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HOUSE BILL 133

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

INTRODUCED BY

Elizabeth "Liz" Thomson

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 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, complainant-centered policies

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1 and procedures for the investigation of and disciplinary
2 procedures addressing allegations of sexual assault, domestic
3 violence, dating violence and harassment or stalking involving
4 a student, faculty member, employee, contractor or regent both
5 on and off campus.

6 B. All policies and procedures shall:

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

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

14 (3) confirm that affirmative consent:

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

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

21 (c) can be revoked at any time; and

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

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

4 D. Policies shall include a:

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

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

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

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

22 E. Procedures shall include:

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

25 (a) providing written notification to

1 the complainant about the availability of, and contact
2 information for, on- and off-campus resources and services and
3 coordination with law enforcement, as appropriate;

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

6 (c) the identification and location of
7 witnesses;

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

10 (e) a preliminary complainant interview;

11 and

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

14 (2) investigation of the complaint, including:

15 (a) contacting and interviewing the
16 accused;

17 (b) seeking the identification and
18 location of witnesses;

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

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

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

25 (4) evaluating complaints and taking

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1 disciplinary action, as appropriate.

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

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

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

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

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

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1 students under the policy; and

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

4 G. For purposes of this section:

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

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

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

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

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

20 (4) "harassment or stalking" means harassment,
21 stalking and aggravated stalking as described in Sections
22 30-3A-2 through 30-3A-3.1 NMSA 1978;

23 (5) "post-secondary educational institution"
24 means an academic, vocational, technical, business,
25 professional or other school, college or university or other

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1 organization or person offering or purporting to offer courses,
2 instruction, training or education, from a physical site in New
3 Mexico, through distance education, correspondence or in
4 person; and

5 (6) "sexual assault" means sexual offenses
6 described in Sections 30-9-11 through 30-9-14 and 30-9-14.3
7 NMSA 1978.

8 SECTION 2. A new section of Chapter 22, Article 2 NMSA
9 1978 is enacted to read:

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

12 A. The department shall adopt detailed,
13 complainant-centered policies and procedures for the
14 investigation of and disciplinary procedures addressing
15 allegations of sexual assault, domestic violence, dating
16 violence and harassment or stalking involving a student,
17 faculty member, employee, school volunteer, contractor or
18 regent both on and off campus.

19 B. All policies and procedures shall:

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

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

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1 engaged in that sexual activity;

2 (3) confirm that affirmative consent:

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

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

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

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

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

18 D. Policies shall include a:

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

22 (2) provision that an individual who
23 participates as a complainant or witness in an investigation
24 will not be subject to disciplinary sanctions for a violation
25 of the school's student conduct policy at or near the time of

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1 the incident, unless the school determines that the violation
2 was egregious, including an action that places the health or
3 safety of any other person at risk or involves plagiarism,
4 cheating or academic dishonesty;

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

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

11 E. Procedures shall include:

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

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

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

20 (c) the identification and location of
21 witnesses;

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

24 (e) a preliminary complainant interview;

25 and

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- 1 (f) a comprehensive follow-up
2 complainant interview, as appropriate;
- 3 (2) investigation of the complaint, including:
4 (a) contacting and interviewing the
5 accused;
6 (b) seeking the identification and
7 location of witnesses;
8 (c) investigating allegations that
9 alcohol or drugs were involved in the incident; and
10 (d) participation of complainant
11 advocates and other support persons;
- 12 (3) confidential reporting by complainants and
13 third parties; and
14 (4) evaluating complaints and taking
15 disciplinary action as appropriate.

16 F. Schools shall, to the extent feasible:

- 17 (1) enter into memoranda of understanding,
18 agreements or collaborative partnerships with existing
19 on-campus and community-based organizations, including rape
20 crisis centers, to refer students for assistance or make
21 services available to students, including counseling, health
22 care, mental health care, complainant advocacy, legal
23 assistance and resources for the accused; and
24 (2) implement comprehensive prevention and
25 outreach programs addressing affirmative consent, sexual

1 assault, domestic violence, dating violence and harassment or
2 stalking that:

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

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

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

16 G. For purposes of this section:

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

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

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

24 (b) where the existence of such a
25 relationship shall be determined based on the length of the

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1 relationship, the type of relationship and the frequency of
2 interaction between the persons involved in the relationship;

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

7 (4) "harassment or stalking" means harassment,
8 stalking and aggravated stalking as described in Sections
9 30-3A-2 through 30-3A-3.1 NMSA 1978; and

10 (5) "sexual assault" means sexual offenses
11 described in Sections 30-9-11 through 30-9-14 and 30-9-14.3
12 NMSA 1978."

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

15 "22-13-1.1. GRADUATION REQUIREMENTS.--

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

25 B. Each student ~~must~~ shall complete a final next-

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1 step plan during the senior year and prior to graduation. The
2 plan shall be filed with the principal of the student's high
3 school and shall be signed by the student, the student's parent
4 and the student's guidance counselor or other school official
5 charged with coursework planning for the student.

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

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

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

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

25 (3) alternative opportunities available if the

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1 student does not finish a planned curriculum.

2 E. The secretary shall:

3 (1) establish specific accountability
4 standards for administrators, counselors, teachers and school
5 district staff to ensure that every student has the opportunity
6 to develop a next-step plan;

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

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

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

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

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

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

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

3 (3) two units in science, one of which shall
4 have a laboratory component; provided, however, that with
5 students entering the ninth grade beginning in the 2005-2006
6 school year, three units in science shall be required, one of
7 which shall have a laboratory component;

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

11 (5) one unit in physical education;

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

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

18 (8) nine elective units and seven and one-half
19 elective units for students entering the ninth grade in the
20 2005-2006 school year that meet department content and
21 performance standards. Student service learning shall be
22 offered as an elective. Financial literacy shall be offered as
23 an elective. Pre-apprenticeship programs may be offered as
24 electives. Media literacy may be offered as an elective.

25 H. For students entering the ninth grade beginning

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1 in the 2009-2010 school year, at least one of the units
2 required for graduation shall be earned as an advanced
3 placement or honors course, a dual-credit course offered in
4 cooperation with an institution of higher education or a
5 distance learning course.

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

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

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

22 (2) four units in mathematics, of which one
23 shall be the equivalent to or higher than the level of algebra
24 2, unless the parent submitted written, signed permission for
25 the student to complete a lesser mathematics unit; and provided

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1 that a financial literacy course that meets state mathematics
2 academic content and performance standards shall qualify as one
3 of the four required mathematics units;

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

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

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

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

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

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1 literacy may be offered as an elective.

2 K. For students entering the eighth grade in the
3 2012-2013 school year, a course in health education is required
4 prior to graduation. Health education may be required in
5 either middle school or high school, as determined by the
6 school district. Each school district shall submit to the
7 department by the beginning of the 2011-2012 school year a
8 health education implementation plan for the 2012-2013 and
9 subsequent school years, including in which grade health
10 education will be required and how the course aligns with
11 department content and performance standards. Health education
12 courses shall include:

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

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

19 (b) is based on evidence-based methods
20 that have proven to be effective;

21 (c) includes a standard of affirmative
22 consent defined as an affirmative, conscious and voluntary
23 agreement to engage in sexual activity; and

24 (d) emphasizes that: 1) it is the
25 responsibility of each person involved in the sexual activity

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

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

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

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1 pursuant to this paragraph; and

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

5 L. For students entering the ninth grade in the
6 2017-2018 school year and subsequent school years:

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

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

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

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

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

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

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

14 P. As used in this section:

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

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

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

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

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

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

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

24 (a) advanced placement or honors
25 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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