

HOUSE BILL 151

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Elizabeth "Liz" Thomson and Charlotte Little and Andrea Romero  
and Yanira Gurrola and Gail Chasey

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO STATE AND PRIVATE EDUCATIONAL INSTITUTIONS;

SJC→~~REQUIRING STATE-FUNDED POST-SECONDARY EDUCATIONAL INSTITUTIONS TO ADOPT POLICIES AND PROCEDURES ADDRESSING AFFIRMATIVE CONSENT AND PREVENTION OF SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE AND HARASSMENT OR STALKING.~~←SJC

SJC→REQUIRING STATE-FUNDED POST-SECONDARY EDUCATIONAL INSTITUTIONS TO ADOPT POLICIES AND PROCEDURES ADDRESSING AFFIRMATIVE CONSENT.←SJC

.227254.1AIC February 14, 2024 (11:51pm)

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

~~SJC → SECTION 1. [NEW MATERIAL] POLICIES AND PROCEDURES ADDRESSING AFFIRMATIVE CONSENT AND PREVENTION OF SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE AND HARASSMENT OR STALKING REQUIRED. --~~

~~A. A post-secondary educational institution that receives state funds for student financial assistance shall adopt trauma-informed policies and trauma-informed responses for the investigation of allegations of sexual assault, domestic violence, dating violence and harassment or stalking involving a student, faculty member, employee, contractor or regent.~~

~~B. All policies and procedures shall:~~

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

~~(2) confirm that it is the responsibility of each party involved in the sexual activity to ensure that the party has the affirmative consent of all other parties engaged in that sexual activity;~~

~~(3) confirm that affirmative consent:~~

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

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

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

~~(4) confirm that the existence of a dating  
relationship between the parties involved, or the fact of past  
sexual relations between them, shall never, by itself, be  
assumed to be an indicator of consent.~~

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

~~D. Policies shall include a provision:~~

~~(1) addressing how the post-secondary  
educational institution will provide appropriate protections  
for the privacy of the parties involved, including  
confidentiality;~~

~~(2) that all parties who participate as a  
complainant or witness in an investigation will not be subject  
to disciplinary sanctions for a violation of the post-secondary  
educational institution student conduct policy at or near the  
time of the incident, unless the post-secondary educational  
institution determines that the violation was egregious,  
including an action that places the health or safety of any  
other party at risk or involves plagiarism, cheating or  
academic dishonesty; and~~

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~~(3) for a comprehensive, trauma-informed response training program for the post-secondary educational institution's employees or contractors involved in investigating and adjudicating sexual assault, domestic violence, dating violence and harassment or stalking cases.~~

~~E. Procedures shall include an initial response by the post-secondary educational institution's employees or contractors to a report of an incident, including providing written notification to the complainant with the contact information for on-campus and community-based resources, services and law enforcement.~~

~~F. Post-secondary educational institutions that receive state funds for student financial assistance shall:~~

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

~~(2) implement comprehensive prevention and outreach programs that:~~

~~(a) include a range of prevention~~

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~~strategies, including empowerment programming, awareness-raising campaigns, primary prevention, bystander intervention and risk reduction;~~

~~(b) make students aware of the post-secondary educational institution's policy on sexual assault, domestic violence, dating violence and harassment or stalking, the practical implications of an affirmative consent standard and the rights and responsibilities of all parties under the policy; and~~

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

~~G. For purposes of this section:~~

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

~~(2) "complainant" means a party who reports having experienced an incident of sexual assault, domestic violence, dating violence or harassment or stalking to the post-secondary educational institution;~~

~~(3) "dating violence" means violence committed by a responding party:~~

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

~~(b) where the existence of such a~~

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~~relationship shall be determined based on the length of the relationship, the type of relationship and the frequency of interaction between the parties involved in the relationship;~~

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

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

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

~~(7) "responding party" means a party who has been accused of an alleged incident of sexual assault, domestic violence, dating violence or harassment or stalking;~~

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

~~(9) "student" means a person who is enrolled in a credit-bearing program through a post-secondary~~

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~~educational institution, whether enrolled part-time, full-time or in an extension program or who has taken a leave of absence or has withdrawn from the institution due to being a complainant;~~

~~(10) "trauma-informed policy" means a program or system that considers the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff and others involved with the system; responds by fully integrating knowledge about trauma into policies, procedures and practices; and seeks to actively resist re-traumatization; and~~

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

SJC → SECTION 1. [NEW MATERIAL] POLICIES AND PROCEDURES ADDRESSING AFFIRMATIVE CONSENT.--

A. A post-secondary educational institution shall adopt policies and procedures that shall:

(1) reference an affirmative consent standard

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in the determination of whether consent was given by all parties to sexual activity;

(2) specify the requirement for the affirmative consent of all other parties engaged in that sexual activity; and

(3) specify that affirmative consent:

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

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

(c) can be revoked at any time; and

(4) specify that the existence of a dating relationship or sexual relations shall not alone be affirmative consent.

B. Policies shall include:

(1) appropriate protections in any investigation of offending conduct of the parties and witnesses involved, including confidentiality;

(2) that all parties who participate as a complainant or witness in an investigation will not be subject to disciplinary sanctions for a violation of the post-secondary educational institution student conduct policy at or near the

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time of the incident, unless the post-secondary educational institution determines that the violation was egregious, including an action that places the health or safety of any other party at risk or involves plagiarism, cheating or academic dishonesty; and

(3) requirements for a training program of employees or contractors involved in investigating allegations of offending conduct, counseling, health care and reporting to law enforcement;

(4) implementing any awareness prevention programs, including primary prevention, bystander intervention and risk reduction programs that:

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

(b) advise students of the policies and procedures on affirmative consent; and

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

C. For purposes of this section:

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

(2) "post-secondary educational institution"

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means a public, private, nonprofit or for-profit educational institution chartered, incorporated or otherwise operating in this state that is legally authorized to award a vocational or technical certificate or a degree at an associate level or above with a physical presence in this state;

(3) "student" means a person who is enrolled in a credit-bearing program through a post-secondary educational institution, whether enrolled part-time, full-time or in an extension program or who has taken a leave of absence or has withdrawn from the institution due to being a complainant;

(4) "trauma-informed policy" means a program or system that considers the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff and others involved with the system; responds by fully integrating knowledge about trauma into policies, procedures and practices; and seeks to actively resist re-traumatization; and

(5) "trauma-informed response" means a response involving an understanding of the complexities of dating violence, domestic violence, sexual assault and harassment or stalking through training centered on the neurobiological impact of trauma, the influence of societal myths and stereotypes surrounding the causes and impacts of

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trauma with an understanding of perpetration methodology and  
how to conduct an effective investigation.←SJC

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