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HOUSE BILL 411

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

INTRODUCED BY

Doreen Y. Gallegos and Gay G. Kernan

AN ACT

RELATING TO CHILDREN; ENACTING A NEW SECTION OF THE PUBLIC SCHOOL CODE TO REQUIRE SCHOOLS TO APPOINT A PERSON WHO IS A POINT OF CONTACT FOR STUDENTS IN FOSTER CARE AND STUDENTS INVOLVED IN THE JUVENILE JUSTICE SYSTEM; ENACTING A NEW SECTION OF THE ABUSE AND NEGLECT ACT TO REQUIRE THE CHILDREN'S COURT TO APPOINT AN EDUCATIONAL DECISION MAKER FOR STUDENTS IN FOSTER CARE.

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

SECTION 1. A new section of Chapter 22, Article 13 NMSA 1978 is enacted to read:

"[NEW MATERIAL] APPOINTING A POINT OF CONTACT PERSON FOR CERTAIN STUDENTS.--

A. As used in this section:

(1) "foster care" means twenty-four-hour

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1 substitute care for a student placed away from the student's
2 parents or guardians and for whom the children, youth and
3 families department has placement and care responsibility,
4 including placements in foster family homes, foster homes of
5 relatives, group homes, emergency shelters, treatment foster
6 homes, residential facilities, child care institutions and
7 preadoptive homes. For the purposes of this section, a student
8 is in foster care regardless of whether the foster care
9 facility is licensed and payments are made by the state, tribal
10 or local agency for the care of the student, whether adoption
11 subsidy payments are being made prior to the finalization of an
12 adoption or whether there is federal matching of any payments
13 that are made; and

14 (2) "involved in the juvenile justice system"
15 means a student who has been referred to the children, youth
16 and families department due to allegations that the student has
17 committed a delinquent offense and voluntary or involuntary
18 conditions have been imposed on the student, including a
19 student who is participating in a diversion program, is under a
20 consent decree or time waiver, is currently supervised by the
21 children, youth and families department, has recently entered
22 or left a juvenile or criminal justice placement or is on
23 supervised release or parole.

24 B. Each school district shall designate an
25 individual to serve as a point of contact for students in

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1 foster care and students involved in the juvenile justice
2 system.

3 C. For students transferring into the school
4 district, the point of contact person shall be responsible for:

5 (1) ensuring that a student is immediately
6 enrolled regardless of whether the records normally required
7 for enrollment are produced by the last school the student
8 attended or by the student;

9 (2) ensuring that the enrolling school
10 communicates with the last school attended by a transferring
11 student to obtain relevant academic and other records within
12 two business days of the student's enrollment;

13 (3) ensuring that the enrolling school
14 performs a timely transfer of credits that the student earned
15 in the last school attended; and

16 (4) collaborating with the education program
17 staff in a juvenile or criminal justice placement and the
18 educational decision maker appointed by the children's court to
19 create and implement a plan for assisting the transition of a
20 student to the school district to minimize disruption to the
21 student's education.

22 D. For students transferring out of the school
23 district, the point of contact person shall be responsible for
24 providing all records to the new school within two business
25 days of receiving a request from the receiving school.

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1 E. For students in foster care, the point of
2 contact person shall be responsible for:

3 (1) developing school district policies for:

4 (a) best interest determinations about
5 whether the student will remain in the school of origin;

6 (b) transportation policies to ensure
7 that students receive transportation to their school of origin
8 if it is in their best interest to remain in the school of
9 origin; and

10 (c) dispute resolution;

11 (2) convening or participating in best
12 interest determination meetings pursuant to the school
13 district's policies; and

14 (3) ensuring that transportation occurs to the
15 student's school of origin pursuant to the school district's
16 policies.

17 F. For students in foster care and students
18 involved in the juvenile justice system, the point of contact
19 person shall be responsible for:

20 (1) ensuring that a student has equal
21 opportunity to participate in sports and other extracurricular
22 activities, career and technical programs or other special
23 programs for which the student qualifies;

24 (2) ensuring that a student in high school
25 receives timely and ongoing assistance and advice from

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1 counselors to improve the student's college and career
2 readiness;

3 (3) ensuring that a student receives all
4 special education services and accommodations to which the
5 student is entitled under state and federal law;

6 (4) identifying school staff at each school
7 site who can ensure that students are appropriately supported
8 throughout their enrollment;

9 (5) supporting communication among the school;
10 the children, youth and families department; the student; the
11 student's educational decision maker appointed by the
12 children's court; caregivers; and other supportive individuals
13 that the student identifies to ensure that the responsibilities
14 listed in this subsection are implemented; and

15 (6) ensuring that other school district staff
16 and teachers have access to training and resources about the
17 educational challenges and needs of system-involved youth,
18 including trauma-informed practices and the impact of trauma on
19 learning.

20 G. The children, youth and families department
21 shall notify a school when a student in the school enters
22 foster care or a student in foster care enrolls in a school.

23 H. The student or the student's educational
24 decision maker may notify a school that the student is involved
25 in the juvenile justice system to obtain support and services

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1 from the point of contact."

2 SECTION 2. Section 32A-4-2 NMSA 1978 (being Laws 1993,
3 Chapter 77, Section 96, as amended) is amended to read:

4 "32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect
5 Act:

6 A. "abandonment" includes instances when the
7 parent, without justifiable cause:

8 (1) left the child without provision for the
9 child's identification for a period of fourteen days; or

10 (2) left the child with others, including the
11 other parent or an agency, without provision for support and
12 without communication for a period of:

13 (a) three months if the child was under
14 six years of age at the commencement of the three-month period;
15 or

16 (b) six months if the child was over six
17 years of age at the commencement of the six-month period;

18 B. "abused child" means a child:

19 (1) who has suffered or who is at risk of
20 suffering serious harm because of the action or inaction of the
21 child's parent, guardian or custodian;

22 (2) who has suffered physical abuse, emotional
23 abuse or psychological abuse inflicted or caused by the child's
24 parent, guardian or custodian;

25 (3) who has suffered sexual abuse or sexual

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1 exploitation inflicted by the child's parent, guardian or
2 custodian;

3 (4) whose parent, guardian or custodian has
4 knowingly, intentionally or negligently placed the child in a
5 situation that may endanger the child's life or health; or

6 (5) whose parent, guardian or custodian has
7 knowingly or intentionally tortured, cruelly confined or
8 cruelly punished the child;

9 C. "aggravated circumstances" includes those
10 circumstances in which the parent, guardian or custodian has:

11 (1) attempted, conspired to cause or caused
12 great bodily harm to the child or great bodily harm or death to
13 the child's sibling;

14 (2) attempted, conspired to cause or caused
15 great bodily harm or death to another parent, guardian or
16 custodian of the child;

17 (3) attempted, conspired to subject or has
18 subjected the child to torture, chronic abuse or sexual abuse;
19 or

20 (4) had parental rights over a sibling of the
21 child terminated involuntarily;

22 D. "educational decision maker" means an
23 individual appointed by the children's court to attend school
24 meetings and to make decisions about the child's education that
25 a parent could make under law, including decisions about the

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1 child's educational setting, and the development and
2 implementation of an individual education plan for the child;

3 ~~[D-]~~ E. "fictive kin" means a person not related by
4 birth, adoption or marriage with whom a child has an
5 emotionally significant relationship;

6 ~~[E-]~~ F. "great bodily harm" means an injury to a
7 person that creates a high probability of death, that causes
8 serious disfigurement or that results in permanent or
9 protracted loss or impairment of the function of a member or
10 organ of the body;

11 ~~[F-]~~ G. "neglected child" means a child:

12 (1) who has been abandoned by the child's
13 parent, guardian or custodian;

14 (2) who is without proper parental care and
15 control or subsistence, education, medical or other care or
16 control necessary for the child's well-being because of the
17 faults or habits of the child's parent, guardian or custodian
18 or the failure or refusal of the parent, guardian or custodian,
19 when able to do so, to provide them;

20 (3) who has been physically or sexually
21 abused, when the child's parent, guardian or custodian knew or
22 should have known of the abuse and failed to take reasonable
23 steps to protect the child from further harm;

24 (4) whose parent, guardian or custodian is
25 unable to discharge that person's responsibilities to and for

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1 the child because of incarceration, hospitalization or physical
2 or mental disorder or incapacity; or

3 (5) who has been placed for care or adoption
4 in violation of the law; provided that nothing in the
5 Children's Code shall be construed to imply that a child who is
6 being provided with treatment by spiritual means alone through
7 prayer, in accordance with the tenets and practices of a
8 recognized church or religious denomination, by a duly
9 accredited practitioner thereof is for that reason alone a
10 neglected child within the meaning of the Children's Code; and
11 further provided that no child shall be denied the protection
12 afforded to all children under the Children's Code;

13 [~~G.~~] H. "physical abuse" includes [~~but is not~~
14 ~~limited to~~] any case in which the child exhibits evidence of
15 skin bruising, bleeding, malnutrition, failure to thrive,
16 burns, fracture of any bone, subdural hematoma, soft tissue
17 swelling or death and:

18 (1) there is not a justifiable explanation for
19 the condition or death;

20 (2) the explanation given for the condition is
21 at variance with the degree or nature of the condition;

22 (3) the explanation given for the death is at
23 variance with the nature of the death; or

24 (4) circumstances indicate that the condition
25 or death may not be the product of an accidental occurrence;

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1 ~~[H.]~~ I. "relative" means a person related to
2 another person by birth, adoption or marriage within the fifth
3 degree of consanguinity;

4 ~~[I.]~~ J. "sexual abuse" includes ~~[but is not limited~~
5 ~~to]~~ criminal sexual contact, incest or criminal sexual
6 penetration, as those acts are defined by state law;

7 ~~[J.]~~ K. "sexual exploitation" includes ~~[but is not~~
8 ~~limited to]~~:

9 (1) allowing, permitting or encouraging a
10 child to engage in prostitution;

11 (2) allowing, permitting, encouraging or
12 engaging a child in obscene or pornographic photographing; or

13 (3) filming or depicting a child for obscene
14 or pornographic commercial purposes, as those acts are defined
15 by state law;

16 ~~[K.]~~ L. "sibling" means a brother or sister having
17 one or both parents in common by birth or adoption; and

18 ~~[L.]~~ M. "transition plan" means an individualized
19 written plan for a child, based on the unique needs of the
20 child, that outlines all appropriate services to be provided to
21 the child to increase independent living skills. The plan
22 shall also include responsibilities of the child, and any other
23 party as appropriate, to enable the child to be self-sufficient
24 upon emancipation."

25 **SECTION 3.** A new section of the Abuse and Neglect Act is

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1 enacted to read:

2 "[NEW MATERIAL] APPOINTMENT OR CHANGE OF EDUCATIONAL
3 DECISION MAKER.--

4 A. In all matters involving children alleged by the
5 state to be abused or neglected, including proceedings to
6 terminate parental rights, the children's court shall appoint
7 an educational decision maker in every case.

8 B. The children's court shall appoint an
9 educational decision maker at the custody hearing; provided
10 that the children's court:

11 (1) may change the appointment of an
12 educational decision maker upon motion of a party at any stage
13 of the proceedings; and

14 (2) shall review at each subsequent stage of
15 the proceedings whether to continue or change the appointment
16 of an educational decision maker for the child.

17 C. The children's court shall appoint a respondent
18 as the child's educational decision maker, unless the
19 children's court determines that doing so would be contrary to
20 the best interests of the child. If the children's court
21 determines that no respondent should be appointed as the
22 child's educational decision maker, the children's court shall
23 appoint another qualified individual, taking into account the
24 following:

25 (1) whether the individual knows the child and

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1 is willing to accept responsibility for making educational
2 decisions;

3 (2) whether the individual has any personal or
4 professional interests that conflict with the interests of the
5 child; and

6 (3) whether the individual is permitted to
7 make all necessary educational decisions for the child,
8 including decisions related to whether the child is a child
9 with a disability under the federal Individuals with
10 Disabilities Education Act."