

SENATE EDUCATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 393

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO PUBLIC EDUCATION; ADDING TO THE PUBLIC SCHOOL CODE
AN EARLY IDENTIFICATION AND NOTIFICATION AND IMMEDIATE
INTERVENTION SYSTEM TO PREVENT UNEXCUSED ABSENCES, HABITUAL
TRUANCY AND WITHDRAWAL FROM SCHOOL; PROVIDING FOR THE
SUSPENSION OR POSTPONEMENT OF DRIVING PRIVILEGES OF SCHOOL-AGE
PERSONS IN VIOLATION OF THE COMPULSORY SCHOOL ATTENDANCE LAW
UPON A HEARING BY THE MOTOR VEHICLE DIVISION OF THE TAXATION
AND REVENUE DEPARTMENT.

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

SECTION 1. Section 22-12-2 NMSA 1978 (being Laws 1967,
Chapter 16, Section 170, as amended by Laws 2007, Chapter 307,
Section 6 and by Laws 2007, Chapter 308, Section 6) is amended
to read:

"22-12-2. COMPULSORY SCHOOL ATTENDANCE [~~RESPONSIBILITY~~]

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underscored material = new
[bracketed material] = delete

1 WITHDRAWAL REQUIREMENTS--SUSPENSION OR DENIAL OF DRIVING
2 PRIVILEGES--APPEAL TO SCHOOL DISTRICT, DEPARTMENT AND DISTRICT
3 COURT.--

4 A. Except as otherwise provided, a school-age
5 person shall attend public school, private school, home school
6 or a state institution until the school-age person is at least
7 eighteen years of age unless that person has graduated from
8 high school or received a general educational development
9 certificate. [~~A parent may give written, signed permission for~~
10 ~~the school-age person to leave school in case of hardship~~
11 ~~approved by the local superintendent.~~]

12 B. A school-age person subject to the provisions of
13 the Compulsory School Attendance Law shall attend school for at
14 least the length of time of the school year that is established
15 in the school district in which the person is a resident or the
16 state-chartered charter school in which the person is enrolled,
17 and the school district or state-chartered charter school shall
18 not excuse a student from attending school except as provided
19 in that law or for parent-authorized medical reasons.

20 C. Any parent of a school-age person subject to the
21 provisions of the Compulsory School Attendance Law is
22 responsible for the school attendance of that person.

23 D. A school-age person who is subject to the
24 provisions of the Compulsory School Attendance Law shall not
25 withdraw from a public school unless:

1 (1) the parent of the school-age person
2 provides written documentation of the person's enrollment in
3 another public school or a private school or a home school
4 operated pursuant to the provisions of Section 22-1-2.1 NMSA
5 1978;

6 (2) the school receives:

7 (a) written documentation of the school-
8 age person's illness;

9 (b) written documentation of a financial
10 hardship causing the school-age person to be employed full time
11 to support the person's family; or

12 (c) an order by a court that has
13 jurisdiction over the school-age person; or

14 (3) at an exit interview:

15 (a) the school-age person, the parent of
16 the school-age person and the principal meet to discuss the
17 intention to withdraw from school;

18 (b) the school-age person and the parent
19 of the school-age person sign a written acknowledgment that a
20 withdrawal from school is likely to diminish the future
21 earnings and long-term employment prospects of the school-age
22 person; and

23 (c) the principal agrees to the
24 withdrawal and signs the written acknowledgment signed by the
25 school-age person and the parent of the school-age person.

.193394.2

1 E. Starting with the 2014-2015 school year, when a
2 school-age person in grade eight through twelve withdraws from
3 a public school without meeting the requirements in Subsection
4 D of this section:

5 (1) a school may provide to the school-age
6 person's parent a notice of noncompliance with the Compulsory
7 School Attendance Law containing:

8 (a) the name, date of birth and address
9 of the school-age person;

10 (b) a statement that the school-age
11 person is in noncompliance with the Compulsory School
12 Attendance Law due to withdrawal from school without meeting
13 the requirements of Subsection D of this section; and

14 (c) notice of the opportunity to request
15 a meeting with the principal or head administrator within two
16 weeks to: 1) commit to returning to school and complying with
17 the Compulsory School Attendance Law; or 2) provide evidence
18 that the school-age person is no longer subject to the
19 Compulsory School Attendance Law;

20 (2) a school district or state-chartered
21 charter school may provide to the school-age person's parent
22 and the motor vehicle division of the taxation and revenue
23 department a certification of noncompliance with the Compulsory
24 School Attendance Law no fewer than thirty days after the
25 notice of noncompliance with the Compulsory School Attendance

1 Law is sent to the parent if the school-age person remains
2 noncompliant;

3 (3) upon the motor vehicle division's receipt
4 of a certification of noncompliance with the Compulsory School
5 Attendance Law, the motor vehicle division shall suspend or
6 deny the issuance of an instruction permit, driver's license or
7 provisional license of a school-age person pursuant to the
8 Motor Vehicle Code; and

9 (4) following the suspension or denial of an
10 instruction permit, driver's license or provisional license,
11 the school-age person may:

12 (a) request a hearing from the school
13 district or state-chartered charter school for the school-age
14 person to provide evidence supporting a request that the school
15 district or state-chartered charter school provide to the motor
16 vehicle division a certification that the school-age person is
17 in compliance with or is no longer subject to the Compulsory
18 School Attendance law;

19 (b) appeal the school district's or
20 state-chartered charter school's determination by requesting a
21 hearing and final decision from the department pursuant to its
22 rules; and

23 (c) appeal the department's final
24 decision to the district court for the county in which the
25 student resides pursuant to Section 39-3-1.1 NMSA 1978.

.193394.2

1 ~~[D-]~~ F. Each local school board and each governing
2 body of a charter school or private school shall enforce the
3 provisions of the Compulsory School Attendance Law for students
4 enrolled in their respective schools."

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

7 "22-12-7. ENFORCEMENT OF ATTENDANCE LAW--HABITUAL
8 TRUANTS--PENALTY--SUSPENSION OR DENIAL OF DRIVING PRIVILEGES--
9 APPEAL TO SCHOOL DISTRICT, DEPARTMENT AND DISTRICT COURT.--

10 A. Each local school board and each governing body
11 of a charter school or private school shall initiate the
12 enforcement of the provisions of the Compulsory School
13 Attendance Law for students enrolled in their respective
14 schools.

15 B. To initiate enforcement of the provisions of the
16 Compulsory School Attendance Law against ~~[an]~~ a student who is
17 a habitual truant, a local school board or governing body of a
18 charter school or private school or its authorized
19 representatives shall give written notice of the habitual
20 truancy by mail to or by personal service on the parent of the
21 student subject to and in noncompliance with the provisions of
22 the Compulsory School Attendance Law. The notice shall include
23 a date, time and place for the parent to meet with the local
24 school district, charter school or private school to develop
25 intervention strategies that focus on keeping the student in an

1 educational setting.

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

19 D. If, after review by the juvenile probation
20 office where the student resides, a determination and finding
21 is made that the habitual truancy by the student may have been
22 caused by the parent of the student, then the matter [~~will~~]
23 shall be referred by the juvenile probation office to the
24 district attorney's office or any law enforcement agency having
25 jurisdiction for appropriate investigation and filing of

.193394.2

1 charges allowed under the Compulsory School Attendance Law.
2 Charges against the parent may be filed in metropolitan court,
3 magistrate court or district court.

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

21 F. [~~The provisions of this section shall apply~~
22 ~~beginning July 1, 2004.~~] Starting with the 2014-2015 school
23 year, when a student in grade eight through twelve accumulates
24 ten or more unexcused absences and becomes a habitual truant:

25 (1) a school may provide to the school-age

1 person's parent a notice of noncompliance with the Compulsory
2 School Attendance Law containing:

3 (a) the name, date of birth and address
4 of the school-age person;

5 (b) a statement that the school-age
6 person is in noncompliance with the Compulsory School
7 Attendance Law due to habitual truancy and the number and dates
8 of unexcused absences; and

9 (c) notice of the opportunity to request
10 a meeting with the principal or head administrator within two
11 weeks to: 1) commit to returning to school and complying with
12 the Compulsory School Attendance Law; 2) contest the
13 occurrences and number of unexcused absences; or 3) provide
14 evidence that the school-age person is no longer subject to the
15 Compulsory School Attendance Law;

16 (2) a school district or state-chartered
17 charter school may provide to the school-age person's parent
18 and the motor vehicle division of the taxation and revenue
19 department a certification of noncompliance with the Compulsory
20 School Attendance Law no fewer than thirty days after the
21 notice of noncompliance with the Compulsory School Attendance
22 Law is sent to the parent if the school-age person remains
23 noncompliant;

24 (3) upon the motor vehicle division's receipt
25 of a certification of noncompliance with the Compulsory School

.193394.2

1 Attendance Law, the motor vehicle division shall suspend or
2 deny the issuance of an instruction permit, driver's license or
3 provisional license of a school-age person pursuant to the
4 Motor Vehicle Code; and

5 (4) following the suspension or denial of an
6 instruction permit, driver's license or provisional license,
7 the school-age person may:

8 (a) request a hearing from the school
9 district or state-chartered charter school for the school-age
10 person to provide evidence supporting a request that the school
11 district or state-chartered charter school provide to the motor
12 vehicle division a certification that the school-age person is
13 in compliance with or is no longer subject to the Compulsory
14 School Attendance Law;

15 (b) appeal the school district's or
16 state-chartered charter school's determination by requesting a
17 hearing and final decision from the department pursuant to its
18 rules; and

19 (c) appeal the department's final
20 decision to the district court for the county in which the
21 student resides pursuant to Section 39-3-1.1 NMSA 1978."

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

24 "22-12-8. EARLY IDENTIFICATION AND NOTIFICATION AND
25 IMMEDIATE INTERVENTION SYSTEM FOR UNEXCUSED ABSENCES AND

1 ~~[TRUANCY] WITHDRAWAL RISK FACTORS.--[Notwithstanding the~~
2 ~~provisions of Section 22-12-7 NMSA 1978, if a student is in~~
3 ~~need of early intervention, the school district, charter school~~
4 ~~or private school shall contact the student's parent to inform~~
5 ~~the parent that the student has unexcused absences from school~~
6 ~~and to discuss possible interventions. The provisions of this~~
7 ~~section do not apply to any absence if the parent has contacted~~
8 ~~the school to explain the absence.]~~

9 A. The department shall develop, and school
10 districts shall implement, an early identification and
11 notification and immediate intervention system pursuant to this
12 section to minimize unexcused absences and prevent habitual
13 truancy and withdrawal from school.

14 B. When a student accumulates five unexcused
15 absences, the school shall request in writing a meeting and
16 meet with the student's parent to discuss:

17 (1) the reasons for the unexcused absences;
18 (2) immediate interventions to prevent further
19 unexcused absences;
20 (3) parental involvement in preventing further
21 unexcused absences; and
22 (4) the potential consequences of habitual
23 truancy.

24 C. For each student who demonstrates any risk
25 factor that may lead to withdrawal from school, each school

.193394.2

1 shall provide to the student immediate interventions aligned to
2 the student's next step plan pursuant to Section 22-13-1.1 NMSA
3 1978 and the risk factors demonstrated by the student.

4 D. For a student who demonstrates any risk factor
5 for withdrawing from school, the school shall maintain and
6 provide to the student's parent and the school district a
7 record of each risk factor and immediate intervention taken.

8 E. As used in this section, a "risk factor"
9 includes:

- 10 (1) multiple discipline referrals;
11 (2) third grade reading scores below the
12 proficiency level;
13 (3) habitual truancy in grades six through
14 nine;
15 (4) failing in a course in grades six through
16 nine; or
17 (5) a grade point average of 1.5 or below in
18 grade nine."

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

21 "22-12-9. UNEXCUSED ABSENCES [~~AND~~], TRUANCY AND
22 WITHDRAWAL--ATTENDANCE POLICIES.--

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

- 25 (1) "habitual truant" means a student who has

1 accumulated the equivalent of ten days or more of unexcused
2 absences within a school year;

3 [~~(2) "student in need of early intervention"~~
4 ~~means a student who has accumulated five unexcused absences~~
5 ~~within a school year;~~] and

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

11 B. An unexcused absence of two or more classes up
12 to fifty percent of an instructional day shall be counted as
13 one-half day absence, and the unexcused absence of more than
14 fifty percent of an instructional day shall be counted as one
15 full-day absence.

16 C. Each school district and charter school shall
17 maintain an attendance policy that:

18 (1) provides for an early identification [~~of~~
19 ~~students with unexcused absences, students in need of early~~
20 ~~intervention and habitual truants and provides intervention~~
21 ~~strategies that focus on keeping students in need of early~~
22 ~~intervention in an educational setting and prohibit out-of-~~
23 ~~school suspension and expulsion as the punishment for unexcused~~
24 ~~absences and habitual truancy] and notification and immediate
25 intervention system, pursuant to Section 22-12-8 NMSA 1978, for~~

.193394.2

1 keeping in an educational setting, without out-of-school
2 suspension or expulsion as a punishment, students who have five
3 or more unexcused absences, students who are habitual truants
4 and students who demonstrate risk factors for withdrawing from
5 school;

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

9 (3) requires that class attendance be taken
10 for every instructional day in every public school or school
11 program in the school district; and

12 (4) provides for schools to document the
13 following for each student identified as an habitual truant:

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

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

18 (c) intervention strategies implemented
19 to support keeping the student in school.

20 D. The department shall review and approve school
21 district and charter school attendance policies.

22 E. School districts and charter schools shall
23 report unexcused absences and habitual truancy rates to the
24 department in a form and at such times as the department
25 determines and shall document intervention efforts made to

1 keep students in need of early intervention and habitual
 2 truants in educational settings. Locally chartered charter
 3 schools shall provide copies of their reports to the school
 4 district.

5 F. Once per semester, each school shall report to
 6 the school district, and once per school year, each school
 7 district shall report to the department, the number of
 8 students who:

9 (1) accumulated five unexcused absences;

10 (2) accumulated ten unexcused absences;

11 (3) withdrew from school pursuant to the
 12 provisions of Subsection D of Section 22-12-2 NMSA 1978:

13 (a) with an exit interview; or

14 (b) without an exit interview;

15 (4) stopped attending school during a
 16 semester; or

17 (5) failed to return to school after a
 18 school break.

19 G. The department shall compile school district
 20 and charter school reports on rates of unexcused absences
 21 [and], habitual truancy and withdrawals and require school
 22 districts and charter schools to certify that the information
 23 is being reported consistently."

24 **SECTION 5.** A new section of the Motor Vehicle Code is
 25 enacted to read:

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1 "[NEW MATERIAL] AUTHORITY OF DIVISION TO SUSPEND LICENSE
2 OF SCHOOL-AGE PERSON.--

3 A. The division is authorized:

4 (1) upon receipt of a certification of
5 noncompliance with the Compulsory School Attendance Law from
6 a school district, a state-chartered charter school or the
7 public education department, to suspend or deny the granting
8 of an instruction permit, driver's license or provisional
9 license of a school-age person without a preliminary hearing;
10 and

11 (2) upon receipt of a certification that the
12 school-age person is in compliance with or is no longer
13 subject to the Compulsory School Attendance Law from a school
14 district, a state-chartered charter school or the public
15 education department:

16 (a) reinstate a suspended instruction
17 permit, driver's license or provisional license of a school-
18 age person; or

19 (b) grant an instruction permit,
20 driver's license or provisional license to a school-age
21 person who was denied an instruction permit, driver's license
22 or provisional license in accordance with this section.

23 B. The division may adopt and promulgate rules to
24 implement the provisions of this section."