

HOUSE BILL 152

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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AN ACT

RELATING TO EDUCATION; REQUIRING A STUDENT IN FOSTER CARE TO
CONTINUE BEING ENROLLED IN THE STUDENT'S SCHOOL OF ORIGIN;
CLARIFYING THE DUTIES OF THE CHILDREN, YOUTH AND FAMILIES
DEPARTMENT, THE PUBLIC EDUCATION DEPARTMENT, SCHOOL DISTRICTS
AND CHARTER SCHOOLS WHEN SERVING STUDENTS IN FOSTER CARE OR
STUDENTS INVOLVED IN THE JUVENILE JUSTICE SYSTEM; REQUIRING
POINTS OF CONTACT AND EDUCATIONAL DECISION MAKERS; PROVIDING
PROCEDURES FOR DETERMINING WHETHER A STUDENT IN FOSTER CARE IS
BETTER SERVED IN THE STUDENT'S SCHOOL OF ORIGIN OR ANOTHER
SCHOOL; REQUIRING STUDENTS TO BE SERVED WITH NECESSARY SERVICES
AND ALLOWED TO PARTICIPATE IN EXTRACURRICULAR ACTIVITIES;
PROVIDING FOR THE COST OF TRANSPORTATION TO THE SCHOOL OF
ORIGIN.

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

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1 SECTION 1. Section 22-13-33 NMSA 1978 (being Laws 2017,
2 Chapter 64, Section 1) is amended to read:

3 "22-13-33. APPOINTING A POINT OF CONTACT PERSON FOR
4 CERTAIN STUDENTS.--

5 A. As used in this section:

6 (1) "educational stability" means the
7 assurance that a student in foster care remains in the
8 student's school of origin, including preschool, unless it is
9 determined that remaining in the school of origin is not in the
10 student's best interest;

11 [~~(1)~~] (2) "foster care" means twenty-four-hour
12 substitute care for a student placed away from the student's
13 parents [~~or guardians~~] and for whom the children, youth and
14 families department has placement and care responsibility,
15 including placements in foster family homes, foster homes of
16 relatives, group homes, emergency shelters, treatment foster
17 homes, residential facilities, child care institutions and
18 [~~preadoptive~~] pre-adoptive homes. For the purposes of this
19 section, a student is in foster care regardless of whether the
20 foster care facility is licensed and payments are made by the
21 state, tribal or local agency for the care of the student,
22 whether adoption subsidy payments are being made prior to the
23 finalization of an adoption or whether there is federal
24 matching of any payments that are made; [~~and~~

25 ~~(2)~~] (3) "involved in the juvenile justice

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

10 (4) "school of origin" means the school in
11 which a student is enrolled at the time of placement in foster
12 care. If a student's foster care placement changes, the school
13 of origin would then be considered the school in which the
14 student is enrolled at the time of the placement change.
15 School of origin for incoming kindergarten students is the
16 school within the attendance area of the student's parent's
17 home before placement in foster care.

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

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1 department and from the children, youth and families
2 department.

3 C. For students transferring into the school
4 district or charter school [~~authorized by the department~~] who
5 are involved in the juvenile justice system, the point of
6 contact person shall be responsible for:

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

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

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

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

25 D. For students transferring out of the school

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1 district or charter school [~~authorized by the department~~], the
2 point of contact person shall be responsible for providing all
3 records to the new school within two business days of receiving
4 a request from the receiving public school.

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

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

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

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

17 (c) dispute resolution;

18 (2) convening or participating in best
19 interest determination meetings in collaboration with the
20 children, youth and families department pursuant to state
21 policies and the school district's or charter school
22 [~~authorized by the department's~~] policies; and

23 (3) ensuring that transportation occurs to the
24 student's school of origin pursuant to the school district's or
25 charter [~~school authorized by the department's~~] school's

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1 policies and in compliance with state policies.

2 F. For students in foster care and students
3 involved in the juvenile justice system, the point of contact
4 person shall be responsible for:

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

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

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

16 (4) identifying school staff at each school
17 site who can ensure that students are appropriately supported
18 throughout their enrollment;

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

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1 (6) ensuring that other public school staff
2 and teachers have access to training and resources about the
3 educational challenges and needs of system-involved youth,
4 including trauma-informed practices and the impact of trauma on
5 learning.

6 G. The children, youth and families department
7 shall designate a foster care point of contact for each county
8 in New Mexico. Multiple counties may share a single designated
9 point of contact.

10 H. For students in foster care, the children, youth
11 and families department point of contact person shall be
12 responsible for:

13 (1) liaison between children, youth and
14 families department foster care caseworkers and school
15 districts or charter schools;

16 (2) complying with state policies and
17 developing policies in collaboration with the school district
18 or charter school for:

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

21 (b) transportation policies to ensure
22 that students receive transportation to their school of origin
23 if it is in their best interest to remain in the school of
24 origin; and

25 (c) dispute resolution;

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1 (3) convening or participating in best
2 interest determination meetings in collaboration with the
3 school district or charter school pursuant to state policies
4 and the school district's or charter school's policies;

5 (4) ensuring that transportation occurs to the
6 student's school of origin pursuant to the school district's or
7 charter school's policies and in compliance with state
8 policies; and

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

15 I. The department and the children, youth and
16 families department shall provide, in writing, a list of the
17 points of contact, including contact information for the points
18 of contact, to all children, youth and families, school
19 district and charter school foster care points of contact;
20 children, youth and families department caseworkers; local
21 superintendents; directors of charter schools; and others
22 requesting the list.

23 ~~[G.]~~ J. The children, youth and families department
24 shall notify a public school when a student in the public
25 school enters foster care or a student in foster care enrolls

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1 in a public school.

2 [H.] K. The student or the student's educational
3 decision maker may notify a public school that the student is
4 involved in the juvenile justice system to obtain support and
5 services from the point of contact.

6 L. The department and the children, youth and
7 families department shall provide training for points of
8 contact from the children, youth and families department,
9 school districts, charter schools, foster care caseworkers,
10 foster parents, treatment foster care agencies and residential
11 treatment centers on ensuring educational stability for
12 students in foster care. Training shall be consistent with
13 state and federal laws, including:

14 (1) following all requirements of federal
15 Title 1 and regulations promulgated pursuant to that title,
16 educational stability for students in the foster care section
17 of the federal Every Student Succeeds Act and state laws;

18 (2) transparency with foster families
19 concerning educational requirements, including:

20 (a) ensuring the requirements for a
21 student to remain in the student's school of origin, unless a
22 determination is made that it is not in the student's best
23 interest; and

24 (b) the responsibilities of foster
25 families to transport students to their school of origin; and

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- 1 (3) for children, youth and families
2 department staff, training that includes information on
3 policies and procedures of the best interest determination
4 process, including:
- 5 (a) how to write a best interest
6 determination;
- 7 (b) information needed to conduct a best
8 interest determination meeting;
- 9 (c) how to conduct a best interest
10 determination meeting;
- 11 (d) transportation for students who
12 remain in their school of origin; and
- 13 (e) dispute resolution processes.

14 M. To ensure educational stability for a student in
15 foster care, the children, youth and families department shall:

16 (1) consider school of origin as one of the
17 top priorities when placing school-aged children in foster
18 care; and

19 (2) include in the licensure for traditional
20 foster care, treatment foster care and residential treatment
21 the requirement that:

22 (a) the traditional foster care,
23 treatment foster care and residential treatment center ensure
24 that a student in foster care remains in the student's school
25 of origin, unless it is determined not to be in the best

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1 interest of the student;

2 (b) the traditional foster care,
3 treatment foster care and residential treatment center shall
4 not use the cost of transportation as a determining factor for
5 moving a student from the student's school of origin; and

6 (c) if a traditional foster care,
7 treatment foster care or residential treatment center
8 discharges a student in foster care due to school of origin,
9 its license may be revoked.

10 N. The children, youth and families department and
11 the school district or charter school shall collaborate in the
12 student's best interest in determining school placement and to
13 resolve any conflict concerning the school placement
14 determination. If the children, youth and families department
15 and the school district or charter school do not agree on the
16 school placement best interest determination of a student in
17 foster care, the secretaries of public education and children,
18 youth and families and the local superintendent or the director
19 of the charter school shall make the final determination.

20 O. Within five business days of the best interest
21 determination placement decision, the children, youth and
22 families department and the school district or charter school
23 shall submit the documents considered in the best interest
24 determination placement decision to the secretaries of public
25 education and children, youth and families and the local

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1 superintendent or charter school director. The secretaries and
2 the local superintendent or charter school director shall meet
3 within forty-eight hours or two weekdays, whichever is later,
4 of receiving the paperwork on the case to make a final
5 determination. This meeting may be conducted via phone
6 conference. If a final determination cannot be made by the
7 secretaries and local superintendent or charter school
8 director, the case shall be referred to children's court for a
9 final determination.

10 P. The student in foster care shall remain in the
11 student's school of origin while any disputes regarding school
12 placement best interest determination are being resolved.

13 Q. The joint determination for school placement
14 shall not delay the student's placement in the new residence.
15 If the joint determination process cannot be completed prior to
16 the placement in the new residence, arrangements shall be made
17 during the dispute resolution process to allow the student to
18 continue to attend the school of origin and be provided all
19 educational services as well as be allowed to participate in
20 all extracurricular activities.

21 R. Students with disabilities are exempt from the
22 dispute resolution process. Students with disabilities
23 described in the federal Individuals with Disabilities
24 Education Act shall be provided a free appropriate public
25 education in the least restrictive environment. For students

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1 with disabilities, the determination regarding the ability of a
2 student to receive free appropriate public education is the
3 exclusive decision of the student's individual education
4 program team. Such a determination may only be challenged
5 through the established dispute resolution mechanisms of
6 special education law. The individual educational plan team
7 determination or the determination reached through the special
8 education dispute resolution process is final, and the student
9 shall be enrolled in the school that can best provide the free
10 appropriate public education.

11 S. If a best interest determination has determined
12 that a student should remain in the school of origin but the
13 children, youth and families department and the school district
14 or charter school cannot reach agreement as to how to cover any
15 additional costs of transportation, the children, youth and
16 families department and the school district or charter school
17 shall ensure that the student continues to be transported to
18 the school of origin while the dispute is being resolved. The
19 children, youth and families department and the school district
20 or charter school are responsible for sharing any additional
21 costs of transportation while the dispute is being resolved.

22 T. If the children, youth and families department
23 and the school district or charter school do not agree on the
24 cost of transportation for a student in foster care to remain
25 in the student's school of origin, the secretaries of public

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1 education and children, youth and families and the local
2 superintendent or the charter school director shall make the
3 final determination. Within five business days of a cost of
4 transportation dispute, the children, youth and families
5 department and the school district or charter school shall
6 submit the documents considered in the cost of transportation
7 to the secretaries and the local superintendent or charter
8 school director. The secretaries and the local superintendent
9 or charter school director shall meet within forty-eight hours
10 or two weekdays, whichever is later, of receiving the paperwork
11 on the cost of transportation to make a final determination.
12 This meeting may be conducted via phone conference. If a final
13 determination cannot be made by the secretaries and the local
14 superintendent or charter school director, the case may be
15 referred to children's court for a final determination."

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