

HOUSE BILL 133

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

INTRODUCED BY

Elizabeth "Liz" Thomson

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO EDUCATION; REQUIRING PUBLIC SCHOOLS AND PUBLIC AND PRIVATE POST-SECONDARY EDUCATIONAL INSTITUTIONS TO ADOPT POLICIES AND PROCEDURES ADDRESSING AFFIRMATIVE CONSENT AND PREVENTION OF SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE AND STALKING; AMENDING THE PUBLIC SCHOOL CODE TO INCLUDE A REQUIREMENT TO SET AFFIRMATIVE CONSENT AS THE STANDARD FOR SEXUAL ACTIVITY.

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

SECTION 1. [NEW MATERIAL] POLICIES ADDRESSING AFFIRMATIVE

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CONSENT AND PREVENTION OF SEXUAL ASSAULT, DOMESTIC VIOLENCE,
DATING VIOLENCE AND STALKING REQUIRED.--

A. A public or private post-secondary educational institution that receives state funds for student financial assistance shall adopt detailed, SJC→complainant-centered←SJC SJC→trauma-informed←SJC policies and procedures for the investigation of and disciplinary procedures addressing allegations of sexual assault, domestic violence, dating violence and harassment or stalking involving a student, faculty member, employee, contractor or regent both on and off campus.

B. All policies and procedures shall:

(1) reference an affirmative consent standard in the determination of whether consent was given by both parties to sexual activity;

(2) confirm that it is the responsibility of each person involved in the sexual activity to ensure that the person has the affirmative consent of all other participants engaged in that sexual activity;

(3) confirm that affirmative consent:

(a) can never be given by a person who is asleep, unconscious, incapacitated due to the influence of drugs, alcohol or medication or unable to communicate due to a mental or physical condition;

(b) cannot be implied, assumed or

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inferred from silence or lack of protest or resistance; and

(c) can be revoked at any time; and

(4) confirm that the existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, shall never by itself be assumed to be an indicator of consent.

C. The standard to be used in determining whether the elements of the complaint against the accused have been demonstrated is the preponderance of the evidence.

D. Policies shall include a:

(1) provision addressing how the institution will provide appropriate protections for the privacy of individuals involved, including confidentiality;

(2) provision that an individual who participates as a complainant or witness in an investigation will not be subject to disciplinary sanctions for a violation of the institution's student conduct policy at or near the time of the incident, unless the institution determines that the violation was egregious, including an action that places the health or safety of any other person at risk or involves plagiarism, cheating or academic dishonesty;

(3) description of the role of the institutional staff supervision; and

(4) provision for a comprehensive, trauma-informed training program for campus officials involved in

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investigating and adjudicating sexual assault, domestic violence, dating violence and harassment or stalking cases.

E. Procedures shall include:

(1) an initial response by the institution's personnel to a report of an incident, including:

(a) providing written notification to the complainant about the availability of, and contact information for, on- and off-campus resources and services and coordination with law enforcement, as appropriate;

(b) providing information in writing to the complainant about the importance of preserving evidence;

(c) the identification and location of witnesses;

(d) response to stranger and non-stranger sexual assault;

(e) a preliminary complainant interview;
and

(f) a comprehensive follow-up complainant interview, as appropriate;

(2) investigation of the complaint, including:

(a) contacting and interviewing the accused;

(b) seeking the identification and location of witnesses;

(c) investigating allegations that

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alcohol or drugs were involved in the incident; and

(d) participation of complainant advocates and other support persons;

(3) confidential reporting by complainants and third parties; and

(4) evaluating complaints and taking disciplinary action, as appropriate.

F. Public or private post-secondary educational institutions that receive state funds for student financial assistance shall, to the extent feasible:

(1) enter into memoranda of understanding, agreements or collaborative partnerships with existing on-campus and community-based organizations, including rape crisis centers, to refer students for assistance or make services available to students, including counseling, health care, mental health care, complainant advocacy, legal assistance and resources for the accused Hfl and the accuser Hfl; and

(2) implement comprehensive prevention and outreach programs addressing sexual assault, domestic violence, dating violence and harassment or stalking that:

(a) include a range of prevention strategies, including empowerment programming, awareness-raising campaigns, primary prevention, bystander intervention and risk reduction;

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(b) make students aware of the institution's policy on sexual assault, domestic violence, dating violence and harassment or stalking by contacting and informing the student body, campus organizations, athletic programs and student groups about the institution's sexual assault policy, the practical implications of an affirmative consent standard and the rights and responsibilities of students under the policy; and

(c) are included as part of every incoming student's orientation.

G. For purposes of this section:

(1) "affirmative consent" means affirmative, conscious and voluntary agreement to engage in sexual activity;

(2) "dating violence" means violence committed by a person:

(a) who is or has been in a social relationship of a romantic or intimate nature with the complainant; and

(b) where the existence of such a relationship shall be determined based on the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship;

(3) "domestic violence" means domestic abuse as defined in Section 40-13-2 NMSA 1978 or crimes against household members described in Sections 30-3-12 through 30-3-16

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NMSA 1978;

(4) "harassment or stalking" means harassment, stalking and aggravated stalking as described in Sections 30-3A-2 through 30-3A-3.1 NMSA 1978;

(5) "post-secondary educational institution" means an academic, vocational, technical, business, professional or other school, college or university or other organization or person offering or purporting to offer courses, instruction, training or education, from a physical site in New Mexico, through distance education, correspondence or in person; SJC→and←SJC

(6) "sexual assault" means sexual offenses described in Sections 30-9-11 through 30-9-14 and 30-9-14.3 NMSA 1978 SJC→. ; and←SJC

SJC→(7) "trauma-informed policy" means a program or system that realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff and others involved with the system; responds by fully integrating knowledge about trauma into policies, procedures and practices; and seeks to actively resist re-traumatization.←SJC

SECTION 2. A new section of Chapter 22, Article 2 NMSA 1978 is enacted to read:

"[NEW MATERIAL] ADDITIONAL DEPARTMENT DUTIES--SEXUAL ASSAULT POLICIES.--

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A. The department shall adopt detailed, SJC→complainant-centered←SJC SJC→trauma-informed←SJC policies and procedures for the investigation of and disciplinary procedures addressing allegations of sexual assault, domestic violence, dating violence and harassment or stalking involving a student, faculty member, employee, school volunteer SJC→, or←SJC contractor SJC→or regent←SJC both on and off campus.

B. All policies and procedures shall:

(1) reference an affirmative consent standard in the determination of whether consent was given by both parties to sexual activity;

(2) confirm that it is the responsibility of each person involved in the sexual activity to ensure that the person has the affirmative consent of all other participants engaged in that sexual activity;

(3) confirm that affirmative consent:

(a) can never be given by a person who is asleep, unconscious, incapacitated due to the influence of drugs, alcohol or medication or unable to communicate due to a mental or physical condition;

(b) cannot be implied, assumed or inferred from silence or lack of protest or resistance; and

(c) is ongoing throughout a sexual activity and can be revoked at any time; and

(4) confirm that the existence of a dating

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relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

C. The standard to be used in determining whether the elements of the complaint against the respondent have been demonstrated is the preponderance of the evidence.

D. Policies shall include a:

(1) provision addressing how the school will provide appropriate protections for the privacy of individuals involved, including confidentiality;

(2) provision that an individual who participates as a complainant or witness in an investigation will not be subject to disciplinary sanctions for a violation of the school's student conduct policy at or near the time of the incident, unless the school determines that the violation was egregious, including an action that places the health or safety of any other person at risk or involves plagiarism, cheating or academic dishonesty;

(3) description of the role of the school staff supervision; and

(4) provision for a comprehensive, trauma-informed training program for school officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence and harassment or stalking cases.

E. Procedures shall include:

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(1) an initial response by the school's personnel to a report of an incident, including:

(a) written notification to the complainant about the availability of, and contact information for, on- and off-campus resources and services and coordination with law enforcement, as appropriate;

(b) providing information in writing to the complainant about the importance of preserving evidence;

(c) the identification and location of witnesses;

(d) response to stranger and non-stranger sexual assault;

(e) a preliminary complainant interview; and

(f) a comprehensive follow-up complainant interview, as appropriate;

(2) investigation of the complaint, including:

(a) contacting and interviewing the accused;

(b) seeking the identification and location of witnesses;

(c) investigating allegations that alcohol or drugs were involved in the incident; and

(d) participation of complainant advocates and other support persons;

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(3) confidential reporting by complainants and third parties; and

(4) evaluating complaints and taking disciplinary action as appropriate.

F. Schools shall, to the extent feasible:

(1) enter into memoranda of understanding, agreements or collaborative partnerships with existing on-campus and community-based organizations, including rape crisis centers, to refer students for assistance or make services available to students, including counseling, health care, mental health care, complainant advocacy, legal assistance and resources for the accused Hfl→and the accuser←Hfl; and

(2) implement comprehensive prevention and outreach programs addressing affirmative consent, sexual assault, domestic violence, dating violence and harassment or stalking that:

(a) include a range of prevention strategies, including empowerment programming, awareness-raising campaigns, primary prevention, bystander intervention and risk reduction;

(b) make students aware of the policy on sexual assault, domestic violence, dating violence and harassment or stalking by contacting and informing the student body, campus organizations, athletic programs and student

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groups about the school's sexual assault policy, the practical implications of an affirmative consent standard and the rights and responsibilities of students under the policy; and

(c) are included as part of every incoming student's orientation.

G. For purposes of this section:

(1) "affirmative consent" means affirmative, conscious and voluntary agreement to engage in sexual activity;

(2) "dating violence" means violence committed by a person:

(a) who is or has been in a social relationship of a romantic or intimate nature with the complainant; and

(b) where the existence of such a relationship shall be determined based on the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship;

(3) "domestic violence" means domestic abuse as defined in Section 40-13-2 NMSA 1978 or crimes against household members described in Sections 30-3-12 through 30-3-16 NMSA 1978;

(4) "harassment or stalking" means harassment, stalking and aggravated stalking as described in Sections 30-3A-2 through 30-3A-3.1 NMSA 1978; SJC→and←SJC

(5) "sexual assault" means sexual offenses

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described in Sections 30-9-11 through 30-9-14 and 30-9-14.3

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SJC→(6) "trauma-informed policy" means a program or system that realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff and others involved with the system; responds by fully integrating knowledge about trauma into policies, procedures and practices; and seeks to actively resist re-traumatization."←SJC

SECTION 3. Section 22-13-1.1 NMSA 1978 (being Laws 1986, Chapter 33, Section 5, as amended) is amended to read:

"22-13-1.1. GRADUATION REQUIREMENTS.--

A. At the end of grades eight through eleven, each student shall prepare an interim next-step plan that sets forth the coursework for the grades remaining until high school graduation. Each year's plan shall explain any differences from previous interim next-step plans, shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent and the student's guidance counselor or other school official charged with coursework planning for the student.

B. Each student [~~must~~] shall complete a final next-step plan during the senior year and prior to graduation. The plan shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent

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and the student's guidance counselor or other school official charged with coursework planning for the student.

C. An individualized education program that meets the requirements of Subsections A and B of this section and that meets all applicable transition and procedural requirements of the federal Individuals with Disabilities Education Act for a student with a disability shall satisfy the next-step plan requirements of this section for that student.

D. A local school board shall ensure that each high school student has the opportunity to develop a next-step plan based on reports of college and workplace readiness assessments, as available, and other factors and is reasonably informed about:

(1) curricular and course options, including honors or advanced placement courses, dual-credit courses, distance learning courses, career clusters and career pathways, pre-apprenticeship programs or remediation programs that the college and workplace readiness assessments indicate to be appropriate;

(2) opportunities available that lead to different post-high-school options; and

(3) alternative opportunities available if the student does not finish a planned curriculum.

E. The secretary shall:

(1) establish specific accountability

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standards for administrators, counselors, teachers and school district staff to ensure that every student has the opportunity to develop a next-step plan;

(2) promulgate rules for accredited private schools in order to ensure substantial compliance with the provisions of this section;

(3) monitor compliance with the requirements of this section; and

(4) compile such information as is necessary to evaluate the success of next-step plans and report annually, by December 15, to the legislative education study committee and the governor.

F. Once a student has entered ninth grade, the graduation requirements shall not be changed for that student from the requirements specified in the law at the time the student entered ninth grade.

G. Successful completion of a minimum of twenty-three units aligned to the state academic content and performance standards shall be required for graduation. These units shall be as follows:

(1) four units in English, with major emphasis on grammar and literature;

(2) three units in mathematics, at least one of which is equivalent to the algebra 1 level or higher;

(3) two units in science, one of which shall

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have a laboratory component; provided, however, that with students entering the ninth grade beginning in the 2005-2006 school year, three units in science shall be required, one of which shall have a laboratory component;

(4) three units in social science, which shall include United States history and geography, world history and geography and government and economics;

(5) one unit in physical education;

(6) one unit in communication skills or business education, with a major emphasis on writing and speaking and that may include a language other than English;

(7) one-half unit in New Mexico history for students entering the ninth grade beginning in the 2005-2006 school year; and

(8) nine elective units and seven and one-half elective units for students entering the ninth grade in the 2005-2006 school year that meet department content and performance standards. Student service learning shall be offered as an elective. Financial literacy shall be offered as an elective. Pre-apprenticeship programs may be offered as electives. Media literacy may be offered as an elective.

H. For students entering the ninth grade beginning in the 2009-2010 school year, at least one of the units required for graduation shall be earned as an advanced placement or honors course, a dual-credit course offered in

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cooperation with an institution of higher education or a distance learning course.

I. The department shall establish a procedure for students to be awarded credit through completion of specified career technical education courses for certain graduation requirements, and districts may choose to allow students who successfully complete an industry-recognized credential, certificate or degree to receive additional weight in the calculation of the student's grade point average.

J. Successful completion of the requirements of the New Mexico diploma of excellence shall be required for graduation for students entering the ninth grade beginning in the 2009-2010 school year. Successful completion of a minimum of twenty-four units aligned to the state academic content and performance standards shall be required to earn a New Mexico diploma of excellence. These units shall be as follows:

(1) four units in English, with major emphasis on grammar, nonfiction writing and literature;

(2) four units in mathematics, of which one shall be the equivalent to or higher than the level of algebra 2, unless the parent submitted written, signed permission for the student to complete a lesser mathematics unit; and provided that a financial literacy course that meets state mathematics academic content and performance standards shall qualify as one of the four required mathematics units;

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(3) three units in science, two of which shall have a laboratory component;

(4) three and one-half units in social science, which shall include United States history and geography, world history and geography, government and economics and one-half unit of New Mexico history;

(5) one unit in physical education, as determined by each school district, which may include a physical education program that meets state content and performance standards or participation in marching band, junior reserve officers' training corps or interscholastic sports sanctioned by the New Mexico activities association or any other co-curricular physical activity;

(6) one unit in one of the following: a career cluster course, workplace readiness or a language other than English; and

(7) seven and one-half elective units that meet department content and performance standards. Career and technical education courses shall be offered as an elective. Student service learning shall be offered as an elective. Financial literacy shall be offered as an elective. Pre-apprenticeship programs may be offered as electives. Media literacy may be offered as an elective.

K. Hf1→~~For students entering the eighth grade in the 2012-2013 school year, a~~←Hf1 Hf1→A←Hf1 course in health

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education is required Hf1→for each student←Hf1 prior to graduation. Health education may be required in either middle school or high school, as determined by the school district.

Hf1→~~Each school district shall submit to the department by the beginning of the 2011-2012 school year a health education implementation plan for the 2012-2013 and subsequent school years, including in which grade health education will be required and how the course aligns with department content and performance standards.~~←Hf1 Health education courses shall

include:

(1) age-appropriate prevention and awareness of sexual abuse and assault [~~awareness and prevention~~] training that:

(a) meets department standards developed in consultation with the federal centers for disease control and prevention [~~that are~~];

(b) is based on evidence-based methods that have proven to be effective; Hf1→and←Hf1

(c) Hf1→for students entering the seventh grade in the 2019-2020 school year or a subsequent school year,←Hf1 includes a standard of affirmative consent defined as an affirmative, conscious and voluntary agreement to engage in sexual activity Hf1→;←Hf1 and Hf1→(d)←Hf1 emphasizes that:

1) it is the responsibility of each person involved in the sexual activity to ensure that the person has the affirmative

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consent of all other participants engaged in that sexual activity; 2) affirmative consent cannot be implied, assumed or inferred from silence or lack of protest or resistance; 3) affirmative consent is ongoing throughout a sexual activity and can be revoked at any time; 4) the existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent; and 5) affirmative consent can never be given by a person who is asleep, unconscious, incapacitated due to the influence of drugs, alcohol or medication or unable to communicate due to a mental or physical condition; and

(2) lifesaving skills training that follows nationally recognized guidelines for hands-on psychomotor skills cardiopulmonary resuscitation training. Students shall be trained to recognize the signs of a heart attack, use an automated external defibrillator and perform the Heimlich maneuver for choking victims. The secretary shall promulgate rules to provide for the:

(a) use of the following instructors for the training provided pursuant to this paragraph: 1) school nurses, health teachers and athletic department personnel as instructors; and 2) any qualified persons volunteering to provide training at no cost to the school district that the school district determines to be eligible to offer instruction

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pursuant to this paragraph; and

(b) approval of training and instructional materials related to the training established pursuant to this paragraph in both English and Spanish.

L. For students entering the ninth grade in the 2017-2018 school year and subsequent school years:

(1) one of the units in mathematics required by Paragraph (2) of Subsection J of this section may comprise a computer science course if taken after the student demonstrates competence in mathematics and if the course is not used to satisfy any part of the requirement set forth in Paragraph (3) of that subsection; and

(2) one of the units in science required by Paragraph (3) of Subsection J of this section may comprise a computer science course if taken after the student demonstrates competence in science and if the course is not used to satisfy any part of the requirement set forth in Paragraph (2) of that subsection.

M. Final examinations shall be administered to all students in all classes offered for credit.

N. Until July 1, 2010, a student who has not passed a state graduation examination in the subject areas of reading, English, mathematics, writing, science and social science shall not receive a high school diploma. The state graduation examination on social science shall include a section on the

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constitution of the United States and the constitution of New Mexico. If a student exits from the school system at the end of grade twelve without having passed a state graduation examination, the student shall receive an appropriate state certificate indicating the number of credits earned and the grade completed. If within five years after a student exits from the school system the student takes and passes the state graduation examination, the student may receive a high school diploma. Any student passing the state graduation examination and completing all other requirements within five years of entering ninth grade, including a final summer session if completed by August 1, may be counted by the school system in which the student is enrolled as a high school graduate for the year in which completion and examination occur.

0. Beginning with the 2010-2011 school year, a student shall not receive a New Mexico diploma of excellence if the student has not demonstrated competence in the subject areas of mathematics, reading and language arts, writing, social studies and science, including a section on the constitution of the United States and the constitution of New Mexico, based on a standards-based assessment or assessments or a portfolio of standards-based indicators established by the department by rule. The standards-based assessments required in Section 22-2C-4 NMSA 1978 may also serve as the assessment required for high school graduation. If a student exits from

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the school system at the end of grade twelve without having satisfied the requirements of this subsection, the student shall receive an appropriate state certificate indicating the number of credits earned and the grade completed. If within five years after a student exits from the school system the student satisfies the requirements of this subsection, the student may receive a New Mexico diploma of excellence. Any student satisfying the requirements of this subsection and completing all other requirements within five years of entering ninth grade, including a final summer session if completed by August 1, may be counted by the school system in which the student is enrolled as a high school graduate for the year in which all requirements are satisfied.

P. As used in this section:

(1) "career and technical education", sometimes referred to as "vocational education", means organized programs offering a sequence of courses, including technical education and applied technology education, that are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring an industry-recognized credential, certificate or degree;

(2) "career and technical education course" means a course with content that provides technical knowledge, skills and competency-based applied learning and that aligns with educational standards and expectations as defined in rule;

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(3) "career cluster" means a grouping of occupations in industry sectors based on recognized commonalities that provide an organizing tool for developing instruction within the educational system;

(4) "career pathways" means a sub-grouping used as an organizing tool for curriculum design and instruction of occupations and career specialities that share a set of common knowledge and skills for career success;

(5) "final next-step plan" means a next-step plan that shows that the student has committed or intends to commit in the near future to a four-year college or university, a two-year college, a trade or vocational program, an internship or apprenticeship, military service or a job;

(6) "interim next-step plan" means an annual next-step plan in which the student specifies post-high-school goals and sets forth the coursework that will allow the student to achieve those goals; and

(7) "next-step plan" means an annual personal written plan of studies developed by a student in a public school or other state-supported school or institution in consultation with the student's parent and school counselor or other school official charged with coursework planning for the student that includes one or more of the following:

(a) advanced placement or honors courses;

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(b) dual-credit courses offered in cooperation with an institution of higher education;

(c) distance learning courses;

(d) career-technical courses; and

(e) pre-apprenticeship programs.

Q. The secretary may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code."

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