

1 SENATE BILL 265

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

3 INTRODUCED BY

4 George K. Muñoz

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11 AN ACT

12 RELATING TO PUBLIC SCHOOLS; ENACTING THE DRUG-RELATED INCIDENT
13 RESPONSE ACT WITHIN THE PUBLIC SCHOOL CODE; REQUIRING SCHOOL
14 DISTRICTS AND GOVERNING BODIES OF CHARTER SCHOOLS TO DEVELOP
15 AND IMPLEMENT SCHOOL-BASED DRUG-RELATED INCIDENT RESPONSE PLANS
16 FOR NONVIOLENT DRUG-RELATED INCIDENTS INVOLVING STUDENTS;
17 REQUIRING THE PUBLIC EDUCATION DEPARTMENT TO COMMENCE A STUDY
18 AND TO TAILOR DRUG-RELATED INCIDENT RESPONSE PLAN REQUIREMENTS
19 AND TRAINING TO THE NEEDS AND ABILITIES OF SCHOOL DISTRICTS AND
20 CHARTER SCHOOLS; REQUIRING DATA COLLECTION, REPORTING AND DATA
21 USE RESTRICTIONS; REQUIRING CERTAIN DATA BE DE-IDENTIFIED;
22 PROVIDING FOR CONFIDENTIALITY AGREEMENTS; PROVIDING
23 DEFINITIONS; MAKING AN APPROPRIATION.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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1 SECTION 1. A new section of the Public School Code is
2 enacted to read:

3 "[NEW MATERIAL] SHORT TITLE.--This act may be cited as the
4 "Drug-Related Incident Response Act".

5 SECTION 2. A new section of the Public School Code is
6 enacted to read:

7 "[NEW MATERIAL] DEFINITIONS.--As used in the Drug-Related
8 Incident Response Act:

9 A. "de-identified data" means student records that
10 have enough personally identifiable information removed or
11 obscured to minimize the risk of unintended disclosure of the
12 identity of the student;

13 B. "drug" means a substance that produces a
14 physiological effect when ingested or otherwise introduced into
15 the body and includes a controlled substance that is illegal to
16 possess or use without a doctor's prescription, including
17 narcotics, stimulants and hallucinogens and any illicit drug;

18 C. "drug-related incident" means any nonviolent
19 incident that involves a student's use or possession of drugs;

20 D. "exclusionary discipline" means removing a
21 student from school, including suspension or expulsion;

22 E. "intervention" means a supportive or preventive
23 action intended to avoid exclusionary discipline;

24 F. "law enforcement unit" means an individual,
25 office, department, division or other component of a school,

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1 including a unit of commissioned police officers or
2 noncommissioned security guards, authorized to:

3 (1) enforce any local, state or federal law,
4 or refer to appropriate authorities a matter for enforcement of
5 those laws against an individual; or

6 (2) maintain the physical security and safety
7 of the school itself;

8 G. "nonjudicial" means a process that does not
9 involve the law, judicial proceedings or the administration of
10 justice and does not involve legal action;

11 H. "response plan" means a school-based plan
12 developed and implemented by a school district and applied to
13 any nonviolent, drug-related incident involving one or more of
14 a school's students;

15 I. "response team" means the individuals composed
16 of school administration or personnel assigned to carry out the
17 school's response plan for a specific drug-related incident;

18 J. "school administration or personnel" means
19 administrative staff, including a school principal, teachers,
20 counselors, mental and physical health staff and special
21 educators and support staff;

22 K. "school district" includes the governing body of
23 a charter school;

24 L. "school grounds" means public elementary and
25 secondary schools, including charter schools and facilities

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1 owned or leased by the school district in or on which public
2 school-related and sanctioned activities are performed and
3 includes buildings, playing fields, parking lots and other
4 facilities located on a school's premises; provided that
5 "school grounds" does not include other commercial properties
6 owned by a school district but not related to the functions of
7 a public school;

8 M. "school-sanctioned activity" means an event that
9 falls under the school's authority and jurisdiction even if it
10 is located off school grounds and includes sporting events,
11 field trips or graduation activities; and

12 N. "substance use disorder" means an individual's
13 impairment caused by the recurrent use of alcohol or other
14 drugs."

15 SECTION 3. A new section of the Public School Code is
16 enacted to read:

17 "[NEW MATERIAL] RESPONSE PLAN--DEPARTMENT GUIDANCE--
18 REQUIRED ELEMENTS.--

19 A. Every school district shall establish and follow
20 a consistent and multi-element school-based response plan for
21 schools to support students involved in a nonviolent drug-
22 related incident on school grounds or at a school-sanctioned
23 activity.

24 B. A response plan required pursuant to Subsection
25 A of this section shall include at a minimum, the following

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1 elements to be applied by the response team:

2 (1) an internal fact-finding system to
3 determine the gravity of an incident before responsive action
4 is recommended or taken, to include an initial determination of
5 the following relevant factors:

6 (a) what drug is involved;

7 (b) whether there are any immediate
8 health concerns, including overdose risk;

9 (c) where the student or students
10 obtained the drug; and

11 (d) whether a student involved in the
12 drug-related incident has a history of past drug-related
13 incidents on school grounds;

14 (2) an assessment of risk factors, including
15 mental health issues, attendance issues and unfavorable living
16 circumstances such as exposure to trauma, poverty, food or
17 housing insecurity or interpersonal violence;

18 (3) a determination of options available
19 commensurate with the gravity of the drug-related incident that
20 may include:

21 (a) a plan for ongoing school
22 counseling, education and mentorship for the student regarding
23 substance use;

24 (b) non-exclusionary discipline,
25 including interventions, community service, restorative

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1 justice, in-school detention and progressive discipline;

2 (c) assistance with access to services
3 to meet basic resource needs, including food, housing and
4 employment;

5 (d) professional health counseling and
6 referrals, including closed-loop referrals, drug use treatment
7 and counseling and information regarding appropriate community
8 resources; and

9 (e) non-judicial action, including in-
10 school suspension or detention or, if warranted and only if no
11 other non-exclusionary option is practicable, exclusionary
12 discipline;

13 (4) notification to the parents or guardians
14 of the student involved in the drug-related incident in
15 writing, either email or written correspondence, and by phone
16 no later than twenty-four hours after learning of the incident
17 in question and prior to any fact gathering;

18 (5) meeting with the student and the student's
19 parents or guardians to clarify facts and identify next steps
20 based on the provisions of this section as incorporated in the
21 response plan; and

22 (6) development and execution of a
23 confidentiality agreement as provided in Section 8 of the Drug-
24 Related Incident Response Act.

25 C. A response plan established pursuant to this

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1 section shall be developed in consultation with appropriate
2 school administration and personnel, including social workers
3 and counselors, and shall include input from students, parents
4 and local community organizations."

5 SECTION 4. A new section of the Public School Code is
6 enacted to read:

7 "[NEW MATERIAL] TRAINING AND EDUCATION.--

8 A. Each school district shall provide training as
9 determined appropriate by the department and aligned with the
10 provisions of the Drug-Related Incident Response Act. Training
11 for key school administration and personnel, including response
12 team members, counselors and nurses, shall include a copy of
13 the response plan and any related supplemental attachments or
14 information and shall at a minimum address:

15 (1) the purpose of the response plan and its
16 specific use in responding to nonviolent drug-related incidents
17 on school grounds;

18 (2) the responsibilities of school
19 administration and personnel, including the response team
20 members, in the application and use of the response plan;

21 (3) the impacts of student drug use and the
22 negative consequences of exclusionary discipline; and

23 (4) the correlation between mental health
24 issues and drug use.

25 B. In addition to the training prescribed in

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1 Subsection A of this section, training for response team
2 members shall include:

3 (1) in-depth guidelines necessary for applying
4 the elements of the response plan;

5 (2) in-depth information regarding the
6 composition of the response team and each team member's
7 responsibilities in the event of a drug-related incident; and

8 (3) any other training or information deemed
9 necessary or appropriate by the department.

10 C. Training for all classroom teachers shall
11 address how to respond to general social, emotional and
12 behavioral needs in the classroom, including:

13 (1) risk factors associated with drug use;

14 (2) the harmful effects of exclusionary
15 discipline;

16 (3) pertinent information related to the
17 elements of the response plan and how and when the response
18 plan will be applied; and

19 (4) classroom behavioral management, to
20 include de-escalation methods.

21 D. Training required pursuant to this section shall
22 be reviewed annually by school districts to ensure it is
23 aligned with department guidance and rules for response plans."

24 SECTION 5. A new section of the Public School Code is
25 enacted to read:

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1 "[NEW MATERIAL] DEPARTMENT STUDY--RESPONSE PLAN

2 REQUIREMENTS--GUIDELINES.--

3 A. The department shall commence a study to tailor
4 the requirements of response plans required pursuant to Section
5 3 of the Drug-Related Incident Response Act and the training
6 required pursuant to Section 4 of that act to the school
7 district's needs and abilities of local schools. School
8 districts shall ensure that the guidelines are incorporated in
9 the response plans. At the time of study commencement, the
10 department may collaborate with the legislative education study
11 committee or contract with an appropriate entity to conduct the
12 study.

13 B. The department or entity responsible for
14 conducting the study required pursuant to this section shall
15 first conduct a review of any existing department or state
16 agency guidelines, policies or programs that substantially
17 relate to or comply with the Drug-Related Incident Response Act
18 and specifically relate to public school responses to drugs and
19 drug-related incidents. Based on that review, the department
20 shall determine any elements to incorporate in the study to
21 comply with the provisions of existing applicable laws or
22 rules. The study shall identify:

- 23 (1) the required elements of a response plan;
24 (2) general guidelines for education,
25 counseling and mentorship regarding drug use commensurate with

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1 the level of a drug-related incident;

2 (3) training needs for school administration
3 and personnel in the application of response plans; and

4 (4) evidence-based resources and best
5 practices for use by school districts.

6 C. The study and subsequent reviews as set forth in
7 this section may include a landscape analysis of potential
8 collaborators, including appropriate state agencies, local
9 juvenile justice departments and drug treatment and resource
10 nonprofit organizations, students, parents and other identified
11 stakeholders. The department shall review the study and issue
12 guidelines every three to five years and update both as deemed
13 appropriate."

14 SECTION 6. A new section of the Public School Code is
15 enacted to read:

16 "[NEW MATERIAL] DATA COLLECTION--DE-IDENTIFIED DATA--
17 STUDENT-LEVEL DATA--OTHER DATA.--

18 A. The department shall establish guidelines for
19 data collection that distinguish drug-related incidents from
20 other incidents on school grounds or at school-sanctioned
21 activities. Student-level data collection shall include:

22 (1) the identity of student or students
23 involved in drug-related incidents;

24 (2) age;

25 (3) race and ethnicity;

- 1 (4) gender;
- 2 (5) gender identity;
- 3 (6) sexual orientation; and
- 4 (7) special education status.

5 B. Data collection required in addition to student-
6 level data collected pursuant to Subsection A of this section
7 shall include:

- 8 (1) the identification of the agency
9 overseeing collection;
- 10 (2) the number of drug-related incidents
11 reported;
- 12 (3) the number of drug-related incidents per
13 student;
- 14 (4) the action, if any, taken in response to
15 drug-related incidents, including the application of a response
16 plan;
- 17 (5) the number of referrals to police, a state
18 agency or to juvenile probation services offices of the
19 judicial district in which the student resides;
- 20 (6) the instances of reporting to the United
21 States department of health and human services' office for
22 civil rights; and
- 23 (7) any other information required by
24 department rule."

25 SECTION 7. A new section of the Public School Code is
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1 enacted to read:

2 "[NEW MATERIAL] DATA REPORTING--SCHOOL DISTRICTS--
3 DEPARTMENT--USE OF DATA--DATA STORAGE.--

4 A. The department shall, within one year of the
5 effective date of the Drug-Related Incident Response Act and
6 annually thereafter, incorporate disaggregated data on drug-
7 related incidents at the school level and by demographic
8 variables into the department's established collection and
9 reporting procedures and in accordance with the department's
10 data-reporting requirements.

11 B. Each school district shall report the data
12 elements provided in Section 6 of the Drug-Related Incident
13 Plan Act to the department quarterly or as determined by the
14 department and shall ensure that the student-level data
15 elements provided are de-identified.

16 C. Aggregated reports shall be public records
17 within the meaning of the Inspection of Public Records Act and
18 shall be open to inspection, with the exception of any portion
19 of a report that is privileged or protected under state or
20 federal law or pursuant to the privacy guidelines provided in
21 Section 8 of the Drug-Related Incident Response Act.

22 D. Student-level data governed by this section
23 shall be accessible for research purposes but shall be allowed
24 for use only at the discretion of the department and subject to
25 a proposal review process established by the department.

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1 Student-level data shall be stored at a public repository
2 approved by the department."

3 SECTION 8. A new section of the Public School Code is
4 enacted to read:

5 "[NEW MATERIAL] PRIVACY--CONFIDENTIALITY.--

6 A. All information and statements gathered by
7 response teams while applying a response plan to a drug-related
8 incident are:

9 (1) private and confidential;

10 (2) not subject to the Inspection of Public
11 Records Act; and

12 (3) not discoverable in civil or criminal
13 litigation, absent both a valid subpoena or other compulsory
14 process and an order of a court of competent jurisdiction.

15 B. As soon as practicable after the occurrence of a
16 drug-related incident, the response team shall provide to the
17 student and where necessary, the student's parent or guardian,
18 a department-approved confidentiality agreement for review and
19 execution containing:

20 (1) notice of the protections afforded by
21 federal and state confidentiality laws;

22 (2) notice of the circumstances under which
23 federal and state confidentiality protections do not apply;

24 (3) consent for the limited release or
25 exchange of confidential information to certain school

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1 administration or personnel or others; and

2 (4) notice of the right to revoke the consent
3 at any time.

4 C. A school's law enforcement unit shall not create
5 a law enforcement unit record with respect to any drug-related
6 incident in which a response plan is applied pursuant to the
7 Drug-Related Incident Response Act unless the record is
8 required by law.

9 D. Nothing in the Drug-Related Incident Response
10 Act shall serve to limit any applicable privacy and
11 confidentiality protections provided by a relevant state or
12 federal law, rule or regulation related to privacy,
13 confidentiality or disclosure of educational records or an
14 individual's substance use disorder treatment records."

15 SECTION 9. A new section of the Public School Code is
16 enacted to read:

17 "[NEW MATERIAL] GRANT PROGRAM--FUNDING.--

18 A. To support the implementation of the response
19 plans required pursuant to the Drug-Related Incident Response
20 Act, the department, in collaboration with the legislative
21 education study committee or other appropriate entity,
22 including a grant-writing entity, may establish a grant program
23 for the purpose of funding in whole or in part:

24 (1) supplemental training deemed necessary by
25 a school district;

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1 (2) the hiring of additional personnel or
2 other resources deemed necessary by a school district; or

3 (3) the sharing of information on existing
4 grant opportunities at the federal or state level that might
5 support school districts in meeting the requirements of the
6 Drug-Related Incident Response Act.

7 B. The department may pursue all federal funding,
8 matching funds and foundation or other charitable funding for
9 the initial start-up and ongoing activities required under the
10 Drug-Related Incident Response Act. The department may receive
11 such gifts, grants and endowments from public or private
12 sources as may be made from time to time for the use and
13 benefit of carrying out the provisions of that act. A grant
14 may address:

15 (1) delivering mandated prevention services,
16 including training on risk-factor assessment and protective
17 measures;

18 (2) decision making regarding student needs
19 and intervention services based on Subsection A of Section 3 of
20 the Drug-Related Incident Response Act; and

21 (3) working with community partners to
22 coordinate services for students presenting more intensive
23 needs."

24 SECTION 10. A new section of the Public School Code is
25 enacted to read:

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