

1 AN ACT

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

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

11 SECTION 1. A new section of Chapter 22, Article 13 NMSA  
12 1978 is enacted to read:

13 "APPOINTING A POINT OF CONTACT PERSON FOR CERTAIN  
14 STUDENTS.--

15 A. As used in this section:

16 (1) "foster care" means twenty-four-hour  
17 substitute care for a student placed away from the student's  
18 parents or guardians and for whom the children, youth and  
19 families department has placement and care responsibility,  
20 including placements in foster family homes, foster homes of  
21 relatives, group homes, emergency shelters, treatment foster  
22 homes, residential facilities, child care institutions and  
23 preadoptive homes. For the purposes of this section, a  
24 student is in foster care regardless of whether the foster  
25 care facility is licensed and payments are made by the state,

1 tribal or local agency for the care of the student, whether  
2 adoption subsidy payments are being made prior to the  
3 finalization of an adoption or whether there is federal  
4 matching of any payments that are made; and

5 (2) "involved in the juvenile justice  
6 system" means a student who has been referred to the  
7 children, youth and families department due to allegations  
8 that the student has committed a delinquent offense and  
9 voluntary or involuntary conditions have been imposed on the  
10 student, including a student who is participating in a  
11 diversion program, is under a consent decree or time waiver,  
12 is currently supervised by the children, youth and families  
13 department, has recently entered or left a juvenile or  
14 criminal justice placement or is on supervised release or  
15 parole.

16 B. Each school district and charter school  
17 authorized by the department shall designate an individual to  
18 serve as a point of contact for students in foster care and  
19 students involved in the juvenile justice system. Charter  
20 schools authorized by school districts shall use the  
21 district's point of contact. Multiple school districts or  
22 charter schools authorized by the department may share a  
23 single designated point of contact with approval from the  
24 department and from the children, youth and families  
25 department.

1           C. For students transferring into the school  
2 district or charter school authorized by the department, the  
3 point of contact person shall be responsible for:

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

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

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

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

22           D. For students transferring out of the school  
23 district or charter school authorized by the department, the  
24 point of contact person shall be responsible for providing  
25 all records to the new school within two business days of

1 receiving a request from the receiving school.

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

4 (1) complying with state policies and  
5 developing school district or charter school policies in  
6 collaboration with the children, youth and families  
7 department for:

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

10 (b) transportation policies to ensure  
11 that students receive transportation to their school of  
12 origin if it is in their best interest to remain in the  
13 school of origin; and

14 (c) dispute resolution;

15 (2) convening or participating in best  
16 interest determination meetings in collaboration with the  
17 children, youth and families department pursuant to state  
18 policies and the school district's or charter school  
19 authorized by the department's policies; and

20 (3) ensuring that transportation occurs to  
21 the student's school of origin pursuant to the school  
22 district's or charter school authorized by the department's  
23 policies and in compliance with state policies.

24 F. For students in foster care and students  
25 involved in the juvenile justice system, the point of contact

1 person shall be responsible for:

2 (1) ensuring that a student has equal  
3 opportunity to participate in sports and other  
4 extracurricular activities, career and technical programs or  
5 other special programs for which the student qualifies;

6 (2) ensuring that a student in high school  
7 receives timely and ongoing assistance and advice from  
8 counselors to improve the student's college and career  
9 readiness;

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

13 (4) identifying school staff at each school  
14 site who can ensure that students are appropriately supported  
15 throughout their enrollment;

16 (5) supporting communication among the  
17 school; the children, youth and families department; the  
18 student; the student's educational decision maker appointed  
19 by the children's court; caregivers; and other supportive  
20 individuals that the student identifies to ensure that the  
21 responsibilities listed in this subsection are implemented;  
22 and

23 (6) ensuring that other school staff and  
24 teachers have access to training and resources about the  
25 educational challenges and needs of system-involved youth,

1 including trauma-informed practices and the impact of trauma  
2 on learning.

3 G. The children, youth and families department  
4 shall notify a school when a student in the school enters  
5 foster care or a student in foster care enrolls in a school.

6 H. The student or the student's educational  
7 decision maker may notify a school that the student is  
8 involved in the juvenile justice system to obtain support and  
9 services from the point of contact."

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

12 "32A-4-2. DEFINITIONS.--As used in the Abuse and  
13 Neglect Act:

14 A. "abandonment" includes instances when the  
15 parent, without justifiable cause:

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

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

21 (a) three months if the child was under  
22 six years of age at the commencement of the three-month  
23 period; or

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

1           B. "abused child" means a child:

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

5                   (2) who has suffered physical abuse,  
6 emotional abuse or psychological abuse inflicted or caused by  
7 the child's parent, guardian or custodian;

8                   (3) who has suffered sexual abuse or sexual  
9 exploitation inflicted by the child's parent, guardian or  
10 custodian;

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

14                   (5) whose parent, guardian or custodian has  
15 knowingly or intentionally tortured, cruelly confined or  
16 cruelly punished the child;

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

19                   (1) attempted, conspired to cause or caused  
20 great bodily harm to the child or great bodily harm or death  
21 to the child's sibling;

22                   (2) attempted, conspired to cause or caused  
23 great bodily harm or death to another parent, guardian or  
24 custodian of the child;

25                   (3) attempted, conspired to subject or has

1 subjected the child to torture, chronic abuse or sexual  
2 abuse; or

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

5 D. "educational decision maker" means an  
6 individual appointed by the children's court to attend school  
7 meetings and to make decisions about the child's education  
8 that a parent could make under law, including decisions about  
9 the child's educational setting, and the development and  
10 implementation of an individual education plan for the child;

11 E. "fictive kin" means a person not related by  
12 birth, adoption or marriage with whom a child has an  
13 emotionally significant relationship;

14 F. "great bodily harm" means an injury to a  
15 person that creates a high probability of death, that causes  
16 serious disfigurement or that results in permanent or  
17 protracted loss or impairment of the function of a member or  
18 organ of the body;

19 G. "neglected child" means a child:

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

22 (2) who is without proper parental care and  
23 control or subsistence, education, medical or other care or  
24 control necessary for the child's well-being because of the  
25 faults or habits of the child's parent, guardian or custodian

1 or the failure or refusal of the parent, guardian or  
2 custodian, when able to do so, to provide them;

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

7 (4) whose parent, guardian or custodian is  
8 unable to discharge that person's responsibilities to and for  
9 the child because of incarceration, hospitalization or  
10 physical or mental disorder or incapacity; or

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

22 H. "physical abuse" includes any case in which the  
23 child exhibits evidence of skin bruising, bleeding,  
24 malnutrition, failure to thrive, burns, fracture of any bone,  
25 subdural hematoma, soft tissue swelling or death and:

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

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

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

7 (4) circumstances indicate that the  
8 condition or death may not be the product of an accidental  
9 occurrence;

10 I. "relative" means a person related to another  
11 person by birth, adoption or marriage within the fifth degree  
12 of consanguinity;

13 J. "sexual abuse" includes criminal sexual  
14 contact, incest or criminal sexual penetration, as those acts  
15 are defined by state law;

16 K. "sexual exploitation" includes:

17 (1) allowing, permitting or encouraging a  
18 child to engage in prostitution;

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

21 (3) filming or depicting a child for obscene  
22 or pornographic commercial purposes, as those acts are  
23 defined by state law;

24 L. "sibling" means a brother or sister having one  
25 or both parents in common by birth or adoption; and

1 M. "transition plan" means an individualized  
2 written plan for a child, based on the unique needs of the  
3 child, that outlines all appropriate services to be provided  
4 to the child to increase independent living skills. The plan  
5 shall also include responsibilities of the child, and any  
6 other party as appropriate, to enable the child to be self-  
7 sufficient upon emancipation."

8 SECTION 3. A new section of the Abuse and Neglect Act  
9 is enacted to read:

10 "APPOINTMENT OR CHANGE OF EDUCATIONAL DECISION MAKER.--

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

15 B. The children's court shall appoint an  
16 educational decision maker at the custody hearing; provided  
17 that the children's court:

18 (1) may change the appointment of an  
19 educational decision maker upon motion of a party at any  
20 stage of the proceedings; and

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

24 C. The children's court shall appoint a respondent  
25 as the child's educational decision maker, unless the

1 children's court determines that doing so would be contrary  
2 to the best interests of the child. If the children's court  
3 determines that no respondent should be appointed as the  
4 child's educational decision maker, the children's court  
5 shall appoint another qualified individual, taking into  
6 account the following:

7 (1) whether the individual knows the child  
8 and is willing to accept responsibility for making  
9 educational decisions;

10 (2) whether the individual has any personal  
11 or professional interests that conflict with the interests of  
12 the child; and

13 (3) whether the individual is permitted to  
14 make all necessary educational decisions for the child,  
15 including decisions related to whether the child is a child  
16 with a disability under the federal Individuals with  
17 Disabilities Education Act."