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HOUSE BILL 449

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Thomas E. Swisstack

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE COMPULSORY SCHOOL
ATTENDANCE LAW; PROVIDING FOR ADDITIONAL TRUANCY REPORTING AND
REFERRAL; CHANGING A DEFINITION; RECONCILING MULTIPLE
AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 1997.

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

Section 1. Section 22-12-2.1 NMSA 1978 (being Laws 1986,
Chapter 33, Section 27, as amended by Laws 1997, Chapter 239,
Section 1 and also by Laws 1997, Chapter 245, Section 1) is
amended to read:

"22-12-2.1. INTERSCHOLASTIC EXTRACURRICULAR ACTIVITIES--
STUDENT PARTICIPATION.--

A. A student shall have a 2.0 grade point average
on a 4.0 scale, or its equivalent, either cumulatively or for
the grading period immediately preceding participation, in

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1 order to be eligible to participate in any interscholastic
2 extracurricular activity. For purposes of this section,
3 "grading period" is a period of time not less than six weeks.
4 The provisions of this subsection shall not apply to students
5 receiving moderate to maximum special education services.

6 B. No student shall be absent from school for
7 school-sponsored interscholastic extracurricular activities in
8 excess of fifteen days per semester, and no class may be missed
9 in excess of fifteen times per semester.

10 C. The provisions of Subsections A and B of this
11 section apply only to interscholastic extracurricular
12 activities.

13 D. The [~~state superintendent~~] secretary may issue a
14 waiver relating to the number of absences for participation in
15 any state or national competition. The [~~state superintendent~~]
16 secretary shall develop a procedure for petitioning cumulative
17 provision eligibility cases, similar to other eligibility
18 situations.

19 E. Student standards for participation in
20 interscholastic extracurricular activities shall be applied
21 beginning with a student's academic record in grade nine."

22 Section 2. Section 22-12-7 NMSA 1978 (being Laws 1967,
23 Chapter 16, Section 175, as amended) is amended to read:

24 "22-12-7. ENFORCEMENT OF ATTENDANCE LAW--HABITUAL
25 TRUANTS--PENALTY.--

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1 A. Each local school board and each governing body
2 of a charter school or private school shall initiate the
3 enforcement of the provisions of the Compulsory School
4 Attendance Law for students enrolled in their respective
5 schools.

6 B. To initiate enforcement of the provisions of the
7 Compulsory School Attendance Law against an habitual truant, a
8 local school board or governing body of a charter school or
9 private school or its authorized representatives shall give
10 written notice of the habitual truancy by certified mail to or
11 by personal service on the parent of the student subject to and
12 in noncompliance with the provisions of the Compulsory School
13 Attendance Law.

14 C. If unexcused absences continue after written
15 notice of habitual truancy as provided in Subsection B of this
16 section has occurred, the student shall be reported to the
17 probation services office of the judicial district where the
18 student resides for an investigation as to whether the student
19 shall be considered to be a neglected child or a child in a
20 family in need of services because of habitual truancy and thus
21 subject to the provisions of the Children's Code. The
22 probation services office may send a written notice to a parent
23 of the student directing the parent and student to report to
24 the probation services office to discuss family services for
25 the student or the family. When a student is twelve years of

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1 age or younger, the probation services office or the student's
2 school shall make a referral to the protective services
3 division of the children, youth and families department to
4 determine if an investigation is warranted. If the protective
5 services division does not conduct an investigation, the
6 division shall communicate that determination to the probation
7 services office or the school that made the referral. If the
8 protective services division does conduct an investigation,
9 upon completion of its investigation, the division shall
10 provide its report to the probation services office or the
11 school that made the referral. In addition to any other
12 disposition, the children's court may order the habitual
13 truant's driving privileges to be suspended for a specified
14 time not to exceed ninety days on the first finding of habitual
15 truancy and not to exceed one year for a subsequent finding of
16 habitual truancy.

17 D. If, after review by the juvenile probation
18 office where the student resides, a determination and finding
19 is made that the habitual truancy by the student may have been
20 caused by the parent of the student, then the matter will be
21 referred by the juvenile probation office to the district
22 attorney's office or any law enforcement agency having
23 jurisdiction for appropriate investigation and filing of
24 charges allowed under the Compulsory School Attendance Law.
25 Charges against the parent may be filed in metropolitan court,

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1 magistrate court or district court.

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

18 ~~[F. The provisions of this section shall apply~~
19 ~~beginning July 1, 2004.]"~~

20 Section 3. Section 22-12-9 NMSA 1978 (being Laws 2004,
21 Chapter 28, Section 1, as amended) is amended to read:

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

24 A. As used in this section and Sections 22-12-7 and
25 22-12-8 NMSA 1978:

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

4 (2) "truant" means a student who has
5 accumulated five unexcused absences within [~~any twenty-day~~
6 ~~period~~] a school year; and

7 (3) "unexcused absence" means an absence from
8 school or a class for which the student does not have an
9 allowable excuse pursuant to the Compulsory School Attendance
10 Law or rules of the local school board or governing authority
11 of a charter school or private school.

12 B. Each school district and charter school shall
13 maintain an attendance policy that:

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

19 (2) uses withdrawal as provided in Section
20 22-8-2 NMSA 1978 only after exhausting efforts to keep students
21 in educational settings; and

22 (3) requires that class attendance be taken
23 for every instructional day in every public school or school
24 program in the school district.

25 C. School districts and charter schools shall

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1 report truancy and habitual truancy rates to the department in
2 a form and at such times as the department determines and shall
3 document efforts made to keep truants and habitual truants in
4 educational settings. Locally chartered charter schools shall
5 provide copies of their reports to the school district."

6 Section 4. Section 32A-3A-2 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 64, as amended) is amended to read:

8 "32A-3A-2. DEFINITIONS.--As used in the Family Services
9 Act:

10 A. "child or family in need of family services"

11 means:

12 (1) a family whose child's behavior endangers
13 the child's health, safety, education or well-being;

14 (2) a family whose child is absent from the
15 child's place of residence for twenty-four hours or more
16 without the consent of the parent, guardian or custodian;

17 (3) a family in which the parent, guardian or
18 custodian of a child refuses to permit the child to live with
19 the parent, guardian or custodian; ~~[or]~~

20 (4) a family in which the child refuses to
21 live with ~~[his]~~ the child's parent, guardian or custodian;
22 ~~[and]~~ or

23 (5) a family whose child has accumulated the
24 equivalent of ten or more unexcused absences within a school
25 year; and

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1 B. "family services" means services that address
2 specific needs of the child or family."

3 Section 5. Section 32A-3A-4 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 66, as amended) is amended to read:

5 "32A-3A-4. REFERRAL PROCESS.--

6 A. The department shall, subject to the
7 availability of resources, design and implement a referral
8 process to assist a child or family in accessing appropriate
9 services.

10 B. Upon a determination that a child or family is
11 in need of family services, the department may send a written
12 notice to the family directing the family to report to the
13 probation services office of the judicial district where the
14 family resides to discuss family services for the child or
15 family.

16 ~~[B.]~~ C. When the child involved in the referral
17 process is an Indian child, the assessment and referral process
18 shall include contact with the Indian child's tribe for the
19 purpose of consulting and exchanging information."

20 Section 6. Section 32A-3B-2 NMSA 1978 (being Laws 1993,
21 Chapter 77, Section 74) is amended to read:

22 "32A-3B-2. DEFINITIONS.--As used in Chapter [32] 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

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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 an
6 authorized excuse more than ten days [~~during~~] within a school
7 [~~semester~~] year;

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

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

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

20 Section 7. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2007.

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