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SENATE BILL 189

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Mary Jane M. Garcia

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO COMPULSORY SCHOOL ATTENDANCE; CHANGING TERMS AND
NOTICE PROVISIONS; CLARIFYING HOW UNEXCUSED ABSENCES ARE
DETERMINED; REQUIRING REPORTS.

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

Section 1. Section 22-8-2 NMSA 1978 (being Laws 1978,
Chapter 128, Section 3, as amended) is amended to read:

"22-8-2. DEFINITIONS.--As used in the Public School
Finance Act:

A. "ADM" or "MEM" means membership;

B. "membership" means the total enrollment of
qualified students on the current roll of a class or school on
a specified day. The current roll is established by the
addition of original entries and reentries minus withdrawals.
Withdrawals of students, in addition to students formally

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1 withdrawn from the public school, include students absent from
2 the public school for as many as ten consecutive school days;
3 provided that withdrawals do not include [~~truants~~] students in
4 need of early intervention and habitual truants the school
5 district is required to intervene with and keep in an
6 educational setting as provided in Section 22-12-9 NMSA 1978;

7 C. "basic program ADM" or "basic program MEM" means
8 the MEM of qualified students but excludes the full-time-
9 equivalent MEM in early childhood education and three- and
10 four-year-old students receiving special education services;

11 D. "cost differential factor" is the numerical
12 expression of the ratio of the cost of a particular segment of
13 the school program to the cost of the basic program in grades
14 four through six;

15 E. "department" or "division" means the public
16 education department;

17 F. "early childhood education ADM" or "early
18 childhood education MEM" means the full-time-equivalent MEM of
19 students attending approved early childhood education programs;

20 G. "full-time-equivalent ADM" or "full-time-
21 equivalent MEM" is that membership calculated by applying to
22 the MEM in an approved public school program the ratio of the
23 number of hours per school day devoted to the program to six
24 hours or the number of hours per school week devoted to the
25 program to thirty hours;

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1 H. "operating budget" means the annual financial
2 plan required to be submitted by a local school board or
3 governing body of a state-chartered charter school;

4 I. "program cost" is the product of the total
5 number of program units to which a school district is entitled
6 multiplied by the dollar value per program unit established by
7 the legislature;

8 J. "program element" is that component of a public
9 school system to which a cost differential factor is applied to
10 determine the number of program units to which a school
11 district is entitled, including but not limited to MEM, full-
12 time-equivalent MEM, teacher, classroom or public school;

13 K. "program unit" is the product of the program
14 element multiplied by the applicable cost differential factor;

15 L. "public money" or "public funds" means all money
16 from public or private sources received by a school district or
17 state-chartered charter school or officer or employee of a
18 school district or state-chartered charter school for public
19 use;

20 M. "qualified student" means a public school
21 student who:

22 (1) has not graduated from high school;

23 (2) is regularly enrolled in one-half or more
24 of the minimum course requirements approved by the department
25 for public school students; and

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1 (3) in terms of age:

2 (a) is at least five years of age prior
3 to 12:01 a.m. on September 1 of the school year; [~~or~~

4 ~~(4)~~] (b) is at least three years of age
5 at any time during the school year and is receiving special
6 education services pursuant to rules of the department; or

7 [~~(5)~~] (c) has not reached the student's
8 twenty-second birthday on the first day of the school year and
9 is receiving special education services pursuant to rules of
10 the department; and

11 N. "state superintendent" means the secretary of
12 public education or the secretary's designee."

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

15 "22-12-7. ENFORCEMENT OF ATTENDANCE LAW--HABITUAL
16 TRUANTS--PENALTY.--

17 A. Each local school board and each governing body
18 of a charter school or private school shall initiate the
19 enforcement of the provisions of the Compulsory School
20 Attendance Law for students enrolled in their respective
21 schools.

22 B. To initiate enforcement of the provisions of the
23 Compulsory School Attendance Law against an habitual truant, a
24 local school board or governing body of a charter school or
25 private school or its authorized representatives shall give

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1 written notice of the habitual truancy by [~~certified~~] mail to
2 or by personal service on the parent of the student subject to
3 and in noncompliance with the provisions of the Compulsory
4 School Attendance Law. The notice shall include a date, time
5 and place for the parent to meet with the local school
6 district, charter school or private school to develop
7 intervention strategies that focus on keeping the student in an
8 educational setting.

9 C. If unexcused absences continue after written
10 notice of habitual truancy as provided in Subsection B of this
11 section has occurred, the student shall be reported to the
12 probation services office of the judicial district where the
13 student resides for an investigation as to whether the student
14 shall be considered to be a neglected child or a child in a
15 family in need of services because of habitual truancy and thus
16 subject to the provisions of the Children's Code. The
17 probation services office may send a written notice to a parent
18 of the student directing the parent and student to report to
19 the probation services office to discuss services for the
20 student or the family. In addition to any other disposition,
21 the children's court may order the habitual truant's driving
22 privileges to be suspended for a specified time not to exceed
23 ninety days on the first finding of habitual truancy and not to
24 exceed one year for a subsequent finding of habitual truancy.

25 D. If, after review by the juvenile probation

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1 office where the student resides, a determination and finding
2 is made that the habitual truancy by the student may have been
3 caused by the parent of the student, then the matter will be
4 referred by the juvenile probation office to the district
5 attorney's office or any law enforcement agency having
6 jurisdiction for appropriate investigation and filing of
7 charges allowed under the Compulsory School Attendance Law.
8 Charges against the parent may be filed in metropolitan court,
9 magistrate court or district court.

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

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1 F. The provisions of this section shall apply
2 beginning July 1, 2004."

3 Section 3. Section 22-12-8 NMSA 1978 (being Laws 1985,
4 Chapter 104, Section 1, as amended) is amended to read:

5 "22-12-8. EARLY IDENTIFICATION--UNEXCUSED ABSENCES AND
6 TRUANCY.--Notwithstanding the provisions of Section 22-12-7
7 NMSA 1978, if a student is [~~truant~~] in need of early
8 intervention, the school district, [~~or~~] charter school or
9 private school shall contact the student's parent to inform the
10 parent that the student [~~is truant~~] has unexcused absences from
11 school and to discuss possible interventions. The provisions
12 of this section do not apply to any absence if the parent has
13 contacted the school to explain the absence."

14 Section 4. Section 22-12-9 NMSA 1978 (being Laws 2004,
15 Chapter 28, Section 1, as amended) is amended to read:

16 "22-12-9. UNEXCUSED ABSENCES AND TRUANCY--ATTENDANCE
17 POLICIES.--

18 A. As used in this section and Sections 22-12-7 and
19 22-12-8 NMSA 1978:

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

23 (2) [~~"truant"~~] "student in need of early
24 intervention" means a student who has accumulated five
25 unexcused absences within [~~any twenty-day period~~] a school

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1 year; and

2 (3) "unexcused absence" means an absence from
3 school or [~~a class~~] classes for which the student does not have
4 an allowable excuse pursuant to the Compulsory School
5 Attendance Law or rules of the local school board or governing
6 authority of a charter school or private school.

7 B. An unexcused absence of two or more classes up
8 to fifty percent of an instructional day shall be counted as
9 one-half day absence, and the unexcused absence of more than
10 fifty percent of an instructional day shall be counted as one
11 full-day absence.

12 [~~B.~~] C. Each school district, [~~and~~] charter school
13 and private school shall maintain an attendance policy that:

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

21 (2) uses withdrawal as provided in Section
22 22-8-2 NMSA 1978 only after exhausting intervention efforts to
23 keep students in educational settings; [~~and~~]

24 (3) requires that class attendance be taken
25 for every instructional day in every public school or school

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1 program in the school district; and

2 (4) provides for schools to document the
3 following for each student identified as a habitual truant:

4 (a) attempts of the school to notify the
5 parent that the student had unexcused absences;

6 (b) attempts of the school to meet with
7 the parent to discuss intervention strategies; and

8 (c) intervention strategies implemented
9 to support keeping the student in school.

10 D. School districts, charter schools and private
11 schools may create policies that allow referral to the
12 probation services office of students who consistently are
13 absent without excuse for one class period or for less than
14 one-half day.

15 E. The department shall review and approve school
16 district and charter school attendance policies.

17 [~~G.~~] F. School districts and charter schools shall
18 report [~~truancy~~] unexcused absences and habitual truancy rates
19 to the department in a form and at such times as the department
20 determines and shall document intervention efforts made to keep
21 [~~truants~~] students in need of early intervention and habitual
22 truants in educational settings. Locally chartered charter
23 schools shall provide copies of their reports to the school
24 district. The department shall compile school district and
25 charter school reports on rates of unexcused absences and

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1 habitual truancy and verify that the information is being
2 reported consistently."

3 Section 5. Section 32A-3B-2 NMSA 1978 (being Laws 1993,
4 Chapter 77, Section 74, as amended) is amended to read:

5 "32A-3B-2. DEFINITIONS.--As used in Chapter 32A, Article
6 3B NMSA 1978, "family in need of court-ordered services" means
7 the child or the family has refused family services or the
8 department has exhausted appropriate and available family
9 services and court intervention is necessary to provide family
10 services to the child or family and the following circumstances
11 exist:

12 A. it is a family whose child, subject to
13 compulsory school attendance, is absent from school without an
14 authorized excuse more than ten days during a school [~~semester~~]
15 year;

16 B. it is a family whose child is absent from the
17 child's place of residence for a time period of twelve hours or
18 more without consent of the child's parent, guardian or
19 custodian;

20 C. it is a family whose child refuses to return
21 home and there is good cause to believe that the child will run
22 away from home if forced to return to the parent, guardian or
23 custodian; or

24 D. it is a family in which the child's parent,
25 guardian or custodian refuses to allow the child to return home

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1 and a petition alleging neglect of the child is not in the
2 child's best interests."

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