

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

AN ACT  
RELATING TO STATE AND PRIVATE EDUCATIONAL INSTITUTIONS;  
REQUIRING STATE-FUNDED POST-SECONDARY EDUCATIONAL  
INSTITUTIONS TO ADOPT POLICIES AND PROCEDURES ADDRESSING  
AFFIRMATIVE CONSENT.

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

SECTION 1. POLICIES AND PROCEDURES ADDRESSING  
AFFIRMATIVE CONSENT.--

A. A post-secondary educational institution shall  
adopt policies and procedures that shall:

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

(2) specify the requirement for the  
affirmative consent of all other parties engaged in that  
sexual activity; and

(3) specify that affirmative consent:  
(a) can never be given by a party 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) can be revoked at any time; and

1 (4) specify that the existence of a dating  
2 relationship or sexual relations shall not alone be  
3 affirmative consent.

4 B. Policies shall include:

5 (1) appropriate protections in any  
6 investigation of offending conduct of the parties and  
7 witnesses involved, including confidentiality;

8 (2) that all parties who participate as a  
9 complainant or witness in an investigation will not be  
10 subject to disciplinary sanctions for a violation of the  
11 post-secondary educational institution student conduct policy  
12 at or near the time of the incident, unless the post-  
13 secondary educational institution determines that the  
14 violation was egregious, including an action that places the  
15 health or safety of any other party at risk or involves  
16 plagiarism, cheating or academic dishonesty;

17 (3) requirements for a training program of  
18 employees or contractors involved in investigating  
19 allegations of offending conduct, counseling, health care and  
20 reporting to law enforcement; and

21 (4) implementing any awareness prevention  
22 programs, including primary prevention, bystander  
23 intervention and risk reduction programs that:

24 (a) include a range of prevention  
25 strategies, including empowerment programming,

1 awareness-raising campaigns, primary prevention, bystander  
2 intervention and risk reduction;

3 (b) advise students of the policies and  
4 procedures on affirmative consent; and

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

7 C. For purposes of this section:

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

11 (2) "post-secondary educational institution"  
12 means a public, private, nonprofit or for-profit educational  
13 institution chartered, incorporated or otherwise operating in  
14 this state that is legally authorized to award a vocational  
15 or technical certificate or a degree at an associate level or  
16 above with a physical presence in this state;

17 (3) "student" means a person who is enrolled  
18 in a credit-bearing program through a post-secondary  
19 educational institution, whether enrolled part-time,  
20 full-time or in an extension program or who has taken a leave  
21 of absence or has withdrawn from the institution due to being  
22 a complainant;

23 (4) "trauma-informed policy" means a program  
24 or system that considers the widespread impact of trauma and  
25 understands potential paths for recovery; recognizes the

1 signs and symptoms of trauma in clients, families, staff and  
2 others involved with the system; responds by fully  
3 integrating knowledge about trauma into policies, procedures  
4 and practices; and seeks to actively resist re-  
5 traumatization; and

6 (5) "trauma-informed response" means a  
7 response involving an understanding of the complexities of  
8 dating violence, domestic violence, sexual assault and  
9 harassment or stalking through training centered on the  
10 neurobiological impact of trauma, the influence of societal  
11 myths and stereotypes surrounding the causes and impacts of  
12 trauma with an understanding of perpetration methodology and  
13 how to conduct an effective investigation.

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25