

HOUSE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO SEXUAL ASSAULT TRAINING; REQUIRING PUBLIC AND PRIVATE POST-SECONDARY EDUCATIONAL INSTITUTIONS TO ADOPT POLICIES AND PROCEDURES ADDRESSING SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE AND STALKING; AMENDING THE PUBLIC SCHOOL CODE TO INCLUDE A REQUIREMENT TO SET "AFFIRMATIVE CONSENT" AS THE STANDARD FOR SEXUAL ACTIVITY.

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

SECTION 1. [NEW MATERIAL] POLICIES CONCERNING SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE AND STALKING REQUIRED.--

A. A public or private post-secondary educational institution that receives state funds for student financial assistance shall adopt detailed, complainant-centered policies and procedures for the investigation of and disciplinary

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1 procedures addressing allegations of sexual assault, domestic
2 violence, dating violence and harassment or stalking involving
3 a student, faculty member, employee, contractor or regent both
4 on and off campus.

5 B. All policies and procedures shall reference an
6 affirmative consent standard in the determination of whether
7 consent was given by both parties to sexual activity.

8 C. It is the responsibility of each person involved
9 in the sexual activity to ensure that the person has the
10 affirmative consent of the other or others to engage in the
11 sexual activity.

12 D. Affirmative consent can never be given by a
13 person who is asleep, unconscious, incapacitated due to the
14 influence of drugs, alcohol or medication, or unable to
15 communicate due to a mental or physical condition.

16 E. Affirmative consent cannot be implied, assumed
17 or inferred from silence or lack of protest or resistance.

18 F. Affirmative consent must be ongoing throughout a
19 sexual activity and can be revoked at any time.

20 G. The existence of a dating relationship between
21 the persons involved, or the fact of past sexual relations
22 between them, should never by itself be assumed to be an
23 indicator of consent.

24 H. The standard to be used in determining whether
25 the elements of the complaint against the accused have been

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1 demonstrated is the preponderance of the evidence.

2 I. Policies shall include:

3 (1) a provision addressing how the institution
4 will provide appropriate protections for the privacy of
5 individuals involved, including confidentiality;

6 (2) a provision that an individual who
7 participates as a complainant or witness in an investigation
8 will not be subject to disciplinary sanctions for a violation
9 of the institution's student conduct policy at or near the time
10 of the incident, unless the institution determines that the
11 violation was egregious, including an action that places the
12 health or safety of any other person at risk or involves
13 plagiarism, cheating or academic dishonesty;

14 (3) a description of the role of the
15 institutional staff supervision; and

16 (4) a provision for a comprehensive,
17 trauma-informed training program for campus officials involved
18 in investigating and adjudicating sexual assault, domestic
19 violence, dating violence and harassment or stalking cases.

20 J. Procedures shall include:

21 (1) procedures for initial response by the
22 institution's personnel to a report of an incident, including:

23 (a) providing written notification to
24 the complainant about the availability of, and contact
25 information for, on- and off-campus resources and services, and

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- 1 coordination with law enforcement, as appropriate;
- 2 (b) providing information in writing to
- 3 the complainant about the importance of preserving evidence;
- 4 (c) the identification and location of
- 5 witnesses;
- 6 (d) response to stranger and non-
- 7 stranger sexual assault;
- 8 (e) a preliminary complainant interview;
- 9 and
- 10 (f) a comprehensive follow-up
- 11 complainant interview, as appropriate;
- 12 (2) procedures for investigation of the
- 13 complaint, including:
- 14 (a) contacting and interviewing the
- 15 accused;
- 16 (b) seeking the identification and
- 17 location of witnesses;
- 18 (c) investigating allegations that
- 19 alcohol or drugs were involved in the incident; and
- 20 (d) participation of complainant
- 21 advocates and other support persons;
- 22 (3) procedures for confidential reporting by
- 23 complainants and third parties; and
- 24 (4) procedures for evaluating complaints and
- 25 taking disciplinary action as appropriate.

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1 K. Public or private post-secondary educational
2 institutions that receive state funds for student financial
3 assistance shall, to the extent feasible:

4 (1) enter into memoranda of understanding,
5 agreements or collaborative partnerships with existing
6 on-campus and community-based organizations, including rape
7 crisis centers, to refer students for assistance or make
8 services available to students, including counseling, health,
9 mental health, complainant advocacy and legal assistance, and
10 including resources for the accused; and

11 (2) implement comprehensive prevention and
12 outreach programs addressing sexual assault, domestic violence,
13 dating violence and harassment or stalking that:

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

18 (b) make students aware of the
19 institution's policy on sexual assault, domestic violence,
20 dating violence and harassment or stalking by contacting and
21 informing the student body, campus organizations, athletic
22 programs and student groups about the institution's overall
23 sexual assault policy, the practical implications of an
24 affirmative consent standard and the rights and
25 responsibilities of students under the policy; and

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

3 L. For purposes of this section:

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

6 (2) "dating violence" means violence committed
7 by a person:

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

11 (b) where the existence of such a
12 relationship shall be determined based on the length of the
13 relationship, the type of relationship and the frequency of
14 interaction between the persons involved in the relationship;

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

19 (4) "harassment or stalking" means harassment,
20 stalking and aggravated stalking as described in Sections
21 30-3A-2 through 30-3A-3.1 NMSA 1978;

22 (5) "post-secondary educational institution"
23 means an academic, vocational, technical, business,
24 professional or other school, college or university or other
25 organization or person offering or purporting to offer courses,

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1 instruction, training or education from a physical site in New
2 Mexico, through distance education, correspondence or in
3 person; and

4 (6) "sexual assault" means sexual offenses
5 described in Sections 30-9-11 through 30-9-14 and 30-9-14.3
6 NMSA 1978.

7 SECTION 2. Section 22-13-1.1 NMSA 1978 (being Laws 1986,
8 Chapter 33, Section 5, as amended) is amended to read:

9 "22-13-1.1. GRADUATION REQUIREMENTS.--

10 A. At the end of grades eight through eleven, each
11 student shall prepare an interim next-step plan that sets forth
12 the coursework for the grades remaining until high school
13 graduation. Each year's plan shall explain any differences
14 from previous interim next-step plans, shall be filed with the
15 principal of the student's high school and shall be signed by
16 the student, the student's parent and the student's guidance
17 counselor or other school official charged with coursework
18 planning for the student.

19 B. Each student must complete a final next-step
20 plan during the senior year and prior to graduation. The plan
21 shall be filed with the principal of the student's high school
22 and shall be signed by the student, the student's parent and
23 the student's guidance counselor or other school official
24 charged with coursework planning for the student.

25 C. An individualized education program that meets

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1 the requirements of Subsections A and B of this section and
2 that meets all applicable transition and procedural
3 requirements of the federal Individuals with Disabilities
4 Education Act for a student with a disability shall satisfy the
5 next-step plan requirements of this section for that student.

6 D. A local school board shall ensure that each high
7 school student has the opportunity to develop a next-step plan
8 based on reports of college and workplace readiness
9 assessments, as available, and other factors and is reasonably
10 informed about:

11 (1) curricular and course options, including
12 honors or advanced placement courses, dual-credit courses,
13 distance learning courses, career clusters and career pathways,
14 pre-apprenticeship programs or remediation programs that the
15 college and workplace readiness assessments indicate to be
16 appropriate;

17 (2) opportunities available that lead to
18 different post-high-school options; and

19 (3) alternative opportunities available if the
20 student does not finish a planned curriculum.

21 E. The secretary shall:

22 (1) establish specific accountability
23 standards for administrators, counselors, teachers and school
24 district staff to ensure that every student has the opportunity
25 to develop a next-step plan;

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1 (2) promulgate rules for accredited private
2 schools in order to ensure substantial compliance with the
3 provisions of this section;

4 (3) monitor compliance with the requirements
5 of this section; and

6 (4) compile such information as is necessary
7 to evaluate the success of next-step plans and report annually,
8 by December 15, to the legislative education study committee
9 and the governor.

10 F. Once a student has entered ninth grade, the
11 graduation requirements shall not be changed for that student
12 from the requirements specified in the law at the time the
13 student entered ninth grade.

14 G. Successful completion of a minimum of twenty-
15 three units aligned to the state academic content and
16 performance standards shall be required for graduation. These
17 units shall be as follows:

18 (1) four units in English, with major emphasis
19 on grammar and literature;

20 (2) three units in mathematics, at least one
21 of which is equivalent to the algebra 1 level or higher;

22 (3) two units in science, one of which shall
23 have a laboratory component; provided, however, that with
24 students entering the ninth grade beginning in the 2005-2006
25 school year, three units in science shall be required, one of

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- 1 which shall have a laboratory component;
- 2 (4) three units in social science, which shall
3 include United States history and geography, world history and
4 geography and government and economics;
- 5 (5) one unit in physical education;
- 6 (6) one unit in communication skills or
7 business education, with a major emphasis on writing and
8 speaking and that may include a language other than English;
- 9 (7) one-half unit in New Mexico history for
10 students entering the ninth grade beginning in the 2005-2006
11 school year; and
- 12 (8) nine elective units and seven and one-half
13 elective units for students entering the ninth grade in the
14 2005-2006 school year that meet department content and
15 performance standards. Student service learning shall be
16 offered as an elective. Financial literacy shall be offered as
17 an elective. Pre-apprenticeship programs may be offered as
18 electives. Media literacy may be offered as an elective.
- 19 H. For students entering the ninth grade beginning
20 in the 2009-2010 school year, at least one of the units
21 required for graduation shall be earned as an advanced
22 placement or honors course, a dual-credit course offered in
23 cooperation with an institution of higher education or a
24 distance learning course.
- 25 I. The department shall establish a procedure for

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1 students to be awarded credit through completion of specified
2 career technical education courses for certain graduation
3 requirements, and districts may choose to allow students who
4 successfully complete an industry-recognized credential,
5 certificate or degree to receive additional weight in the
6 calculation of the student's grade point average.

7 J. Successful completion of the requirements of the
8 New Mexico diploma of excellence shall be required for
9 graduation for students entering the ninth grade beginning in
10 the 2009-2010 school year. Successful completion of a minimum
11 of twenty-four units aligned to the state academic content and
12 performance standards shall be required to earn a New Mexico
13 diploma of excellence. These units shall be as follows:

14 (1) four units in English, with major emphasis
15 on grammar, nonfiction writing and literature;

16 (2) four units in mathematics, of which one
17 shall be the equivalent to or higher than the level of algebra
18 2, unless the parent submitted written, signed permission for
19 the student to complete a lesser mathematics unit; and provided
20 that a financial literacy course that meets state mathematics
21 academic content and performance standards shall qualify as one
22 of the four required mathematics units;

23 (3) three units in science, two of which shall
24 have a laboratory component;

25 (4) three and one-half units in social

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1 science, which shall include United States history and
2 geography, world history and geography, government and
3 economics and one-half unit of New Mexico history;

4 (5) one unit in physical education, as
5 determined by each school district, which may include a
6 physical education program that meets state content and
7 performance standards or participation in marching band, junior
8 reserve officers' training corps or interscholastic sports
9 sanctioned by the New Mexico activities association or any
10 other co-curricular physical activity;

11 (6) one unit in one of the following: a
12 career cluster course, workplace readiness or a language other
13 than English; and

14 (7) seven and one-half elective units that
15 meet department content and performance standards. Career and
16 technical education courses shall be offered as an elective.
17 Student service learning shall be offered as an elective.
18 Financial literacy shall be offered as an elective. Pre-
19 apprenticeship programs may be offered as electives. Media
20 literacy may be offered as an elective.

21 K. For students entering the eighth grade in the
22 2012-2013 school year, a course in health education is required
23 prior to graduation. Health education may be required in
24 either middle school or high school, as determined by the
25 school district. Each school district shall submit to the

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1 department by the beginning of the 2011-2012 school year a
2 health education implementation plan for the 2012-2013 and
3 subsequent school years, including in which grade health
4 education will be required and how the course aligns with
5 department content and performance standards. Health education
6 courses shall include:

7 (1) age-appropriate sexual abuse and assault
8 awareness and prevention training that meets department
9 standards developed in consultation with the federal centers
10 for disease control and prevention that are based on evidence-
11 based methods that have proven to be effective and that
12 includes a standard of affirmative consent defined as
13 affirmative, conscious and voluntary agreement to engage in
14 sexual activity; and emphasizing that:

15 (a) it is the responsibility of each
16 person involved in the sexual activity to ensure that the
17 person has the affirmative consent of the other or others to
18 engage in the sexual activity;

19 (b) affirmative consent cannot be
20 implied, assumed or inferred from silence or lack of protest or
21 resistance;

22 (c) affirmative consent must be ongoing
23 throughout a sexual activity and can be revoked at any time;

24 (d) the existence of a dating
25 relationship between the persons involved, or the fact of past

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1 sexual relations between them, should never by itself be
2 assumed to be an indicator of consent; and

3 (e) affirmative consent can never be
4 given by a person who is asleep, unconscious, incapacitated due
5 to the influence of drugs, alcohol or medication, or unable to
6 communicate due to a mental or physical condition; and

7 (2) lifesaving skills training that follows
8 nationally recognized guidelines for hands-on psychomotor
9 skills cardiopulmonary resuscitation training. Students shall
10 be trained to recognize the signs of a heart attack, use an
11 automated external defibrillator and perform the Heimlich
12 maneuver for choking victims. The secretary shall promulgate
13 rules to provide for the:

14 (a) use of the following instructors for
15 the training provided pursuant to this paragraph: 1) school
16 nurses, health teachers and athletic department personnel as
17 instructors; and 2) any qualified persons volunteering to
18 provide training at no cost to the school district that the
19 school district determines to be eligible to offer instruction
20 pursuant to this paragraph; and

21 (b) approval of training and
22 instructional materials related to the training established
23 pursuant to this paragraph in both English and Spanish.

24 L. For students entering the ninth grade in the
25 2017-2018 school year and subsequent school years:

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1 (1) one of the units in mathematics required
2 by Paragraph (2) of Subsection J of this section may comprise a
3 computer science course if taken after the student demonstrates
4 competence in mathematics and if the course is not used to
5 satisfy any part of the requirement set forth in Paragraph (3)
6 of that subsection; and

7 (2) one of the units in science required by
8 Paragraph (3) of Subsection J of this section may comprise a
9 computer science course if taken after the student demonstrates
10 competence in science and if the course is not used to satisfy
11 any part of the requirement set forth in Paragraph (2) of that
12 subsection.

13 M. Final examinations shall be administered to all
14 students in all classes offered for credit.

15 N. Until July 1, 2010, a student who has not passed
16 a state graduation examination in the subject areas of reading,
17 English, mathematics, writing, science and social science shall
18 not receive a high school diploma. The state graduation
19 examination on social science shall include a section on the
20 constitution of the United States and the constitution of New
21 Mexico. If a student exits from the school system at the end
22 of grade twelve without having passed a state graduation
23 examination, the student shall receive an appropriate state
24 certificate indicating the number of credits earned and the
25 grade completed. If within five years after a student exits

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1 from the school system the student takes and passes the state
2 graduation examination, the student may receive a high school
3 diploma. Any student passing the state graduation examination
4 and completing all other requirements within five years of
5 entering ninth grade, including a final summer session if
6 completed by August 1, may be counted by the school system in
7 which the student is enrolled as a high school graduate for the
8 year in which completion and examination occur.

9 O. Beginning with the 2010-2011 school year, a
10 student shall not receive a New Mexico diploma of excellence if
11 the student has not demonstrated competence in the subject
12 areas of mathematics, reading and language arts, writing,
13 social studies and science, including a section on the
14 constitution of the United States and the constitution of
15 New Mexico, based on a standards-based assessment or
16 assessments or a portfolio of standards-based indicators
17 established by the department by rule. The standards-based
18 assessments required in Section 22-2C-4 NMSA 1978 may also
19 serve as the assessment required for high school graduation.
20 If a student exits from the school system at the end of grade
21 twelve without having satisfied the requirements of this
22 subsection, the student shall receive an appropriate state
23 certificate indicating the number of credits earned and the
24 grade completed. If within five years after a student exits
25 from the school system the student satisfies the requirements

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1 of this subsection, the student may receive a New Mexico
2 diploma of excellence. Any student satisfying the requirements
3 of this subsection and completing all other requirements within
4 five years of entering ninth grade, including a final summer
5 session if completed by August 1, may be counted by the school
6 system in which the student is enrolled as a high school
7 graduate for the year in which all requirements are satisfied.

8 P. As used in this section:

9 (1) "career and technical education",
10 sometimes referred to as "vocational education", means
11 organized programs offering a sequence of courses, including
12 technical education and applied technology education, that are
13 directly related to the preparation of individuals for paid or
14 unpaid employment in current or emerging occupations requiring
15 an industry-recognized credential, certificate or degree;

16 (2) "career and technical education course"
17 means a course with content that provides technical knowledge,
18 skills and competency-based applied learning and that aligns
19 with educational standards and expectations as defined in rule;

20 (3) "career cluster" means a grouping of
21 occupations in industry sectors based on recognized
22 commonalities that provide an organizing tool for developing
23 instruction within the educational system;

24 (4) "career pathways" means a sub-grouping
25 used as an organizing tool for curriculum design and

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1 instruction of occupations and career specialities that share a
2 set of common knowledge and skills for career success;

3 (5) "final next-step plan" means a next-step
4 plan that shows that the student has committed or intends to
5 commit in the near future to a four-year college or university,
6 a two-year college, a trade or vocational program, an
7 internship or apprenticeship, military service or a job;

8 (6) "interim next-step plan" means an annual
9 next-step plan in which the student specifies post-high-school
10 goals and sets forth the coursework that will allow the student
11 to achieve those goals; and

12 (7) "next-step plan" means an annual personal
13 written plan of studies developed by a student in a public
14 school or other state-supported school or institution in
15 consultation with the student's parent and school counselor or
16 other school official charged with coursework planning for the
17 student that includes one or more of the following:

18 (a) advanced placement or honors
19 courses;

20 (b) dual-credit courses offered in
21 cooperation with an institution of higher education;

22 (c) distance learning courses;

23 (d) career-technical courses; and

24 (e) pre-apprenticeship programs.

25 Q. The secretary may establish a policy to provide

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1 for administrative interpretations to clarify curricular and
2 testing provisions of the Public School Code."

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