Law. The notice shall include a date, time  
25 and place for the parent to meet with the local school

1 district, charter school or private school to develop  
2 intervention strategies that focus on keeping the student in  
3 an educational setting.

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

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

1 district attorney's office or any law enforcement agency  
2 having jurisdiction for appropriate investigation and filing  
3 of charges allowed under the Compulsory School Attendance  
4 Law. Charges against the parent may be filed in metropolitan  
5 court, magistrate court or district court.

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

23 F. The provisions of this section shall apply  
24 beginning July 1, 2004."

25 Section 3. Section 22-12-8 NMSA 1978 (being Laws 1985,

1 Chapter 104, Section 1, as amended) is amended to read:

2 "22-12-8. EARLY IDENTIFICATION--UNEXCUSED ABSENCES AND  
3 TRUANCY.--Notwithstanding the provisions of Section 22-12-7  
4 NMSA 1978, if a student is in need of early intervention, the  
5 school district, charter school or private school shall  
6 contact the student's parent to inform the parent that the  
7 student has unexcused absences from school and to discuss  
8 possible interventions. The provisions of this section do  
9 not apply to any absence if the parent has contacted the  
10 school to explain the absence."

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

13 "22-12-9. UNEXCUSED ABSENCES AND TRUANCY--ATTENDANCE  
14 POLICIES.--

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

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

20 (2) "student in need of early intervention"  
21 means a student who has accumulated five unexcused absences  
22 within a school year; and

23 (3) "unexcused absence" means an absence  
24 from school or classes for which the student does not have an  
25 allowable excuse pursuant to the Compulsory School Attendance

1 Law or rules of the local school board or governing authority  
2 of a charter school or private school.

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

8 C. Each school district, and charter school shall  
9 maintain an attendance policy that:

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

17 (2) uses withdrawal as provided in Section  
18 22-8-2 NMSA 1978 only after exhausting intervention efforts  
19 to keep students in educational settings;

20 (3) requires that class attendance be taken  
21 for every instructional day in every public school or school  
22 program in the school district; and

23 (4) provides for schools to document the  
24 following for each student identified as a habitual truant:

25 (a) attempts of the school to notify



1 the parent that the student had unexcused absences;

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

4 (c) intervention strategies implemented  
5 to support keeping the student in school.

6 D. The department shall review and approve school  
7 district and charter school attendance policies.

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

20 Section 5. Section 32A-3B-2 NMSA 1978 (being Laws 1993,  
21 Chapter 77, Section 74, as amended) is amended to read:

22 "32A-3B-2. DEFINITIONS.--As used in Chapter 32A,  
23 Article 3B NMSA 1978, "family in need of court-ordered  
24 services" means the child or the family has refused family  
25 services or the department has exhausted appropriate and

1 available family services and court intervention is necessary  
2 to provide family services to the child or family and the  
3 following circumstances exist:

4 A. it is a family whose child, subject to  
5 compulsory school attendance, is absent from school without  
6 an authorized excuse more than ten days during a school year;

7 B. it is a family whose child is absent from the  
8 child's place of residence for a time period of twelve hours  
9 or more without consent of the child's parent, guardian or  
10 custodian;

11 C. it is a family whose child refuses to return  
12 home and there is good cause to believe that the child will  
13 run away from home if forced to return to the parent, guardian  
14 or custodian; or

15 D. it is a family in which the child's parent,  
16 guardian or custodian refuses to allow the child to return  
17 home and a petition alleging neglect of the child is not in  
18 the child's best interests."

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