



## **New Mexico Attendance Policy For Expecting and Parenting Students In Action**

Prepared on Behalf of New Mexico Civil Legal Services

By

**Southwest Women's Law Center**

June 2016

The Southwest Women's Law Center is a non-profit legal advocacy organization in Albuquerque, New Mexico. Founded in 2005, the Center's mission is to provide women in New Mexico with the opportunity to achieve their full economic and personal potential by: eliminating gender bias, discrimination and harassment; lifting women and their families out of poverty; and ensuring access to comprehensive reproductive health services and information. SWLC integrates five tools to create social change: legal research; policy analysis; advocacy; community and stakeholder education; and coalition work on local, state and national levels. The Center's goals include ensuring low and middle-income families in the state know the rights they possess under the law. This report outlines New Mexico's 2013 excused absence policy for pregnant and parenting students and school district's compliance with notification requirements.

### **I. Introduction**

In 2013, the New Mexico State Legislature passed a law giving pregnant and parenting students<sup>1</sup> additional excused absences with the aim of increasing graduation rates for students who become pregnant or are raising children while enrolled in middle or high school. This law included a provision requiring all middle schools, junior high schools, and high schools to notify the entire student body of these additional excused absences.

In the spring of 2016, the Southwest Women's Law Center (SWLC) conducted a study of student handbooks for all high schools in New Mexico school districts. SWLC compiled data on whether the student handbook was readily available online; whether the online handbook was for the current, 2015-2016, school year; if the handbook included the school or district's attendance policy; and whether the handbook notified students about the additional excused absences available for pregnant and parenting students. SWLC found that most school districts or individual high schools have an up-to-date handbook available online. While most school districts included their attendance policy in the student handbook, only a handful include the attendance policy for pregnant and

parenting students. A majority of student handbooks are silent on any issues facing pregnant or parenting students.

## **II. New Mexico's Compulsory Attendance Law**

New Mexico has a Compulsory Attendance Law. This law requiring all youth between the ages of five and eighteen to attend public school, private school, home school or a state institution.<sup>2</sup> This law requires students to attend school regularly. School districts are required to put attendance policies in place to ensure student success. Teachers and school administrators are required to monitor students' unexcused absences and report them to the Public Education Department.<sup>3</sup>

Students are only allowed a certain number of unexcused absences before the school district must take action. When a student receives his or her fifth unexcused absences, the student is considered a "student in need of early intervention" and ten unexcused absences qualifies the student as "habitual truant."<sup>4</sup> Once a student is a habitual truant, the school must notify the student's parent or guardian and set up a meeting to develop a plan to prevent future absences. If a student continues to accumulate unexcused absences, the student will be referred to probation services through Children's Court. There can be consequences to the student. A student can have their driving privileges suspended for missing too much school. Criminal charges can be filed against the student's parent for allowing the student to be a habitual truant.<sup>5</sup> Each school district is required to adopt an attendance policy for students that reflect New Mexico's Compulsory Attendance Law.<sup>6</sup>

School districts are required to notify students about the district's attendance policy. Most New Mexico school districts utilize their student handbooks to explain the attendance policy to students and parents. The majority of handbooks outline the Compulsory Attendance statute including the penalties for having too many unexcused absences. These handbooks often explain the difference between an unexcused absence and an excused absence. Many handbooks have a detailed list of what reasons for an absence qualify to be excused. The handbooks instruct students and parents what action must be taken for an absence to qualify as excused. The majority of these student handbooks fail to explain the attendance policy for pregnant and parenting students.

## **III. Excused Absence Policy for Pregnant and Parenting Students in New Mexico**

New Mexico recently added a special attendance provision in the Compulsory Attendance statute for pregnant and parenting students. In 2013, the New Mexico Legislature passed a bill striving to make it easier for pregnant and parenting students to complete their education. The legislature recognized that pregnant and parenting students might need to miss more school days than students without that added responsibility of being pregnant or having a child requiring care. Therefore, the Compulsory Attendance Law was modified to give pregnant and parenting students additional excused absences. This policy applies to students who are pregnant or parenting a child under the age of

thirteen. The policy gives student parents ten excused absences after the birth of their child<sup>7</sup> and gives pregnant and parenting students four additional excused absences per semester.<sup>8</sup>

A student must notify an appointed person at the school of his or her pregnant or parenting status. To qualify for ten excused absences the student must furnish the appropriate school personnel with documentation proving the birth of his or her child. These excused absences do not hinge on any medical necessity. A doctor's note is not required to receive the excusal. If more time is out of school is medically necessary, a student is entitled to receive additional time off under federal law with a doctor's note.<sup>9</sup> The four additional excused absences per semester are automatically granted to students who are pregnant or parenting upon proof of their status. The law does not require these absences go to a certain activities. The student is not required to provide a doctor's note for these four additional excused absences under the law.

The pregnant or parenting student must be given an opportunity to make up any work missed during their excused absence. The law clearly states the student will have the opportunity to make up missed work from the ten excused absences after childbirth and the four additional absences during the semester. Under the law, a student must be given one day for every day they missed school to complete any make-up work.

Finally, the law makes it the student's responsibility to disclose their status as an expecting or parenting student to the proper school personnel. The law gives the student discretion to make the disclosure. If a student does not want to disclose their status as an expecting or parenting student, they are not required to make that disclosure. However, they must make a disclosure to the proper school personnel to be entitled to the attendance policy.

This law is only a floor requiring schools to provide these additional excused absences to pregnant and parenting students. There is nothing preventing a school or district from doing more to protect these students. Schools are allowed to provide additional absences if desired. Schools are also required to provide additional support and respect the rights of expecting and parenting under Title IX.<sup>10</sup>

#### **IV. Why provide expecting and parenting students additional excused absences?**

##### **A. Ten Excused Absences After Child is Born**

Federal law gives expecting and parenting students some protections. If a student misses class to give birth, that student must be given an excused absence as long as medically necessary. If a doctor does not determine it is medically necessary to continue to miss school, a student must return.

New Mexico recognized that a student needs a transition period. The New Mexico law gives students ten excused absences after the birth of his or her child. The New Mexico

Legislature made sure fathers were entitled to these additional excused absences. These ten days give a new mother and/or father time to bond with the child. These days can be utilized to create a new routine for the student.

If new mothers may need additional excused absences to recover, they are entitled to those under federal law. The student would be required to provide the school with a doctor's note classifying the absences as medically necessary. The ten excused absences required to be given in New Mexico does not require any medical reason for missing class.

### **B. Four Additional Excused Absences Per Semester For Pregnant and Parenting Students**

It is impossible to anticipate all the issues that may arise for a pregnant or parenting student. These four excused absences can cover doctor's appointments for prenatal care, caring for a sick child, taking a child to the doctor for necessary shots and preventive treatment, or any number of issues that may arise when pregnant or parenting.

Four additional excused absences are available to students who are pregnant. To ensure a healthy pregnancy, a woman will need to attend prenatal doctors appointments. Towards the end of a pregnancy, it is not uncommon for a doctor to want to see a woman every one to two weeks. These additional excused absences ensure a student does not have to decide between attending a necessary doctor's appointment and being able to graduate from school.

The four additional excused absences are not limited to appointments for the pregnancy. This broad allowance ensures that women experiencing difficult pregnancies or medical conditions due to their pregnancy can miss class when needed. Some women may experience severe morning sickness or other medical conditions that could affect attendance. By allowing for the student decide what fits her needs, the law does not accidentally exclude students with particular needs.

Parenting students are entitled to the four additional excused absences. As parents, students are faced with additional challenges to comply with attendance policies. Students have to decide what to do when a child is sick or have a doctor's appointment. Most daycares will not allow children to attend when ill. Some students will not have an alternative to staying home from school to care for the sick child or take them to the scheduled appointment. These additional absences can be utilized for these reasons.

### **C. Additional Benefits of the Excused Absence Policy**

Since a student must disclose their status as a pregnant or parenting student to qualify for additional excused absences, the school has an opportunity to assist the student. Students may not know additional resources or programs are available to help them succeed in school while pregnant or parenting a child. By disclosing this information to the school, it enables the school to inform the student of these resources.

## **V. Notification Requirements**

School districts have the important and lawful duty to notify all students in middle, junior high, and high school of the attendance policy for pregnant and parenting students. This notification is vital to the student's successful graduation. If a student does not know about the additional excused absences, they may think graduation is not within their reach.

New Mexico's 2013 law requires schools notify all middle, junior high, and high school students of the excused absence policy for pregnant and parenting students. The law does not specify how the district is required to notify students. There is no requirement on how this policy should be distributed. However, student handbooks are used by most school districts in New Mexico to explain the individual school or the district's attendance policy. These handbooks usually include New Mexico's Compulsory Attendance Law, what an excused versus unexcused absence is, how to get an absence excused, and the maximum number of absences (excused and unexcused) allowed by the school.

### **A. Student Handbook Survey**

#### **1. Availability of Student Handbooks Online**

By providing the public with an electronic copy of the handbook, districts ensure that students, parents, and concerned community members understand district policies.

SWLC researched student handbooks for 90 school districts in New Mexico. There is no uniformity in student handbooks for the different districts. School districts can have a handbook for the whole district, all middle and high schools in the district, all high schools in the district, or have distinct handbooks for each high school in the district. Of the 90 districts researched, 73 school districts have a district-wide handbook or at least one recent high school student handbook available online. While New Mexico has many small school districts, overall, the districts are very successful at making an updated student handbook available electronically.

Not all 73 districts with student handbook available online had the current 2015-2016 school year, but they all had a handbook between 2013 and 2016 or had handbooks that did not specify a school year. Fifty-one school districts had a student handbook for the 2015-2016 school year. Eleven districts had a handbook that was last updated in 2014. Five handbooks were updated in 2013. Six districts did not specify the year of the handbook available online. SWLC did not research handbooks older than 2013 (as that was the year the pregnant and parenting attendance policy was passed into law).

Since some school districts have district-wide handbooks and others have handbooks for individual high schools, SWLC researched 108 individual high schools within the 90 different school districts. Of the 108 high schools, 57 schools (53%) have student

handbooks for 2015-2016 available online. Only 27 high schools (25%) do not have any handbook from after the 2012-2013 school year available online. Five high schools (5%) have a handbook from 2013, and twelve schools (11%) have a handbook from 2014. Seven student handbooks (6%) did not specify the year the student handbook was released.

## **2. Attendance Policy Listed in the Student Handbook**

The district's attendance policy is usually explained in the student handbook. The handbook outlines what absences are considered excused. Common excused absences include a student being ill (some schools require a note from a healthcare provider under certain circumstances), doctor or dentist appointment (some schools require a note from the provider), death or illness of an immediate family member, court appointments, religious holidays, deployment of a military parent, college visits, suspension, or other activities excused by the principal or superintendent. Some districts do not provide a comprehensive list of what kind of absences can be excused.

The handbook instructs the students and parents on how the absence is to be excused. Some schools require a phone call. Others require a student to turn in a note signed by their parent when they return from school. Some districts go very in depth by outlining all information a parent must include in the note or phone call. Some districts include a protocol for parents who do not have telephones.

Finally, the handbooks often listed consequences for failing to follow the attendance policy of the school. Most of New Mexico's school districts explained the Compulsory Attendance Law in their student handbooks. The law was copied verbatim into the handbook, referenced, or generally outlined in 76 of the 81 available handbooks (94%). By including this law, the district informed students and parents of potential legal consequences of the student not attending school. Disciplinary consequences were often also included. These consequences could include lunch detention, Saturday school, not being able to complete make-up work, and loss of credit for a class.

While the 94% of student handbooks warn students about legal and disciplinary consequences of unexcused absences, several schools have consequences for students with too many excused absences. Out of the 81 schools with available handbooks, 55 schools (68%) had some kind of limitation to excused absences. Some districts require a note from a healthcare provider once a student reaches a certain number of excused absences verified by a parent. Other districts send notifications home to parents once students reach a certain number of absences. Finally, districts sometimes schedule a parent-teacher conference to discuss the cause of the excused absences.

Some districts have much harsher limitations on excused absences. Once student reaches a certain number of absences, he or she lost credit for the class. These districts do not only count unexcused absences toward this limitation. Excused absences are limited as well. In order to get class credit, the student cannot miss more than a certain number of days. A handful of districts did not differentiate between excused and unexcused

absences and stated legal action could be taken against the student and his or her parents if too many absences were accumulated.

The majority of districts that limit the number of excused absences a student can have to receive class credit allow students to miss eight to ten classes per semester. Some districts allow for fewer absences. For example Tukumcari Public Schools and Central Consolidated Schools allow five absences per semester before the student is in danger of losing class credit. Other districts only allow for parents to verify a very limited number of absences. Moriarty-Edgewood Schools and Cuba Municipal Schools allow for three excused absences through parental verification. After three excusals, the district requires documentation other than parent verification for any future excused absences. Grady Public Schools allows for four absences before requiring additional documentation. Loving Municipal Schools considers five absences excessive and will call a parent-teacher conference about attendance.

By outlining the attendance policy in the student handbooks, districts ensure parents and student know what is required. These handbooks give the student notice of attendance requirements and possible disciplinary action if they fail to comply. Many handbooks have a very detailed policy explained in the handbook. This will likely cause parents and students believe that the policy is complete within the handbook.

### **3. Excused Absences Policy for Pregnant and Parenting Student Not Disclosed in Most Student Handbooks**

While most student handbooks have a very detailed attendance policy, the districts omit the additional excused absences allowed for pregnant and parenting students. Only six school handbooks (7%) disclosed this policy. Those six schools fall into four school districts. Albuquerque Public Schools, Farmington Municipal Schools, Gadsden Independent Schools, and Vaughn Municipal Schools are the only four school districts to comply with the notice requirement of the law through their student handbooks available online.

While the law does not specify how a school district is to give students notice of the attendance policy for pregnant and parenting students, the student handbook is the most logical way to provide notice to students. Since most student handbooks already include a very detailed attendance policy, students and parents will likely think it includes all attendance policy information. By omitting this policy from the handbook, the information is not easily accessible when needed.

Furthermore, some handbooks include information that could be misleading about the attendance policy for pregnant and parenting students. Four schools specify that pregnant students can be put on home-bond instruction. While a pregnant student may have a right to homebound instruction under federal law, it cannot be made a mandatory. Artesia Public Schools' handbook says pregnant students may be placed in a homebound program. The handbook for Chama Valley Schools and Questa Independent Schools states a student becomes a candidate for homebound instruction when pregnant. Finally,

Santa Rosa Consolidated Schools' handbook limits consideration for homebound study to pregnant students and as well as other qualifiers.

The language used in student handbooks for homebound instruction is critical for clarity. For example, a student may not see the language as voluntary in the Artesia handbook. This handbook says that students may be placed in a homebound program. The handbook does not say how that process works. It is not clear if a student can request that placement or if an administrator is responsible for making that decision. Adding to this lack of clarity is the absence of the attendance policy for pregnant and parenting students or any other rights pregnant or parenting students have under federal law. This omission could send a message to students that pregnant students will not be provided with any assistance and socially accepted at the school.

A few student handbooks have harmful information about pregnant and parenting students. For example, Quemado Independent Schools' handbook states that pregnant girls are not automatically entitled to special arrangements. Under the law, students must disclose to the school they are pregnant or parenting to be entitled to the additional excused absences. However once that disclosure is made, a pregnant or parenting student is entitled to the additional excused absences outlined in the policy. Quemado's handbook does not say anything about the rights a pregnant or parenting student has. It does not include the attendance policy for pregnant or parenting students. The handbook simply states they are not entitled to special arrangements. This statement could lead a girl who is pregnant or a student who is parenting a child to feel like she cannot go to the school for assistance.

Reserve Combined Schools' handbook has a similar statement that marriage or pregnancy does not automatically entitle students to special arrangements. Their handbook at least notes that pregnant students have the right not to be excluded. This language can still alienate a pregnant or parenting student and discourage her (or him) from coming to the school's administration for assistance. Since the handbook does not notify the excused absence policy for pregnant and parenting students, it is not in compliance with current New Mexico law.

Lordsburg Municipal Schools and Cuba Independent Schools both include language about a pregnant and parenting student attendance. Neither student handbook explains the attendance policy for pregnant and parenting students. These handbooks simply state that attendance for pregnant and parenting students is decided on an individual basis. While this language may not be as harmful, it can still make the student feel singled out by the administration. By including the state policy, the districts could at least disclose there are special attendance regulations for pregnant and parenting students. If a school wants to do more to assist a pregnant or parenting student than required by the attendance policy, the handbook can include the policy and the schools willingness to work with students beyond the required policy.

## **B. Effect of Omitting the Pregnant and Parenting Student Attendance Policy**

The New Mexico attendance policy for pregnant and parenting students should be included in all student handbooks to ensure pregnant and parenting students know there are policies in place to help them stay in school and graduate. Pregnant and parenting students often face isolation and social stigma. By including the policy in the student handbook, schools can promote a culture of acceptance.

Some attendance policies laid out in the student handbooks contradict the intent of the policy for pregnant and parenting students. If a student loses credit for a class once they reach eight excused or unexcused absences, the policy allowing a student ten excused absences for the birth of his or her child no longer matters to the student. The law allows additional excused absences, but does not guarantee a student will not be penalized for using those excused absences. Based on the policy, it appears the student would not receive credit for his or her missed classes without appealing the decision to the administration or school board.

The law specifies that the four additional excused absences be in addition to the number of excused absences allowed for other students. It does not clearly add to the number of excused absences allowable for class credit. Districts could alleviate some of the confusion by outlining the excused absence policy for pregnant and parenting student in the handbook. This addition could clarify if pregnant and parenting student are allotted additional excused absences before they lose credit for a class or face disciplinary actions.

## **VI. Conclusion**

New Mexico School Districts are failing to follow the notice requirement set out in the excused absence policy for pregnant and parenting students. This omission causes confusion and can alienate students. School districts need to modify student handbooks to ensure all students are getting notice of this attendance policy.

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<sup>1</sup> Note on language: The New Mexico statute specifically applies to students who are pregnant or parenting. When referring to the statute, this report will use the term pregnant or parenting students. When discussing policy issues, this report will include fathers-to-be as well as mothers-to-be by using the term expecting and parenting students.

<sup>2</sup> § 22-12-2(A) NMSA 1978.

<sup>3</sup> § 22-12-9(E) NMSA 1978.

<sup>4</sup> § 22-12-9(A) NMSA 1978.

<sup>5</sup> § 22-12-7(D) NMSA 1978.

<sup>6</sup> 6.10.8.8(B) NMCA.

<sup>7</sup> §22-12-3.1 NMSA and 6.10.8.8(B)(2) NMCA

<sup>8</sup> *Id.*

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<sup>9</sup> Title IX of the Education Amendments of 1972 requires schools to provide excused absences to expecting and parenting students when a doctor certifies missing school or a class is medically necessary. 34 C.F.R. § 106.40§ 106.40(b)(5) (2000)

<sup>10</sup> For more information about expecting and parenting student’s rights, see SWLC’s 2016 report “Expecting and Parenting Students in New Mexico.”