

# UNANNOTATED

## CHAPTER 22 Public Schools

### ARTICLE 1 General Provisions

#### 22-1-1. Public School Code.

Chapter 22 NMSA 1978 [except Article 5A] may be cited as the "Public School Code".

**History:** 1953 Comp., § 77-1-1, enacted by Laws 1967, ch. 16, § 1; 1977, ch. 246, § 59; 2003, ch. 153, § 1.

#### 22-1-1.1. Legislative findings and purpose.

A. The legislature finds that, although New Mexico has been in the forefront of educational reforms in many areas, additional improvements are necessary to enhance and upgrade the delivery of quality education in New Mexico.

B. The legislature further finds that enhancement of the educational system in New Mexico requires a renewed emphasis on the primary grades, recognizing especially the importance of the first grade to a child's future educational career.

C. The legislature further finds that teachers and administrators play a key role in any reform efforts and acknowledges their importance in the educational process.

D. The legislature further finds that the smorgasbord curriculum offered in many schools fails to provide students with the basic educational background necessary to provide them with indispensable life skills.

E. The legislature further finds that discipline in the schools is essential to provide an atmosphere conducive to effective learning.

F. It is the purpose of this reform legislation, among other things, to stress the importance of substantive academic subjects, provide for a greater emphasis on the primary grades, upgrade curriculum and graduation requirements, systematically evaluate instructional improvement and student progress, increase parental involvement in the public schools and recognize that teachers should be treated like other professionals.

**History:** Laws 1986, ch. 33, § 1.

## **22-1-1.2. Legislative findings and purpose.**

A. The legislature finds that no education system can be sufficient for the education of all children unless it is founded on the sound principle that every child can learn and succeed and that the system must meet the needs of all children by recognizing that student success for every child is the fundamental goal.

B. The legislature finds further that the key to student success in New Mexico is to have a multicultural education system that:

(1) attracts and retains quality and diverse teachers to teach New Mexico's multicultural student population;

(2) holds teachers, students, schools, school districts and the state accountable;

(3) integrates the cultural strengths of its diverse student population into the curriculum with high expectations for all students;

(4) recognizes that cultural diversity in the state presents special challenges for policymakers, administrators, teachers and students;

(5) provides students with a rigorous and relevant high school curriculum that prepares them to succeed in college and the workplace; and

(6) elevates the importance of public education in the state by clarifying the governance structure at different levels.

C. The legislature finds further that the teacher shortage in this country has affected the ability of New Mexico to compete for the best teachers and that, unless the state and school districts find ways to mentor beginning teachers, intervene with teachers while they still show promise, improve the job satisfaction of quality teachers and elevate the teaching profession by shifting to a professional educator licensing and salary system, public schools will be unable to recruit and retain the highest quality teachers in the teaching profession in New Mexico.

D. The legislature finds further that a well-designed, well-implemented and well-maintained assessment and accountability system is the linchpin of public school reform and must ensure that:

(1) students who do not meet or exceed expectations will be given individual attention and assistance through extended learning programs and individualized tutoring;

(2) students have accurate, useful information about their options and the adequacy of their preparation for post-secondary education, training or employment in order to set and achieve high goals;

(3) teachers who do not meet performance standards must improve their skills or they will not continue to be employed as teachers;

(4) public schools make progress toward educational excellence; and

(5) school districts and the state are prepared to actively intervene and improve failing public schools.

E. The legislature finds further that improving children's reading and writing abilities and literacy throughout their years in school must remain a priority of the state.

F. The legislature finds further that the public school governance structure needs to change to provide accountability from the bottom up instead of from the top down. Each school principal, with the help of school councils made up of parents and teachers, must be the instructional leader in the public school, motivating and holding accountable both teachers and students. Each local superintendent must function as the school district's chief executive officer and have responsibility for the day-to-day operations of the school district, including personnel and student disciplinary decisions.

G. It is the purpose of the 2003 public school reform legislation as augmented by this 2007 legislation to provide the framework to implement the legislative findings to ensure student success in New Mexico.

**History:** 1978 Comp., § 22-1-1.2, enacted by Laws 2003, ch. 153, § 2; 2007, ch. 307, § 1; 2007, ch. 308, § 1; 2015, ch. 58, § 1.

## **22-1-2. Definitions.**

As used in the Public School Code:

A. "academic proficiency" means mastery of the subject-matter knowledge and skills specified in state academic content and performance standards for a student's grade level;

B. "charter school" means a school authorized by a chartering authority to operate as a public school;

C. "commission" means the public education commission;

D. "department" means the public education department;

E. "home school" means the operation by the parent of a school-age person of a home study program of instruction that provides a basic academic educational program, including reading, language arts, mathematics, social studies and science;

F. "instructional support provider" means a person who is employed to support the instructional program of a school district, including educational assistant, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, marriage and family therapist, interpreter for the deaf and diagnostician;

G. "licensed school employee" means teachers, school administrators and instructional support providers;

H. "local school board" means the policy-setting body of a school district;

I. "local superintendent" means the chief executive officer of a school district;

J. "parent" includes a guardian or other person having custody and control of a school-age person;

K. "private school" means a school, other than a home school, that offers on-site programs of instruction and that is not under the control, supervision or management of a local school board;

L. "public school" means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either an elementary, middle, junior high or high school or any combination of those and includes a charter school;

M. "school" means a supervised program of instruction designed to educate a student in a particular place, manner and subject area;

N. "school administrator" means a person licensed to administer in a school district and includes school principals, central district administrators and charter school head administrators;

O. "school-age person" means a person who is at least five years of age prior to 12:01 a.m. on September 1 of the school year, who has not received a high school diploma or its equivalent and who has not reached the person's twenty-second birthday on the first day of the school year and meets other criteria provided in the Public School Finance Act [Chapter 22, Article 8 NMSA 1978];

P. "school building" means a public school, an administration building and related school structures or facilities, including teacher housing, that is owned, acquired or constructed by the school district as necessary to carry out the functions of the school district;

Q. "school bus private owner" means a person, other than a school district, the department, the state or any other political subdivision of the state, that owns a school bus;

R. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes;

S. "school employee" includes licensed and nonlicensed employees of a school district;

T. "school principal" means the chief instructional leader and administrative head of a public school;

U. "school year" means the total number of contract days offered by public schools in a school district during a period of twelve consecutive months;

V. "secretary" means the secretary of public education;

W. "state agency" or "state institution" means the New Mexico military institute, New Mexico school for the blind and visually impaired, New Mexico school for the deaf, New Mexico boys' school, girls' welfare home, New Mexico youth diagnostic and development center, Sequoyah adolescent treatment center, Carrie Tingley crippled children's hospital, New Mexico behavioral health institute at Las Vegas and any other state agency responsible for educating resident children;

X. "state educational institution" means an institution enumerated in Article 12, Section 11 of the constitution of New Mexico;

Y. "substitute teacher" means a person who holds a certificate to substitute for a teacher in the classroom;

Z. "teacher" means a person who holds a level one, two or three-A license and whose primary duty is classroom instruction or the supervision, below the school principal level, of an instructional program or whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers;

AA. "certified school instructor" means a licensed school employee; and

BB. "certified school employee" or "certified school personnel" means a licensed school employee.

**History:** 1978 Comp., § 22-1-2, enacted by Laws 2003, ch. 153, § 3; 2004, ch. 27, § 13; 2005, ch. 313, § 3; 2005, ch. 315, § 1; 2007, ch. 309, § 1; 2009, ch. 217, § 1; 2010, ch. 116, § 1; 2015, ch. 58, § 2; 2015, ch. 108, § 1; 2019, ch. 206, § 1; 2019, ch. 207, § 1.

### **22-1-2.1. Home school; requirements.**

Any person operating or intending to operate a home school shall:

A. submit a home school registration form made available by the department and posted on the department's web site to notify the department within thirty days of the establishment of the home school and to notify the department on or before August 1 of each subsequent year of operation of the home school;

B. maintain records of student disease immunization or a waiver of that requirement; and

C. provide instruction by a person possessing at least a high school diploma or its equivalent.

**History:** 1978 Comp., § 22-1-2.1, enacted by Laws 1985, ch. 21, § 2; 1993, ch. 62, § 2; 1993, ch. 226, § 1; 2001, ch. 62, § 1; 2014, ch. 12, § 3.

### **22-1-3. Definitions; public schools; classifications.**

As used in the Public School Code:

A. "elementary school" means a public school providing instruction for grades kindergarten through eight, unless there is a junior high school program approved by the state board [department], in which case it means a public school providing instruction for grades kindergarten through six;

B. "secondary school" means a public school providing instruction for grades nine through twelve, unless there is a junior high school program approved by the state board [department], in which case it means a public school providing instruction for grades seven through twelve;

C. "junior high school" means a public school providing a junior high school program approved by the state board [department] for grades seven through nine, or for grades seven and eight; and

D. "high school" means a public school providing instruction for any of the grades nine through twelve, unless there is a junior high school program approved by the state board [department] for grades seven through nine, in which case it means a public school providing instruction for any of the grades ten through twelve.

**History:** 1953 Comp., § 77-1-3, enacted by Laws 1967, ch. 16, § 3; 1977, ch. 2, § 1.

### **22-1-4. Free public schools; exceptions; withdrawing and enrolling; open enrollment.**

A. Except as provided by Section 24-5-2 NMSA 1978, and except as provided in Subsection H of this section, a free public school education shall be available to any school-age person who is a resident of this state and has not received a high school diploma or its equivalent.

B. A free public school education in those courses already offered to persons pursuant to the provisions of Subsection A of this section shall be available to any person who is a resident of this state and has received a high school diploma or its equivalent if there is available space in such courses.

C. A person entitled to a free public school education pursuant to the provisions of this section may enroll or re-enroll in a public school at any time and, unless required to attend school pursuant to the Attendance for Success Act [22-12A-1 to 22-12A-14 NMSA 1978], may withdraw from a public school at any time.

D. In adopting and promulgating rules concerning the enrollment of students transferring from a home school or private school to the public schools, the local school board shall provide that the grade level at which the transferring student is placed is appropriate to the age of the student or to the student's score on a student achievement test administered according to the statewide assessment and accountability system.

E. A local school board shall adopt and promulgate rules governing enrollment and re-enrollment at public schools other than charter schools within the school district. These rules shall include:

(1) definition of the school district boundary and the boundaries of attendance areas for each public school;

(2) for each public school, definition of the boundaries of areas outside the school district boundary or within the school district but outside the public school's attendance area and within a distance of the public school that would not be served by a school bus route as determined pursuant to Section 22-16-4 NMSA 1978 if enrolled, which areas shall be designated as "walk zones";

(3) priorities for enrollment of students as follows:

(a) first, students residing within the school district, or who will be residing within the school district if the student is a child in a military family who will be attending public school in the school district during the upcoming school year as provided in Subsection H of this section, and within the attendance area of a public school and students who had resided in the attendance area prior to a parent who is an active duty member of the armed forces of the United States or member of the national guard being deployed and whose deployment has required the student to relocate outside the attendance area for custodial care;

(b) second, students who previously attended the public school or are the children of a military family living in temporary housing and are assigned, awaiting placement or pending a move to permanent housing in a different attendance area where the students' family seeks enrollment of the students in either their current school attendance area or the school attendance area of the permanent housing; and

(c) third, all other applicants;

(4) establishment of maximum allowable class size if smaller than that permitted by law; and

(5) rules pertaining to grounds for denial of enrollment or re-enrollment at schools within the school district and the school district's hearing and appeals process for such a denial. Grounds for denial of enrollment or re-enrollment shall be limited to:

(a) a student's expulsion from any school district or private school in this state or any other state during the preceding twelve months; or

(b) a student's behavior in another school district or private school in this state or any other state during the preceding twelve months that is detrimental to the welfare or safety of other students or school employees.

F. In adopting and promulgating rules governing enrollment and re-enrollment at public schools other than charter schools within the school district, a local school board may establish additional enrollment preferences for rules admitting students in accordance with the second and third priorities of enrollment set forth in Subparagraphs (b) and (c) of Paragraph (3) of Subsection E of this section. The additional enrollment preferences may include:

(1) after-school child care for students;

(2) child care for siblings of students attending the public school;

(3) children of employees employed at the public school;

(4) extreme hardship;

(5) location of a student's previous school;

(6) siblings of students already attending the public school; and

(7) student safety.

G. As long as the maximum allowable class size established by law or by rule of a local school board, whichever is lower, is not met or exceeded in a public school by enrollment of first- and second-priority persons, the public school shall enroll other



persons applying in the priorities stated in the school district rules adopted pursuant to Subsections E and F of this section. If the maximum would be exceeded by enrollment of an applicant in the second and third priorities, the public school shall establish a waiting list. As classroom space becomes available, persons highest on the waiting list within the highest priority on the list shall be notified and given the opportunity to enroll.

H. Every school district and charter school shall allow military families that will be relocating to a military installation in New Mexico pursuant to an official military order to enroll their children in public school prior to their actual physical presence in the school district. A parent may submit the student's name for any lottery-selected charter school, magnet school or other public school program for which the student qualifies. The school district or charter school shall accept electronic applications for enrollment, including enrollment in a specific school or program with the school district or charter school. The school district or charter school shall provide the applicant with materials regarding academic courses, electives, sports and other relevant information regarding the public school in which the student wants to be enrolled. The public school shall preregister the student in anticipation of the student's enrollment. A student's parent:

(1) shall provide proof of residence in the school district within forty-five days after the published arrival date provided on official military documentation; and

(2) may use any of the following addresses related to the family's military move:

(a) a temporary on-base billeting facility;

(b) off-base military housing; or

(c) a purchased or leased residence.

**History:** 1953 Comp., § 77-1-4, enacted by Laws 1975, ch. 338, § 1; 1978, ch. 211, § 7; 1979, ch. 16, § 1; 1997, ch. 127, § 2; 1998, ch. 62, § 1; 2000, ch. 15, § 1; 2000, ch. 82, § 1; 2001, ch. 239, § 1; 2001, ch. 244, § 1; 2003, ch. 153, § 4; 2011, ch. 21, § 1; 2015, ch. 58, § 3; 2021, ch. 76, § 1; 2023, ch. 33, § 1.

## **22-1-5. Recomplied.**

## **22-1-6. Repealed.**

**History:** Laws 1989, ch. 308, § 1; 1990 (1st S.S.), ch. 4, § 3; 1991, ch. 238, § 1; 1997, ch. 40, § 1; 1997, ch. 261, § 1; 1999, ch. 210, § 1; 2001, ch. 313, § 1; repealed by Laws 2003, ch. 153, § 73.

## **22-1-6.1. Repealed.**

**History:** Laws 2003, ch. 18, § 1; repealed by Laws 2004, ch. 27, § 29.

## **22-1-7. Recompiled.**

## **22-1-8. Recompiled.**

## **22-1-9. High school diploma; resident military dependents.**

A. A New Mexico resident high school student who is required to move out of state because the student's parent is a member of the New Mexico national guard or a branch of the armed forces of the United States and the parent is transferred to an out-of-state location may receive a New Mexico high school diploma under the following conditions:

- (1) the student was a New Mexico resident and was regularly enrolled in a New Mexico high school prior to the parent being transferred to an out-of-state location;
- (2) the student's parent notified the school district of the move and that the parent and student were retaining their New Mexico residency;
- (3) the student transferred to and immediately enrolled in a high school at the new location and received high school credits that meet or exceed New Mexico's requirements for graduation; and
- (4) the student has not graduated from high school or received a diploma, high school equivalency credential or any other certification of high school completion or its equivalent.

B. A student who meets the conditions of Subsection A of this section may request the New Mexico school district from which the student transferred to grant a high school diploma. The student shall include with the request for a New Mexico high school diploma:

- (1) certification by the parent, and the student if over the age of eighteen, that the parent and student maintained their New Mexico residency;
- (2) a transcript from the high school the student attended and a description of the course units to be transferred; and
- (3) any other information the school district requires to review the request.

C. The school district shall review the student's high school transcript from the school the student transferred to and determine if the courses and grades meet or exceed New Mexico's requirements for graduation. If the transcript meets New Mexico standards, the school district shall grant the student a high school diploma.

**History:** Laws 2007, ch. 74, § 1; 2015, ch. 122, § 7.

## **22-1-9.1. New Mexico diploma of excellence; state seal for bilingual and biliterate graduates.**

A. The state seal of bilingualism-biliteracy on a New Mexico diploma of excellence certifies that the recipient is proficient for meaningful use in college, a career or to meet a local community language need in a world language other than English. The graduate's high school transcript shall also indicate that the graduate received the state seal on the graduate's New Mexico diploma of excellence.

B. The department shall adopt rules to establish the criteria for students to earn a seal of bilingualism-biliteracy, to include:

(1) the number of units of credit in a language other than English, including content courses taught in a language other than English, English language arts or English as a second language for English language learners;

(2) passage of state assessments in a world language other than English or English language arts for English language learners;

(3) in the case of tribal languages, certification of tribal language proficiency in consultation with individual tribes and adherence to processes and criteria defined by that tribe as appropriate for determining proficiency in its language;

(4) demonstrated proficiency in one or more languages other than English through one of the following methods:

(a) score three or higher on an advanced placement examination for a language other than English;

(b) score four or higher on an international baccalaureate examination for a higher-level language other than English course;

(c) score proficient on a national assessment of language proficiency in a language other than English; or

(d) provide presentations, interviews, essays, portfolios and other alternative processes that demonstrate proficiency in a language other than English.

C. In establishing the criteria for awarding the state seal of bilingualism-biliteracy, the department shall establish and consult with a task force of stakeholders that represent language experts, including:

(1) Indian nations, tribes and pueblos;

(2) teachers of world languages;

- (3) endorsed teachers of bilingual multicultural education;
- (4) directors of bilingual education;
- (5) statewide organizations representing language educators, bilingual education, dual language education and teachers of English as a second language;
- (6) university professors of world languages, heritage languages, Indian languages and bilingual education; and
- (7) representatives of the state bilingual advisory council, the Indian education advisory council and the Hispanic education advisory council.

**History:** Laws 2014, ch. 46, § 1.

## **22-1-9.2. Department-issued diplomas.**

The department shall authorize a diploma program that results in a diploma award by the department for adults who have not graduated from high school but who want a program that:

- A. documents their educational attainment through college and career readiness standards;
- B. assesses high school-level skills in applied life and work contexts; and
- C. prepares them to enter college or the workforce, upgrade their skills, advance to a better job or move from one field of work to another.

**History:** Laws 2019, ch. 185, § 1.

## **22-1-10. Waiver of requirements; temporary provision.**

The legislature finds that funding constraints require school districts to have financial flexibility to meet decreased state support. For the 2016-2017 through 2018-2019 school years, the secretary may waive requirements of the Public School Code and rules promulgated in accordance with that code pertaining to individual class load, teaching load, length of school day, staffing patterns, subject areas and purchases of instructional materials. The department shall monitor such waivers, and the secretary shall report to the legislative education study committee and the legislative finance committee on any issues or actions of a school district that appear to adversely affect student learning.

**History:** Laws 2010, ch. 68, § 1; 2012, ch. 51, § 1; 2013, ch. 187, § 1; 2013, ch. 203, § 1; 2016, ch. 22, § 1.

## **22-1-11. Educational data system.**

A. As used in this section:

- (1) "council" means the data system council;
- (2) "data system" means the unified pre-kindergarten through post-graduate education accountability data system;
- (3) "data system partners" means the public education department and the higher education department;
- (4) "educational agencies" means other public agencies and institutions that provide educational services for resident school-age persons and children in state-funded private pre-kindergarten programs; and
- (5) "pre-kindergarten through post-graduate system" means an integrated, seamless pre-kindergarten through post-graduate system of education.

B. The data system partners, in consultation with the council, shall establish a data system, the purpose of which is to:

- (1) collect, integrate and report longitudinal student-level and educator data required to implement federally or state-required education performance accountability measures;
- (2) conduct research and evaluation regarding federal, state and local education and training programs at all levels; and
- (3) audit and ensure compliance of those programs with applicable federal or state requirements.

C. The components of the data system shall include the use of a common student identifier for the pre-kindergarten through post-graduate system and an educator identifier, both of which may include additional identifiers, with the ability to match educator data to student data and educator data to data from schools, post-secondary education programs and other educational agencies.

D. The data system partners shall convene a "data system council" made up of the following members:

- (1) the secretary of public education or the secretary's designee;
- (2) the secretary of higher education or the secretary's designee;
- (3) the secretary of children, youth and families or the secretary's designee;

- (4) the secretary of workforce solutions or the secretary's designee;
- (5) the secretary of economic development or the secretary's designee;
- (6) the secretary of information technology or the secretary's designee;
- (7) the secretary of human services or the secretary's designee;
- (8) the secretary of health or the secretary's designee;
- (9) the director of the office of education accountability or the director's designee;
- (10) the director of the public school facilities authority or the director's designee;
- (11) a representative from the office of the governor;
- (12) the presidents or their designees of one research university, one four-year comprehensive university, two branch colleges and two independent community colleges; provided that the presidents shall be selected by the data system partners in collaboration with organizations that represent the presidents of those institutions;
- (13) at least six public school superintendents or their designees; provided that the appointments by the data system partners shall be made so that small, medium and large school districts are equally represented on the council at all times;
- (14) at least three charter school administrators or their designees appointed by the data system partners;
- (15) the director of the legislative education study committee or the director's designee; and
- (16) the director of the legislative finance committee or the director's designee.

E. The council shall:

- (1) meet at least four times each calendar year;
- (2) create a management plan that assigns authority and responsibility for the operation of the data system among the educational agencies whose data will be included in the data system;
- (3) assist the educational agencies whose data will be included in the data system in developing interagency agreements to:

- (a) enable data to be shared across and between the educational agencies;
  - (b) define appropriate uses of data;
  - (c) assure researcher access to data;
  - (d) assure the security of the data system;
  - (e) ensure that the educational system agencies represented on the council, the legislative education study committee, the legislative finance committee and other users, as appropriate, have access to the data system; and
  - (f) ensure the privacy of any person whose personally identifiable information is contained in the data system;
- (4) develop a strategic plan for the data system; and
  - (5) create policies that ensure users have prompt and reasonable access to reports generated from the data system, including:
    - (a) identification of categories of data system users based on security level;
    - (b) descriptions of the reports that the data system is capable of generating on demand; and
    - (c) definitions of the most timely process by which users may retrieve other reports without compromising the security of the data system or the privacy of any person whose personally identifiable information is contained in the data system.

F. The data system strategic plan shall include:

- (1) the development of policy and practical goals, including time lines and budget goals, that are to be met through the implementation of the data system; and
- (2) the training and professional development that the data system partners will provide to users who will be analyzing, accessing or entering data into the data system.

G. The confidentiality of personally identifiable student and educator data shall be safeguarded consistent with the requirements of state and federal law. To the extent permitted by the data system partners in conformance with state and federal law, public entities participating in the data system may:

- (1) disclose or redisclose data for educational purposes and longitudinal comparisons, analyses or studies, including those authorized by law;

(2) enter into agreements with other organizations for research studies to improve instruction for the benefit of local educational agencies, public schools and post-secondary educational institutions, subject to safeguards to ensure that the research organization uses the student records only for the authorized study purposes; and

(3) disclose education records to a student's former secondary school or school district upon request solely for purposes of evaluation or accountability for its programs.

H. Nothing in this section precludes the data system partners, in consultation with school districts, charter schools and public post-secondary educational institutions, from collecting and distributing aggregate data about students or educators or data about an individual student or educator without personally identifiable information.

I. The data system partners, in consultation with school districts, charter schools and public post-secondary educational institutions, shall jointly adopt rules to carry out the provisions of this section, including security administration requirements and the provision of training for data entry personnel at all levels.

J. By December 31 of each year, the data system partners shall submit a data system status report to the legislature and to the governor. Prior to submission and publication of the report referred to in Subsection K of this section, the data system partners shall distribute a draft of the report to school districts, charter schools and all public post-secondary educational institutions to allow comment on the draft report.

K. The data system partners, in consultation with school districts, charter schools and public post-secondary educational institutions, shall develop and adopt the content and a format for the report, including the ability of the data system to:

(1) connect student records from pre-kindergarten through post-graduate education;

(2) connect public school educator data to student data;

(3) match individual public school students' test records from year to year to measure academic growth, including student-level college and career readiness test scores;

(4) report the number and percentage of untested public school students by school district and by school and by major ethnic group, special education status, poverty status and gender;

(5) report high school longitudinal graduation and dropout data, including information that distinguishes between dropouts or students whose whereabouts are



unknown and students who have transferred to other schools, including private schools or home schools, other school districts or other states;

(6) provide post-secondary remediation data, including assessment scores on exams used to determine the need for remediation;

(7) provide post-secondary remedial course enrollment history, including the number and type of credit and noncredit remedial courses being taken;

(8) report post-secondary retention data that indicate whether students are returning the second fall term after being enrolled as full-time first-time degree-seeking students;

(9) report to New Mexico public high schools on their students who enroll in a public post-secondary educational institution within three years of graduating or leaving the high school regarding freshman-year outcomes;

(10) provide post-secondary student completion status, including information that indicates if students are making annual progress toward their degrees;

(11) include data regarding students who have earned a high school equivalency credential in reporting post-secondary outcomes;

(12) report data collected for the educator accountability reporting system;

(13) report pre-kindergarten through post-graduate student-level enrollment data, demographic information and program participation information;

(14) report pre-kindergarten through post-graduate student-level transcript information, including information on courses completed, grades earned and cumulative grade point average;

(15) connect performance with financial information;

(16) establish and maintain a state data audit system to assess the quality, validity and reliability of data; and

(17) provide any other student-level and educator data necessary to assess the performance of the pre-kindergarten through post-graduate system.

**History:** Laws 2010, ch. 112, § 1; 2015, ch. 122, § 8.

## **22-1-12. Career technical education pilot project.**

A. A "career technical education pilot project" is created as a seven-year pilot project administered by the department to fund high-quality career technical education

programs and monitor their effect on student outcomes, including achievement scores, academic growth, remediation rates and graduation rates. The department shall consult with the higher education department and the workforce solutions department as it develops its measures to determine what constitutes a high-quality career technical education program and what students should know and be able to demonstrate to an employer or to succeed in a post-secondary career technical education program. School districts, charter schools and secondary schools funded by the federal bureau of Indian education may apply to participate in the pilot project on forms provided by the department. The department may provide grants to school districts, charter schools and secondary schools funded by the federal bureau of Indian education to:

(1) establish career technical education programs as part of the pilot project; and

(2) provide professional development and training to career technical education teachers in the pilot project.

B. At a minimum, the career technical education programs funded by the department as part of the pilot project shall:

(1) include rigorous content aligned with academic standards and relevant career technical content that align secondary and post-secondary education;

(2) incorporate permeable pathways through post-secondary education;

(3) include potential for dual credit courses;

(4) require competency in science, technology, engineering and mathematics;

(5) require training in soft skills and social skills;

(6) lead to an industry-recognized credential at the post-secondary level or to an associate's or bachelor's degree;

(7) establish partnerships among the local school district, charter school or secondary school funded by the federal bureau of Indian education, post-secondary institutions and local business and industry; and

(8) provide the data necessary to the department and the participating public schools and secondary schools funded by the federal bureau of Indian education to evaluate each program and the pilot project.

C. The department shall provide professional development to existing career technical education teachers and training to new teachers in career technical education that:

- (1) addresses project-based learning;
- (2) includes the basics of pedagogy;
- (3) promotes integration of career technical curricula with core content areas;
- (4) includes training in instruction for employability and soft skills;
- (5) includes training in social-emotional learning and trauma-informed instruction; and
- (6) addresses department standards and benchmarks for career technical education.

D. The department shall promulgate rules for the administration of the pilot project, the collection and analysis of student, program and instructor data and required reporting by participating public schools and secondary schools funded by the federal bureau of Indian education.

E. The department shall provide annual and final reports to the legislature through the legislative education study committee and the governor on the efficacy of the pilot project.

**History:** Laws 2019, ch. 61, § 1; 2023, ch. 65, § 1.

### **22-1-13. Career technical education fund created.**

The "career technical education fund" is created as a nonreverting fund in the state treasury until the end of the pilot project. The fund consists of appropriations, gifts, grants and donations. The department shall administer the fund, and money in the fund is appropriated to the department to carry out the career technical education pilot project. The fund shall be administered by the department, and money in the fund is appropriated to the department to provide grants to school districts, charter schools and secondary schools funded by the federal bureau of Indian education participating in the pilot project. Expenditures from the fund shall be on warrants of the secretary of finance and administration on vouchers signed by the secretary of public education or the secretary's designated representative.

**History:** Laws 2019, ch. 61, § 2; 2023, ch. 65, § 2.

### **22-1-14. Dental examination requirement; opting out; education; outreach.**

A. As of July 1, 2021, a student shall not enroll in school unless the student has provided, in accordance with protocols established by the department:

(1) satisfactory evidence of having undergone a dental examination that meets standards established pursuant to department rules; or

(2) a form, signed by the student's parent or guardian, that states that the parent understands the risks associated when a student does not undergo a dental examination prior to school enrollment and that the parent or guardian nevertheless opts not to obtain a dental examination for the student.

B. Department rules shall specify that students shall obtain dental examinations required pursuant to Subsection A of this section at their own expense or at the expense of any dental health coverage they have.

C. By July 1, 2020, the secretary shall:

(1) adopt and promulgate rules to prescribe the requirements for dental examination pursuant to this section; and

(2) provide extensive education statewide for parents and guardians explaining the requirements for dental examination and providing information regarding where they may receive referrals to dental health care professionals statewide who are authorized to perform dental examinations in accordance with those rules.

D. Beginning July 1, 2022, the department shall collect data regarding student compliance with the provisions of Subsection A of this section and make an annual written report of that data to the legislative finance committee and the legislative health and human services committee.

**History:** Laws 2019, ch. 107, § 14.

## **22-1-15. Free menstrual products in public schools.**

A. Menstrual products shall be provided at no charge to students in:

(1) each women's bathroom and gender-neutral bathroom and at least one men's bathroom in every public middle school, junior high school, secondary school and high school; and

(2) at least one women's bathroom, one men's bathroom and one gender-neutral bathroom in every public elementary school.

B. For the purpose of this section, "menstrual product" means a sanitary pad or tampon.

**History:** Laws 2023, ch. 56, § 1.

## **ARTICLE 2**

### **Public Education Department and Commission**

#### **22-2-1. Secretary and department; general powers.**

A. The secretary is the governing authority and shall have control, management and direction of all public schools, except as otherwise provided by law.

B. The department may:

(1) adopt, promulgate and enforce rules to exercise its authority and the authority of the secretary;

(2) enter into contracts to carry out its duties;

(3) apply to the district court for an injunction, writ of mandamus or other appropriate relief to enforce the provisions of the Public School Code [Chapter 22 [except Article 5A] NMSA 1978] or rules promulgated pursuant to the Public School Code; and

(4) waive provisions of the Public School Code as authorized by law.

**History:** 1978 Comp., § 22-2-1, enacted by Laws 1990 (1st S.S.), ch. 9, § 10; 1992, ch. 77, § 1; 1993, ch. 226, § 2; 2003, ch. 143, § 2; 2004, ch. 27, § 14.

#### **22-2-2. Department; general duties.**

The department shall:

A. properly and uniformly enforce the provisions of the Public School Code [Chapter 22 [except Article 5A] NMSA 1978];

B. determine policy for the operation of all public schools and vocational education programs in the state, including vocational programs that are part of a juvenile construction industries initiative for juveniles who are committed to the custody of the children, youth and families department;

C. supervise all schools and school officials coming under its jurisdiction, including taking over the control and management of a public school or school district that has failed to meet requirements of law or department rules or standards, and, until such time as requirements of law, standards or rules have been met and compliance is ensured, the powers and duties of the local school board and local superintendent shall be suspended;

D. prescribe courses of instruction to be taught in all public schools in the state, requirements for graduation and standards for all public schools, for private schools seeking state accreditation and for the educational programs conducted in state institutions other than the New Mexico military institute;

E. provide technical assistance to local school boards and school districts;

F. assess and evaluate public schools for accreditation purposes to determine the adequacy of student gain in standards-required subject matter, adequacy of student activities, functional feasibility of public school and school district organization, adequacy of staff preparation and other matters bearing upon the education of the students;

G. assess and evaluate all state institutions and those private schools that desire state accreditation;

H. enforce requirements for home schools. Upon finding that a home school is not in compliance with law, the department may order that a student attend a public school or a private school;

I. require periodic reports on forms prescribed by it from all public schools and attendance reports from private schools;

J. determine the qualifications for and issue licenses to teachers, instructional support providers and school administrators according to law and according to a system of classification adopted and promulgated by rules of the department;

K. deny, suspend or revoke a license according to law for incompetency, moral turpitude or any other good and just cause;

L. approve or disapprove all rules promulgated by an association or organization attempting to regulate a public school activity and invalidate any rule in conflict with any rule promulgated by the department. The department shall require an association or organization attempting to regulate a public school activity to comply with the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] and be subject to the inspection provisions of the Public Records Act [Chapter 14, Article 3 NMSA 1978]. The department may require performance and financial audits of an association or organization attempting to regulate a public school activity. The department shall have no power or control over the rules or the bylaws governing the administration of the internal organization of the association or organization;

M. review decisions made by the governing board or officials of an organization or association regulating a public school activity, and any decision of the department shall be final in respect thereto;

N. require a public school under its jurisdiction that sponsors athletic programs involving sports to mandate that the participating student obtain catastrophic health and accident insurance coverage, such coverage to be offered through the school and issued by an insurance company duly licensed pursuant to the laws of New Mexico;

O. establish and maintain regional centers, at its discretion, for conducting cooperative services between public schools and school districts within and among those regions and for facilitating regulation and evaluation of school programs;

P. approve education curricula and programs offered in all two-year public post-secondary educational institutions, except those in Chapter 21, Article 12 NMSA 1978, that lead to alternative licenses for degreed persons pursuant to Section 22-10A-8 NMSA 1978 or licensure for educational assistants;

Q. withhold program approval from a college of education or teacher preparation program that fails to offer a course on teaching reading that:

- (1) is based upon current scientifically based reading research;
- (2) aligns with department-adopted reading standards;
- (3) includes strategies and assessment measures to ensure that beginning teachers are proficient in teaching reading; and
- (4) was designed after seeking input from experts in the education field;

R. annually, prior to December 1, prepare and publish a report on public and private education in the state and distribute the report to the governor and the legislature;

S. solicit input from local school boards and school districts in the formulation and implementation of department rules; and

T. report to the legislature or any of its committees as requested and report findings of any educational research study made with public money to the legislature through its appropriate interim or standing committees.

**History:** 1953 Comp., § 77-2-2, enacted by Laws 1967, ch. 16, § 5; 1969, ch. 180, § 2; 1971, ch. 263, § 2; 1975, ch. 332, § 2; 1978, ch. 211, § 8; 1979, ch. 51, § 1; 1984, ch. 39, § 1; 1985, ch. 21, § 3; 1987, ch. 77, § 1; 1993, ch. 226, § 3; 1996, ch. 65, § 1; 1997, ch. 19, § 1; 1999, ch. 279, § 1; 2000, ch. 74, § 1; 2001, ch. 286, § 1; 2001, ch. 299, § 5; 2003, ch. 143, § 2; 2003, ch. 153, § 5; 2003, ch. 394, § 2; 2004, ch. 27, § 15.

### **22-2-2.1. Additional department duties; waiver of certain requirements.**

A. The department shall approve all reasonable requests to waive the following for all public schools that exceed educational standards as determined by the department:

(1) accreditation review requirements as provided in Section 22-2-2 NMSA 1978;

(2) the length of the school day requirement as provided in Section 22-2-8.1 NMSA 1978;

(3) the individual class load requirement as provided in Section 22-10A-20 NMSA 1978;

(4) the subject area requirement as provided in Section 22-13-1 NMSA 1978; and

(5) purchase of instructional material from the department-approved multiple list requirement as provided in Section 22-15-8 NMSA 1978.

B. Upon receiving a waiver request from a school that exceeds educational standards and in addition to the requirements set forth in Subsection A of this section, the department may waive:

(1) the graduation requirement as provided in Section 22-13-1.1 NMSA 1978;

(2) evaluation standards for school personnel; and

(3) other requirements of the Public School Code [Chapter 22 [except Article 5A] NMSA 1978] that impede innovation in education if the waiver request is supported by the teachers at the requesting school and the requesting school's local school board.

C. Waivers granted pursuant to this section shall begin in the school year following that in which a public school exceeds educational standards and may remain in effect as long as the school continues to exceed educational standards.

D. The department shall only waive requirements that do not conflict with the federal No Child Left Behind Act of 2001 or rules adopted pursuant to that act.

**History:** Laws 2003, ch. 104, § 1; 2003, ch. 143, § 2; 2004, ch. 27, § 16.

## **22-2-2.2. Commission; duties.**

A. The commission shall work with the department to develop the five-year strategic plan for public elementary and secondary education in the state. The strategic plan shall be updated at least biennially. The commission shall solicit the input of persons who have an interest in public school policy, including local school boards, school districts and school employees; home schooling associations; parent-teacher associations;



educational organizations; the commission on higher education; colleges, universities and vocational schools; state agencies responsible for educating resident children; juvenile justice agencies; work force development providers; and business organizations.

B. In addition to the duty provided in Subsection A of this section, the commission shall:

(1) solicit input from local school boards, school districts and the public on policy and governance issues and report its findings and recommendations to the secretary and the legislature; and

(2) recommend to the secretary conduct and process guidelines and training curricula for local school boards.

**History:** Laws 2004, ch. 27, § 17.

### **22-2-2.3. Department; additional duties; closing a school; consultations with tribal leaders and members and families of students.**

A. Whenever the department is contemplating closing a public school on tribal land for any reason, it shall consult with tribal leaders and members and families of students attending the public school.

B. Consultation shall include, among other actions, meetings in which the department explains:

(1) the reasons for closing the public school;

(2) the reasons why the department has not or cannot provide additional resources to keep the public school open;

(3) locations of other public schools in the vicinity to which students will be sent and the plan to transport students to those schools;

(4) how the public school receiving new students will consult with tribal leaders and members and families of students attending the public school related to:

(a) culturally and linguistically responsive school policies;

(b) rigorous and culturally meaningful curricula and instructional materials;

(c) sensitivity to the tribe's calendar of religious and other tribal obligations when making the school calendar; and

(d) professional development for school personnel at the public school to ensure that the best practices used in teaching, mentoring, counseling and administration are culturally and linguistically responsive to students;

(5) how the educational outcomes for the Indian students will be improved by attending another public school;

(6) plans for the public school buildings that will be left empty by the closure; and

(7) any other matters the department believes provide an adequate explanation of the reasons for closing the public school on tribal lands.

**History:** Laws 2019, ch. 174, § 1.

### **22-2-3. Repealed.**

**History:** 1953 Comp., § 77-2-3, enacted by Laws 1967, ch. 16, § 6; repealed by Laws 2004, ch. 27, § 29.

### **22-2-4. Repealed.**

**History:** 1953 Comp., § 77-2-4, enacted by Laws 1967, ch. 16, § 7; 1969, ch. 4, § 1; repealed by Laws 2004, ch. 27, § 29.

### **22-2-5. Repealed.**

**History:** 1953 Comp., § 77-2-5, enacted by Laws 1967, ch. 16, § 8; repealed by Laws 2004, ch. 27, § 29.

### **22-2-6. Repealed.**

**History:** 1953 Comp., § 77-2-6, enacted by Laws 1967, ch. 16, § 9; 1978, ch. 211, § 9; 2003, ch. 153, § 6; repealed by Laws 2004, ch. 27, § 29.

#### **22-2-6.1. Recompiled.**

#### **22-2-6.2. Recompiled.**

#### **22-2-6.3. Recompiled.**

#### **22-2-6.4. Recompiled.**

#### **22-2-6.5. Recompiled.**

**22-2-6.6. Recompiled.**

**22-2-6.7. Recompiled.**

**22-2-6.8. Recompiled.**

**22-2-6.9. Recompiled.**

**22-2-6.10. Recompiled.**

**22-2-6.11. Recompiled.**

**22-2-6.12. Recompiled.**

**22-2-7. Repealed.**

**History:** 1953 Comp., § 77-2-7, enacted by Laws 1967, ch. 16, § 10; repealed by Laws 2003, ch. 153, § 73.

**22-2-8. School standards.**

The state board [department] shall prescribe standards for all public schools in the state. A copy of these standards shall be furnished by the department to each local school board, local superintendent and school principal. The standards shall include standards for the following areas:

- A. curriculum, including academic content and performance standards;
- B. organization and administration of education;
- C. the keeping of records, including financial records prescribed by the department;
- D. membership accounting;
- E. teacher preparation;
- F. the physical condition of public school buildings and grounds; and
- G. educational facilities of public schools, including laboratories and libraries.

**History:** 1953 Comp., § 77-2-8, enacted by Laws 1967, ch. 16, § 11; 2003, ch. 143, § 2; 2003, ch. 153, § 7.

**22-2-8.1. School year; length of school day; minimum.**

A. Except as otherwise provided in this section, students shall be in school programs, exclusive of lunch, for a minimum of one thousand one hundred forty instructional hours per year, except half-day kindergarten, which shall have five hundred fifty instructional hours per year.

B. An instructional hour is a period at school during which students receive instruction aligned to academic content and performance standards and includes:

- (1) a school program set forth in Sections 22-13-1 and 22-13-1.1 NMSA 1978;
- (2) enrichment programs that focus on problem solving and cognitive skills development;
- (3) content that provides technical knowledge, skills and competency-based applied learning;
- (4) research- or evidence-based social, emotional or academic interventions; and
- (5) instruction that occurs at the same time breakfast is served or consumed in accordance with the breakfast after the bell program or federal requirements.

C. Up to sixty instructional hours per school year for elementary grades and thirty instructional hours for middle and high school grades may be used for professional work hours, which may be embedded during the course of a normal school day. A "professional work hour" means time during which a teacher participates in professional work aligned to challenging academic content and performance standards, including:

- (1) home visiting or parent-teacher conferences;
- (2) educator training or professional development; and
- (3) mentorship, coaching and collaboration between school employees.

D. Nothing in this section precludes a local school board from setting a school year or the length of school days in excess of the minimum requirements established by Subsection A of this section.

E. The secretary may waive the minimum length of school days in those school districts where such minimums would create undue hardships as defined by the department as long as the school year is adjusted to ensure that students in those school districts receive the same total instructional time as other students in the state.

F. Notwithstanding any other provision of this section, provided that instruction occurs simultaneously, time when breakfast is served or consumed pursuant to a state

or federal program shall be deemed to be time in a school-directed program and is part of the instructional day.

G. Every general election and regular local election shall be a school holiday for students and staff at each public school in this state.

**History:** 1978 Comp., § 22-2-8.1, enacted by Laws 1986, ch. 33, § 2; 1993, ch. 226, § 4; 2000, ch. 107, § 1; 2003, ch. 72, § 1; 2009, ch. 276, § 1; 2011, ch. 35, § 1; 2011, ch. 154, § 1; 2023, ch. 19, § 1; 2023, ch. 84, § 22.

## **22-2-8.2. Recompiled.**

## **22-2-8.3. Repealed.**

**History:** 1978 Comp., § 22-2-8.3, enacted by Laws 1986, ch. 33, § 4; 1990 (1st S.S.), ch. 3, § 2; 1993, ch. 226, § 6; 1997, ch. 234, § 1; repealed by Laws 2003, ch. 153, § 73.

## **22-2-8.4. Recompiled.**

## **22-2-8.5. Repealed.**

**History:** 1978 Comp., § 22-2-8.5, enacted by Laws 1986, ch. 33, § 6; 1989, ch. 270, § 1; 1993, ch. 226, § 8; 2001, ch. 331, § 1; repealed by Laws 2003, ch. 153, § 73.

## **22-2-8.6. Recompiled.**

## **22-2-8.7. Recompiled.**

## **22-2-8.8. High school equivalency credential.**

The department shall issue a high school equivalency credential to any candidate who is at least sixteen years of age and who has successfully completed the high school equivalency credential tests.

**History:** Laws 1999, ch. 193, § 1; 2014, ch. 31, § 1; 2015, ch. 122, § 9.

## **22-2-8.9. Repealed.**

## **22-2-8.10. Repealed.**

## **22-2-8.11. High school curricula and end-of-course tests; alignment.**

High school curricula and end-of-course tests shall be aligned with the placement tests administered by two- and four-year public educational institutions in New Mexico.

The department of education [public education department] shall collaborate with the commission on higher education in aligning high school curricula and end-of-course tests with the placement tests.

**History:** Laws 2003, ch. 37, § 1.

### **22-2-8.12. Repealed.**

### **22-2-8.13. Standardized statewide grading system.**

The department shall adopt and promulgate rules to establish a standardized alphabetic or numeric grading system based on the 4.0 scale or one hundred percent scale to be used by public schools, including charter schools, for grades three through twelve that is aligned with the New Mexico academic content standards and benchmarks and performance standards. A public school shall include the results of standards-based assessments in the standardized grading system and may augment the standardized grading system with a narrative or other method that measures a student's academic, social, behavioral or other skills.

**History:** Laws 2007, ch. 255, § 1; 2011, ch. 54, § 1.

### **22-2-8.14. Student identification numbers used on transcripts and general educational development certificates [high school equivalency credentials].**

The state identification number issued for each public school student pursuant to Section 22-2C-11 NMSA 1978 shall be included on each student's transcripts and on general educational development certificates [high school equivalency credentials] issued by the department.

**History:** Laws 2009, ch. 205, § 1.

### **22-2-9. United States [and New Mexico] flag[s]; display regulations.**

The flag of the United States and the flag of the State of New Mexico shall be displayed in each classroom and on or within all public school buildings of this state according to the regulations adopted by the state board [department].

**History:** 1953 Comp., § 77-2-9, enacted by Laws 1967, ch. 16, § 12; 1979, ch. 18, § 1; 1989, ch. 37, § 1.

### **22-2-10. Educational research reports.**

The findings of any educational research study made with public money shall be reported to the legislature or any of its committees upon request of the legislature or any of its committees. The legislature or any of its committees may require quarterly or more frequent progress reports concerning any such research.

**History:** 1953 Comp., § 77-2-10, enacted by Laws 1967, ch. 16, § 13.

## **22-2-11. Repealed.**

**History:** 1953 Comp., § 77-2-11, enacted by Laws 1975 (1st S.S.), ch. 8, § 1; repealed by Laws 2003, ch. 151, § 9.

## **22-2-12. Repealed.**

**History:** 1953 Comp., § 77-2-12, enacted by Laws 1975 (1st S.S.), ch. 8, § 2; repealed by Laws 2003, ch. 151, § 9.

## **22-2-13. Repealed.**

**History:** 1953 Comp., § 77-2-13, enacted by Laws 1975 (1st S.S.), ch. 8, § 3; repealed by Laws 2003, ch. 151, § 9.

## **22-2-14. Local school boards; public schools; suspension; procedures.**

A. Money budgeted by a school district shall be spent first to attain and maintain the requirements for a school district as prescribed by law and by standards and rules as prescribed by the department. The department shall give written notification to a local school board, local superintendent and school principal, as applicable, of any failure to meet requirements by any part of the school district under the control of the local school board. The notice shall specify the deficiency. Instructional units or administrative functions may be disapproved for such deficiencies. The department shall disapprove instructional units or administrative functions that it determines to be detrimental to the educational process.

B. Within thirty days after receipt of the notice of failure to meet requirements, the local school board, local superintendent and school principal, as applicable, shall:

(1) comply with the specific and attendant requirements in order to remove the cause for disapproval; or

(2) submit plans satisfactory to the department to meet requirements and remove the cause for disapproval.

C. The secretary, after consultation with the commission, shall suspend from authority and responsibility a local school board, local superintendent or school principal that has had notice of disapproval and fails to comply with procedures of Subsection B of this section. The department shall act in lieu of the suspended local school board, local superintendent or school principal until the department removes the suspension.

D. To suspend a local school board, local superintendent or school principal, the secretary shall deliver to the local school board an alternative order of suspension, stating the cause for the suspension and the effective date and time the suspension will begin. The alternative order shall also contain notice of a time, date and place for a public hearing, prior to the beginning of suspension, to be held by the department, at which the local school board, local superintendent or school principal may appear and show cause why the suspension should not be put into effect. Within five days after the hearing, the secretary shall make permanent, modify or withdraw the alternative order.

E. The secretary may suspend a local school board, local superintendent or school principal when the local school board, local superintendent or school principal has been notified of disapproval and when the department has sufficient reason to believe that the educational process in the school district or public school has been severely impaired or halted as a result of deficiencies so severe as to warrant disapproved status before a public hearing can be held.

F. The department, while acting in lieu of a suspended local school board, local superintendent or school principal, shall execute all the legal authority of the local school board, local superintendent or school principal and assume all the responsibilities of the local school board, local superintendent or school principal.

G. The provisions of this section shall be invoked at any time the secretary, after consultation with the commission, finds the school district or public school has failed to attain and maintain the requirements of law or department standards and rules.

H. The commission shall consult with the secretary and may recommend alternative actions for the secretary's consideration.

I. A local school board, local superintendent or school principal aggrieved by a decision of the secretary may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** 1953 Comp., § 77-6-10, enacted by Laws 1967, ch. 16, § 64; 1969, ch. 180, § 7; 1972, ch. 89, § 1; reenacted by 1978, ch. 129, § 1; 1979, ch. 52, § 1; 1988, ch. 64, § 12; 2003, ch. 153, § 8; 2004, ch. 27, § 18.

## **22-2-15. Repealed.**

**History:** 1953 Comp., § 77-6-10.1, enacted by Laws 1969, ch. 180, § 8; reenacted by 1978, ch. 129, § 2; 1999, ch. 265, § 32; repealed by Laws 2004, ch. 27, § 29.



## **22-2-16. Reports.**

The state superintendent [secretary] shall report all actions taken under provisions of Sections 22-2-14 and 22-2-15 [repealed] NMSA 1978 to the legislative school study committee. The state superintendent and director shall report all actions taken under provisions of Section 22-8-30 NMSA 1978 to the legislative school study committee [legislative education study committee].

**History:** 1953 Comp., § 77-6-10.2, enacted by Laws 1969, ch. 180, § 9; reenacted by 1978, ch. 129, § 3.

## **22-2-17. Repealed.**

**History:** Laws 1993, ch. 168, § 1; repealed by Laws 2003, ch. 153, § 73.

## **22-2-18. Repealed.**

## **22-2-19. Recompiled.**

## **22-2-20. Repealed.**

**History:** Laws 2003, ch. 130, § 1; 2006, ch. 57, § 1; repealed by Laws 2017, ch. 19, § 2.

## **22-2-21. Repealed.**

**History:** Laws 2011, ch. 50, § 1; 2013, ch. 178, § 1; 2015, ch. 108, § 2; repealed by Laws 2019, ch. 181, § 6.

## **22-2-22. Recompiled.**

**History:** Laws 2014, ch. 74, § 1; recompiled as 22-16-12 by compiler.

# **ARTICLE 2A**

## **Tutor-Scholars Program (Repealed.)**

### **22-2A-1. Repealed.**

**History:** Laws 1991, ch. 126, § 1; repealed by Laws 1991, ch. 126, § 9.

### **22-2A-2. Repealed.**

**History:** Laws 1991, ch. 126, § 2; repealed by Laws 1991, ch. 126, § 9.

### **22-2A-3. Repealed.**

**History:** Laws 1991, ch. 126, § 3; repealed by Laws 1991, ch. 126, § 9.

### **22-2A-4. Repealed.**

**History:** Laws 1991, ch. 126, § 4; repealed by Laws 1991, ch. 126, § 9.

### **22-2A-5. Repealed.**

**History:** Laws 1991, ch. 126, § 5; repealed by Laws 1991, ch. 126, § 9.

### **22-2A-6. Repealed.**

**History:** Laws 1991, ch. 126, § 6; repealed by Laws 1991, ch. 126, § 9.

### **22-2A-7. Repealed.**

**History:** Laws 1991, ch. 126, § 7; repealed by Laws 1991, ch. 126, § 9.

### **22-2A-8. Repealed.**

**History:** Laws 1991, ch. 126, § 8; repealed by Laws 1991, ch. 126, § 9.

## **ARTICLE 2B**

### **Regional Cooperative Education**

#### **22-2B-1. Short title.**

Chapter 22, Article 2B NMSA 1978 may be cited as the "Regional Cooperative Education Act".

**History:** Laws 1993, ch. 232, § 1; 2001, ch. 293, § 3.

#### **22-2B-2. Definitions.**

As used in the Regional Cooperative Education Act:

- A. "council" means a regional education coordinating council; and
- B. "cooperative" means a regional education cooperative.

**History:** Laws 1993, ch. 232, § 2; 2001, ch. 293, § 4.

## **22-2B-3. Regional education cooperatives authorized.**

A. The department may authorize the existence and operation of "regional education cooperatives". Upon authorization by the department, local school boards may join with other local school boards or other state-supported educational institutions to form cooperatives to provide education-related services. Cooperatives shall be deemed individual state agencies administratively attached to the department; provided that:

(1) pursuant to the rules of the department, cooperatives may own, and have control and management over, buildings and land independent of the director of the facilities management division of the general services department;

(2) cooperatives shall not submit budgets to the department of finance and administration but shall submit them to the department. The department shall, by rule, determine the provisions of the Public School Finance Act [Chapter 22, Article 8 NMSA 1978] relating to budgets and expenditures that are applicable to cooperatives; and

(3) pursuant to the rules of the department, the secretary may, after considering the factors specified in Section 22-8-38 NMSA 1978, designate a cooperative council as a board of finance with which all funds appropriated or distributed to it shall be deposited. If such a designation is not made or if such a designation is suspended by the secretary, the money appropriated or to be distributed to a cooperative shall be deposited with the state treasurer. Unexpended or unencumbered balances in the account of a cooperative shall not revert.

B. The department shall, by rule, establish minimum criteria for the establishment and operation of cooperatives. The department shall also establish procedures for oversight of cooperatives to ensure compliance with department rule. Cooperatives shall be exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978].

C. With council approval, a cooperative may provide revenue-generating education-related services to nonmembers, so long as those services do not detract from the cooperative's ability to fulfill its responsibilities to its members.

D. With council approval, a cooperative may apply for and receive public and private grants as well as gifts, donations, bequests and devises and use them to further the purposes and goals of the cooperative.

E. Each cooperative shall cooperate with the department as required by federal-state plans or department rules in the effectuation and administration of its educational programs. Each cooperative shall submit reports to the department at such times and in such form as required by department rule. Reports shall include an evaluation of the effectiveness of the technical assistance and other services provided to members of the cooperative and any nonmember public and private entities to which the cooperative

provided educational services. The reports and evaluations submitted pursuant to this subsection shall be made available upon request to the legislative education study committee and the legislative finance committee.

**History:** Laws 1993, ch. 232, § 3; 2001, ch. 293, § 5; 2009, ch. 64, § 1; 2013, ch. 115, § 22.

#### **22-2B-4. Regional education coordinating councils created; membership.**

A. Subject to regulations adopted by the state board [department] , each cooperative shall be governed by a regional education coordinating council.

B. Councils shall be composed of the superintendents or chief administrative officers of each local school district or state-supported educational institution participating in the cooperative.

C. Members of each council shall elect a chairman from its members. Meetings shall be held at the call of the chairman. A meeting of a majority of the members of the council constitutes a quorum for the purpose of conducting business.

**History:** Laws 1993, ch. 232, § 4.

#### **22-2B-5. Regional education coordinating councils; duties.**

A. Each council shall oversee the function and operation of a cooperative. At the direction of the council, the cooperative shall provide:

- (1) education-related services to members of the cooperative;
- (2) technical assistance and staff development opportunities to members of the cooperative;
- (3) cooperative purchasing capabilities and fiscal management opportunities to members of the cooperative;
- (4) such additional services to members of the cooperative as may be determined by the council to be appropriate; and
- (5) revenue-generating education-related services to nonmembers when the council determines that the provision of such services will not interfere with the cooperative's ability to fulfill its responsibilities to its members.

B. Pursuant to rule of the department, each council shall:

(1) adopt a budget and administrative guidelines as necessary to carry out the purposes of the cooperative; and

(2) hire an executive director and necessary additional staff.

**History:** Laws 1993, ch. 232, § 5; 2009, ch. 64, § 2.

## **22-2B-6. Repealed.**

**History:** Laws 1993, ch. 232, § 6; repealed by Laws 2001, ch. 293, § 7.

## **22-2B-7. Culturally and linguistically diverse student populations; professional development for school personnel.**

A. All cooperatives that want to provide technical assistance and professional development for teachers, educational assistants and other instructional support staff in the educational needs of culturally and linguistically diverse students shall join together and submit one application to the department for funding. The group of participating cooperatives shall assign one cooperative to provide coordination, financial accounting and disbursement of funding received from the department to all participating cooperatives.

B. With council approval, each cooperative may provide or contract for technical assistance and professional development for teachers, educational assistants and other instructional support staff that are focused on the educational needs of culturally and linguistically diverse students.

C. Technical assistance and professional development programs shall be aligned with state academic content standards, benchmarks and performance standards for bilingual multicultural education and shall meet school district and charter school educational plans related to bilingual multicultural education, Indian education and Hispanic education.

D. Professional development programs shall be centered on the following:

(1) research-based bilingual multicultural education and language revitalization programs and implications for instruction;

(2) best practices in teaching English as a second language, English language development, bilingual multicultural education and language revitalization programs;

(3) classroom assessments that support academic and language development;

(4) principles of first and second language acquisition, including language revitalization, differentiated language instruction and sheltered content instruction; and

(5) effective practices of program implementation and program evaluation.

E. With council approval, a cooperative may offer professional development to school personnel in school districts and charter schools that are not members of the cooperative and may charge a course fee, which shall not be more than the actual per-participant cost of attendance at the professional development program.

F. Each participating cooperative shall provide direct technical assistance, in addition to professional development, that results in improved culturally and linguistically responsive education in public schools. The participating cooperatives shall work closely with appropriate service providers to build and support cooperative, school district and charter school internal capacity of their staff and their members' staff to ensure long-term, local, sustained support to teachers and other school personnel who work with culturally and linguistically diverse students.

**History:** Laws 2019, ch. 200, § 1.

## **ARTICLE 2C**

### **Assessment and Accountability**

#### **22-2C-1. Short title.**

Chapter 22, Article 2C NMSA 1978 may be cited as the "Assessment and Accountability Act".

**History:** 1978 Comp., § 22-2A-1, enacted by Laws 2003, ch. 153, § 10; 2007, ch. 307, § 2; 2007, ch. 308, § 2; 2007, ch. 309, § 2.

#### **22-2C-2. Purposes.**

The purposes of the Assessment and Accountability Act are to comply with federal accountability requirements; to provide the means whereby parents, students, public schools and the public can assess the progress of students in learning and schools in teaching required academic content; and to institute a system in which public schools, school districts and the department are held accountable for ensuring student success.

**History:** 1978 Comp., § 22-2A-2, enacted by Laws 2003, ch. 153, § 11.

#### **22-2C-3. Academic content and performance standards; department powers and duties.**

A. The department shall adopt academic content and performance standards for grades one through twelve in the following areas:

- (1) mathematics;
- (2) reading and language arts;
- (3) science; and
- (4) social studies.

B. The department may adopt content and performance standards in other subject areas.

C. Academic content and performance standards shall be sufficiently academically challenging to meet or exceed any applicable federal requirements.

D. The department shall measure the performance of every public school in New Mexico.

**History:** 1978 Comp., § 22-2A-3, enacted by Laws 2003, ch. 153, § 12; 2015, ch. 58, § 5.

#### **22-2C-4. Statewide assessment and accountability system; indicators; required assessments; alternative assessments; limits on alternatives to English language reading assessments.**

A. The department shall establish a statewide assessment and accountability system that is aligned with the state academic content and performance standards.

B. The academic assessment program shall test student achievement as follows:

- (1) for grades three through eight and for grade eleven, standards-based assessments in mathematics, reading and language arts;
- (2) for grades three through eight, a standards-based writing assessment with the writing assessment scoring criteria applied to the extended response writing portions of the language arts standards-based assessments; and
- (3) for one of grades three through five and six through eight and for grade eleven, standards-based assessments in science by the 2007-2008 school year.

C. The department shall involve appropriate licensed school employees in the development of the standards-based assessments.

D. Before August 5 of each year, the department shall provide student scores on all standards-based assessments taken during the prior school year and required in Subsection B of this section to students' respective school districts in order to make test score data available to assist school district staff with appropriate grade-level and other placement for the current school year.

E. All students shall participate in the academic assessment program. The department shall adopt standards for reasonable accommodations in standards-based assessments for students with disabilities and limited English proficiency, including when and how accommodations may be applied. The legislative education study committee shall review the standards prior to adoption by the department.

F. Students who have been determined to be limited English proficient may be allowed to take the standards-based assessment in their primary language. A student who has attended school for three consecutive years in the United States shall participate in the English language reading assessment unless granted a waiver by the department based on criteria established by the department. An English language reading assessment waiver may be granted only for a maximum of two additional years and only on a case-by-case basis.

**History:** 1978 Comp., § 22-2A-4, enacted by Laws 2003, ch. 153, § 13; 2004, ch. 31, § 1; 2005, ch. 315, § 2; 2007 ch. 306, § 1; 2007, ch. 307, § 3; 2007, ch. 308, § 3; 2015, ch. 58, § 6.

#### **22-2C-4.1. Statewide college and workplace readiness assessment system.**

A. The department shall establish a readiness assessment system to measure the readiness of every New Mexico high school student for success in higher education or a career no later than the 2008-2009 school year. The department shall ensure that the readiness assessment system is aligned with state academic content and performance standards, college placement tests and entry-level career skill requirements. The readiness assessment system shall include, for grade eleven, in the fall, one or more of the following components chosen by the student:

- (1) a college placement assessment;
- (2) a workforce readiness assessment; or
- (3) an alternative demonstration of competency using standards-based indicators.

B. Students shall participate in the readiness assessment system at no cost to the student.



C. Reports of assessment results shall be provided to students and parents in writing whenever possible but, if necessary, orally in the language best understood by each student and parent.

D. The department shall adopt standards for reasonable accommodations in the administration of readiness assessments for students with disabilities and limited English proficiency, including when and how accommodations may be applied.

E. In developing, selecting or approving the high school or college readiness assessments for school district or charter school use, the department may adopt commercially available standards-based assessments or approve a school district's or charter school's short-cycle assessments that meet the requirements of this section. The department shall involve appropriate licensed school employees in the development or selection of readiness assessments.

**History:** Laws 2007, ch. 307, § 4; 2007, ch. 308, § 4; 2008, ch. 21, § 1; 2016, ch. 56, § 1.

## **22-2C-5. Measuring and categorizing students' academic performance.**

The department shall adopt the process and methodology for measuring students' academic performance. Academic performance shall be categorized by school and by the following subgroups:

- A. ethnicity;
- B. race;
- C. limited English proficiency;
- D. students with disabilities; and
- E. poverty.

**History:** 1978 Comp., § 22-2A-5, enacted by Laws 2003, ch. 153, § 14; 2007, ch. 309, § 3; 2015, ch. 58, § 7.

## **22-2C-6. Remediation programs; promotion policies; restrictions.**

A. Remediation programs, academic improvement programs and promotion policies shall be aligned with school-district-determined assessment results and requirements of the state assessment and accountability program.

B. Local school boards shall approve school-district-developed remediation programs and academic improvement programs to provide special instructional

assistance to students in grades one through eight who do not demonstrate academic proficiency. The cost of remediation programs and academic improvement programs shall be borne by the school district. Remediation programs and academic improvement programs shall be incorporated into the school district's educational plan for student success and filed with the department.

C. The cost of summer and extended day remediation programs and academic improvement programs offered in grades nine through twelve shall be borne by the parent; however, where parents are determined to be indigent according to guidelines established by the department, the school district shall bear those costs.

D. Diagnosis of weaknesses identified by a student's academic achievement may serve as criteria in assessing the need for remedial programs or retention.

E. A parent shall be notified no later than the end of the second grading period that the parent's child is not academically proficient, and a conference consisting of the parent and the teacher shall be held to discuss possible remediation programs available to assist the student in becoming academically proficient. Specific academic deficiencies and remediation strategies shall be explained to the student's parent and a written intervention plan developed containing time lines, academic expectations and the measurements to be used to verify that a student has overcome academic deficiencies. Remediation programs and academic improvement programs include tutoring, extended day or week programs, summer programs and other research-based interventions and models for student improvement.

F. At the end of grades one through seven, three options are available, dependent on a student's academic proficiency:

(1) the student is academically proficient and shall enter the next higher grade;

(2) the student is not academically proficient and shall participate in the required level of remediation. Upon certification by the school district that the student is academically proficient, the student shall enter the next higher grade; or

(3) the student is not academically proficient after completion of the prescribed remediation program and upon the recommendation of the teacher and school principal shall either be:

(a) retained in the same grade for no more than one school year with an academic improvement plan developed by the student assistance team in order to become academically proficient, at which time the student shall enter the next higher grade; or

(b) promoted to the next grade if the parent refuses to allow the child to be retained pursuant to Subparagraph (a) of this paragraph. In this case, the parent shall

sign a waiver indicating the parent's desire that the student be promoted to the next higher grade with an academic improvement plan designed to address specific academic deficiencies. The academic improvement plan shall be developed by the student assistance team outlining time lines and monitoring activities to ensure progress toward overcoming those academic deficiencies. Students failing to become academically proficient at the end of that year as measured by grades, performance on school district assessments and other measures identified by the school district shall be retained in the same grade for no more than one year in order to have additional time to achieve academic proficiency.

G. At the end of the eighth grade, a student who is not academically proficient shall be retained in the eighth grade for no more than one school year to become academically proficient or if the student assistance team determines that retention of the student in the eighth grade will not assist the student to become academically proficient, the team shall design a high school graduation plan to meet the student's needs for entry into the work force or a post-secondary educational institution. If a student is retained in the eighth grade, the student assistance team shall develop a specific academic improvement plan that clearly delineates the student's academic deficiencies and prescribes a specific remediation plan to address those academic deficiencies.

H. A student who does not demonstrate academic proficiency for two successive school years shall be referred to the student assistance team for placement in an alternative program designed by the school district. Alternative program plans shall be filed with the department.

I. Promotion and retention decisions affecting a student enrolled in special education shall be made in accordance with the provisions of the individual educational plan established for that student.

J. For the purposes of this section:

(1) "academic improvement plan" means a written document developed by the student assistance team that describes the specific content standards required for a certain grade level that a student has not achieved and that prescribes specific remediation programs such as summer school, extended day or week school and tutoring;

(2) "school-district-determined assessment results" means the results obtained from student assessments developed or adopted by a local school board and conducted at an elementary grade level or middle school level;

(3) "educational plan for student success" means a student-centered tool developed to define the role of the academic improvement plan within the public school and the school district that addresses methods to improve student learning and success in school and that identifies specific measures of a student's progress; and

(4) "student assistance team" means a group consisting of a student's:

- (a) teacher;
- (b) school counselor;
- (c) school administrator; and
- (d) parent.

**History:** 1978 Comp., § 22-2-8.6, enacted by Laws 1986, ch. 33, § 7; 1987, ch. 320, § 3; 1993, ch. 226, § 9; 2000, ch. 20, § 1; recompiled and amended as § 22-2C-6 by Laws 2003, ch. 153, § 15; 2007, ch. 309, § 4.

## **22-2C-7. Repealed.**

**History:** 1978 Comp., § 22-2A-7, enacted by Laws 2003, ch. 153, § 16; 2006, ch. 83, § 1; 2007, ch. 309, § 5; 2011, ch. 32, § 1; repealed by Laws 2015, ch. 58, § 15.

## **22-2C-7.1. Repealed.**

**History:** Laws 2007, ch. 309, § 6; 2011, ch. 66, § 1; repealed by Laws 2015, ch. 58, § 15.

## **22-2C-8. State improving schools program.**

The department may institute a "state improving schools program" that measures public school improvement through school safety, dropout rate, parent and community involvement and graduation and attendance rates. Those indicators may be weighed against socioeconomic variables such as the percentage of student mobility rates, the percentage of limited English proficient students using criteria established by the federal office of civil rights and the percentage of students eligible for free or reduced-fee lunches and other factors determined by the department. Public schools that show the greatest improvement may be eligible for supplemental funding from the incentives for school improvement fund pursuant to Section 22-2C-9 NMSA 1978. Funding for the state improving schools program may include federal funds allowable under federal law or rule.

**History:** 1978 Comp., § 22-2A-8, enacted by Laws 2003, ch. 153, § 17; 2015, ch. 58, § 8.

## **22-2C-9. Incentives for school improvement fund; created; distributions.**

A. The "incentives for school improvement fund" is created in the state treasury. The fund includes appropriations, federal allocations for the purposes of the fund, income from investment of the fund, gifts, grants and donations. Balances in the fund shall not revert to any other fund at the end of any fiscal year. The fund shall be administered by the department, and money in the fund is appropriated to the department to provide supplemental incentive funding for the state improving schools program. No more than three percent of the fund may be retained by the department for administrative purposes. Money in the fund shall be expended on warrants of the secretary of finance and administration pursuant to vouchers signed by the secretary of public education or the secretary's authorized representative.

B. The department shall adopt a formula for distributing incentive funding from the fund. The total number of public schools that receive supplemental funding shall not constitute more than fifteen percent of the student membership in the state. Distributions shall be made proportionately to public schools that qualify.

C. Each public school's school council shall determine how the supplemental funding shall be used. The money received by a public school shall not be used for salaries, salary increases or bonuses, but may be used to pay substitute teachers when teachers attend professional development activities.

**History:** 1978 Comp., § 22-2A-9, enacted by Laws 2003, ch. 153, § 18; 2015, ch. 58, § 9.

## **22-2C-10. Schools in need of improvement fund; created.**

A. The "schools in need of improvement fund" is created in the state treasury. The fund includes appropriations, federal allocations for the purposes of the fund, income from investment of the fund, gifts, grants and donations. Balances in the fund shall not revert to any other fund at the end of any fiscal year. The fund shall be administered by the department, and money in the fund is appropriated to the department to provide assistance to public schools in need of improvement. No more than three percent of the fund may be retained by the department for administrative purposes. Money in the fund shall be expended on warrants of the secretary of finance and administration pursuant to vouchers signed by the secretary of public education or the secretary's authorized representative.

B. Distributions from the fund shall be by application approved by the department.

**History:** 1978 Comp., § 22-2A-10, enacted by Laws 2003, ch. 153, § 19; 2015, ch. 58, § 10.

## **22-2C-11. Assessment and accountability system reporting; parent survey; data system; fiscal information.**

A. The department shall:

(1) issue a state identification number for each public school student for use in the accountability data system;

(2) adopt the format for reporting individual student assessments to parents. The student assessments shall report each student's progress and academic needs as measured against state standards;

(3) adopt the format for reporting annual progress of public schools, school districts, state-chartered charter schools and the department. A school district's report shall include reports of all locally chartered charter schools in the school district. If the department has adopted a state improving schools program, the annual accountability report shall include the results of that program for each public school. The annual accountability report format shall be clear, concise and understandable to parents and the general public. All annual accountability reports shall ensure that the privacy of individual students is protected;

(4) require that when public schools, school districts, state-chartered charter schools and the state disaggregate and report school data for demographic subgroups, they include data disaggregated by ethnicity, race, limited English proficiency, students with disabilities, poverty and gender; provided that ethnicity and race shall be reported using the following categories:

(a) Caucasian, non-Hispanic;

(b) Hispanic;

(c) African American;

(d) American Indian or Alaska Native;

(e) Native Hawaiian or other Pacific Islander;

(f) Asian;

(g) two or more races; and

(h) other; provided that if the sample of students in any category enumerated in Subparagraphs (a) through (g) of this paragraph is so small that a student in the sample may be personally identifiable in violation of the federal Family Educational Rights and Privacy Act of 1974, the report may combine that sample into the "other" category;

(5) report cohort graduation data annually for the state, for each school district and for each state-chartered charter school and each public high school, based on information provided by all school districts and state-chartered charter schools

according to procedures established by the department; provided that the report shall include the number and percentage of students in a cohort who:

(a) have graduated by August 1 of the fourth year after entering the ninth grade;

(b) have graduated in more than four years, but by August 1 of the fifth year after entering ninth grade;

(c) have received a state certificate by exiting the school system at the end of grade twelve without having satisfied the requirements for a high school diploma as provided in Section 22-13-1.1 NMSA 1978 or completed all course requirements but have not passed the graduation assessment or portfolio of standards-based indicators pursuant to Section 22-13-1.1 NMSA 1978;

(d) have dropped out or whose status is unknown;

(e) have exited public school and indicated an intent to pursue a high school equivalency credential; or

(f) are still enrolled in public school;

(6) report annually, based on data provided by school districts and state-chartered charter schools, the number and percentage of public school students in each cohort in the state in grades nine through twelve who have advanced to the next grade or graduated on schedule, who remain enrolled but have not advanced to the next grade on schedule, who have dropped out or whose other educational outcomes are known to the department; and

(7) establish technical criteria and procedures to define which students are included or excluded from a cohort.

B. Local school boards and governing boards of charter schools may establish additional indicators through which to measure the school district's or charter school's performance.

C. The school district's or state-chartered charter school's annual accountability report shall include a report of four- and five-year graduation rates for each public high school in the school district or state-chartered charter school. All annual accountability reports shall ensure that the privacy of individual students is protected. As part of the graduation rate data, the school district or state-chartered charter school shall include data showing the number and percentage of students in the cohort:

(1) who have received a state certificate by exiting the school system at the end of grade twelve without having satisfied the requirements for a high school diploma as provided in Section 22-13-1.1 NMSA 1978 or completed all course requirements but

have not passed the graduation assessment or portfolio of standards-based indicators pursuant to Section 22-13-1.1 NMSA 1978;

- (2) who have dropped out or whose status is unknown;
- (3) who have exited public school and indicated an intent to pursue a high school equivalency credential;
- (4) who are still enrolled; and
- (5) whose other educational outcomes are known to the school district.

D. The school district's or state-chartered charter school's annual accountability report shall be adopted by the local school board or governing body of the state-chartered charter school, shall be published no later than November 15 of each year and shall be published at least once each school year in a newspaper of general circulation in the county where the school district or state-chartered charter school is located as well as online on the website of the school district or state-chartered charter school. In publication, the report shall be titled "The School District Report Card" or "The Charter School Report Card" and disseminated in accordance with guidelines established by the department to ensure effective communication with parents, students, educators, local policymakers and business and community organizations.

E. The annual accountability report shall include the names of those members of the local school board or the governing body of the charter school who failed to attend annual mandatory training.

F. The annual accountability report shall include data on expenditures for central office administration and expenditures for the public schools of the school district or charter school.

G. The department shall create an accountability data system through which data from each public school and each school district or state-chartered charter school may be compiled and reviewed. The department shall provide the resources to train school district and charter school personnel in the use of the accountability data system.

H. The department shall verify data submitted by the school districts and state-chartered charter schools.

I. At the end of fiscal year 2005, after the budget approval cycle, the department shall produce a report to the legislature that shows for all school districts using performance-based program budgeting the relationship between that portion of a school district's program cost generated by each public school in the school district and the budgeted expenditures for each public school in the school district as reported in the district's performance-based program budget. At the end of fiscal year 2006 and



subsequent fiscal years, after the budget approval cycle, the department shall report on this relationship in all public schools in all school districts in the state.

J. When all public schools are participating in performance-based budgeting, the department shall recommend annually to the legislature for inclusion in the general appropriation act the maximum percentage of appropriations that may be expended in each school district for central office administration.

K. The department shall disseminate its statewide accountability report to school districts and charter schools; the governor, legislators and other policymakers; and business and economic development organizations.

L. As used in this section, "cohort" means a group of students who enter grade nine for the first time at the same time, plus those students who transfer into the group in later years and minus those students who leave the cohort for documented excusable reasons.

**History:** 1978 Comp., § 22-2A-11, enacted by Laws 2003, ch. 153, § 20; 2004, ch. 27, § 19; 2007, ch. 309, § 7; 2010, ch. 111, § 1; 2013, ch. 196, § 2; 2015, ch. 58, § 11; 2015, ch. 122, § 10; 2017, ch. 65, § 1.

### **22-2C-11.1. Student identification number unique to that student.**

The student identification number required pursuant to Section 22-2C-11 NMSA 1978 shall be unique to each student and shall not be used or assigned to another student. That number shall be on all forms, student records, transcripts and databases in which a student is identified by name. A student shall be assigned only one identification number. It shall be the responsibility of every school district and charter school in the state to determine if the student has ever enrolled previously in a public school in New Mexico, and school districts and charter schools shall use the original student identification number.

**History:** Laws 2019, ch. 195, § 1.

### **22-2C-12. Repealed.**

**History:** Laws 2009, ch. 189, § 1; repealed by Laws 2015, ch. 58, § 15.

### **22-2C-13. Reporting recommended changes to laws.**

By the end of the 2015 calendar year and each calendar year thereafter, the department shall report to the legislative education study committee the department's recommendations for proposed changes to laws to comport with any applicable federal requirements.

**History:** Laws 2015, ch. 58, § 4.

# **ARTICLE 2D**

## **Family and Youth Resources**

### **22-2D-1. Short title.**

Sections 64 through 68 [22-2D-1 to 22-2D-5 NMSA 1978] of this act may be cited as the "Family and Youth Resource Act".

**History:** Laws 2003, ch. 153, § 64.

### **22-2D-2. Advisory committee; members; meetings; duties.**

A. The "family and youth resource advisory committee" is created. Members of the committee are:

- (1) the state superintendent [secretary] or his designee;
- (2) the secretary of health or his designee;
- (3) the secretary of human services or his designee;
- (4) the secretary of children, youth and families or his designee; and
- (5) the following members appointed by the state board [department]:

(a) one representative each from four different local community-based organizations, including faith-based providers, involved with the provision of health or social services to families; and

(b) one local superintendent or his designee from a school district in which there are more than two schools eligible to participate in the family and youth resources program.

B. The members of the committee shall appoint the chairman and such other officers as they deem necessary.

C. The committee shall meet as frequently as it deems appropriate or necessary, but at least once a year. The chairman may call special meetings as he deems necessary and shall convene special meetings at the request of a majority of the members.

D. A majority of the committee constitutes a quorum.

E. Members who are not state officers may be reimbursed for per diem and mileage expenses as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

F. The department shall staff the committee.

G. The committee shall:

(1) recommend to the department guidelines for the creation, implementation and operation of programs;

(2) recommend to the department standards and criteria for awarding grants and the form and content of grant applications; and

(3) review applications for grants and make recommendations to the department within ninety days of receipt of the grant applications.

**History:** Laws 2003, ch. 153, § 65.

### **22-2D-3. Programs; purpose; functions.**

A. A "family and youth resources program" may be created in any public school in the state. Except as provided in Subsection D of this section, the department shall accept applications for grants from public schools in which eighty percent of the students are eligible for the free or reduced-fee lunch program to fund their program.

B. The purpose of the program is to provide an intermediary for students and their families at public schools to access social and health care services. The goal of the program is to forge mutual long-term relationships with public and private agencies and community-based, civic and corporate organizations to help students attain high academic achievement by meeting certain nonacademic needs of students and their families.

C. A program shall include the employment of a resource liaison, who shall:

(1) assess student and family needs and match those needs with appropriate public or private providers, including civic and corporate sponsors;

(2) make referrals to health care and social service providers;

(3) collaborate and coordinate with health and social service agencies and organizations through school-based and off-site delivery systems;

(4) recruit service providers and business, community and civic organizations to provide needed services and goods that are not otherwise available to a student or the student's family;

(5) establish partnerships between the school and community organizations such as civic, business and professional groups and organizations; and recreational, social and after-school programs such as boys' and girls' clubs and boy and girl scouts;

- (6) identify and coordinate age-appropriate resources for students in need of:
  - (a) counseling, training and placement for employment;
  - (b) drug and alcohol abuse counseling;
  - (c) family crisis counseling; and
  - (d) mental health counseling;
- (7) promote family support and parent education programs; and
- (8) seek out other services or goods a student or the student's family needs to assist the student to stay in school and succeed.

D. A public school or group of public schools that has received a grant to establish a family and youth resources program may continue to be eligible for funding if its percentage of students eligible for the free or reduced-fee price lunch program drops below eighty percent, so long as it maintains an average of eighty percent or more for any three-year period.

**History:** Laws 2003, ch. 153, § 66; 2009, ch. 118, § 1.

#### **22-2D-4. Family and youth resource programs; grants; department duties.**

A. Subject to the availability of funding, grants are available to a public school or group of public schools that meets department eligibility requirements.

B. Applications for grants shall be in the form prescribed by the department and shall include the following information:

- (1) a statement of need, including demographic and socioeconomic information about the area to be served by the program;
- (2) goals and expected outcomes of the program;
- (3) services and activities to be provided by the program;
- (4) written agreements for the provision of services by public and private agencies, community groups and other parties;
- (5) a work plan and budget for the program, including staffing requirements and the expected availability of staff;
- (6) hours of operation;

- (7) strategies for dissemination of information about the program to potential users;
- (8) training and professional development plans;
- (9) plans to ensure that program participants are not stigmatized for their use of the program;
- (10) a physical description of the place in the school or adjacent to the school in which the program will be located;
- (11) letters of endorsement and commitment from community agencies and organizations and local governments; and
- (12) any other information the department requires.

C. Grants shall not be awarded for applications submitted that supplant funding and other resources that have been used for purposes similar to the program.

**History:** Laws 2003, ch. 153, § 67.

## **22-2D-5. Family and youth resource fund.**

The "family and youth resource fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and earnings from investment of the fund. The fund shall not be transferred to any other fund at the end of a fiscal year. The fund shall be administered by the department, and money in the fund is appropriated to the department to carry out the purposes of the Family and Youth Resource Act. Money in the fund shall be disbursed on warrants issued by the secretary of finance and administration pursuant to vouchers signed by the state superintendent [secretary] or his authorized representative.

**History:** Laws 2003, ch. 153, § 68.

## **ARTICLE 2E**

### **A-B-C-D-F Schools Rating (Repealed.)**

#### **22-2E-1. Repealed.**

**History:** Laws 2011, ch. 10, § 1; repealed by Laws 2019, ch. 249, §4.

#### **22-2E-2. Repealed.**

**History:** Laws 2011, ch. 10, § 2; repealed by Laws 2019, ch. 249, §4.

### **22-2E-3. Repealed.**

**History:** Laws 2011, ch. 10, § 3; repealed by Laws 2019, ch. 249, §4.

### **22-2E-4. Repealed.**

**History:** Laws 2011, ch. 10, § 4; 2013, ch. 196, § 3; 2015, ch. 108, § 3; repealed by Laws 2019, ch. 249, §4.

## **ARTICLE 2F**

### **School Support and Accountability**

#### **22-2F-1. Short title.**

This act [22-2F-1 to 22-2F-3 NMSA 1978] may be cited as the "School Support and Accountability Act".

**History:** Laws 2019, ch. 249, § 1.

#### **22-2F-2. Definitions.**

As used in the School Support and Accountability Act:

A. "adjusted cohort graduation rate" means the graduation rate of first-time ninth grade students with a diploma of excellence in a particular school year adjusted by adding any students who transfer into the cohort after the ninth grade and subtracting any students who transfer out, emigrate to another country or die;

B. "chronic absenteeism" means the percentage of students missing ten percent or more of the school year for any reason, including excused absences, unexcused absences and out-of-school suspensions;

C. "college, career and civic readiness" includes the completion of a college-ready course of study; the completion of a high-quality career technical education program; the completion of advanced courses such as advanced placement, international baccalaureate or dual credit; a seal of bilingualism-biliteracy on the student's diploma of excellence; demonstrating competency for college readiness or career certification; or the completion of a work-based learning experience; and for all students, includes the completion of a service-based learning experience, participation in a civic engagement experience or participation in a college or career exploration experience;

D. "comprehensive support" means support for a school that performs at or below the support identification threshold, or has an adjusted cohort graduation rate of less

than sixty-six and two-thirds percent, or fails to exit targeted support status after a number of years determined by the department;

E. "educational climate" means the percentage of school stakeholders who report that the school provides an appropriate climate for learning in the domains of student and staff engagement, social-emotional and physical safety and a school environment conducive to teaching and learning;

F. "English language proficiency" means the ability of students to use academic English to make and communicate meaning in spoken and written contexts in an assessment determined by the department;

G. "local school board" includes the governing body of a charter school;

H. "more rigorous intervention" means an intervention plan for a school that fails to exit comprehensive support status after a number of years determined by the department;

I. "on track to graduate" means data on each individual student that show the student's graduation status and potential predictors of dropout, such as student attendance, behavior, grades and test scores;

J. "opportunity to learn standards" means a comprehensive view of the context in which learning takes place, including curriculum and instruction, educational resources and school staff competency;

K. "school stakeholders" means students, parents, other family members, teachers, school staff and community partners who are part of a school's immediate environment;

L. "student growth" means a measure, either norm-referenced to students with similar prior test scores or criterion-referenced to a specific standard, of students' academic progress within a specified time period;

M. "student proficiency" means a measure demonstrating students' grade level mastery of the knowledge and skills determined by the New Mexico standards-based assessments;

N. "support identification threshold" means a threshold set by the department using the metrics in the school support and accountability system to identify the lowest performing five percent of schools in the state receiving Title 1 funds;

O. "system" means the school support and accountability system;

P. "targeted support" means support for a school in which at least one subgroup of students, but not the entire school, performs at or below the support identification threshold; and

Q. "traditional support" means a school that is not designated for targeted support or comprehensive support or has exited more rigorous intervention status by surpassing the support identification threshold.

**History:** Laws 2019, ch. 249, § 2.

**22-2F-3. School support and accountability system; created; establishing a school dashboard; prioritizing resources for schools receiving additional support.**

A. The "school support and accountability system" is created in the department. The department, in consultation with school districts, charter schools, school personnel, tribal nations and the legislative education study committee, shall promulgate rules to carry out the provisions of the School Support and Accountability Act through the system.

B. The system shall:

(1) differentiate Title 1 support to public schools in the state using the metrics identified in Paragraphs (2) and (3) of this subsection to assign, for each public school, a designation of targeted support, comprehensive support or more rigorous intervention to comply with the federal Elementary and Secondary Education Act of 1965;

(2) include indicators of academic achievement that shall be afforded substantial weight and, in the aggregate, much greater weight than the indicators described in Paragraph (3) of this subsection, including:

(a) student proficiency on the New Mexico standards-based assessments pursuant to Subsection B of Section 22-2C-4 NMSA 1978;

(b) student growth, which will comprise a substantial part of the weighting of academic achievement indicators both for all students at the public school and disaggregated by quartile on the New Mexico standards-based assessments;

(c) progress of English language learners toward English language proficiency as measured by an assessment determined by the department; and

(d) for high schools, the four-year, five-year and six-year adjusted cohort graduation rates; and

(3) include indicators of school quality and student success that are valid, reliable, comparable and statewide, including:

(a) chronic absenteeism;

(b) college, career and civic readiness; and



(c) the educational climate of the school.

C. The department shall include in the system student data disaggregated by each major racial and ethnic group, economically disadvantaged students, English learner status, children with disabilities, gender and migrant status; provided that ethnicity and race shall be reported using the following categories:

- (1) Caucasian, non-Hispanic;
- (2) Hispanic;
- (3) African American;
- (4) American Indian or Alaska Native;
- (5) Native Hawaiian or other Pacific Islander;
- (6) Asian;
- (7) two or more races; and

(8) other; provided that if the sample of students in any category enumerated in Paragraphs (1) through (7) of this subsection is so small that a student in the sample may be personally identifiable in violation of the federal Family Educational Rights and Privacy Act of 1974, the report may combine that sample into the "other" category.

D. The department shall provide the technological platform for a dashboard for each public school. The dashboard shall provide school and student information to school stakeholders and policymakers in a transparent manner, including the following indicators:

(1) the results of each indicator included in Paragraphs (2) and (3) of Subsection B and in Subsection C of this section;

(2) designations of school quality and student success for any school meeting a specific standard set by the department for any indicator included in Paragraphs (2) and (3) of Subsection B of this section;

(3) designations of excellence for any school scoring in the ninetieth percentile for any indicator included in Paragraphs (2) and (3) of Subsection B of this section;

(4) designations of school quality and student success for any school meeting a specific standard set by the department for American Indian or Hispanic students for any indicator included in Paragraphs (2) and (3) of Subsection B of this section;

(5) designations of excellence for any school scoring in the ninetieth percentile for American Indian or Hispanic students for any indicator included in Paragraphs (2) and (3) of Subsection B of this section;

(6) the designation of support for schools that meet the criteria for traditional support, targeted support, comprehensive support or more rigorous intervention;

(7) the demographics of the students and staff of the school;

(8) indicators of opportunity to learn standards, including:

(a) a survey of relevant and engaging curriculum and instruction;

(b) educational resources, including total school-level expenditures and total instructional expenditures per student; and

(c) qualified and competent school staff, including the percentage of teachers with three or more years of experience, the percentage of teachers who are fully licensed and endorsed in the field they teach, the types of degrees held by staff, information from the highly objective uniform statewide standard of evaluation for teachers and the percentage of national board-certified teachers; and

(9) the number of hours of training attended by each school's local school board members and whether each member met statutory training requirements.

E. The dashboard shall include each school's mission, vision and goals and provide for optional comments from the local school board about the strengths, opportunities for improvement and programmatic offerings corresponding to any of the reported indicators in the dashboard. For local school boards that do not provide this information, the department shall populate this section of the dashboard with information from the public school's educational plan for student success.

F. The department shall ensure that a local school board prioritizes the resources of a public school that has received a designation of targeted support, comprehensive support or more rigorous intervention toward improving student performance using evidence-based programs and a continuous improvement plan based on the indicators in Paragraphs (2) and (3) of Subsection B of this section identified through a school-level needs assessment until the public school no longer holds that designation.

**History:** Laws 2019, ch. 249, § 3; 2024, ch. 43, § 3.

## **ARTICLE 3**

### **Educational Apportionment (Repealed.)**

#### **22-3-1. Repealed.**

**22-3-2. Repealed.**

**22-3-3. Repealed.**

**22-3-4. Repealed.**

**22-3-5. Repealed.**

**22-3-6. Repealed.**

**22-3-7. Repealed.**

**22-3-8. Repealed.**

**22-3-9. Repealed.**

**22-3-10. Repealed.**

**22-3-11. Repealed.**

**22-3-12. Repealed.**

**22-3-13. Repealed.**

**22-3-14. Repealed.**

**22-3-15. Repealed.**

**22-3-16. Repealed.**

**22-3-17. Repealed.**

**22-3-18. Repealed.**

**22-3-19. Repealed.**

**22-3-20. Repealed.**

**22-3-21. Repealed.**

**22-3-22. Repealed.**

**22-3-23. Repealed.**

**22-3-24. Repealed.**

**22-3-25. Repealed.**

**22-3-26. Repealed.**

**22-3-27. Repealed.**

**22-3-28. Repealed.**

**22-3-29. Repealed.**

**22-3-30. Repealed.**

**22-3-31. Repealed.**

**22-3-32. Repealed.**

**22-3-33. Repealed.**

**22-3-34. Repealed.**

**22-3-35. Repealed.**

**22-3-36. Repealed.**

**22-3-37 to 22-3-54. Repealed.**

**History:** Laws 1991 (1st S.S.), ch. 4, §§ 1 through 18; repealed by Laws 2011 (1st S.S.), ch. 4, § 17.

**22-3-54.1. Deleted.**

## **ARTICLE 3A**

### **2011 Educational Redistricting (Repealed.)**

**22-3A-1. Repealed.**

**History:** Laws 2011 (1st S.S.), ch. 4, § 1; repealed by Laws 2021 (2nd S.S.), ch. 3, § 17.

## **22-3A-2. Repealed.**

**History:** Laws 2011 (1st S.S.), ch. 4, § 2; repealed by Laws 2021 (2nd S.S.), ch. 3, § 17.

## **22-3A-3. Repealed.**

**History:** Laws 2011 (1st S.S.), ch. 4, § 3; repealed by Laws 2021 (2nd S.S.), ch. 3, § 17.

## **22-3A-4. Repealed.**

**History:** Laws 2011 (1st S.S.), ch. 4, § 4; repealed by Laws 2021 (2nd S.S.), ch. 3, § 17.

## **22-3A-5. Repealed.**

**History:** Laws 2011 (1st S.S.), ch. 4, § 5; repealed by Laws 2021 (2nd S.S.), ch. 3, § 17.

## **22-3A-6. Repealed.**

**History:** Laws 2011 (1st S.S.), ch. 4, § 6; repealed by Laws 2021 (2nd S.S.), ch. 3, § 17.

## **22-3A-7. Repealed.**

**History:** Laws 2011 (1st S.S.), ch. 4, § 7; repealed by Laws 2021 (2nd S.S.), ch. 3, § 17.

## **22-3A-8. Repealed.**

**History:** Laws 2011 (1st S.S.), ch. 4, § 8; repealed by Laws 2021 (2nd S.S.), ch. 3, § 17.

## **22-3A-9. Repealed.**

**History:** Laws 2011 (1st S.S.), ch. 4, § 9; repealed by Laws 2021 (2nd S.S.), ch. 3, § 17.

## **22-3A-10. Repealed.**

**History:** Laws 2011 (1st S.S.), ch. 4, § 10; repealed by Laws 2021 (2nd S.S.), ch. 3, § 17.

### **22-3A-11. Repealed.**

**History:** Laws 2011 (1st S.S.), ch. 4, § 11; repealed by Laws 2021 (2nd S.S.), ch. 3, § 17.

### **22-3A-12. Repealed.**

**History:** Laws 2011 (1st S.S.), ch. 4, § 12; repealed by Laws 2021 (2nd S.S.), ch. 3, § 17.

### **22-3A-13. Repealed.**

**History:** Laws 2011 (1st S.S.), ch. 4, § 13; repealed by Laws 2021 (2nd S.S.), ch. 3, § 17.

### **22-3A-14. Repealed.**

**History:** Laws 2011 (1st S.S.), ch. 4, § 14; repealed by Laws 2021 (2nd S.S.), ch. 3, § 17.

### **22-3A-15. Repealed.**

**History:** Laws 2011 (1st S.S.), ch. 4, § 15; repealed by Laws 2021 (2nd S.S.), ch. 3, § 17.

### **22-3A-16. Repealed.**

**History:** Laws 2011 (1st S.S.), ch. 4, § 16; repealed by Laws 2021 (2nd S.S.), ch. 3, § 17.

## **ARTICLE 3B**

### **2021 Educational Redistricting**

#### **22-3B-1. Short title.**

This act [22-3B-1 to 22-3B-16 NMSA 1978] may be cited as the "2021 Educational Redistricting Act".

**History:** Laws 2021 (2nd S.S.), ch. 3, § 1.

#### **22-3B-2. Commission members.**

The public education commission is composed of ten members to be elected from districts established by law.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 2.

### **22-3B-3. Election for staggered terms.**

A. Members of the public education commission shall be elected for staggered terms of four years.

B. Members shall be elected at the general election for terms commencing on January 1 next succeeding their election.

C. Members from districts two, three, five, six and seven shall be elected from the districts described in Sections 7 [22-3B-NMSA 1978], 8 [22-3B-8 NMSA 1978], 10 [22-3B-10 NMSA 1978], 11 [22-3B-11 NMSA 1978] and 12 [22-3B-12 NMSA 1978] of the 2021 Educational Redistricting Act at the 2022 and subsequent general elections.

D. Members from districts one, four, eight, nine and ten shall be elected from the districts described in Sections 6 [22-3B-6 NMSA 1978], 9 [22-3B-9 NMSA 1978], 13 [22-3B-13 NMSA 1978], 14 [22-3B-14 NMSA 1978] and 15 [22-3B-15 NMSA 1978] of the 2021 Educational Redistricting Act at the 2024 and subsequent general elections.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 3.

### **22-3B-4. Residence.**

A candidate for the office of public education commissioner shall reside in the district for which the candidate files a declaration of candidacy at the time of such filing. A public education commissioner shall reside in the district from which the commissioner was elected or appointed and shall be deemed to have resigned if the commissioner changes residence to a place outside the district. Vacancies shall be filled as provided in Section 16 [22-3B-16 NMSA 1978] of the 2021 Educational Redistricting Act.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 4.

### **22-3B-5. Precincts.**

A. Precinct designations and boundaries used in the 2021 Educational Redistricting Act are those precinct designations and boundaries established pursuant to the Precinct Boundary Adjustment Act [1-3-10 to 1-3-14 NMSA 1978] as revised and approved pursuant to that act by the secretary of state as of November 30, 2021.

B. A board of county commissioners shall not create any precinct that lies in more than one public education commission district and shall not divide any precinct so that the divided parts of the precinct are situated in two or more public education commission districts. Votes cast in a public education commission election from precincts created or divided in violation of this subsection shall be invalid and shall not be counted or canvassed.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 5.

### **22-3B-6. Public education commission district one.**

Public education commission district one is composed of Bernalillo county precincts 20 through 30, 32 through 57, 59 through 67, 70 through 77, 80 through 83, 90, 91, 94, 95, 98, 100, 109 through 115, 117 through 120, 127, 128, 130, 134, 136 through 149, 156 through 160, 167 through 169, 178, 189, 190, 198, 199, 202 through 210, 227 through 231, 233, 234, 236, 237, 239, 240, 247, 249, 258, 260, 262 through 265, 267 through 269, 340, 363, 367, 394, 399, 599, 600, 604 through 607, 609, 611, 612, 614 through 622, 625, 626, 629, 631 through 633, 635 through 639, 647 through 650, 652 through 655 and 687.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 6.

### **22-3B-7. Public education commission district two.**

Public education commission district two is composed of Bernalillo county precincts 289 through 302, 304 through 310, 316 through 325, 328 through 336, 339, 348 through 350, 360 through 362, 364 through 366, 368, 376, 380, 388 through 393, 395 through 398, 407, 413 through 419, 421 through 430, 447 through 454, 456 through 550, 560 through 569, 574, 583 through 590, 592 through 594, 598, 601 through 603, 608, 656 through 660, 662 through 665, 667 and 669 through 685.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 7.

### **22-3B-8. Public education commission district three.**

Public education commission district three is composed of Bernalillo county precincts 2 through 19, 68, 69, 78, 79, 84 through 86, 89, 101 through 108, 116, 121 through 126, 131 through 133, 135, 150 through 155, 161 through 166, 171 through 175, 177, 179 through 188, 191 through 197, 200, 201, 211, 212, 214 through 216, 218 through 226, 232, 235, 238, 241 through 246, 248, 251 through 257, 259, 266, 271 through 287, 311 through 315, 326, 327, 337, 338, 341 through 347, 351 through 359, 369 through 375, 377 through 379, 381 through 387, 400 through 406, 408 through 412, 420, 431 through 446, 455, 581, 591, 610, 613, 623, 624, 627, 628, 634, 640, 642, 644 through 646, 651, 661, 666, 668 and 686.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 8.

### **22-3B-9. Public education commission district four.**

Public education commission district four is composed of Bernalillo county precincts 1, 87, 129, 170, 176, 217, 261, 303, 553 through 559, 570 through 573, 575 through 580, 595 through 597, 641 and 643; Los Alamos county; Sandoval county precincts 1



through 23 and 27 through 157; and Santa Fe county precincts 11, 12, 15 through 19, 63, 72, 73, 80, 82, 84, 85, 90, 92, 93, 114, 115, 125, 145, 146, 148, 152, 153, 155 through 157, 165 and 177.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 9.

### **22-3B-10. Public education commission district five.**

Public education commission district five is composed of Bernalillo county precinct 31; Cibola county precincts 2 through 6, 8 through 14 and 16 through 30; McKinley county; Sandoval county precincts 24 through 26; San Juan county precincts 1 through 59, 70, 71, 75, 77 through 83, 99 through 110, 120, 121 and 130 through 134; and Socorro county precinct 15.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 10.

### **22-3B-11. Public education commission district six.**

Public education commission district six is composed of Bernalillo county precincts 58, 88, 92, 93, 96, 97, 99, 213, 250, 270, 288, 551, 552, 582 and 630; Catron county; Cibola county precincts 1, 7 and 15; Dona Ana county precincts 1 through 4, 21, 60, 63, 64, 95, 100, 105, 107, 111, 115, 121, 123, 171, 172, 182 and 185; Grant county; Hidalgo county; Luna county; Sierra county; Socorro county precincts 1 through 14 and 16 through 27; Torrance county; and Valencia county.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 11.

### **22-3B-12. Public education commission district seven.**

Public education commission district seven is composed of Dona Ana county precincts 5 through 20, 22 through 59, 61, 62, 65 through 94, 96 through 99, 101 through 104, 106, 108 through 110, 112 through 114, 116 through 120, 122, 124 through 170, 173 through 181, 183, 184 and 186 through 190; and Otero county precincts 1, 41 through 46 and 66.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 12.

### **22-3B-13. Public education commission district eight.**

Public education commission district eight is composed of Chaves county precincts 1 through 18, 20 through 25, 31 through 36, 40 through 46, 51, 52, 61 through 64, 71 through 73, 81 through 85, 90 through 93 and 95; Colfax county; Curry county; De Baca county; Guadalupe county; Harding county; Lincoln county; Mora county; Quay county; Roosevelt county; San Miguel county; Taos county precincts 2 through 4, 7, 18, 21 and 26; and Union county.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 13.

## **22-3B-14. Public education commission district nine.**

Public education commission district nine is composed of Chaves county precincts 47, 74, 94 and 101 through 106; Eddy county; Lea county; and Otero county precincts 2 through 40 and 47 through 65.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 14.

## **22-3B-15. Public education commission district ten.**

Public education commission district ten is composed of Rio Arriba county; San Juan county precincts 60 through 69, 72 through 74, 76 and 90; Santa Fe county precincts 1 through 10, 13, 14, 20 through 62, 64 through 71, 74 through 79, 81, 83, 86 through 89, 91, 94 through 113, 116 through 124, 126 through 144, 147, 149 through 151, 154, 158 through 164, 166 through 176, 178 and 179; and Taos county precincts 1, 5, 6, 8 through 17, 19, 20, 22 through 25 and 27 through 47.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 15.

## **22-3B-16. Continuing terms; vacancies.**

A. A public education commissioner who is serving on the public education commission as of the effective date of this section shall serve the remainder of the term for which the commissioner was elected or appointed.

B. The governor shall by appointment fill a vacancy on the public education commission. An appointment to fill a vacancy on the public education commission shall be for a term ending on December 31 after the next general election, at which election a person shall be elected to fill any remainder of the unexpired term.

C. Before the general election of 2022, an appointment to fill a vacancy on the public education commission shall be made from the district as it existed when the person creating the vacancy in office was elected or appointed.

D. After the general election of 2022, an appointment to fill a vacancy in district two, three, five, six or seven shall be made from the district as set out in Sections 7 [22-3B-7 NMSA 1978], 8 [22-3B-8 NMSA 1978], 10 [22-3B-10 NMSA 1978], 11 [22-3B-11 NMSA 1978] and 12 [22-3B-12 NMSA 1978] of the 2021 Educational Redistricting Act.

E. After the general election of 2022 and before the general election of 2024, an appointment to fill a vacancy in district one, four, eight, nine or ten shall be made from the district as it existed when the person creating the vacancy in office was elected or appointed. After the general election of 2024, an appointment to fill a vacancy in district one, four, eight, nine or ten shall be made from the district as set out in Sections 6 [22-

3B-6 NMSA 1978], 9 [22-3B-9 NMSA 1978], 13 [22-3B-13 NMSA 1978], 14 [22-3B-14 NMSA 1978] and 15 [22-3B-15 NMSA 1978] of the 2021 Educational Redistricting Act.

**History:** Laws 2021 (2nd S.S.), ch. 3, § 16.

## **ARTICLE 4**

### **Creation, Consolidation and Annexation of School Districts**

#### **22-4-1. School districts.**

A. Every public school in the state shall be located within the geographical boundaries of a school district.

B. A school district shall be created, exist or be consolidated only pursuant to the provisions of law.

C. The geographical boundaries of a school district shall not coincide or overlap the geographical boundaries of another school district except as may be provided by law.

**History:** 1953 Comp., § 77-3-1, enacted by Laws 1967, ch. 16, § 14.

#### **22-4-2. New school districts; creation.**

A. The state board [department] may order the creation of a new school district:

(1) upon receipt of and according to a resolution requesting the creation of the new school district by the local school board of the existing school district;

(2) after review by the local school board and upon receipt of a petition bearing signatures verified by the county clerk of the affected area of sixty percent of the registered voters residing within the geographic area desiring creation of a new school district; or

(3) upon recommendation of the state superintendent [secretary] and upon a determination by the state board [department] that creation of a new district would meet the standards set forth in Subsection B of this section.

B. Within ninety days of receipt of the local school board resolution, receipt of the voters' petition or receipt of a recommendation by the state superintendent [secretary], the state board [department] shall conduct a public hearing to determine whether:

(1) the existing school district and the new school district to be created will each have a minimum membership of five hundred;

(2) a high school program is to be taught in the existing school district and in the new school district to be created unless an exception is granted to this requirement by the state board [department]; and

(3) creating the new school district is in the best interest of public education in the existing school district and in the new school district to be created and in the best interest of public education in the state.

**History:** 1953 Comp., § 77-3-2, enacted by Laws 1967, ch. 16, § 15; 1981, ch. 26, § 1; 1993, ch. 235, § 1.

### **22-4-3. Consolidation; request; districts without junior or senior high schools; standards.**

A. The state board [department] may order consolidation of school districts upon receipt of and according to identical resolutions requesting consolidation from each local school board of each school district affected by the consolidation only if it determines that such consolidation:

(1) will help to equalize the educational opportunities for public school students in each school district affected by the consolidation;

(2) will make the most advantageous and economical use of public school facilities;

(3) takes into consideration the convenience and welfare of the public school students in each school district affected by the consolidation; and

(4) is in the best interest of public education in each school district affected by the consolidation and in the best interest of the public education in the state.

B. The state board [department] may also order consolidation of a school district which has not maintained either a junior or senior high school program for two consecutive years prior to consolidation with an adjacent district which has maintained such programs for the students of both districts upon receipt of and according to identical resolutions requesting consolidation from each local school board of each school district affected by the consolidation.

C. The state board [department] may bring an action in the district court for an order of consolidation of two or more school districts when:

(1) all attempts to obtain an agreement between the local school boards to consolidate such school districts under Subsection A of this section have failed;

(2) one or more schools within the school districts proposed to be consolidated have received a disapproval accreditation status from the state department of education [public education department]; and

(3) after public hearing on such proposed consolidation, the state board makes findings of fact:

(a) that such consolidation will meet the criteria specified in Paragraphs (1) through (4) of Subsection A of this section; and

(b) that one or more schools within a school district proposed to be consolidated are deficient in their ability to provide the necessary educational opportunities for public school students in that district.

D. Notice of public hearing shall be given by the state board [department] at least thirty days prior to the hearing date by two consecutive publications one week apart in a newspaper of general circulation in the deficient school district proposed to be consolidated. The notice shall state:

(1) the subject of the hearing;

(2) the time and place of the hearing; and

(3) the manner in which interested persons may present their views.

E. The public hearing shall be held in a suitable and convenient location within the deficient school district proposed to be consolidated. At the hearing, the state board [department] shall allow all interested persons a reasonable opportunity to submit data, views or arguments, orally or in writing, and to examine witnesses testifying at the hearing.

F. Within ten days from the date the hearing is concluded the state board [department] shall make its determination in writing and if such determination includes an intention to bring an action for consolidation in the district court, such intention shall be included in the written determination. A copy of the written determination of the state board shall be sent to each of the school boards concerned.

G. Within sixty days from the date of the issuance of its written determination, the state board [department] may bring an action for a court order of consolidation in the district court of any judicial district in which the deficient school district is located. A copy of the petition for such action shall be served upon each of the local school boards affected by the consolidation. Such local school boards shall be parties to the action. The director shall authorize the necessary transfers and expenditures in the budgets of the concerned school districts to cover all necessary costs incurred by them in such action. Upon request of any of the parties to the action, a jury trial shall be allowed. The state board shall have the burden of establishing the existence of conditions required

under Subsection C of this section and of proving that such consolidation will meet the criteria specified in Paragraphs (1) through (4) of Subsection A of this section. The court may deny the order for consolidation if it is found that:

(1) the conditions prescribed in Paragraphs (1) and (2) of Subsection C of this section do not exist;

(2) such proposed consolidation will not meet the criteria specified in Paragraphs (1) through (4) of Subsection A of this section; or

(3) that the alleged deficiency in the school district's ability to provide the necessary educational opportunities for public school students in such district does not exist.

H. In the event the court denies the order for consolidation, the state board [department] shall not again initiate such action for consolidation affecting the same or substantially the same school districts for one year after the date of the denial of such order.

I. In the event the court orders the consolidation, such consolidation shall not become effective until the end of the current school term.

J. Any final order of the district court is reviewable by the court of appeals in the same manner as provided under the rules of civil procedure.

**History:** 1953 Comp., § 77-3-3, enacted by Laws 1967, ch. 16, § 16; 1970, ch. 4, § 1; 1973, ch. 106, § 1; 1977, ch. 246, § 61.

#### **22-4-4. [Consolidation of district without junior or senior high schools; governing board.]**

Where consolidation is ordered under Subsection B hereof [22-4-3B NMSA 1978], the governing board of the district maintaining the junior and senior high school programs shall become the governing board of the consolidated district, the board of the district consolidated shall be dissolved, and the provisions of Sections 22-4-10 through 22-4-14 NMSA 1978 relating to appointment of an interim board and the holding of special elections shall not be applicable.

**History:** 1953 Comp., § 77-3-3.1, enacted by Laws 1970, ch. 4, § 2.

#### **22-4-5. Alternate method of consolidation.**

Sections 22-4-6 through 22-4-9 NMSA 1978 shall be an alternative method of consolidation to that provided in Section 22-4-3 NMSA 1978.

**History:** 1953 Comp., § 77-3-4, enacted by Laws 1967, ch. 16, § 17.

#### **22-4-6. Alternate method; survey; report; submission to the state board [department].**

A. Upon receipt of a request from a local school board, the state board [department] shall cause a school district survey to be made to study the feasibility of a consolidation.

B. A school district survey shall be made by a school district survey committee. The school district survey committee shall submit a written report on a school district survey, along with any recommendations made by the committee, to each local school board of each school district affected by the survey. The report shall be accompanied by all maps, records and material supporting the recommendations.

C. Any local school board of a school district affected by the survey may suggest alterations to the report and the recommendations. If these alterations are approved by each local school board of each school district affected by the survey and the school district survey committee, the alterations shall become part of the final report and recommendations of the school district survey committee. If local school boards of all school districts affected by the survey approve the final report and recommendations of the school district survey committee, the final report and recommendations shall be submitted to the state board [department].

**History:** 1953 Comp., § 77-3-5, enacted by Laws 1967, ch. 16, § 18.

#### **22-4-7. Alternate method; survey committee.**

To make a school district survey to determine the feasibility of a consolidation, the school district survey committee shall consist of the following members:

A. one person designated by the state transportation director from the state transportation division;

B. one person appointed by the state board [department] for each school district affected by the survey. Each person appointed by the state board shall reside outside of every school district affected by the school district survey; and

C. one person appointed by each local school board of a school district affected by the school district survey.

**History:** 1953 Comp., § 77-3-6, enacted by Laws 1967, ch. 16, § 19.

#### **22-4-8. Alternate method; survey committee; compensation.**

Members of a school district survey committee shall serve without compensation but shall be entitled to reimbursement of expenses incurred in the performance of

committee duties out of funds of the department of education [public education department].

**History:** 1953 Comp., § 77-3-7, enacted by Laws 1967, ch. 16, § 20.

#### **22-4-9. Alternate method; standards for consolidation.**

The state board [department] may order consolidation according to the recommendations contained in a final report and recommendations of the school district survey committee approved by each local school board of each school district affected by the survey only if it determines that such consolidation:

- A. will help to equalize the educational opportunities for public school students in each school district affected by the consolidation;
- B. will make the most advantageous and economical use of public school facilities;
- C. takes into consideration the convenience and welfare of the public school students in each school district affected by the survey; and
- D. is in the best interest of public education in each school district affected by the consolidation and in the best interest of public education in the state.

**History:** 1953 Comp., § 77-3-8, enacted by Laws 1967, ch. 16, § 21.

#### **22-4-10. Order of state board [department].**

A. Any order of the state board [department] for creation of a new school district or for consolidation shall contain the following:

- (1) an accurate description of the geographical boundaries of all school districts affected by the order;
- (2) the disposition of all property affected by the order;
- (3) the dissolution of the elected local school board of each school district affected by the order of consolidation; and
- (4) the appointment of three qualified electors of the state who are residents of the new school district created by the order or the consolidated school district to be members of an interim local school board to govern the new or consolidated school district.

B. A certified copy of the order of the state board [department] shall be kept on permanent file with the department of education [public education department].



C. One certified copy of the order of the state board [department] shall be furnished to each local school board affected by the order, to each county assessor of a county having a school district within it affected by the order, to the chief [secretary of public education], to the state tax commission [property tax division of the taxation and revenue department], to the oil and gas accounting commission [audit and compliance division of the taxation and revenue department] and to each member appointed to the interim local school board.

D. Any creation of a new school district or consolidation ordered by the state board [department] shall take effect upon the issuance of the order. However, for taxation purposes, creation of a new school district or consolidation shall be effective on January 1 following the date of the issuance of the order by the state board [department].

**History:** 1953 Comp., § 77-3-9, enacted by Laws 1967, ch. 16, § 22.

### **22-4-11. [Publication of order; actions attacking order.]**

After adoption of an order of the state board [department] for creation of a new school district or for consolidation of school districts, the state superintendent [secretary] of public instruction shall forthwith cause a copy of such order to be published in a newspaper of general circulation in each county within which any part of the new or consolidated school district may be located.

Actions to attack the validity of any such order shall be filed within thirty days from the date of such publication, but not afterwards. Such actions shall be filed in Santa Fe county district court and the state board of education [department] shall be an indispensable party thereto.

**History:** 1953 Comp., § 77-3-9.1, enacted by Laws 1970, ch. 4, § 3.

### **22-4-12. Interim local school board; special election.**

A. The interim local school board of a newly created or consolidated school district has all the powers and duties of a local school board. The interim local school board shall hold office only until the local school board is elected and qualified.

B. For the purpose of electing five members to the local school board of a newly created or consolidated school district, the interim local school board shall call a special school district election to be held not less than forty-five days nor more than ninety days from the date of the issuance of the order of the state board [department] appointing members to the interim local school board. If the date for a regular school district election occurs during this period, the interim local school board shall give notice of the regular school district election for the purpose of electing five members to the local school board of the newly created or consolidated school district instead of calling a special school district election.

C. The interim local school board shall appoint a superintendent of schools to perform the administrative and supervisory functions of the interim local school board and to also conduct the school district election. The term of office of the superintendent of schools appointed by the interim local school board shall coincide with the term of office of the interim local school board.

**History:** 1953 Comp., § 77-3-10, enacted by Laws 1967, ch. 16, § 23.

### **22-4-13. Special school district election; term of office.**

The term of office of members of a local school board elected at a special school district election for a newly created or consolidated school district shall be as follows:

A. three members shall be elected for terms expiring at the next regular school district election; and

B. two members shall be elected for terms expiring two years after the next regular school district election.

**History:** 1953 Comp., § 77-3-11, enacted by Laws 1967, ch. 16, § 24; 1985, ch. 142, § 1.

### **22-4-14. Regular school district election; term of office.**

If the interim local school board calls for the election of members to the local school board of a newly created or consolidated school district at a regular school district election, the terms of office of the members elected shall be as follows:

A. three members shall be elected for terms of two years; and

B. two members shall be elected for terms of four years.

**History:** 1953 Comp., § 77-3-12, enacted by Laws 1967, ch. 16, § 25; 1985, ch. 142, § 2.

### **22-4-15. Consolidated school districts; outstanding contracts; indebtedness.**

A. All contracts entered into by a local school board of a school district prior to consolidation shall be honored by the consolidated school district. The acquiring of tenure rights and tenure rights that have been obtained shall not be affected by consolidation.

B. Any outstanding school district bonds or other indebtedness of a school district shall not be affected by consolidation. Whenever a school district included within a

consolidation has outstanding school district bonds or certificates of indebtedness, the school district shall retain its identity for the purpose of paying any debt service until the bonds or certificates are paid in full. No school district included within a consolidation shall become responsible for the debt service of any other school district included within the consolidation.

**History:** 1953 Comp., § 77-3-13, enacted by Laws 1967, ch. 16, § 26.

## **22-4-16. [Existing school districts validated.]**

That the organization, existence or consolidation of all school districts heretofore ordered by the state board [department] of education of the state of New Mexico are hereby validated and their existence as ordered by the state board of education is hereby validated and confirmed, provided that the passage of this act [22-4-16 NMSA 1978] shall not affect any consolidations upon which an action is pending contesting such consolidation at the time this act becomes effective.

**History:** 1953 Comp., § 73-15-9, enacted by Laws 1955, ch. 76, § 1.

## **22-4-17. Annexation of area for school district purposes; resolutions; approval; filing.**

A. Whenever it becomes economically feasible for students residing in one school district to attend school in another school district, whether or not that school district is within the same county as the school district of residence, the local school boards of the school districts may provide for annexation of the appropriate area by resolution of each of the local school boards concerned. The resolutions shall be submitted to the state board [department] of education for its approval.

B. Prior to adopting such resolution, the local school board proposing to annex the area within another school district shall furnish an accurate legal description of the area to be annexed and the net taxable value of the property within the area to the chief, public school finance division [secretary of public education]. The chief [secretary] shall furnish to each local school board concerned a statement of the financial implication of the annexation.

C. After resolutions are adopted by each of the local school boards concerned and approved by the state board [department] of education, copies of the resolutions shall be filed with:

(1) the county commission of the county where the principal office of each local school board is located and the county commissions of those other counties in which area is affected;

(2) the county assessor of the county where the principal office of each local school board is located and the county assessors of those other counties in which area is affected;

(3) state board of education; and

(4) department of finance and administration.

**History:** 1953 Comp., § 77-3-2.1, enacted by Laws 1977, ch. 213, § 1.

## **22-4-18. Validation of previous annexation.**

Every member of a local school board of a local school district which has been a party to an annexation similar to that authorized in Section 1 [22-4-17 NMSA 1978] of this act but occurring prior to the effective date of this act is determined to have been a legally authorized governing authority and such annexation is validated as of the date of the resolution adopting such action.

**History:** 1953 Comp., § 77-3-2.2, enacted by Laws 1977, ch. 213, § 2.

## **ARTICLE 4A**

### **Advisory Referenda (Repealed.)**

#### **22-4A-1. Repealed.**

**History:** Laws 1987, ch. 191, § 1; repealed by Laws 2019, ch. 212, § 284.

#### **22-4A-2. Repealed.**

**History:** Laws 1987, ch. 191, § 2; repealed by Laws 2019, ch. 212, § 284.

#### **22-4A-3. Repealed.**

**History:** Laws 1987, ch. 191, § 3; ; repealed by Laws 2019, ch. 212, § 284.

## **ARTICLE 5**

### **Local School Boards**

#### **22-5-1. Local school boards; members.**

A local school board shall be composed of five qualified electors of the state residing within the school district.

**History:** 1953 Comp., § 77-4-1, enacted by Laws 1967, ch. 16, § 27.

### **22-5-1.1. Local school board members; elected from districts.**

Members of local school boards in districts having a population in excess of sixteen thousand shall reside in and be elected from single-member districts. Once, following every federal decennial census, the local school board shall divide the school district into a number of election districts equal in number to the number of members on the school board. Such election districts shall be contiguous and compact and as equal in population as is practicable; provided that the local school board of any district having a population of sixteen thousand or less may provide for single-member districts as provided in this section.

**History:** 1978 Comp., § 22-5-1.1, enacted by Laws 1985, ch. 202, § 1; 1993, ch. 226, § 10.

### **22-5-2. Repealed.**

### **22-5-3. School board membership; optional form.**

A. The local school board of any school district in this state may by resolution provide for the local board of that district to be composed of seven qualified electors of the state who reside within the district. The resolution shall provide that the board consist of seven separate positions, and each such position shall be designated by number. Qualified electors seeking election to the school board shall file and run for only one of the numbered positions.

B. If the resolution provided for in this section is adopted, it shall go into effect within thirty days after its adoption unless a petition signed by the qualified electors of the school district in a number equal to twenty percent of all the voters in the district voting at the last regular school board election is presented to the local board within such thirty days asking that an election be held on the question of increasing the membership of the local board to seven members.

C. Upon receipt and verification of the petition, the local school board shall within thirty days call a special school election to vote upon the question of increasing the membership of the local school board in that district to seven members.

D. If the voters of the school district approve the increase in the local school board's membership to seven members, the resolution shall be in effect.

E. A resolution adopted pursuant to Subsection A of this section shall conform to the requirements of Section 1-22-5 NMSA 1978 and shall provide for the election of two additional school board members at the next regular school district election. One new member shall be elected to serve until the first regular school board election following the member's election. The second new member shall be elected to serve until the

second regular school board election following the member's election. Thereafter, persons elected to fill the additional new positions on the board shall be elected for terms as provided by law.

**History:** 1953 Comp., § 77-4-1.3, enacted by Laws 1969, ch. 103, § 2; 1981, ch. 316, § 1; 1993, ch. 226, § 11; 2015, ch. 145, § 95.

### **22-5-3.1. Local school boards; reversion to five members.**

A. Any seven-member local school board of a school district in the state may by resolution provide for the local school board of that school district to be composed of five qualified electors of the state who reside within the school district.

B. If the resolution specified in Subsection A of this section is adopted, the existing local school board at the first election at which the terms of three members expire shall by lot:

(1) eliminate two positions if the next succeeding election is one at which the terms of two members expire;

(2) eliminate two positions if the next succeeding election is one at which the term of one member expires, and at the next election at which the terms of three members expire designate one position for a two-year term; provided that thereafter all terms shall be four-year terms; or

(3) eliminate two positions if the next succeeding election is one at which the terms of three members expire, and at the succeeding election designate one position for a two-year term; provided that thereafter all terms shall be four-year terms.

C. Any resolution adopted pursuant to the provisions of this section shall be effective thirty days after its adoption unless a petition signed by the qualified electors of the school district in a number equal to at least twenty percent of all voters in the school district voting at the last regular school board election is presented to the local school board on or before the thirtieth day asking that an election be held on the question of decreasing the membership of the local school board to five members.

D. Upon receipt and verification of the petition, the local school board shall within thirty days call a special election to vote upon the question of decreasing the membership of the local school board in that school district to five members.

E. If the voters of the school district approve the decrease in the local school board's membership to five members, the resolution shall be in effect, and the elimination of two members at subsequent elections as provided in Subsection B of this section shall be valid.

**History:** 1978 Comp., § 22-5-3.1, enacted by Laws 1981, ch. 302, § 1; 2015, ch. 145, § 96.

## **22-5-4. Local school boards; powers; duties.**

A local school board shall have the following powers or duties:

A. subject to the rules of the department, develop educational policies for the school district;

B. employ a local superintendent for the school district and fix the superintendent's salary;

C. review and approve the annual school district budget;

D. acquire, lease and dispose of property;

E. have the capacity to sue and be sued;

F. acquire property by eminent domain pursuant to the procedures provided in the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978];

G. issue general obligation bonds of the school district;

H. provide for the repair of and maintain all property belonging to the school district;

I. for good cause and upon order of the district court, subpoena witnesses and documents in connection with a hearing concerning any powers or duties of the local school board;

J. except for expenditures for salaries, contract for the expenditure of money according to the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978];

K. adopt rules pertaining to the administration of all powers or duties of the local school board;

L. accept or reject any charitable gift, grant, devise or bequest. The particular gift, grant, devise or bequest accepted shall be considered an asset of the school district or the public school to which it is given;

M. offer and, upon compliance with the conditions of such offer, pay rewards for information leading to the arrest and conviction or other appropriate disciplinary disposition by the courts or juvenile authorities of offenders in case of theft, defacement or destruction of school district property. All such rewards shall be paid from school district funds in accordance with rules promulgated by the department; and

N. give prior approval for any educational program in a public school in the school district that is to be conducted, sponsored, carried on or caused to be carried on by a private organization or agency.

**History:** 1953 Comp., § 77-4-2, enacted by Laws 1967, ch. 16, § 28; 1973, ch. 3, § 1; 1979, ch. 335, § 3; 1981, ch. 116, § 1; 1981, ch. 125, § 48; 1990, ch. 52, § 2; 1992, ch. 77, § 2; 1993, ch. 226, § 12; 2003, ch. 153, § 21; 2004, ch. 27, § 20; 2005, ch. 315, § 3.

## **22-5-4.1. Repealed.**

## **22-5-4.2. Child abuse; report coordination; confirmation.**

A. A local school board shall adopt policies providing for the coordination and internal tracking of reports made pursuant to Section 32A-4-3 NMSA 1978. Such policies, however, shall not require any notification to school district personnel before the report is made to the offices listed in Subsection A of Section 32A-4-3 NMSA 1978. Such policies shall include measures to protect the identity of any alleged victims. No policy shall purport to relieve any person having a duty to report under Section 32A-4-3 NMSA 1978 from that duty.

B. After a report is made pursuant to Section 32A-4-3 NMSA 1978, the office receiving the notification shall notify the person making the report within five days after the report was made that the office is investigating the matter. Mailing a notice within five days shall constitute compliance with this subsection.

**History:** Laws 1985, ch. 94, § 1; 2021, ch. 94, § 3.

## **22-5-4.3. School discipline policies; racial sensitivity and anti-racism training; hotline for reporting racially charged incidents and racialized aggression involving students or school personnel; students may self-administer certain medications.**

A. Local school boards shall establish student discipline policies and shall file them with the department. The local school board shall involve parents, school personnel and students in the development of these policies, and public hearings shall be held during the formulation of these policies in the high school attendance areas within each school district or on a district-wide basis for those school districts that have no high school. No local school board shall allow for the imposition of discipline, discrimination or disparate treatment against a student based on the student's race, religion or culture or because of the student's use of protective hairstyles or cultural or religious headdresses.

B. Each school district discipline policy shall establish rules of conduct governing areas of student and school activity, detail specific prohibited acts and activities and enumerate possible disciplinary sanctions, which sanctions may include in-school



suspension, school service, suspension or expulsion. Corporal punishment shall be prohibited by each local school board and each governing body of a charter school.

C. An individual school within a school district may establish a school discipline policy, provided that parents, school personnel and students are involved in its development and a public hearing is held in the school prior to its adoption. If an individual school adopts a discipline policy in addition to the local school board's school district discipline policy, it shall submit its policy to the local school board for approval.

D. All school discipline policies shall define and include a specific prohibition against racialized aggression involving a student or school personnel. Every school district and every charter school shall provide links to the statewide hotline to report racially charged incidents or racialized aggression.

E. No school employee who in good faith reports any known or suspected violation of the school discipline policy or in good faith attempts to enforce the policy shall be held liable for any civil damages as a result of such report or of the employee's efforts to enforce any part of the policy.

F. All public school and school district discipline policies shall allow students to carry and self-administer asthma medication and emergency anaphylaxis medication that has been legally prescribed to the student by a licensed health care provider under the following conditions:

(1) the health care provider has instructed the student in the correct and responsible use of the medication;

(2) the student has demonstrated to the health care provider and the school nurse or other school official the skill level necessary to use the medication and any device that is necessary to administer the medication as prescribed;

(3) the health care provider formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours or school-sponsored activities, including transit to or from school or school-sponsored activities; and

(4) the student's parent has completed and submitted to the school any written documentation required by the school or the school district, including the treatment plan required in Paragraph (3) of this subsection and other documents related to liability.

G. The parent of a student who is allowed to carry and self-administer asthma medication and emergency anaphylaxis medication may provide the school with backup medication that shall be kept in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

H. Authorized school personnel who in good faith provide a person with backup medication as provided in this section shall not be held liable for civil damages as a result of providing the medication.

I. Local school boards and governing bodies of charter schools shall not prohibit a student who is enrolled, or eligible for enrollment, in a federally recognized Indian nation, tribe or pueblo from wearing tribal regalia or objects of cultural significance along with or attached to a cap or gown or wearing tribally significant footwear or other items of apparel under a gown at graduation ceremonies or public school events.

J. As used in this section:

(1) "cultural or religious headdresses" includes hijabs, head wraps or other headdresses used as part of a person's personal cultural or religious beliefs;

(2) "protective hairstyles" includes such hairstyles as braids, locs, twists, tight coils or curls, cornrows, bantu knots, afros, weaves, wigs or head wraps; and

(3) "tribal regalia" means a tribe's traditional dress or recognized objects of religious or cultural significance, including tribal symbols, jewelry, beading and feathers.

**History:** 1978 Comp., § 22-5-4.3, enacted by Laws 1986, ch. 33, § 9; 1993, ch. 226, § 13; 2005, ch. 60, § 1; 2011, ch. 97, § 1; 2021, ch. 19, § 1; 2021, ch. 37, § 1; 2021, ch. 51, § 8; 2025, ch. 7, § 1.

#### **22-5-4.4. School employees; reporting drug and alcohol use; release from liability.**

A. A school employee who knows or in good faith suspects any student of using or abusing alcohol or drugs shall report such use or abuse pursuant to procedures established by the local school board.

B. No school employee who in good faith reports any known or suspected instances of alcohol or drug use or abuse shall be held liable for any civil damages as a result of such report or his efforts to enforce any school policies or regulations regarding drug or alcohol use or abuse.

**History:** 1978 Comp., § 22-1-5, enacted by Laws 1985, ch. 180, § 1; recompiled as § 22-5-4.4 by Laws 1986, ch. 33, § 10.

#### **22-5-4.5. Pledge of allegiance.**

Local school boards shall provide that the pledge of allegiance shall be recited daily in each public school in the school district according to regulations adopted by the state board [department].

**History:** 1978 Comp., § 22-5-4.5, enacted by Laws 1986, ch. 33, § 11.

#### **22-5-4.6. Recompiled.**

#### **22-5-4.7. Additional student discipline policies; weapon-free schools.**

A. In addition to other student discipline policies, each school district shall adopt a policy providing for the expulsion from school, for a period of not less than one year, of any student who is determined to have knowingly brought a weapon to a school under the jurisdiction of the local board. The local school board or the superintendent of the school district may modify the expulsion requirement on a case-by-case basis.

B. Student discipline policies shall also provide for placement in an alternative educational setting, for not more than forty-five days, of any student with a disability who is determined to have knowingly brought a weapon to a school under the jurisdiction of the local board. If a parent or guardian of the student requests a due process hearing, then the student shall remain in the alternative educational setting during the pendency of any proceeding, unless the parent or guardian and the school district agree otherwise.

C. For the purposes of this section, "weapon" means:

(1) any firearm that is designed to, may readily be converted to or will expel a projectile by the action of an explosion; and

(2) any destructive device that is an explosive or incendiary device, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter-ounce, mine or similar device.

**History:** 1978 Comp., § 22-5-4.7, enacted by Laws 1995, ch. 47, § 1.

#### **22-5-4.8. Area vocational high schools.**

A. A local school board, alone or in cooperation with other local school boards, may develop a plan for the establishment of an area vocational high school. The plan shall be submitted to the department for its approval.

B. The department may approve a plan for an area vocational high school if the plan adequately provides for:

(1) sufficient financing for the operation of the school, which may include an election for a special levy not to exceed one dollar (\$1.00) for each one thousand dollars (\$1,000) of net taxable value, and that may be in addition to levies authorized by the College District Tax Act;

(2) a broad vocational and technical education program serving a sufficient number of students to achieve economic viability; and

(3) compliance with the state plan for vocational education.

**History:** Laws 1999, ch. 219, § 19; 2019, ch. 59, § 1.

#### **22-5-4.9. High school diplomas; World War II veterans.**

A. Notwithstanding any other provision of the Public School Code, a local school board may issue a high school diploma to a World War II veteran who:

(1) is an honorably discharged member of the armed forces of the United States;

(2) was scheduled to graduate from high school after 1940 and before 1951;

(3) was a resident of New Mexico and attended a high school in the locality of the current school district; and

(4) left high school before graduation to serve in World War II.

B. A local school board may issue a high school diploma to a qualifying World War II veteran regardless of whether the veteran holds a high school equivalency credential or is deceased.

C. The department shall adopt and promulgate rules to carry out the provisions of this section, including:

(1) an application form to be submitted by the World War II veteran or a person acting on behalf of the veteran if the veteran is incapacitated or deceased; and

(2) what constitutes acceptable evidence of eligibility for a diploma.

**History:** Laws 2003, ch. 113, § 1; 2015, ch. 122, § 11.

#### **22-5-4.10. High school diplomas; Korean conflict veterans.**

A. Notwithstanding any other provision of the Public School Code, a local school board may issue a high school diploma to a Korean conflict veteran who:

(1) is an honorably discharged member of the armed forces of the United States;

(2) was scheduled to graduate from high school after June 27, 1950 and before January 31, 1955;

(3) was a resident of New Mexico and attended a high school in the locality of the current school district; and

(4) left high school before graduation to serve in the Korean conflict.

B. A local school board may issue a high school diploma to a qualifying Korean conflict veteran regardless of whether the veteran holds a high school equivalency credential or is deceased.

C. The department shall adopt and promulgate rules to carry out the provisions of this section, including:

(1) an application form to be submitted to the local school board by the Korean conflict veteran or a person acting on behalf of the veteran if the veteran is incapacitated or deceased; and

(2) what constitutes acceptable evidence of eligibility for a diploma.

**History:** Laws 2005, ch. 11, § 1; 2015, ch. 122, § 12.

#### **22-5-4.11. Psychotropic medication; prohibition on compulsion.**

A. Each local school board or governing body shall develop and promulgate policies that prohibit school personnel from denying any student access to programs or services because the parent or guardian of the student has refused to place the student on psychotropic medication.

B. School personnel may share school-based observations of a student's academic, functional and behavioral performance with the student's parent or guardian and offer program options and other forms of assistance that are available to the parent or guardian and the student based on those observations. However, an employee or agent of a school district or governing body shall not compel or attempt to compel any specific actions by the parent or guardian or require that a student take a psychotropic medication.

C. School personnel shall not require a student to undergo psychological screening unless the parent or guardian of that student gives prior written consent before each instance of psychological screening.

D. Nothing in this act shall be construed to create a prohibition against a teacher or other school personnel from consulting or sharing a classroom-based observation with a parent or guardian regarding:

(1) a student's academic and functional performance;

(2) a student's behavior in the classroom or school; or

- (3) the need for evaluation for special education or related services.

E. As used in this section:

(1) "psychotropic medication" means a drug that shall not be dispensed or administered without a prescription, whose primary indication for use has been approved by the federal food and drug administration for the treatment of mental disorders and that is listed as a psychotherapeutic agent in drug facts and comparisons or in the American hospital formulary service; and

(2) "school personnel" means school personnel that the department has licensed.

**History:** Laws 2015, ch. 51, § 1.

## **22-5-4.12. Use of restraint and seclusion; techniques; requirements.**

A. A school may permit the use of restraint or seclusion techniques on any student only if both of the following apply:

(1) the student's behavior presents an imminent danger of serious physical harm to the student or others; and

(2) less restrictive interventions appear insufficient to mitigate the imminent danger of serious physical harm.

B. If a restraint or seclusion technique is used on a student:

(1) school employees shall maintain continuous visual observation and monitoring of the student while the restraint or seclusion technique is in use;

(2) the restraint or seclusion technique shall end when the student's behavior no longer presents an imminent danger of serious physical harm to the student or others;

(3) the restraint or seclusion technique shall be used only by school employees who are trained in the safe and effective use of restraint and seclusion techniques unless an emergency situation does not allow sufficient time to summon those trained school employees;

(4) the restraint technique employed shall not impede the student's ability to breathe or speak; and

(5) the restraint technique shall not be out of proportion to the student's age or physical condition.

C. Schools shall establish policies and procedures for the use of restraint or seclusion techniques in a school safety plan; provided that:

- (1) the school safety plan shall not be specific to any individual student; and
- (2) any school safety plan shall be drafted by a planning team that includes at least one special education expert.

D. Schools shall establish reporting and documentation procedures to be followed when a restraint or seclusion technique has been used on a student. The procedures shall include the following provisions:

- (1) a school employee shall provide the student's parent or guardian with written or oral notice on the same day that the incident occurred, unless circumstances prevent same-day notification. If the notice is not provided on the same day of the incident, notice shall be given within twenty-four hours after the incident;

- (2) within a reasonable time following the incident, a school employee shall provide the student's parent or guardian with written documentation that includes information about any persons, locations or activities that may have triggered the behavior, if known, and specific information about the behavior and its precursors, the type of restraint or seclusion technique used and the duration of its use; and

- (3) schools shall review strategies used to address a student's dangerous behavior if use of restraint or seclusion techniques for an individual student has occurred two or more times during any thirty-calendar-day period. The review shall include:

- (a) a review of the incidents in which restraint or seclusion techniques were used and an analysis of how future incidents may be avoided, including whether the student requires a functional behavioral assessment; and

- (b) a meeting of the student's individualized education program team, behavioral intervention plan team or student assistance team within two weeks of each use of restraint or seclusion after the second use within a thirty-calendar-day period to provide recommendations for avoiding future incidents requiring the use of restraint or seclusion.

E. If a school summons law enforcement instead of using a restraint or seclusion technique on a student, the school shall comply with the reporting, documentation and review procedures established pursuant to Subsection D of this section.

F. Policies regarding restraint and seclusion shall consider school district support and strategies for school employees to successfully reintegrate a student who has been restrained or secluded back into the school or classroom environment.

G. The provisions of this section shall not be interpreted as addressing the conduct of law enforcement or first responders.

H. The provisions of this section do not apply to any school located within a county juvenile detention center or a state-operated juvenile facility.

I. For the purposes of this section:

(1) "first responder" means a person based outside of a school who functions within the emergency medical services system and who is dispatched to a school to provide initial emergency aid;

(2) "mechanical restraint" means the use of any device or material attached or adjacent to the student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove, but "mechanical restraint" does not include mechanical supports or protective devices;

(3) "physical restraint" means the use of physical force without the use of any device or material that restricts the free movement of all or a portion of a student's body, but "physical restraint" does not include physical escort;

(4) "restraint" when not otherwise modified means mechanical or physical restraint; and

(5) "seclusion" means the involuntary confinement of a student alone in a room from which egress is prevented. "Seclusion" does not mean the use of a voluntary behavior management technique, including a timeout location, as part of a student's education plan, individual safety plan, behavioral plan or individualized education program that involves the student's separation from a larger group for purposes of calming.

**History:** Laws 2017, ch. 33, § 1.

### **22-5-4.13. Local school board; consideration of opening or closing a public school on tribal land; consultation with tribal leaders and members and families of students.**

A. Whenever a local school board is contemplating opening a public school on tribal land, in addition to negotiations involving land or buildings, the local school board and the local superintendent shall consult with tribal leaders and members and families of students who will be eligible to attend the public school on the design of the school's programming.

B. Consultation shall include, among other actions, meetings in which the local school board and local superintendent explain:



(1) how and why they reached the decision to approach the tribe about opening a public school on tribal land; and

(2) the level of their commitment to improving educational outcomes for Indian students by opening a public school and how that commitment will be manifested through:

(a) culturally and linguistically responsive school policies;

(b) rigorous and culturally meaningful curricula and instructional materials;

(c) sensitivity to the tribe's calendar of religious and tribal obligations when making the school calendar; and

(d) professional development for school personnel at the public school to ensure that the best practices used in teaching, mentoring, counseling and administration are culturally and linguistically responsive to students.

C. Whenever a local school board is contemplating closing a public school on tribal land for any reason, it shall consult with tribal leaders and members and families of students attending the public school.

D. Consultation shall include, among other actions, meetings in which the local board and the local superintendent explain:

(1) the reasons for closing the public school;

(2) the reasons why the local school board has not or cannot provide additional resources to keep the public school open;

(3) locations of other public schools in the vicinity to which students will be sent and the plan to transport students to those schools;

(4) how the public school receiving new students will consult with tribal leaders and members and families of students attending the public school related to:

(a) culturally and linguistically responsive school policies;

(b) rigorous and culturally meaningful curricula and instructional materials;

(c) sensitivity to the tribe's calendar of religious and other tribal obligations when making the school calendar; and

(d) professional development for school personnel at the public school to ensure that the best practices used in teaching, mentoring, counseling and administration are culturally and linguistically responsive to students;

(5) how the educational outcomes for the Indian students will be improved by attending another public school;

(6) plans for the public school buildings that will be left empty by the closure; and

(7) any other matters the local school board believes provide an adequate explanation of the reasons for closing the public school on tribal lands.

**History:** Laws 2019, ch. 174, § 2.

#### **22-5-4.14. High school diplomas; Vietnam conflict veterans.**

A. Notwithstanding any other provision of the Public School Code, a local school board may issue a high school diploma to a Vietnam conflict veteran who:

(1) is an honorably discharged member of the armed forces of the United States;

(2) was scheduled to graduate from high school after February 28, 1961 and before May 7, 1975;

(3) was a resident of New Mexico and attended a high school in the locality of the current school district; and

(4) left high school before graduation to serve in the Vietnam conflict.

B. A local school board may issue a high school diploma to a qualifying Vietnam conflict veteran regardless of whether the veteran holds a high school equivalency credential or is deceased.

C. The department shall adopt and promulgate rules to carry out the provisions of this section, including:

(1) an application form to be submitted to the local school board by the Vietnam conflict veteran or a person acting on behalf of the veteran if the veteran is incapacitated or deceased; and

(2) what constitutes acceptable evidence of eligibility for a diploma.

**History:** Laws 2020, ch. 72, § 1.

#### **22-5-4.15. Contract extension or termination of local superintendent; limitation.**

A local school board shall not, during any time between the date of a regular local election in which school board positions are on the ballot and sixty days after the convening of the newly elected board or until sixty days after a majority of a local school board has been appointed:

- A. extend the local superintendent's contract; or
- B. terminate the local superintendent without cause.

**History:** Laws 2024, ch. 43, § 4.

#### **22-5-4.16. Local school board meetings; webcasting and archiving.**

Except as otherwise provided in this section, live audio and video webcasts of local school board meetings shall be accessible through the school district's website and shall include a user interface that allows members of the public to submit written or verbal comments. A webcast shall begin as soon as practicable after the chair has called the meeting to order and shall terminate as soon as practicable after the local school board has adjourned. Recordings of the webcasts and an electronic copy of any minutes approved at the meeting shall be posted on the school district's website within one week of the meeting's conclusion and shall be publicly available for at least three years following the date of the meeting unless the state records retention schedule provides otherwise.

**History:** Laws 2024, ch. 43, § 6.

#### **22-5-5. Compensation; prohibited employment.**

- A. The members of a local school board shall serve without compensation.
- B. No member of a local school board shall be employed in any capacity by a school district governed by that local school board during the term of office for which the member was elected or appointed.

**History:** 1953 Comp., § 77-4-3, enacted by Laws 1967, ch. 16, § 29.

#### **22-5-6. Nepotism prohibited.**

A. A local superintendent shall not initially employ or approve the initial employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law of a member of the local school board or the local superintendent. The local school board may waive the nepotism rule for family members of a local superintendent.

B. Nothing in this section shall prohibit the continued employment of a person employed on or before July 1, 2008.

**History:** 1953 Comp., § 77-4-3.1, enacted by Laws 1971, ch. 199, § 1; 1981, ch. 86, § 1; 2003, ch. 153, § 22; 2009, ch. 195, § 1.

## **22-5-7. Officers; surety bonds.**

A. From among its members, a local school board shall elect a president, a vice-president and a secretary.

B. Before assuming the duties of office, the president and secretary of a local school board and the superintendent of schools of a school district shall each obtain an official bond payable to the school district and conditioned upon the faithful performance of their duties during their terms of office. The bonds shall be executed by a corporate surety company authorized to do business in this state. The amount of each bond required shall be fixed by the local school board but shall not be less than five thousand dollars (\$5,000).

C. A local school board may elect to obtain a schedule or blanket corporate surety bond covering all local school board members and school district administrators and employees for any period not exceeding four years.

D. The cost of bonds obtained pursuant to this section shall be paid from the operational fund of the school district. The bonds shall be approved by the director of the public school finance division [secretary] and filed with the secretary of finance and administration.

**History:** 1953 Comp., § 77-4-4, enacted by Laws 1967, ch. 16, § 30; 1977, ch. 247, § 202; 1980, ch. 151, § 45.

## **22-5-8. Term of office.**

A. The full term of office of a member of a local school board shall be four years succeeding the member's election to office at a regular local election held pursuant to the Local Election Act [Chapter 1, Article 22 NMSA 1978].

B. Any member of a local school board whose term of office has expired shall continue in that office until a successor is elected and qualified.

**History:** 1953 Comp., § 77-4-5, enacted by Laws 1967, ch. 16, § 31; 1985, ch. 142, § 3; 1993, ch. 226, § 15; 2018, ch. 79, § 88.

### **22-5-8.1. Repealed.**

## **22-5-9. Local school board vacancies.**

A. A vacancy occurring in the membership of a local school board shall be filled at an open meeting, at which a quorum of the membership is present, by a majority vote of the remaining members appointing a qualified elector to fill the vacancy.

B. A qualified elector appointed to fill a vacancy occurring in the membership of a local school board shall hold that office until the next regular school district election when an election shall be held to fill the vacancy for the unexpired term.

C. If a qualified elector is not appointed to fill the vacancy within forty-five days from the date the vacancy occurred, the department shall appoint a qualified elector to fill the vacancy until the next regular school district election.

D. In the event vacancies occur in a majority of the full membership of a local school board, the department shall appoint qualified electors to fill the vacancies. Those persons appointed shall hold office until the next regular school district election when an election shall be held to fill the vacancies for the unexpired terms.

**History:** 1953 Comp., § 77-4-6, enacted by Laws 1967, ch. 16, § 32; 1979, ch. 335, § 4; 2015, ch. 145, § 97.

### **22-5-9.1. Oath of office.**

All elected or appointed members of local school boards shall take the oath of office prescribed by Article 20, Section 1 of the constitution of New Mexico.

**History:** Laws 1979, ch. 335, § 7.

### **22-5-10. Publications; advertisements.**

Except where otherwise specifically provided, whenever a local school board is required by law to make a publication or advertisement, the publication or advertisement shall be published in English in any newspaper published in the school district having general circulation within the school district. If there is no such newspaper, any newspaper published in the state having general circulation in the school district.

**History:** 1953 Comp., § 77-4-7, enacted by Laws 1967, ch. 16, § 33.

### **22-5-11. School district salary system.**

A. Prior to the beginning of each school year, each local superintendent shall file with the department the school district salary system, which salary system shall incorporate any salary increases or compensation measures specifically mandated by the legislature. Salaries for teachers and school administrators shall be aligned with the licensure framework provided for in the School Personnel Act [Chapter 22, Article 10A NMSA 1978].

B. A local superintendent shall not reduce the school district salary system established pursuant to Subsection A of this section without the prior written approval of the state superintendent [secretary]. The state superintendent shall give written notice to the legislative finance committee, the legislative education study committee and the department of finance and administration of approved reduction of any school district's salary system, including the reasons for the request for reduction and the grounds for approval.

**History:** 1978 Comp., § 22-5-11, enacted by Laws 1986, ch. 33, § 12; 1993, ch. 226, § 16; 2003, ch. 153, § 23.

## **22-5-12. Local school boards; vacant or vacated offices.**

A. A local school board shall hold at least one regular meeting each month of the calendar year.

B. The office of any member of a local school board, if the member misses four consecutive regular meetings, may be declared vacant by a majority vote of the remaining members of the local school board.

C. The office of any member of a local school board, if the member misses six consecutive regular meetings, shall be vacant.

D. Any vacancy of an office on a local school board created pursuant to this section shall be filled in the same manner as other vacancies on a local school board are filled. Any member of a local school board who has his office declared vacant or vacated pursuant to this section shall not be eligible for appointment to the local school board until the term for which he was originally elected or appointed has expired.

E. As used in this section "regular meeting" means a meeting of the members of a local school board at which at least a quorum is present, about which notice has been published and at which normal school district business is transacted.

**History:** 1953 Comp., § 5-3-1.1, enacted by Laws 1967, ch. 131, § 1; 1979, ch. 335, § 2; 1978 Comp., § 10-3-2, recompiled as § 22-5-12 by Laws 1993, ch. 226, § 53.

## **22-5-13. Local school board mandatory training.**

A. The department shall develop a mandatory training course for local school board members that explains department rules, policies and procedures, statutory powers and duties of local school boards, legal concepts pertaining to public schools, finance and budget and other matters deemed relevant by the department. The department shall notify local school board members of the dates of the training course, the last of which shall not be later than three months after a local school board election.

B. Local school board members in their first term shall complete at least ten hours of mandatory training during their first year serving on the board. Training for new local school board members shall include:

- (1) at least two hours covering laws and department policies and procedures affecting local school boards or public schools, including ethics and school personnel;
- (2) at least two hours covering public school finance, budgeting and fiduciary responsibilities of local school boards;
- (3) at least two hours covering legal concepts pertaining to local school boards and school districts, including the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] and the Inspection of Public Records Act [Chapter 14, Article 3 NMSA 1978];
- (4) at least two hours covering effective governance practices and effective methods of supporting and supervising the local superintendent; and
- (5) at least two hours covering student achievement and student support services.

C. Mandatory training for all other local school board members shall include at least five hours per year and shall cover:

- (1) laws and department policies and procedures affecting local school boards or public schools, including ethics and school personnel;
- (2) public school finance, budgeting and fiduciary responsibilities of local school boards and performance-based budgeting;
- (3) a local school board's role in evaluating and improving student academic achievement and using data to set individual school goals for student academic achievement in each of the school district's public schools;
- (4) a local school board's role in providing a safe learning environment conducive to improving student outcomes;
- (5) legal concepts pertaining to local school boards and school districts, including the Open Meetings Act and the Inspection of Public Records Act;
- (6) effective governance practices and effective methods of supporting and supervising the local superintendent; and
- (7) other matters deemed relevant by the department.

**History:** 1978 Comp., § 22-5-13, enacted by Laws 2003, ch. 153, § 24; 2024, ch. 43, § 5.

## **22-5-14. Local superintendent; powers and duties.**

A. The local superintendent is the chief executive officer of the school district.

B. The local superintendent shall:

(1) carry out the educational policies and rules of the state board [department] and local school board;

(2) administer and supervise the school district;

(3) employ, fix the salaries of, assign, terminate or discharge all employees of the school district;

(4) prepare the school district budget based on public schools' recommendations for review and approval by the local school board and the department. The local superintendent shall tell each school principal the approximate amount of money that may be available for his school and provide a school budget template to use in making school budget recommendations; and

(5) perform other duties as required by law, the department or the local school board.

C. The local superintendent may apply to the state board [department] for a waiver of certain provisions of the Public School Code [Chapter 22 [except Article 5A] NMSA 1978] relating to length of school day, staffing patterns, subject area or the purchase of instructional materials for the purpose of implementing a collaborative school improvement program for an individual public school.

**History:** 1978 Comp., § 22-5-14, enacted by Laws 2003, ch. 153, § 25.

## **22-5-15. Collaborative school improvement programs.**

A. A local superintendent may approve an individual public school's plan to implement a collaborative school improvement program upon a finding that the plan is in the best interest of the public school and is supported by the participating teaching staff.

B. The input and concerns of parents, students, school employees and members of the community shall be solicited and considered in the development and adoption of a collaborative school improvement program.

C. If necessary for the implementation of a collaborative school improvement program, the local superintendent may apply to the state board [department] for a



waiver of Public School Code [Chapter 22 [except Article 5A] NMSA 1978] provisions relating to length of school day, staffing patterns, subject areas or purchase of instructional material. The state board may approve a request for a waiver upon a finding that the local superintendent has demonstrated accountability for student learning through alternative planning and that the participating teaching staff supports the implementation of a collaborative school improvement program. The local superintendent shall provide the state board with a program budget that shows the type and number of students served, the type and number of school employees involved and all expenditures of the waiver.

D. A teacher participating in the development and implementation of a collaborative school improvement program may contact the state board [department] to comment on the local superintendent's waiver request if the teacher communicated his opinion in writing to the local superintendent at the time the local superintendent approved implementation of the program.

**History:** 1978 Comp., § 22-5-4.6, enacted by Laws 1990, ch. 52, § 3; 1993, ch. 226, § 14; recompiled and amended as § 22-5-15 by Laws 2003, ch. 153, § 26.

## **22-5-16. Advisory school councils; creation; duties.**

A. Each public school shall create an advisory "school council" to assist the school principal with school-based decision-making and to involve parents in their children's education.

B. A school council shall be created and its membership elected in accordance with local school board rule. School council membership shall reflect an equitable balance between school employees and parents and community members. At least one community member shall represent the business community, if such person is available. The school principal may serve as chairman. The school principal shall be an active member of the school council.

C. The school council shall:

(1) work with the school principal and give advice, consistent with state and school district rules and policies, on policies relating to instructional issues and curricula and on the public school's proposed and actual budgets;

(2) develop creative ways to involve parents in the schools;

(3) where appropriate, coordinate with any existing work force development boards or vocational education advisory councils to connect students and school academic programs to business resources and opportunities; and

(4) serve as the champion for students in building community support for schools and encouraging greater community participation in the public schools.

**History:** 1978 Comp., § 22-5-16, enacted by Laws 2003, ch. 153, § 27.

## **22-5-17. Private use of school facilities; policy; insurance.**

The local school board of a school district that is not a participant under the Public School Insurance Authority Act [Chapter 22, Article 29 NMSA 1978]:

A. shall, by rule, establish a policy to be followed relating to the use of volunteers. The policy shall be distributed to each school in the district and posted upon the school district's web site;

B. shall, by rule, establish a policy to be followed relating to the use of school facilities by private persons. The policy shall be distributed to each school in the district and posted upon the school district's web site; and

C. may insure, by negotiated policy, self-insurance or any combination thereof, against claims of bodily injury, personal injury or property damage related to the use of school facilities by private persons; provided that the coverage shall be for no more than one million dollars (\$1,000,000) for each occurrence.

**History:** Laws 2009, ch. 198, § 2.

## **22-5-18. Local school board authority over who may carry a firearm on school premises.**

Only a local school board has the authority to authorize school security personnel to carry a firearm on any public school premises or other school district property. The decision shall be made in an open meeting and shall be formalized as a policy of the board.

**History:** Laws 2019, ch. 189, § 1.

# **ARTICLE 5A**

## **School Alcohol-Free Zone**

### **22-5A-1. Short title.**

This act [22-5A-1 to 22-5A-5 NMSA 1978] may be cited as the "School Alcohol-Free Zone Act".

**History:** Laws 2005, ch. 249, § 1.

### **22-5A-2. Definitions.**

As used in the School Alcohol-Free Zone Act:

A. "alcoholic beverage" means a beverage with no less than one-half percent alcohol and includes wine, beer, fermented, distilled, rectified and fortified beverages; and

B. "school grounds" means public elementary and secondary schools, including charter schools and facilities owned or leased by the school district in or on which public school-related and sanctioned activities are performed, but does not include other commercial properties owned by a school district but not related to the functions of a public school. "School grounds" includes the buildings, playing fields, parking lots and other facilities located on a school's premises.

**History:** Laws 2005, ch. 249, § 2.

### **22-5A-3. Alcoholic beverages prohibited on public school grounds.**

It is unlawful to possess or consume alcoholic beverages on public school grounds.

**History:** Laws 2005, ch. 249, § 3.

### **22-5A-4. Notices required.**

A school shall conspicuously post notices on school grounds stating that possession and consumption of alcoholic beverages is prohibited on school grounds.

**History:** Laws 2005, ch. 249, § 4.

### **22-5A-5. Penalties.**

A. A person convicted of consumption or possession of an alcoholic beverage on school property for the first offense is guilty of a petty misdemeanor and subject to a fine of not less than twenty-five dollars (\$25.00) or more than one hundred dollars (\$100) and may be ordered to perform community service.

B. A person convicted of consumption or possession of an alcoholic beverage on school property for the second or a subsequent offense is guilty of a misdemeanor and subject to a fine of not more than five hundred dollars (\$500) or imprisonment for a definite term not to exceed six months, or both.

**History:** Laws 2005, ch. 249, § 5.

## **ARTICLE 6**

### **School District Elections (Repealed.)**

**22-6-1. Repealed.**

**22-6-2. Repealed.**

**22-6-3. Repealed.**

**22-6-4. Repealed.**

**22-6-5. Repealed.**

**22-6-6. Repealed.**

**22-6-7. Repealed.**

**22-6-8. Repealed.**

**22-6-9. Repealed.**

**22-6-10. Repealed.**

**22-6-11. Repealed.**

**22-6-12. Repealed.**

**22-6-13. Repealed.**

**22-6-14. Repealed.**

**22-6-15. Repealed.**

**22-6-16. Repealed.**

**22-6-17. Repealed.**

**22-6-18. Repealed.**

**22-6-19. Repealed.**

**22-6-20. Repealed.**

**22-6-21. Repealed.**

**22-6-22. Repealed.**

**22-6-23. Repealed.**

**22-6-24. Repealed.**

**22-6-25. Repealed.**

**22-6-26. Repealed.**

**22-6-27. Repealed.**

**22-6-28. Repealed.**

**22-6-29. Repealed.**

**22-6-30. Repealed.**

**22-6-31. Repealed.**

**22-6-32. Repealed.**

**22-6-33. Repealed.**

**22-6-34. Repealed.**

## **ARTICLE 7**

### **Local School Board Member Recall (Repealed, Recompiled.)**

**22-7-1. Recompiled.**

**History:** 1953 Comp., § 77-4A-1, enacted by Laws 1977, ch. 308, § 1; 2018, ch. 79, § 89; 1978 Comp., § 22-7-1, recompiled and amended as § 1-25-1 by Laws 2019, ch. 212, § 159.

**22-7-2. Repealed.**

**History:** 1953 Comp., § 77-4A-2, enacted by Laws 1977, ch. 308, § 2; repealed by Laws 2019, ch. 212, § 284.

### **22-7-3. Recompiled.**

**History:** 1953 Comp., § 77-4A-6, enacted by Laws 1977, ch. 308, § 3; 1985, ch. 169, § 1; 1978 Comp., § 22-7-3, recompiled and amended as § 1-25-2 Laws 2019, ch. 212, § 160.

### **22-7-4. Recompiled.**

**History:** 1953 Comp., § 77-4A-4, enacted by Laws 1977, ch. 308, § 4; 1978 Comp., §22-7-4, recompiled and amended as § 1-25-3 Laws 2019, ch. 212, § 161.

### **22-7-5. Recompiled.**

**History:** 1953 Comp., § 77-4A-5, enacted by Laws 1977, ch. 308, § 5; 1985, ch. 169, § 2; 1978 Comp., §22-7-5, recompiled and amended as § 1-25-12 by Laws 2019, ch. 212, § 170.

### **22-7-6. Recompiled.**

**History:** 1953 Comp., § 77-4A-6, enacted by Laws 1977, ch. 308, § 6; 1993, ch. 226, § 17; 1978 Comp., § 22-7-6, recompiled and amended as § 1-25-4 by Laws 2019, ch. 212, § 162.

### **22-7-7. Recompiled.**

**History:** 1953 Comp., § 77-4A-7, enacted by Laws 1977, ch. 308, § 7; 1985, ch. 169, § 3; 1978 Comp., § 22-7-7, recompiled and amended as § 1-25-8 by Laws 2019, ch. 212, § 166.

### **22-7-8. Recompiled.**

**History:** 1953 Comp., § 77-4A-8, enacted by Laws 1977, ch. 308, § 8; 1985, ch. 169, § 4; 1978 Comp., § 22-7-8, recompiled and amended as § 1-25-5 by Laws 2019, ch. 212, § 163.

### **22-7-9. Recompiled.**

**History:** 1953 Comp., § 77-4A-9, enacted by Laws 1977, ch. 308, § 9; 1979, ch. 277, § 1; 1985, ch. 169, § 5; 1987, ch. 142, § 1; 1978 Comp., § 22-7-9, recompiled and amended as § 1-25-7 by Laws 2019, ch. 212, § 165.

#### **22-7-9.1. Recompiled.**

**History:** 1978, Comp., § 22-7-9.1, enacted by Laws 1987, ch. 142, § 2; recompiled and amended as § 1-25-6 by Laws 2019, ch. 212, § 164.

## **22-7-10. Recompiled.**

**History:** 1953 Comp., § 77-4A-10, enacted by Laws 1977, ch. 308, § 10; 1985, ch. 169, § 6; 1978 Comp., § 22-7-10, recompiled and amended as § 1-25-9 by Laws 2019, ch. 212, § 167.

## **22-7-11. Repealed.**

## **22-7-12. Recompiled.**

**History:** 1953 Comp., § 77-4A-12, enacted by Laws 1977, ch. 308, § 12; 1979, ch. 277, § 2; 1985, ch. 169, § 7; 1978 Comp., § 22-7-12, recompiled and amended as § 1-25-10 by Laws 2019, ch. 212, § 168.

## **22-7-13. Recompiled.**

**History:** 1953 Comp., § 77-4A-13, enacted by Laws 1977, ch. 308, § 13; 1979, ch. 277, § 3; 1985, ch. 169, § 8; 1993, ch. 226, § 18; 2015, ch. 145, § 98; 2018, ch. 79, § 90; 1978 Comp., § 22-7-13, recompiled and amended as § 1-25-11 by Laws 2019, ch. 212, § 169.

## **22-7-14. Recompiled.**

**History:** 1953 Comp., § 77-4A-14, enacted by Laws 1977, ch. 308, § 14; 1978 Comp., § 22-7-14, recompiled and amended as § 1-25-13 by Laws 2019, ch. 212, § 171.

## **22-7-15. Repealed.**

**History:** 1953 Comp., § 77-4A-15, enacted by Laws 1977, ch. 308, § 15; 1985, ch. 169, § 9; repealed by Laws 2019, ch. 212, § 284.

## **22-7-16. Repealed.**

**History:** 1953 Comp., § 77-4A-16, enacted by Laws 1977, ch. 308, § 16; repealed by Laws 2019, ch. 212, § 284.

# **ARTICLE 8**

## **Public School Finance**

### **22-8-1. Short title.**

Chapter 22, Article 8 NMSA 1978 may be cited as the "Public School Finance Act".

**History:** 1953 Comp., § 77-6-1, enacted by Laws 1967, ch. 16, § 55; 2003, ch. 153, § 28.

## **22-8-2. Definitions.**

As used in the Public School Finance Act:

A. "ADM" or "MEM" means membership;

B. "membership" means the total enrollment of qualified students on the current roll of a class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawals of students, in addition to students formally withdrawn from the public school, include students absent from the public school for as many as ten consecutive school days; provided that withdrawals do not include students in need of early intervention and habitual truants the school district is required to intervene with and keep in an educational setting as provided in Section 22-12-9 NMSA 1978 [repealed];

C. "basic program ADM" or "basic program MEM" means the MEM of qualified students but excludes the full-time-equivalent MEM in early childhood education and three- and four-year-old students receiving special education services;

D. "cost differential factor" is the numerical expression of the ratio of the cost of a particular segment of the school program to the cost of the basic program in grades four through six;

E. "department" or "division" means the public education department;

F. "early childhood education ADM" or "early childhood education MEM" means the full-time-equivalent MEM of students attending approved early childhood education programs;

G. "full-time-equivalent ADM" or "full-time- equivalent MEM" is that membership calculated by applying to the MEM in an approved public school program the ratio of the number of hours per school day devoted to the program to six hours or the number of hours per school week devoted to the program to thirty hours;

H. "operating budget" means the annual financial plan and educational plan required to be submitted by a local school board or governing body of a state-chartered charter school;

I. "performance measure" means a quantitative indicator used to assess the output or outcome of an approved program;

J. "performance target" means the expected level of performance of a program's performance measure;



K. "program cost" is the product of the total number of program units to which a school district is entitled multiplied by the dollar value per program unit established by the legislature;

L. "program element" is that component of a public school system to which a cost differential factor is applied to determine the number of program units to which a school district is entitled, including MEM, full-time-equivalent MEM, teacher, classroom or public school;

M. "program unit" is the product of the program element multiplied by the applicable cost differential factor;

N. "public money" or "public funds" means all money from public or private sources received by a school district or state-chartered charter school or officer or employee of a school district or state-chartered charter school for public use;

O. "qualified student" means a public school student who:

- (1) has not graduated from high school;
- (2) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and
- (3) in terms of age and other criteria:
  - (a) is at least five years of age prior to 12:01 a.m. on September 1 of the school year;
  - (b) is at least three years of age at any time during the school year and is receiving special education services pursuant to rules of the department;
  - (c) except as provided in Subparagraph (d) of this paragraph, has not reached the student's twenty-second birthday on the first day of the school year; or
  - (d) has reached the student's twenty-second birthday on the first day of the 2019-2020 school year, is counted in a school district's or charter school's MEM on the third reporting date of the 2018-2019 school year, has been continuously enrolled in the same public school since that reporting date and is still enrolled in that school;

P. "rural population rate" means that proportion of the total population within a school district's geographic boundaries that lives in a rural area and not in an urban area as defined by the United States census bureau;

Q. "staffing cost multiplier" means:

- (1) for fiscal year 2019, the instructional staff training and experience index;

(2) for fiscal year 2020, the weighted average of the instructional staff training and experience index at seventy-five percent and the teacher cost index at twenty-five percent;

(3) for fiscal year 2021, the weighted average of the instructional staff training and experience index at fifty percent and the teacher cost index at fifty percent;

(4) for fiscal year 2022, the weighted average of the instructional staff training and experience index at twenty-five percent and the teacher cost index at seventy-five percent; and

(5) for fiscal year 2023 and subsequent fiscal years, the teacher cost index; and

R. "state superintendent" means the secretary of public education or the secretary's designee.

**History:** 1953 Comp., § 77-6-2, enacted by Laws 1967, ch. 16, § 56; 1969, ch. 180, § 3; 1971, ch. 263, § 3; 1972, ch. 17, § 1; 1974, ch. 7, § 1; 1974, ch. 8, § 1; 1977, ch. 83, § 1; 1977, ch. 246, § 62; reenacted by Laws 1978, ch. 128, § 3; 1980, ch. 151, § 46; 1983, ch. 301, § 68; 1985, ch. 93, § 1; 1986, ch. 33, § 13; 1988, ch. 64, § 13; 1995, ch. 69, § 1; 1997, ch. 40, § 2; 2004, ch. 27, § 21; 2005, ch. 260, § 1; 2006, ch. 94, § 2; 2009, ch. 193, § 1; 2018, ch. 55, § 1; 2019, ch. 206, § 6; 2019, ch. 207, § 6.

### **22-8-3. Office of education abolished; functions transferred.**

The office of education in the department of finance and administration is abolished. On the effective date of this act, all powers and duties provided by law for the office of education are transferred to the state department of public education [public education department].

**History:** 1978 Comp., § 22-8-3, enacted by Laws 1988, ch. 64, § 14.

### **22-8-4. Department; duties.**

In addition to other duties provided by law, the department shall:

A. prescribe the forms for and supervise and control the preparation of all budgets of all public schools and school districts; and

B. compile accurate information concerning public school finance and administration.

**History:** 1953 Comp., § 77-6-4, enacted by Laws 1967, ch. 16, § 58; 1969, ch. 180, § 4; 1974, ch. 8, § 2; 1978, ch. 127, § 2; 1979, ch. 305, § 1; 1988, ch. 64, § 15.

## **22-8-5. Rules; procedures.**

A. The department, in consultation with the state auditor, shall establish rules and procedures for a uniform system of accounting and budgeting of funds for all public schools and school districts of the state. The rules, including revisions or amendments, shall become effective upon filing with the state records center and archives and publication. A copy shall also be filed with the department of finance and administration.

B. All public schools and school districts shall comply with the rules and procedures prescribed and shall, upon request, submit additional reports concerning finances to the department, including an accounting of the costs of services related to providing a program included in the educational plan approved by the department. In addition, upon request, all public schools and school districts shall file reports with the department containing pertinent details regarding applications for federal money or federal grants-in-aid or regarding federal money or federal grants-in-aid received, including details of programs, matching funds, personnel requirements, salary provisions and program numbers, as indicated in the catalog of federal domestic assistance, of the federal funds applied for and of those received.

C. Upon request by the department of finance and administration, the legislative finance committee or the legislative education study committee, the department shall furnish information and data obtained from public schools and school districts and information compiled by the department related to public school finances within ten business days.

**History:** 1953 Comp., § 77-6-5, enacted by Laws 1967, ch. 16, § 59; 1976 (S.S.), ch. 28, § 3; 1988, ch. 64, § 16; 1999, ch. 291, § 1; 2003, ch. 273, § 23; 2019, ch. 206, § 7; 2019, ch. 207, § 7.

### **22-8-5.1. Procurement, travel and gas cards.**

A. The department shall promulgate rules governing the use of procurement, travel and gas cards by school districts and charter schools. At a minimum, the rules shall require local school boards and governing bodies to adopt policies for the use of procurement, travel or gas cards, including placing limits on the amount and types of purchases that may be made on such cards and procedures to monitor, control and report expenditures.

B. As used in this section:

(1) "charter school" means a school organized as a charter school pursuant to the provisions of the Charter Schools Act [Chapter 22, Article 8B NMSA 1978]; and

(2) "governing body" means the governing structure of a charter school as set forth in the school's charter.

**History:** Laws 2011, ch. 12, § 2.

**22-8-6. Operating budgets; educational plans; submission; certain reports; failure to submit.**

A. Prior to April 15 of each year, each local school board shall submit to the department an operating budget for the school district and any locally chartered charter school in the school district for the ensuing fiscal year.

B. The date for the submission of the operating budget for each school district and each charter school as required by this section may be extended to a later date fixed by the secretary.

C. The operating budget required by this section may include:

(1) estimates of the cost of insurance policies for periods up to five years if a lower rate may be obtained by purchasing insurance for the longer term; or

(2) estimates of the cost of contracts for the transportation of students for terms extending up to four years.

D. The operating budget required by this section shall include a budget for each charter school of the membership projected for each charter school, the total program units generated at that charter school and approximate anticipated disbursements and expenditures at each charter school.

E. For fiscal year 2021 and subsequent fiscal years, each school district's and each locally chartered or state-chartered charter school's educational plan shall include:

(1) information on the instructional time offered by the school district or charter school, including the number of instructional days by school site and the number of hours in each instructional day and the frequency of early-release days;

(2) a narrative explaining the identified services to improve the academic success of at-risk students;

(3) a narrative explaining the services provided to students enrolled in the following programs:

(a) extended learning time programs, including a report of how the extended learning time is used to improve the academic success of students and professional learning of teachers; and

(b) K-5 plus programs;

(4) a narrative explaining the school district's or charter school's beginning teacher mentorship programs as well as class size and teaching load information;

(5) a narrative explaining supplemental programs or services offered by the school district or charter school to ensure that the Bilingual Multicultural Education Act [Chapter 22, Article 23 NMSA 1978], the Indian Education Act [Chapter 22, Article 23A NMSA 1978] and the Hispanic Education Act [Chapter 22, Article 23B NMSA 1978] are being implemented by the school district or charter school;

(6) a narrative describing the amount of program cost generated for services to students with disabilities and the spending of these revenues on services to students with disabilities, which shall include the following:

(a) program cost generated for students enrolled in approved special education programs;

(b) budgeted expenditures of program cost, for students enrolled in approved special education programs, on students with disabilities;

(c) the amount of program cost generated for personnel providing ancillary and related services to students with disabilities;

(d) budgeted expenditures of program cost for personnel providing ancillary and related services to students with disabilities, on special education ancillary and related services personnel; and

(e) a description of the steps taken to ensure that students with disabilities have access to a free and appropriate public education; and

(7) a common set of performance targets and performance measures, as determined by the department in consultation with the department of finance and administration, the legislative finance committee and the legislative education study committee.

F. In addition to the requirements of Subsection E of this section, a school district or charter school that receives federal or local revenue shall include in its educational plan a narrative explaining how the school district or charter school will use the federal or local revenue to improve outcomes for students or to improve the condition of a school building. No later than October 1 of each year, a school district or charter school that received federal or local revenue in the prior fiscal year shall report to the department on the actual uses of that revenue, including a comprehensive evaluation of how the programs and services provided with that revenue improved outcomes for students or how capital projects undertaken improved the condition of a school building. A school district or charter school that is required under federal law to consult with tribal entities as a condition of receiving impact aid funds shall include in its educational plan a detailed narrative of its consultations with tribal entities and the results of those

consultations. The school district or charter school shall transmit the October 1 spending and outcomes report to the appropriate tribal authorities. No later than November 15 of each year, the department shall compile the federal and local revenue outcomes reports into a statewide report to the legislative education study committee and the legislative finance committee that includes an analysis and identification of effective programs and strategies that improve outcomes for students.

G. A school district or charter school operating budget and educational plan shall prioritize federal and local revenue for purposes relating to the Indian Education Act [Chapter 22, Article 23A NMSA 1978]; for capital expenditures authorized by the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978], the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978] or the Public School Buildings Act [Chapter 22, Article 26 NMSA 1978]; or for research-based or evidence-based social, emotional or academic interventions for which at-risk program units may be used.

H. If a local school board or governing board of a charter school fails to submit an operating budget pursuant to this section, the department shall prepare the operating budget for the school district or charter school for the ensuing fiscal year. A local school board or governing board of a charter school shall be considered as failing to submit an operating budget pursuant to this section if the budget submitted exceeds the total projected resources of the school district or charter school or if the budget submitted does not comply with the law or with rules and procedures of the department.

I. As used in this section:

(1) "federal revenue" means seventy-five percent of the revenue derived from:

(a) federal forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978; or

(b) federal assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid funds"; and

(2) "local revenue" means seventy-five percent of the revenue from a school district one-half mill school district property tax and revenue from the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978 ] and the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978].

**History:** 1953 Comp., § 77-6-6, enacted by Laws 1967, ch. 16, § 60; 1988, ch. 64, § 17; 1993, ch. 224, § 2; 1993, ch. 227, § 9; 1999, ch. 281, § 21; 1999, ch. 291, § 2; 2019, ch. 206, § 8; 2019, ch. 207, § 8; 2021, ch. 52, § 3.

## **22-8-6.1. Charter school operating budgets; maximum MEM.**

A. Each state-chartered charter school shall submit to the charter schools division of the department a school-based operating budget. The operating budget shall be submitted to the division for approval or amendment pursuant to the Public School Finance Act and the Charter Schools Act [Chapter 22, Article 8B NMSA 1978]. Thereafter, the operating budget shall be submitted to the commission for review.

B. Each locally chartered charter school shall submit to the local school board a school-based operating budget for approval or amendment. The approval or amendment authority of the local school board relative to the charter school operating budget is limited to ensuring that sound fiscal practices are followed in the development of the operating budget and that the charter school operating budget is within the allotted resources. The local school board shall have no veto authority over individual line items within the charter school's proposed financial budget or over any item in the educational plan, but shall approve or disapprove the operating budget in its entirety. Upon final approval of the charter school operating budget by the local school board, the individual charter school operating budget shall be included separately in the budget submission to the department required pursuant to the Public School Finance Act and the Charter Schools Act.

C. For its first year of operation, a charter school's operating budget shall be based on the projected number of program units generated by the school and its students using the at-risk index and the staffing cost multiplier of the school district in which the charter school is located, and the charter school's operating budget shall be adjusted using the qualified MEM on the first reporting date of the current school year. For its second and subsequent fiscal years of operation, a charter school's operating budget shall be based on the number of program units generated by the charter school and its students using the average of the MEM on the second and third reporting dates of the prior year, the at-risk index of the school district in which the charter school is located and the charter school's staffing cost multiplier.

**History:** Laws 1993, ch. 227, § 8; 1999, ch. 281, § 22; 2006, ch. 94, § 3; 2009, ch. 213, § 1; 2010, ch. 116, § 2; 2015, ch. 108, § 4; 2018, ch. 55, § 2; 2019, ch. 206, § 9; 2019, ch. 207, § 9.

## **22-8-7. Manner of budget submission.**

All budgets submitted by a school district, locally chartered charter school or state-chartered charter school shall be in a manner specified by the department.

**History:** 1953 Comp., § 77-6-7, enacted by Laws 1967, ch. 16, § 61; 1969, ch. 180, § 5; 1999, ch. 291, § 3; 2006, ch. 94, § 4; 2015, ch. 108, § 5.

### **22-8-7.1. Certain school district budgets.**

A. The local school board of a school district with a total MEM of greater than thirty thousand shall develop a school-based budgeting plan for all schools in the district for

presentation to the legislative education study committee by October 15, 1993. The plan shall describe the means by which teachers, parents and administrators will participate in the development of school-based budgets.

B. In those school districts with a total MEM of greater than thirty thousand each individual school may voluntarily submit to the local school board a school-based budget based upon the projected total MEM at that school and the projected number of program units generated by students at that school. If an individual school submits such a budget, the local school board may include it in the budget submission to the department required pursuant to the Public School Finance Act.

**History:** Laws 1993, ch. 224, § 1.

### **22-8-8. Budgets; minimum student membership.**

Without prior approval of the state superintendent [secretary], no local school board shall maintain or provide a budget allowance for a public school having an average daily membership of less than eight.

**History:** 1953 Comp., § 77-6-8, enacted by Laws 1967, ch. 16, § 62; 1988, ch. 64, § 18.

### **22-8-9. Budgets; minimum requirements.**

A. An operating budget for a school district shall not be approved by the department if the educational plan does not provide for:

(1) a school year and school day that includes instructional hours and professional work hours as provided in Section 22-2-8.1 NMSA 1978; and

(2) a pupil-teacher ratio or class or teaching load as provided in Section 22-10A-20 NMSA 1978.

B. The department shall, by rule, establish the requirements for an instructional day, the standards for an instructional hour and the standards for a full-time teacher and for the equivalent thereof.

**History:** 1953 Comp., § 77-6-9, enacted by Laws 1967, ch. 16, § 63; 1969, ch. 180, § 6; 1979, ch. 32, § 1; 1982, ch. 40, § 1; 1986, ch. 33, § 14; 1988, ch. 64, § 19; 1993, ch. 223, § 1; 1993, ch. 226, § 19; 1994, ch. 68, § 1; 1996, ch. 62, § 1; 1997, ch. 136, § 1; 2001, ch. 285, § 1; 2003, ch. 153, § 29; 2009, ch. 276, § 2; 2019, ch. 206, § 10; 2019, ch. 207, § 10; 2023, ch. 19, § 2.

### **22-8-10. Budgets; fixing the operating budget.**

A. Prior to June 20 of each year, each local school board and each governing board of a charter school shall, at a public hearing of which notice has been published by the



local school board or governing board of a charter school, fix the operating budget for the school district or charter school for the ensuing fiscal year. At the discretion of the secretary or the local school board or governing body of a charter school, the department may participate in the public hearing.

B. Prior to the public hearing held to fix the operating budget for the school district or charter school, the local school board or governing body of a charter school shall give notice to parents explaining the budget process and inviting parental involvement and input in that process prior to the date for the public hearing. The educational plan submitted by the local school board or the governing body of a charter school to the department shall include information on parental involvement and input.

**History:** 1953 Comp., § 77-6-11, enacted by Laws 1967, ch. 16, § 65; 1988, ch. 64, § 20; 1989, ch. 225, § 1; 1993, ch. 41, § 1; 1999, ch. 291, § 4; 2019, ch. 206, § 11; 2019, ch. 207, § 11.

## **22-8-11. Budgets; approval of operating budget.**

A. The department shall:

(1) on or before July 1 of each year, approve and certify to each local school board and governing body of a charter school an operating budget for use by the school district or charter school;

(2) ensure that each program in a school district or charter school's operating budget meets the requirements of law and the department's rules and procedures and that no school district or charter school generates program units for a program not meeting the requirements of law and the department's rules or procedures;

(3) make corrections, revisions and amendments to the operating budgets fixed by the local school boards or governing bodies of charter schools and the secretary to conform the operating budgets to the requirements of law and to the department's rules and procedures; and

(4) ensure that a local school board or governing body of a charter school is prioritizing resources toward proven programs and methods that are linked to improved student achievement.

B. No school district or charter school or officer or employee of a school district or charter school shall make any expenditure or incur any obligation for the expenditure of public funds unless that expenditure or obligation is made in accordance with an operating budget approved by the department. This prohibition does not prohibit the transfer of funds pursuant to the department's rules and procedures.

C. The department shall not approve and certify an operating budget of any school district or charter school that fails to demonstrate that parental involvement in the budget process was solicited.

D. The department shall not approve and certify an operating budget of any school district or charter school that the secretary determines has failed to provide sufficient data and information to determine if the school district or charter school is meeting the requirements of law or the department's rules and procedures.

**History:** 1953 Comp., § 77-6-12, enacted by Laws 1967, ch. 16, § 66; 1978, ch. 128, § 4; 1988, ch. 64, § 21; 1993, ch. 41, § 2; 1999, ch. 291, § 5; 2006, ch. 94, § 5; 2011, ch. 10, § 5; 2015, ch. 108, § 6; 2019, ch. 206, § 12; 2019, ch. 207, § 12.

## **22-8-12. Operating budgets; amendments.**

Operating budgets shall not be altered or amended after approval and certification by the department, except for the following purposes and according to the following procedure:

A. upon written request of a local school board or governing body of a state-chartered charter school, the secretary may authorize transfer within the budget, or provide for items not included, when the total amount of the budget will not be increased thereby;

B. upon written request of a local school board or governing body of a state-chartered charter school, the secretary, in conformance with the rules of the department, may authorize an increase in any budget if the increase is necessary because of the receipt of revenue that was not anticipated at the time the budget was fixed and if the increase is directly related to a special project or program for which the additional revenue was received. The secretary shall make a written report to the legislative finance committee of any such budget increase;

C. upon written request of a local school board or governing body of a state-chartered charter school, the secretary may authorize an increase in a budget of not more than one thousand dollars (\$1,000); or

D. upon written request of a local school board or governing body of a state-chartered charter school, the secretary, after notice and a public hearing, may authorize an increase in a school budget in an amount exceeding one thousand dollars (\$1,000). The notice of the hearing shall designate the school district that proposes to alter or amend its budget, together with the time, place and date of the hearing. The notice of the hearing shall be published at least once a week for two consecutive weeks in a newspaper of general circulation in the county in which the school district is situated. The last publication of the notice shall be at least three days prior to the date set for the hearing. The charter schools division shall establish how a state-chartered charter

school notifies the parents of its students of proposed increases in a charter school budget.

**History:** 1953 Comp., § 77-6-13, enacted by Laws 1967, ch. 16, § 67; 1969, ch. 180, § 10; 1977, ch. 247, § 203; 1988, ch. 64, § 22; 1999, ch. 291, § 6; 2006, ch. 94, § 6.

### **22-8-12.1. Membership projections and budget requests.**

A. Each local school board or governing body of a state-chartered charter school shall submit annually, on or before October 15, to the department:

- (1) an estimate for the succeeding fiscal year of:
  - (a) the membership of qualified students to be enrolled in the basic program;
  - (b) the full-time-equivalent membership of students to be enrolled in approved early childhood education programs; and
  - (c) the membership of students to be enrolled in approved special education programs;
- (2) all other information necessary to calculate program costs; and
- (3) any other information related to the financial needs of the school district or state-chartered charter school as may be requested by the department.

B. All information requested pursuant to Subsection A of this section shall be submitted on forms prescribed and furnished by the department and shall comply with the department's rules and procedures.

C. The department shall:

- (1) review the financial needs of each school district or state-chartered charter school for the succeeding fiscal year; and
- (2) submit annually, on or before November 30, to the secretary of finance and administration the recommendations of the department for:
  - (a) amendments to the public school finance formula;
  - (b) appropriations for the succeeding fiscal year to the public school fund for inclusion in the executive budget document; and
  - (c) appropriations for the succeeding fiscal year for pupil transportation and instructional materials.

**History:** 1953 Comp., § 77-6-13.1, enacted by Laws 1978, ch. 128, § 5; 1980, ch. 151, § 48; 1988, ch. 64, § 23; 1993, ch. 226, § 20; 1999, ch. 291, § 7; 2006, ch. 94, § 7.

## **22-8-12.2. Repealed.**

## **22-8-12.3. Local school board finance subcommittee; audit committee; membership; duties.**

A. As used in this section, "local school board" includes the governing authority of a charter school.

B. Each local school board shall appoint at least two members of the board as a finance subcommittee to assist the board in carrying out its budget and finance duties.

C. The finance subcommittee shall:

(1) make recommendations to the local school board in the following areas:

(a) financial planning, including reviews of the school district's revenue and expenditure projections;

(b) review of financial statements and periodic monitoring of revenues and expenses;

(c) annual budget preparation and oversight; and

(d) procurement; and

(2) serve as an external monitoring committee on budget and other financial matters.

D. Except as otherwise provided in this section, each local school board shall appoint an audit committee that consists of two board members, one volunteer member who is a parent of a student attending that school district and one volunteer member who has experience in accounting or financial matters. The superintendent and the school district business manager shall serve as ex-officio members of the committee. A local school board with more than five members may appoint more than two board members to its audit committee. The audit committee shall:

(1) evaluate the request for proposal for annual financial audit services;

(2) recommend the selection of the financial auditor;

(3) attend the entrance and exit conferences for annual and special audits;

(4) meet with external financial auditors at least monthly after audit field work begins until the conclusion of the audit;

(5) be accessible to the external financial auditors as requested to facilitate communication with the board and the superintendent;

(6) track and report progress on the status of the most recent audit findings and advise the local school board on policy changes needed to address audit findings;

(7) provide other advice and assistance as requested by the local school board; and

(8) be subject to the same requirements regarding the confidentiality of audit information as those imposed upon the local school board by the Audit Act [12-6-1 through 12-6-14 NMSA 1978] and rules of the state auditor.

**History:** Laws 2010, ch. 115, § 1.

## **22-8-13. Reports.**

A. Each public school shall keep accurate records concerning membership in the public school.

B. The dates for which MEM is reported are as follows:

(1) the first reporting date, the second Wednesday in October;

(2) the second reporting date, December 1 or the first working day in December; and

(3) the third reporting date, the second Wednesday in February.

C. The superintendent of each school district or head administrator of a state-chartered charter school shall maintain the following reports for each reporting period:

(1) the basic program MEM by grade in each public school;

(2) the early childhood education MEM;

(3) the special education MEM in each public school in class C and class D programs as defined in Section 22-8-21 NMSA 1978;

(4) the number of class A and class B programs as defined in Section 22-8-21 NMSA 1978; and

(5) the full-time-equivalent MEM for bilingual multicultural education programs.

D. The superintendent of each school district and the head administrator of each state-chartered charter school shall furnish all reports required by law or the department to the department within ten working days of the close of each reporting period. Failure of the department to approve timely submissions shall not cause a school district or charter school to be found noncompliant with the requirements of this section. For purposes of this section, "working day" means every calendar day excluding Saturdays, Sundays and legal holidays.

E. All information required pursuant to this section shall be on forms prescribed and furnished by the department. A copy of any report made pursuant to this section shall be kept as a permanent record of the school district or charter school and shall be subject to inspection and audit at any reasonable time.

F. The department may withhold up to one hundred percent of allotments of funds to any school district or state-chartered charter school where the superintendent or head administrator has failed to comply with the requirements of this section. Withholding may continue until the superintendent or head administrator complies with and agrees to continue complying with requirements of this section.

G. The provisions of this section may be modified or suspended by the department for any school district or school or state-chartered charter school operating under the Variable School Calendar Act [22-22-1 to 22-22-26 NMSA 1978]. The department shall require MEM reports consistent with the calendar of operations of such school district or school or state-chartered charter school and shall calculate an equivalent MEM for use in projecting school district or charter school revenue.

**History:** Laws 1967, ch. 16, § 68; 1953 Comp., § 77-6-14; Laws 1969, ch. 180, § 11; 1971, ch. 263, § 4; 1972, ch. 16, § 7; reenacted by Laws 1974, ch. 8, § 3; 1975, ch. 90, § 1; 1976 (S.S.), ch. 32, § 1; 1978, ch. 128, § 6; 1988, ch. 64, § 24; 1990, ch. 94, § 2; 2006, ch. 94, § 8; 2010, ch. 116, § 3; 2011, ch. 70, § 1.

### **22-8-13.1. School district and charter school audits; sanctions for not submitting timely audit reports.**

A. Each school district and charter school shall have an annual audit as required by the Audit Act [12-6-1 to 12-6-14 NMSA 1978] and rules of the state auditor that shall be completed and submitted to the state auditor by the date specified in rules of the state auditor. At the completion of the annual or any special audit, the school district or charter school shall submit a copy of the audit report to the department.

B. School districts and charter schools shall comply with due dates for annual audits specified by rule of the state auditor. Failure to submit a timely audit report shall subject

a school district or charter school to progressive sanctions. A school district or charter school that does not submit an annual audit report:

(1) within ninety days from the due date, shall be required to submit monthly financial reports to the department until the department is satisfied that the school district or charter school is in compliance with all financial and audit requirements;

(2) after ninety days but within one hundred eighty days from the due date, may be withheld temporarily in an amount up to five percent of its current-year state equalization guarantee distribution;

(3) after one hundred eighty days but within two hundred seventy days, may be withheld temporarily in an amount up to seven percent of its current-year state equalization guarantee distribution and may be required to submit a corrective action plan to the secretary; and

(4) after two hundred seventy days, may be withheld temporarily in an amount up to seven percent of its current-year state equalization guarantee distribution and may be subject to the secretary's suspension of the local school board or governing body acting as a board of finance.

**History:** Laws 2009, ch. 273, § 2.

## **22-8-13.2. Financial reporting.**

A. Each local superintendent or person in charge of the fiscal management of a charter school shall provide quarterly reports on the financial position of the school district or charter school, as applicable, to the local school board of the school district or the governing body of the charter school for use in reviewing the financial status of the school district or charter school. The department shall develop the forms to be used for the financial reporting required under this section. The forms shall provide for at least the following:

(1) a report on the budget status of the local school district or charter school, including the approved operating budget for revenues and expenses compared with year-to-date actual revenue and expenses;

(2) a statement of any budget adjustment requests;

(3) cash reports, including revenue, expenses, temporary loans and cash balances for operational, state and federal grants, capital outlay and debt service funds;

(4) voucher reports, including a list of issued warrants or checks;

(5) reports listing procurement, travel or gas card expenses; and

(6) investment reports.

B. School districts and charter schools shall post the reports required under Subsection A of this section on the school district's or charter school's web site.

C. As used in this section:

(1) "charter school" means a school organized as a charter school pursuant to the provisions of the Charter Schools Act [Chapter 22, Article 8B NMSA 1978]; and

(2) "governing body" means the governing structure of a charter school as set forth in the school's charter.

**History:** Laws 2011, ch. 12, § 1.

### **22-8-13.3. Reporting system; reporting requirements.**

A. No later than December 31, 2021, the department, with input from stakeholders, including school districts, charter school leaders, business managers and staff from the legislative finance committee and legislative education study committee, shall establish, implement and maintain a statewide financial reporting system that is based on a standard chart of accounts. The department shall annually update the reporting system.

B. In designing, implementing and maintaining the reporting system pursuant to Subsection A of this section, the department shall adhere to the following guidelines:

(1) the reporting system shall be based on a standard chart of accounts that will enable comparisons between schools, between local education agencies and between regional education cooperatives;

(2) the reporting system shall allow for the display of administrative costs of every school site and local education agency;

(3) the reporting system shall make it possible to determine how school sites and local education agencies budget funds to support at-risk students, offer bilingual and multicultural educational services to students and support special education students;

(4) the reporting system shall make it possible to determine each local education agency's and regional education cooperative's actual expenditures, which shall include actual salary expenditures and actual benefit expenditures reported by job category specified in the standard chart of accounts at the local education agency level, at the school site level and, if applicable, at the regional education cooperative level;



(5) the reporting system shall report the expenditures for each of the major categories specified in the chart of accounts for school sites and local education agencies; and

(6) the reporting system shall make it possible to determine how school sites and local education agencies budget seventy-five percent of their federal impact aid and forest reserve revenue and seventy-five percent of their local revenue from the one-half mill school district property tax and revenue from the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978 ] and the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978].

C. The standard chart of accounts shall include the reporting of revenues received at all levels, including local, state and federal funds.

D. As used in this section:

(1) "local education agency" means a school district or state-chartered charter school; and

(2) "reporting system" means the statewide online financial reporting system.

**History:** Laws 2020, ch. 71, § 1; 2021, ch. 52, § 4.

## **22-8-14. Public school fund.**

A. The "public school fund" is created.

B. The public school fund shall be distributed to school districts and state-chartered charter schools in the following parts:

(1) state equalization guarantee distribution;

(2) transportation distribution; and

(3) supplemental distributions:

(a) out-of-state tuition to school districts;

(b) emergency; and

(c) program enrichment.

C. The distributions of the public school fund shall be made by the department within limits established by law. The balance remaining in the public school fund at the end of each fiscal year shall revert to the general fund, unless otherwise provided by law.

**History:** 1953 Comp., § 77-6-15, enacted by Laws 1967, ch. 16, § 69; 1969, ch. 180, § 12; 1971, ch. 263, § 5; 1972, ch. 87, § 1; 1973, ch. 351, § 1; 1974, ch. 8, § 4; 1975, ch. 342, § 1; 1988, ch. 64, § 25; 2006, ch. 94, § 9.

## **22-8-15. Allocation limitation.**

A. The department shall determine the allocations to each school district and charter school from each of the distributions of the public school fund, subject to the limits established by law.

B. The local school board in each school district with locally chartered charter schools shall allocate the appropriate distributions of the public school fund to individual locally chartered charter schools pursuant to each locally chartered charter school's school-based budget approved by the local school board and the department. The appropriate distribution of the public school fund shall flow to the locally chartered charter school within five days after the school district's receipt of the state equalization guarantee for that month.

**History:** 1953 Comp., § 77-6-16, enacted by Laws 1967, ch. 16, § 70; 1974, ch. 8, § 5; 1988, ch. 64, § 26; 1993, ch. 224, § 3; 1993, ch. 227, § 10; 1999, ch. 281, § 23; 2006, ch. 94, § 10.

## **22-8-16. Payment to school districts.**

The department shall make payments of each distribution of the public school fund by warrant of the department of finance and administration drawn against the public school fund upon vouchers issued by the department. When payments are made to county treasurers for school districts within the county, the county treasurer shall hold and allocate these funds solely for the use and benefit of the specific school district and purpose for which the allocation was made.

**History:** 1953 Comp., § 77-6-17, enacted by Laws 1967, ch. 16, § 71; 1974, ch. 8, § 6; 1988, ch. 64, § 27.

## **22-8-17. Program cost determination; required information.**

A. The program cost for each school district and charter school shall be determined by the department in accordance with the provisions of the Public School Finance Act.

B. The department is authorized to require from each school district and charter school the information necessary to make an accurate determination of the district's or charter school's program cost.

**History:** 1953 Comp., § 77-6-18, enacted by Laws 1969, ch. 180, § 13; reenacted by Laws 1974, ch. 8, § 7; 1988, ch. 64, § 28; 2006, ch. 94, § 11.

## **22-8-18. Program cost calculation; local responsibility.**

A. The total program units for the purpose of computing the program cost shall be calculated by multiplying the sum of the program units itemized as Paragraphs (1) and (2) in this subsection by the staffing cost multiplier and adding the program units itemized as Paragraphs (3) through (15) in this subsection. The itemized program units are as follows:

- (1) early childhood education;
- (2) basic education;
- (3) special education, adjusted by subtracting the units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers;
- (4) bilingual multicultural education;
- (5) fine arts education;
- (6) elementary physical education;
- (7) size adjustment;
- (8) at-risk;
- (9) enrollment growth or new district adjustment;
- (10) special education units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers;
- (11) national board for professional teaching standards certification;
- (12) home school student;
- (13) home school student activities;
- (14) charter school student activities; and
- (15) K-12 plus.

B. The total program cost calculated as prescribed in Subsection A of this section includes the cost of early childhood, special, bilingual multicultural, fine arts and vocational education and other remedial or enrichment programs. It is the responsibility of the local school board or governing body of a charter school to determine its priorities in terms of the needs of the community served by that board. Except as otherwise

provided in this section, funds generated under the Public School Finance Act are discretionary to local school boards and governing bodies of charter schools; provided that the special program needs as enumerated in this section are met; and provided further that the department shall ensure that the local school board or governing body of a charter school is prioritizing resources for the public school toward proven programs and methods linked to improved student achievement.

**History:** 1953 Comp., § 77-6-18.1, enacted by Laws 1969, ch. 180, § 14; 1971, ch. 263, § 6; reenacted by 1974, ch. 8, § 8; 1976 (S.S.), ch. 32, § 2; 1977, ch. 244, § 1; 1986, ch. 33, § 15; 1990 (1st S.S.), ch. 3, § 4; 1993, ch. 237, § 1; 1997, ch. 40, § 3; 2003, ch. 144, § 1; 2003, ch. 152, § 7; 2005, ch. 206, § 1; 2006, ch. 94, § 12; 2007, ch. 347, § 1; 2007, ch. 348, § 2; 2007, ch. 365, § 1; 2011, ch. 10, § 6; 2014, ch. 61, § 1; 2015, ch. 108, § 7; 2018, ch. 55, § 3; 2019, ch. 206, § 13; 2019, ch. 207, § 13; 2023, ch. 19, § 4.

## **22-8-19. Early childhood education program units.**

A. The number of early childhood education program units is determined by multiplying the early childhood education MEM by the cost differential factor 1.44. Early childhood education students enrolled in half-day kindergarten programs shall be counted for 0.5 early childhood MEM. Early childhood education students enrolled in full-day kindergarten programs shall be counted for 1.0 early childhood education MEM.

B. For the purpose of calculating early childhood education program units, developmentally disabled three- and four-year-old students shall be counted in early childhood education membership. No developmentally disabled three- or four-year-old student shall be counted for more than 0.5 early childhood education MEM.

**History:** 1953 Comp., § 77-6-18.2, enacted by Laws 1969, ch. 180, § 15; reenacted by Laws 1974, ch. 8, § 9; 1976 (S.S.), ch. 32, § 3; 1990 (1st S.S.), ch. 3, § 5; 1997, ch. 40, § 4; 2000, ch. 107, § 2.

### **22-8-19.1. Preschool programs; selected districts.**

A. The children, youth and families department shall fund preschool programs for zero- to five-year-old children in selected school districts. The children, youth and families department shall distribute any appropriation for this purpose to local entities upon approval by that department of an application from an individual school district or community-based early childhood education program. The preschool programs shall collaborate, where possible, with existing headstart programs or with other appropriate early childhood education programs in the community, and the preschool programs shall use one of the following three models:

- (1) a community-based early childhood education program;
- (2) a school-based early childhood education program; or

- (3) a home-based early childhood education program.

B. School districts may choose to contract with licensed community-based early childhood education programs already in existence. School-based early childhood education programs may be housed in a school accredited by the public education department. A home-based early childhood education program may include a parents-as-teachers program, which supports parents in meeting the developmental learning and social growth needs of their young children.

C. Each preschool program shall have a strong parental involvement component, a staff development component and a procedural process to enable the children, youth and families department to monitor and evaluate the program. The curriculum for each program shall comprehensively address the total developmental needs of the child, including physical, cognitive, social and emotional needs, and shall include aspects of health care, nutrition, safety, the needs of the family and multicultural sensitivity, in coordination with other resources for families.

**History:** Laws 1992, ch. 83, § 1; 1993, ch. 47, § 1; 2012, ch. 14, § 1.

## **22-8-20. Basic program units.**

The number of basic program units is determined by multiplying the basic program MEM in each grade by the corresponding cost differential factor as follows:

Grades	Cost Differential Factor
1	1.2
2 and 3	1.18
4 through 6	1.045
7 through 12	1.25.

**History:** 1978 Comp., § 22-8-20, enacted by Laws 1991, ch. 85, § 3; 1993, ch. 2, § 1; 1993, ch. 226, § 21; 1993, ch. 226, § 22; 1993, ch. 228, § 2; 1993, ch. 228, § 3.

## **22-8-21. Special education program units.**

A. For the purpose of the Public School Finance Act, special education programs for exceptional children are those approved by the department and classified as follows:

- (1) class A programs, in which department certified individuals provide services to children whose individualized education programs require a minimal amount of special education and in which the ratio of students to professionals is regulated by the state board [department];

- (2) class B programs, in which department certified individuals provide services to children whose individualized education programs require a moderate

amount of special education and in which the ratio of students to professionals is regulated by the state board;

(3) class C programs, in which department certified individuals provide services to children whose individualized education programs require an extensive amount of special education and in which the ratio of students to professionals is regulated by the state board;

(4) class D programs, in which department certified individuals provide services to children whose individualized education programs require a maximum amount of special education and in which the ratio of students to professionals is regulated by the state board. Students in class D programs may be enrolled in private, nonsectarian, nonprofit educational training centers in accordance with the provisions of Section 22-13-8 NMSA 1978; and

(5) programs for developmentally disabled three- and four-year-old children meeting standards approved by the state board.

B. All students assigned to the programs for exceptional children classified in Subsection A of this section shall have been so assigned as a result of diagnosis and evaluation performed in accordance with the standards of the department before the students may be counted in the determination of special education program units as provided in Subsection C of this section.

C. The number of special education program units is the sum of the following:

(1) the MEM in approved class A and B programs as defined in Subsection A of this section multiplied by the cost differential factor .7;

(2) the MEM in approved class C programs as defined in Subsection A of this section multiplied by the cost differential factor 1.0;

(3) the MEM in approved class D programs as defined in Subsection A of this section multiplied by the cost differential factor 2.0;

(4) the MEM for developmentally disabled three- and four-year-old children as defined in Subsection A of this section multiplied by the cost differential factor 2.0; provided that no developmentally disabled three- or four-year-old student shall be counted for additional ancillary service units; and

(5) for related services ancillary to providing special education, the number of full-time-equivalent certified or licensed ancillary service and diagnostic service personnel multiplied by the cost differential factor 25.0.

D. For the purpose of calculating membership in class C and class D programs, students shall be counted in actual grade placement or according to chronological age if not in actual grade placement.

**History:** 1953 Comp., § 77-6-18.4, enacted by Laws 1969, ch. 180, § 17; 1971, ch. 263, § 7; 1972, ch. 87, § 2; 1973, ch. 351, § 2; reenacted by 1974, ch. 8, § 11; 1976 (S.S.), ch. 32, § 5; 1980, ch. 35, § 1; 1987, ch. 149, § 1; 1992, ch. 75, § 1; 1992, ch. 84, § 1; 1997, ch. 40, § 5.

## **22-8-22. Bilingual multicultural education program units.**

The number of bilingual multicultural education program units is determined by multiplying the full-time-equivalent MEM in programs implemented in accordance with the provisions of the Bilingual Multicultural Education Act [Chapter 22, Article 23 NMSA 1978] by the cost differential factor 0.35, effective July 1, 1990; 0.4, effective July 1, 1991; .425, effective July 1, 1992; 0.45, effective July 1, 1993; and 0.5, effective July 1, 1994.

**History:** 1953 Comp., § 77-6-18.6, enacted by Laws 1974, ch. 8, § 13; 1976 (S.S.), ch. 32, § 6; 1990 (1st S.S.), ch. 3, § 6; 1992, ch. 75, § 2; 1993, ch. 238, § 1.

## **22-8-23. Size adjustment program units.**

A. An approved public school, including a charter school, with a MEM of fewer than four hundred, including early childhood education full-time-equivalent MEM but excluding membership in class C and class D programs and excluding full-time-equivalent membership in three- and four-year-old developmentally disabled programs, that is geographically located in a school district with fewer than two thousand MEM, is eligible for additional program units. Separate schools established to provide special programs, including but not limited to vocational and alternative education, shall not be classified as public schools for purposes of generating size adjustment program units. The number of additional program units to which a school district or charter school is entitled under this subsection is the sum of elementary-junior high units and senior high units computed in the following manner:

$$\begin{array}{r} \text{Elementary-Junior High Units} \\ 200 - \text{MEM} \\ \hline 200 \end{array} \quad \times 1.0 \times \text{MEM} = \text{Units}$$

where MEM is equal to the membership of an approved elementary or junior high school, including early childhood education full-time-equivalent membership but excluding membership in class C and class D programs and excluding full-time-equivalent membership in three- and four-year-old developmentally disabled programs;

Senior High Units

$$\begin{array}{r} 200 - \text{MEM} \\ \hline 200 \end{array} \quad \times 2.0 \times \text{MEM} = \text{Units}$$

or,

$$\begin{array}{r} \text{Senior High Units} \\ 400 - \text{MEM} \\ \hline 400 \end{array} \quad \times 1.6 \times \text{MEM} = \text{Units}$$

whichever calculation for senior high units is higher, where MEM is equal to the membership of an approved senior high school excluding membership in class C and class D programs.

B. An approved public school with a MEM of fewer than four hundred, including early childhood education full-time-equivalent MEM but excluding MEM in class C and class D programs and excluding full-time-equivalent MEM in three- and four-year-old developmentally disabled programs, geographically located in a school district with two thousand MEM or more is eligible for additional program units computed in the following manner:

(1) for fiscal year 2020, eighty percent of the sum of elementary-junior high units and senior high units as prescribed in Subsection A of this section;

(2) for fiscal year 2021, sixty percent of the sum of elementary-junior high units and senior high units as prescribed in Subsection A of this section;

(3) for fiscal year 2022, forty percent of the sum of elementary-junior high units and senior high units as prescribed in Subsection A of this section;

(4) for fiscal year 2023, twenty percent of the sum of elementary-junior high units and senior high units as prescribed in Subsection A of this section; and

(5) for fiscal year 2024 and subsequent fiscal years, no elementary-junior high units and senior high units as prescribed in Subsection A of this section.

C. A school district with total MEM of fewer than four thousand, including early childhood education full-time-equivalent MEM, is eligible for additional program units. The number of additional program units to which a school district is entitled under this subsection is the number of district units computed in the following manner:

$$\begin{array}{r} \text{District Units} \\ 4,000 - \text{MEM} \\ \hline 4,000 \end{array} \quad \times 0.15 \times \text{MEM} = \text{Units}$$



where MEM is equal to the total district membership, including early childhood education full-time-equivalent membership.

D. A school district, as defined in Subsection R of Section 22-1-2 NMSA 1978, with a MEM of fewer than two hundred, including early childhood education full-time-equivalent MEM, is eligible for additional program units if the department certifies that the school district has implemented practices to reduce scale inefficiencies, including shared service agreements with regional education cooperatives or other school districts for noninstructional functions and distance education. The numbers of additional program units to which a school district is entitled under this subsection is the number of units computed in the following manner:

$$200 - \text{MEM} = \text{Units}$$

where MEM is equal to the total district MEM, including early childhood education full-time-equivalent MEM.

E. A school district with a rural population rate greater than forty percent or a charter school initially chartered before July 1, 2018 and geographically located in a school district with a rural population rate greater than forty percent is eligible for additional program units. The number of additional program units to which a school district or charter school is entitled pursuant to this subsection is determined by multiplying the full-time-equivalent MEM by the rural population rate and the cost differential factor of 0.03 for fiscal year 2020, 0.06 for fiscal year 2021, 0.09 for fiscal year 2022, 0.12 for fiscal year 2023 and 0.15 for fiscal year 2024 and subsequent fiscal years.

**History:** 1953 Comp., § 77-6-18.7, enacted by Laws 1974, ch. 8, § 14; reenacted by Laws 1975, ch. 119, § 1; 1976 (S.S.), ch. 32, § 7; 1977, ch. 82, § 1; 1979, ch. 276, § 1; 1981, ch. 87, § 1; 1989, ch. 221, § 1; 1991, ch. 85, § 4; 1993, ch. 87, § 1; 1997, ch. 40, § 6; 2014, ch. 57, § 1; 2019, ch. 206, § 14; 2019, ch. 207, § 14.

### **22-8-23.1. Enrollment growth program units.**

A. A school district or charter school with an increase in MEM equal to or greater than one percent, when compared with the immediately preceding year, is eligible for additional program units. The increase in MEM shall be calculated as follows:

(Current Year MEM - Previous Year MEM)

$$\text{Previous Year MEM} \quad \times 100 = \text{Percent Increase.}$$

The number of additional program units shall be calculated as follows:

$$((\text{Current Year MEM} - \text{Previous Year MEM}) - (\text{Current Year MEM} \times .01)) \times 1.5 = \text{Units.}$$

B. In addition to the units calculated in Subsection A of this section, a school district or charter school with an increase in MEM equal to or greater than one percent, when compared with the immediately preceding year, is eligible for additional program units. The increase in MEM shall be calculated in the following manner:

(Current Year MEM - Previous Year MEM)

Previous Year MEM     x 100 = Percent Increase.

The number of additional program units to which an eligible school district or charter school is entitled under this subsection is the number of units computed in the following manner:

(Current Year MEM - Previous Year MEM) x .50 = Units.

C. As used in this section:

(1) "current year MEM" means MEM on the first reporting date of the current year;

(2) "MEM" means the total school district or charter school membership, including early childhood education full-time-equivalent membership and special education membership, but excluding full-day kindergarten membership for the first year that full-day kindergarten is implemented in a school pursuant to Subsection D of Section 22-13-3.2 NMSA 1978; and

(3) "previous year MEM" means MEM on the first reporting date of the previous year.

**History:** 1978 Comp., § 22-8-23.1, enacted by Laws 1990 (1st S.S.), ch. 3, § 7; 1990 (1st S.S.), ch. 3, § 8; 2003, ch. 156, § 1; 2003, ch. 386, § 1; 2006, ch. 94, § 13; 2010, ch. 116, § 4.

## **22-8-23.2. New district adjustment; additional program units.**

A. A newly created school district is eligible for additional program units. The number of additional program units to which a newly created school district is entitled under this subsection is the number of units computed in the following manner:

(MEM for current year) x .147 = Units

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

B. A school district whose membership decreases as a result of the establishment of a newly created school district is eligible for additional program units. The number of

additional program units to which that district is entitled under this subsection is the number of units computed in the following manner:

$$(\text{MEM for prior year} - \text{MEM for current year}) \times .17 = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

C. As used in this section, "newly created school district" means a local school district not in existence during the immediately preceding school year.

**History:** 1978 Comp., § 22-8-23.2, enacted by Laws 1993, ch. 237, § 2.

### **22-8-23.3. At-risk program units.**

A. A school district is eligible for additional program units if it establishes within its department-approved educational plan identified services to assist students to reach their full academic potential. A school district receiving additional at-risk program units shall include a report of specified services implemented to improve the academic success of at-risk students. The report shall identify the ways in which the school district and individual public schools use funding generated through the at-risk index and the intended outcomes. For purposes of this section, "at-risk student" means a student who meets the criteria to be included in the calculation of the three-year average total rate in Subsection B of this section. The number of additional units to which a school district is entitled under this section is computed in the following manner:

$$\text{At-Risk Index} \times \text{MEM} = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education, full-time-equivalent membership and special education membership and where the at-risk index is calculated in the following manner:

$$\text{Three-Year Average Total Rate} \times 0.33 = \text{At-Risk Index.}$$

B. To calculate the three-year average total rate, the department shall compute a three-year average of the school district's percentage of membership used to determine its Title 1 allocation, a three-year average of the percentage of membership classified as English language learners using criteria established by the office for civil rights of the United States department of education and a three-year average of the percentage of student mobility. The department shall then add the three-year average rates. The number obtained from this calculation is the three-year average total rate.

C. The department shall recalculate the at-risk index for each school district every year.

D. For purposes of this section, "services" means research-based or evidence-based social, emotional or academic interventions, such as:

- (1) case management, tutoring, reading interventions and after-school programs that are delivered by social workers, counselors, teachers or other professional staff;
- (2) culturally relevant professional and curriculum development, including those necessary to support language acquisition, bilingual and multicultural education;
- (3) additional compensation strategies for high-need schools;
- (4) whole school interventions, including school-based health centers and community schools;
- (5) educational programming intended to improve career and college readiness of at-risk students, including dual or concurrent enrollment, career and technical education, guidance counseling services and coordination with post-secondary institutions; and
- (6) services to engage and support parents and families in the education of students.

**History:** 1978 Comp., § 22-8-23.3, enacted by Laws 1997, ch. 40, § 7; 2002, ch. 68, § 1; 2014, ch. 55, § 1; 2018, ch. 55, § 4; 2019, ch. 206, § 15; 2019, ch. 207, § 15; 2020, ch. 23, § 1; 2023, ch. 148, § 1.

#### **22-8-23.4. National board for professional teaching standards; program units.**

The number of program units for licensed school employees certified by the national board for professional teaching standards is determined by multiplying by one and one-half the number of licensed school employees certified by the national board for professional teaching standards employed by the school district or charter school on or before the first reporting date of the school year and verified by the department. Department approval of these units shall be contingent on verification by the school district or charter school that these licensed school employees hold certification by the national board for professional teaching standards and are receiving a one-time salary differential equal to or greater than the amount generated by the units multiplied by the program unit value during the fiscal year in which the school district or charter school will receive these units.

**History:** Laws 2003, ch. 144, § 2; 2003, ch. 152, § 9; 2006, ch. 94, § 14; 2010, ch. 116, § 5; 2023, ch. 145, § 1.

#### **22-8-23.5. Fine arts education program units.**

The number of fine arts education program units is determined by multiplying the full-time-equivalent MEM in programs implemented in accordance with the provisions of the Fine Arts Education Act [Chapter 22, Article 15D NMSA 1978] by the cost differential factor of 0.055 for fiscal year 2024 and succeeding fiscal years.

**History:** Laws 2003, ch. 144, § 3 and by Laws 2003, ch. 152, § 8; 2023, ch. 148, § 2.

#### **22-8-23.6. Charter school student activities program unit.**

The charter school student activities program unit for a school district is determined by multiplying the number of charter school students who are participating in school district activities governed by the New Mexico activities association by the cost differential factor of 0.1. The student activities program unit shall be paid to the school district in which it is generated. A charter school student is eligible to participate in school district activities at the public school in the attendance zone in which the student resides, according to the New Mexico activities association guidelines. If the student chooses to participate at a public school other than the one in the attendance zone in which the student resides, the student shall be subject to New Mexico activities association transfer guidelines.

**History:** Laws 2006, ch. 94, § 15.

#### **22-8-23.7. Elementary physical education program units.**

A. The number of elementary physical education program units is determined by multiplying the number of students in elementary physical education by the cost differential factor of six one-hundredths.

B. As used in this section, "elementary physical education" means eligible physical education programs that serve students in kindergarten through grade six in a public school classified by the department as an elementary school.

**History:** Laws 2007, ch. 348, § 1.

#### **22-8-23.8. Home school student activities program unit.**

The home school student activities program unit for a school district is determined by multiplying the number of home school students who are participating in school district activities governed by the New Mexico activities association by the cost differential factor of 0.1. The home school student activities program unit shall be paid to the school district in which it is generated. A home school student is eligible to participate in up to three school district activities at the public school in the attendance zone in which the student resides, according to the New Mexico activities association guidelines. The school district shall verify each home school student's academic eligibility to participate in school district activities. As used in this section, "activities" means athletics, co-

curricular and extracurricular activities sanctioned by the New Mexico activities association.

**History:** Laws 2007, ch. 365, § 2; 2009, ch. 93, § 1; 2012, ch. 23, § 1.

### **22-8-23.9. Home school student program units.**

Notwithstanding the provision in Section 22-8-2 NMSA 1978 defining a qualified student as one who is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students, home school students may take one or more classes at public schools and, if so, shall generate program units as provided in this section. The home school student program unit for a school district is determined by multiplying the number of home school students who are enrolled in one or more classes by the cost differential factor 0.25 per class per home school student up to the enrollment required for the home school student to meet the definition of "qualified student". The home school student program units shall be paid to the school district in which they are generated. A home school student is eligible to enroll in a public school in the attendance zone in which the student resides or in another public school outside the attendance zone as provided in Section 22-1-4 NMSA 1978. The school district shall verify each home school student's academic and other eligibility to enroll in the class.

**History:** Laws 2013, ch. 113, § 1; 2014, ch. 61, § 2.

### **22-8-23.10. Repealed.**

**History:** Laws 2019, ch. 206, § 16; 2019, ch. 207, § 16; 2021, ch. 134, § 1; repealed by Laws 2023, ch. 19, § 5.

### **22-8-23.11. Repealed.**

**History:** Laws 2019, ch. 206, § 17; 2019, ch. 207, § 17; 2021, ch. 134, § 2; repealed by Laws 2023, ch. 19, § 5.

### **22-8-23.12. New program funding.**

For the first year of programs operating pursuant to the K-5 Plus Act, the Bilingual Multicultural Education Act, the Fine Arts Education Act or for extended learning time programs, a school district or charter school shall generate the applicable program units. A school district's or charter school's budget shall be based on the projected number of program units for the program's first year of operation and shall be adjusted using the qualified MEM on the first reporting date of the current school year.

**History:** Laws 2019, ch. 206, § 18 and Laws 2019, ch. 207, § 18.

### **22-8-23.13. Public education reform fund created.**

A. The "public education reform fund" is created as a nonreverting fund in the state treasury and consists of appropriations; unspecified gifts, grants and donations to the fund; and income from investment of the fund.

B. Subject to legislative appropriation, money in the fund is appropriated to the department for the purposes of implementing evidence-based public education initiatives related to high-quality teaching and school leadership, extended learning opportunities for students, educational interventions for at-risk students, effective and efficient school administration or promoting public education accountability.

**History:** Laws 2019, ch. 206, § 19 and Laws 2019, ch. 207, § 19.

### **22-8-23.14. K-12 plus program units; additional program units.**

A. A public school operating on a five-day calendar that provides more than one hundred eighty days of instruction, and a public school operating on a four-day calendar that provides more than one hundred fifty-five days of instruction, shall be considered a "K-12 plus school". Each school district or charter school with a K-12 plus school shall be eligible to receive program units for students in that public school.

B. The number of K-12 plus program units is determined by multiplying the MEM in department-approved K-12 plus schools by the cost differential factor of twelve thousandths and the number of instructional days provided between:

(1) one hundred eighty-one and one hundred ninety instructional days for a public school with a five-day school week; and

(2) one hundred fifty-six and one hundred sixty-five instructional days for a public school with a four-day school week.

C. The number of K-12 plus program units is determined by multiplying the MEM in department-approved K-12 plus schools by the cost differential factor of sixteen thousandths and the number of instructional days provided between:

(1) one hundred ninety-one and two hundred five instructional days for a public school with a five-day school week; and

(2) one hundred sixty-six and one hundred seventy-five instructional days for a public school with a four-day school week.

D. A school district is eligible for the total number of program units calculated in this manner for every K-12 plus school in that school district.

E. No later than October 15 of each year, a school district or charter school that wishes to establish a new K-12 plus school for the next fiscal year shall submit to the department the actual number of students participating in each of its K-12 plus schools in the current year and an estimate of the number of students that the school district or charter school expects will participate in each K-12 plus school in the next year.

F. No later than November 15 of each year, the department shall notify the legislature of the number of students participating in K-12 plus schools in the current school year and the number of students projected to participate in K-12 plus schools in the next school year.

**History:** Laws 2023, ch. 19, § 3.

## **22-8-24. Instructional staff training and experience index; definitions; factors; calculations.**

A. For the purpose of calculating the instructional staff training and experience index, the following definitions and limitations shall apply:

(1) "instructional staff" means the personnel assigned to the instructional program of the school district, excluding principals, substitute teachers, instructional aides, secretaries and clerks;

(2) the number of instructional staff to be counted in calculating the instructional staff training and experience index is the actual number of full-time equivalent instructional staff on the October payroll;

(3) the number of years of experience to be used in calculating the instructional staff training and experience index is that number of years of experience allowed for salary increment purposes on the salary schedule of the school district; and

(4) the academic degree and additional credit hours to be used in calculating the instructional staff training and experience index is the degree and additional semester credit hours allowed for salary increment purposes on the salary schedule of the school district.

B. The factors for each classification of academic training by years of experience are provided in the following table:

Academic Classification	Years of Experience				
	0 – 2	3 – 5	6 – 8	9 – 15	Over 15

---

Bachelor's degree



or less	.75	.90	1.00	1.05	1.05
Bachelor's degree plus 15 credit hours	.80	.95	1.00	1.10	1.15
Master's degree or bachelor's degree plus 45 credit hours	.85	1.00	1.05	1.15	1.20
Master's degree plus 15 credit hours	.90	1.05	1.15	1.30	1.35
Post-master's degree or master's degree plus 45 credit hours	1.00	1.15	1.30	1.40	1.50

C. The instructional staff training and experience index for each school district shall be calculated in accordance with instructions issued by the state superintendent [secretary]. The following calculations shall be computed:

- (1) multiply the number of full-time equivalent instructional staff in each academic classification by the numerical factor in the appropriate "years of experience" column provided in the table in Subsection B of this section;
- (2) add the products calculated in Paragraph (1) of this subsection; and
- (3) divide the total obtained in Paragraph (2) of this subsection by the total number of full-time equivalent instructional staff.

D. In the event that the result of the calculation of the training and experience index is 1.0 or less, the district's factor shall be no less than 1.0.

E. In the event that a new school district is created, the training and experience index for that district is 1.12.

**History:** 1953 Comp., § 77-6-18.8, enacted by Laws 1974, ch. 8, § 15; 1975, ch. 119, § 2; 1976 (S.S.), ch. 32, § 8; 1993, ch. 91, § 1; 1993, ch. 237, § 3.

## **22-8-25. State equalization guarantee distribution; determination of amount.**

A. To determine the amount of the state equalization guarantee distribution, the department shall:

- (1) calculate the number of program units to which each school district or charter school is entitled using an average of the MEM on the second and third reporting dates of the prior year; or

(2) calculate the number of program units to which a school district or charter school operating under an approved year-round school calendar is entitled using an average of the MEM on appropriate dates established by the department; or

(3) calculate the number of program units to which a school district or charter school with a MEM of two hundred or less is entitled by using an average of the MEM on the second and third reporting dates of the prior year or the MEM on the first reporting date of the current year, whichever is greater; provided that the calculation of program units using the MEM on the first reporting date of the current school year shall exclude enrollment growth program units;

(4) using the results of the calculations in Paragraph (1), (2) or (3) of this subsection and the staffing cost multiplier from the October report of the prior school year, establish a total program cost of the school district or charter school;

(5) deduct the total amount of guaranteed energy savings contract payments that the department determines will be made to the school district from the public school utility conservation fund during the fiscal year for which the state equalization guarantee distribution is being computed; and

(6) deduct ninety percent of the amount certified for the school district by the department pursuant to the Energy Efficiency and Renewable Energy Bonding Act [Chapter 6, Article 21D NMSA 1978].

B. Reduction of a school district's state equalization guarantee distribution shall cease when the school district's cumulative reductions equal its proportional share of the cumulative debt service payments necessary to service the bonds issued pursuant to the Energy Efficiency and Renewable Energy Bonding Act [Chapter 6, Article 21D NMSA 1978].

C. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deductions made in Paragraphs (5) and (6) of Subsection A of this section.

D. The amount of the state equalization guarantee distribution to which a state-chartered charter school is entitled is the difference between the state-chartered charter school's program cost and the two percent withheld by the department for administrative services.

E. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. In the event that a school district or charter school has received more state equalization guarantee funds than its entitlement, a refund shall be made by the school district or charter school to the state general fund.

**History:** 1953 Comp., § 77-6-19, enacted by Laws 1969, ch. 180, § 19; 1971, ch. 263, § 9; 1972, ch. 90, § 1; reenacted by Laws 1974, ch. 8, § 16; 1975, ch. 119, § 3; 1979, ch.

268, § 2; 1979, ch. 278, § 1; reenacted by Laws 1981, ch. 176, §§ 3, 4, 5; 1986, ch. 32, § 20; 1986, ch. 33, § 16; 1988, ch. 63, § 1; 1988, ch. 64, § 29; 1989, ch. 258, § 1; 1990, ch. 94, § 3; 1993, ch. 226, § 23; 1993, ch. 231, § 14; 1997, ch. 40, § 8; 1999, ch. 275, § 1; 2002, ch. 63, § 1; 2005, ch. 176, § 12; 2005, ch. 291, § 1; 2006, ch. 94, § 16; 2010, ch. 116, § 6; 2017, ch. 78, § 1; 2018, ch. 55, § 6; 2021, ch. 52, § 5.

### **22-8-25.1. Additional per unit distribution from public school fund.**

The legislature shall maintain each year in the public school fund an amount equal to the amount of revenue produced by all school districts pursuant to Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978 for which credit is required to be taken pursuant to Section 22-8-25 NMSA 1978. Each year the department shall distribute to each school district an amount determined by the department on a per program unit basis which shall be included within the state equalization guarantee distribution made pursuant to the general appropriation act.

**History:** 1953 Comp., § 22-8-25.1, enacted by Laws 1985 (1st S.S.), ch. 15, § 17; 1988, ch. 64, § 30.

### **22-8-26. Transportation distribution.**

A. Money in the transportation distribution of the public school fund shall be used only for the purpose of making payments to each school district or state-chartered charter school for the to-and-from school transportation costs of students in grades kindergarten through twelve attending public school within the school district or state-chartered charter school and of three- and four-year-old children who meet the department approved criteria and definition of developmentally disabled and for transportation of students to and from their regular attendance centers and the place where vocational education programs are being offered.

B. In the event a school district's or state-chartered charter school's transportation allocation exceeds the amount required to meet obligations to provide to-and-from transportation, three- and four-year-old developmentally disabled transportation and vocational education transportation, fifty percent of the remaining balance shall be deposited in the transportation emergency fund.

C. Of the excess amount retained by the school district or state-chartered charter school, at least twenty-five percent shall be used for to-and-from transportation-related services, excluding salaries and benefits, and up to twenty-five percent may be used for other transportation-related services, excluding salaries and benefits as defined by rule of the department.

D. In the event the sum of the proposed transportation allocations to each school district or state-chartered charter school exceeds the amounts in the transportation distribution, the allocation to each school district or state-chartered charter school shall

be reduced in the proportion that the school district or state-chartered charter school allocation bears to the total statewide transportation distribution.

E. A local school board or governing body of a state-chartered charter school, with the approval of the state transportation director, may provide additional transportation services pursuant to Section 22-16-4 NMSA 1978 to meet established program needs.

F. Nothing in this section prohibits the use of school buses to transport the general public pursuant to the Emergency Transportation Act [Chapter 22, Article 17 NMSA 1978].

**History:** 1953 Comp., § 77-6-22, enacted by Laws 1967, ch. 16, § 76; 1969, ch. 180, § 21; 1974, ch. 73, § 1; 1975, ch. 342, § 2; 1976 (S.S.), ch. 20, § 1; 1978, ch. 127, § 3; 1979, ch. 67, § 1; 1979, ch. 289, § 1; 1979, ch. 305, § 2; 1987, ch. 149, § 2; 1988, ch. 64, § 31; 1995, ch. 208, § 1; 1999 (1st S.S.), ch. 11, § 1; 2001, ch. 48, § 1; 2006, ch. 94, § 17.

## **22-8-27. Transportation equipment.**

A. The department shall establish a systematic program for the purchase of necessary school bus transportation equipment.

B. In establishing a system for the replacement of school-district-owned buses, the department shall provide for the replacement of school buses on a twelve-year cycle. School districts requiring additional buses to accommodate growth in the school district or to meet other special needs may petition the department for additional buses. Under exceptional circumstances, school districts may also petition the department for permission to replace buses prior to the completion of a twelve-year cycle or to use buses in excess of twelve years contingent upon satisfactory annual safety inspections.

C. In establishing a system for the use of contractor-owned buses by school districts or state-chartered charter schools, the department shall establish a schedule for the payment of rental fees for the use of contractor-owned buses. The department shall establish procedures to ensure the systematic replacement of buses on a twelve-year replacement cycle. School districts requiring additional buses to accommodate growth in the school district or to meet other special needs may petition the department for additional buses. Under exceptional circumstances, school districts may also petition the department for permission to replace buses prior to the completion of a twelve-year cycle or to use buses in excess of twelve years contingent upon satisfactory annual safety inspections.

D. The school district shall file a lien on every contractor-owned school bus under the contract, which lien shall have priority second only to a lien securing a purchase-money obligation. The school district shall perfect its lien on each contractor-owned school bus by filing the lien with the motor vehicle division of the taxation and revenue department. The lien shall be recorded on the title of the school bus. A school bus

contractor shall not refinance or use a school bus on which a school district has a lien as collateral for any other loan without prior written permission of the department. A school bus lien shall be collected and enforced as provided in Chapter 55, Article 9 NMSA 1978. The school district shall release its lien on a school bus:

- (1) when the department authorizes a replacement of the school bus; or
- (2) when the contractor has reimbursed the school district the amount calculated pursuant to Subsection E of this section if the school bus service contract is terminated or not renewed and the contractor owes the school district as provided in that subsection.

E. No school district shall pay rental fees for any one bus for a period in excess of five years. In the event a school bus service contract is terminated or not renewed by either party, the department shall calculate the remaining number of years that a bus could be used based on a twelve-year replacement cycle and calculate a value reflecting that use. The school district shall deduct an amount equal to that value from any remaining amount due on the contract, or if no balance remains on the contract, the contractor shall reimburse the school district an amount equal to the value calculated.

F. If the school district fails to take action to collect money owed to it when a school bus contract is terminated or not renewed, the department may deduct the amount from the school district's transportation distribution.

**History:** 1953 Comp., § 77-6-23, enacted by Laws 1967, ch. 16, § 77; 1988, ch. 64, § 32; 1993, ch. 226, § 24; 1995, ch. 208, § 2; 2006, ch. 94, § 18; 2009, ch. 92, § 1; 2015, ch. 46, § 1.

## **22-8-28. Repealed.**

## **22-8-29. Transportation distributions; reports; payments.**

A. On the second reporting date and the third reporting date of each year, each local school board of a school district and governing body of a state-chartered charter school shall report to the state transportation director, upon forms furnished by the state transportation director, the following information concerning the school district's or state-chartered charter school's operation on each respective reporting date of the current year:

- (1) the number and designation of school bus routes in operation in the school district;
- (2) the number of miles traveled by each school bus on each school bus route, showing the route mileage in accordance with the type of road surface traveled;

(3) the number of students, including special education students, transported on each reporting date of the current year and adjusted for special education students on December 1;

(4) the projected number of students to be transported in the next school year;

(5) the seating capacity, age and mileage of each bus used in the school district for student transportation; and

(6) the number of total miles traveled for each school district's or state-chartered charter school's per capita feeder routes.

B. Each local school board of a school district and governing body of a state-chartered charter school maintaining a school bus route shall make further reports to the state transportation director at other times specified by the state transportation director.

C. The state transportation director shall certify to the secretary that the allocations from the transportation distributions to each school district and state-chartered charter school are based upon the transportation distribution formula established in the Public School Code [Chapter 22 NMSA 1978], calculated and distributed for the entire school year using an average of the amounts reported pursuant to Subsection A of this section on the second reporting date and third reporting date of the prior school year, and are subject to audit and verification; provided that for fiscal years 2022 and 2023, the state transportation director shall use an average of the amounts reported pursuant to Subsection A of this section on the second and third reporting dates of fiscal year 2020.

D. The department shall make periodic installment payments to school districts and state-chartered charter schools during the school year from the transportation distributions, based upon the allocations certified by the state transportation director.

**History:** 1953 Comp., § 77-6-24, enacted by Laws 1967, ch. 16, § 78; 1974, ch. 73, § 2; 1978, ch. 127, § 5; 1979, ch. 305, § 4; 1988, ch. 64, § 33; 1995, ch. 208, § 3; 1999 (1st S.S.), ch. 11, § 2; 2006, ch. 94, § 19; 2010, ch. 116, § 7; 2015, ch. 57, § 1; 2021, ch. 130, § 1; 2022, ch. 9, § 1.

### **22-8-29.1. Calculation of transportation allocation.**

A. As used in this section:

(1) "annual variables" means the coefficients calculated by regressing the total operational expenditures from two years prior to the current school year for each school district and state-chartered charter school using the number of students transported and the numerical value of site characteristics; provided that for fiscal years

2022 and 2023, the coefficients shall be calculated by regressing the total operational expenditures from fiscal year 2019;

(2) "base amount" means the fixed amount that is the same for all school districts and an amount established by rule for state-chartered charter schools;

(3) "total operational expenditures" means the sum of all to-and-from school transportation expenditures, excluding expenditures incurred in accordance with the provisions of Section 22-8-27 NMSA 1978; and

(4) "variable amount" means the sum of the product of the annual variables multiplied by each school district's or state-chartered charter school's numerical value of the school district's and state-chartered charter school's site characteristics multiplied by the number of days of operation for each school district or state-chartered charter school.

B. The department shall calculate the transportation allocation for each school district and state-chartered charter school.

C. The base amount is designated as product A. Product A is the constant calculated by regressing the total operational expenditures from the two years prior to the current school year for school district or state-chartered charter school operations using the numerical value of site characteristics approved by the department. The legislative education study committee and the legislative finance committee may review the site characteristics developed by the state transportation director prior to approval by the department.

D. The variable amount is designated as product B. Product B is the predicted additional expenditures for each school district or state-chartered charter school based on the regression analysis using the site characteristics as predictor variables multiplied by the number of days.

E. The allocation to each school district and state-chartered charter school shall be equal to product A plus product B. The adjustment factor shall be applied to the calculation.

F. For the 2001-2002, 2002-2003 and 2003-2004 school years, the transportation allocation for each school district shall not be less than ninety-five percent or more than one hundred five percent of the prior school year's transportation expenditure.

**History:** Laws 1995, ch. 208, § 10; 1999 (1st S.S.), ch. 11, § 3; 2001, ch. 350, § 1; 2006, ch. 94, § 20; 2021, ch. 130, § 2; 2022, ch. 9, § 2.

**22-8-29.2. Repealed.**

**22-8-29.3. Repealed.**

#### **22-8-29.4. Transportation distribution adjustment factor.**

A. The department shall establish a transportation distribution adjustment factor. The adjustment factor shall be calculated as follows:

(1) calculate the unadjusted transportation allocation for each school district and state-chartered charter school, designated in Section 22-8-29.1 NMSA 1978 as product A plus product B;

(2) the sum total of product A plus product B in all school districts and state-chartered charter schools added together equals product C; and

(3) subtract product C from the total operational transportation distribution for the current year and divide the result by product C and then add 1 in the following manner:  $[(\text{total operational transportation distribution} - C) \div C] + 1$ . The result is the transportation distribution adjustment factor.

B. As used in this section, "total operational transportation distribution" means the total legislative appropriation for the transportation distribution minus amounts included for capital outlay expenses.

**History:** Laws 1995, ch. 208, § 13; 1999 (1st S.S.), ch. 11, § 4; 2006, ch. 94, § 21.

#### **22-8-29.5. Repealed.**

#### **22-8-29.6. Transportation emergency fund.**

A. The "transportation emergency fund" is created in the state treasury. Money in the fund shall not revert to the general fund at the end of any fiscal year. Money in the fund is appropriated to the department for the purpose of funding transportation emergencies, including fuel price increases. The secretary shall make distributions to ensure the safety of students receiving to-and-from transportation services.

B. The secretary shall account for all transportation emergency distributions and shall make full reports to the governor, the legislative education study committee and the legislative finance committee of payments made.

**History:** Laws 1995, ch. 208, § 15; 1999 (1st S.S.), ch. 11, § 5; 2014, ch. 23, § 1.

#### **22-8-30. Supplemental distributions.**

A. The department shall make supplemental distributions only for the following purposes:



(1) to pay the out-of-state tuition of students subject to the Compulsory School Attendance Law [Chapter 22, Article 12 NMSA 1978] who are attending school out-of-state because school facilities are not reasonably available in the school district of their residence;

(2) to make emergency distributions to school districts or state-chartered charter schools in financial need, but no money shall be distributed to any school district or state-chartered charter school having cash and invested reserves, or other resources or any combination thereof, equaling five percent or more of the school district's or state-chartered charter school's operational budget;

(3) to make program enrichment distributions in the amount of actual program expense to school districts and state-chartered charter schools for the purpose of providing specific programs to meet particular educational requirements that cannot otherwise be financed;

(4) a special vocational education distribution to area vocational schools or state-supported schools with department-approved vocational programs to reimburse those schools for the cost of vocational education programs for those students subject to the Compulsory School Attendance Law who are enrolled in such programs; and

(5) to make emergency capital outlay distributions to school districts or state-chartered charter schools that have experienced an unexpected capital outlay emergency demanding immediate attention.

B. The department shall account for all supplemental distributions and shall make full reports to the governor, legislative education study committee and legislative finance committee of payments made as authorized in Subsection A of this section.

C. The department may divert any unused or unneeded balances in any of the distributions made under the supplementary distribution authority to make any other distribution made pursuant to the same authority.

**History:** 1953 Comp., § 77-6-29, enacted by Laws 1967, ch. 16, § 83; 1969, ch. 180, § 22; 1971, ch. 263, § 12; reenacted by 1974, ch. 8, § 17; 1978, ch. 148, § 1; 1988, ch. 64, § 34; 2006, ch. 94, § 22.

### **22-8-30.1. Recompiled.**

### **22-8-30.2. Recompiled.**

### **22-8-31. State-support reserve fund.**

A. The "state-support reserve fund" is created.

B. The state-support reserve fund shall be used only to augment the appropriations for the state equalization guarantee distribution in order to ensure, to the extent of the amount undistributed in the fund, that the maximum figures for such distribution established by law shall not be reduced.

C. The undistributed money in the state-support reserve fund shall be invested by the state treasurer in interest-bearing securities of the United States government or in certificates of deposit in qualified banks and in savings and loan associations whose deposits are insured with an agency of the United States. The state treasurer may deposit money from the state-support reserve fund or any other fund in one or more accounts with any such bank or federally insured savings and loan association, but the state treasurer, in any official capacity, shall not deposit money from that fund or any other fund in any one federally insured savings and loan association the aggregate of which would exceed the amount of federal savings and loan insurance corporation insurance for a single public account. Income from these investments shall be periodically credited to the general fund.

D. At least forty-five days before the money is needed, the chief shall notify the state treasurer in writing of the amount that will be needed for distribution.

E. It is the intent of the legislature that the state-support reserve fund be reimbursed in the amount of the yearly distribution by appropriation in the year following the distribution so that the fund at the beginning of each fiscal year shall have a credit balance of at least ten million dollars (\$10,000,000).

F. Distribution from the state-support reserve fund shall be made in the same manner and on the same basis as the state equalization guarantee distribution.

**History:** 1953 Comp., § 77-6-30, enacted by Laws 1967, ch. 16, § 84; 1968, ch. 18, § 10; 1969, ch. 180, § 23; 1974, ch. 8, § 18; 1975, ch. 157, § 8; 1976 (S.S.), ch. 32, § 9; 2021, ch. 52, § 6.

## **22-8-32. Current school fund; receipts; disposition.**

A. As they are received, the state treasurer shall deposit into the current school fund revenue received from the following sources:

- (1) all fines and forfeitures collected under general laws;
- (2) the net proceeds of property that may come to the state by escheat; and
- (3) all other revenue which by law is to be credited to the current school fund.

B. At the end of each month, the state treasurer shall transfer the amount in the common school current fund, also known as the common school income fund, to the current school fund.

C. At the end of each month, after the transfer authorized in Subsection B of this section, the state treasurer shall transfer any unencumbered balance in the current school fund to the public school fund.

**History:** 1953 Comp., § 77-6-32, enacted by Laws 1967, ch. 16, § 86; 1972, ch. 90, § 2; 1976, ch. 7, § 1.

### **22-8-33. Distribution of certain revenue.**

There shall be distributed to the credit of each school district in a county, according to the proportion that the forty-day average daily membership of the school district bears to the forty-day average daily membership of the entire county, all revenue received by the county for public school purposes from the forest reserve funds distributed pursuant to Section 6-11-3 NMSA 1978.

**History:** 1953 Comp., § 77-6-35, enacted by Laws 1967, ch. 16, § 89; 1969, ch. 180, § 24; 1972, ch. 90, § 3; 1985 (1st S.S.), ch. 15, § 18.

### **22-8-34. Federal mineral leasing funds.**

A. Money received by the state pursuant to the provisions of the federal Mineral Leasing Act shall be distributed to the public school fund, except as follows:

- (1) an annual appropriation to the instructional material fund;
- (2) an annual appropriation to the board of regents of the New Mexico institute of mining and technology for the bureau of geology and mineral resources;
- (3) the distribution made pursuant to Subsection B of this section; and
- (4) the distribution made pursuant to Section 3 [9-29A-3 NMSA 1978] of this 2020 act.

B. Money received by the state as its share of a prepayment of royalties pursuant to 30 U.S.C. 1726(b), as that section may be amended or renumbered, shall be distributed as follows:

- (1) a portion of the receipts, estimated by the taxation and revenue department to be equal to the amount that the state would have received as its share of royalties in the same fiscal year if the prepayment had not been made, shall be distributed to the public school fund; and
- (2) the remainder shall be distributed to the common school permanent fund.

**History:** 1953 Comp., § 77-6-36, enacted by Laws 1967, ch. 16, § 90; 1974, ch. 8, § 19; 1999, ch. 43, § 1; 1999, ch. 253, § 1; 2001, ch. 246, § 2; 2020, ch. 3, § 7.

## **22-8-35. Tax anticipation certificates.**

A. For operating expenses, a local school board with the consent of the chief [secretary] may anticipate the collection of taxes for which tax levies have been made by issuing and selling certificates of indebtedness. These certificates shall be issued on the faith and credit of the school district issuing the certificates. The certificates shall not bear interest in excess of six percent a year. The total unpaid certificates outstanding shall not exceed the budget allowance for operating expenses of the school district for a period of ninety days. The certificates shall be paid out of the money first credited thereafter to the operating fund of the school district.

B. For school building construction, repair or both, a local school board with consent of the chief [secretary] may anticipate the collection of taxes for which tax levies have been made for that purpose by issuing and selling certificates of indebtedness. These certificates shall be issued on the faith and credit of the school district issuing the certificates. The certificates shall not bear interest in excess of six percent a year. The certificates shall be paid out of the money first received under the tax levy.

**History:** 1953 Comp., § 77-6-39, enacted by Laws 1967, ch. 16, § 93.

## **22-8-36. Certification of allocations; fund accounts.**

The chief [secretary] shall certify periodically to each county treasurer the allocations of funds to each school district in the county. The chief [secretary] shall certify to the county treasurer the names and purposes of the separate funds the county treasurer shall establish and maintain for each school district.

**History:** 1953 Comp., § 77-6-40, enacted by Laws 1967, ch. 16, § 94.

## **22-8-37. Public school funds.**

Except for money received for a cafeteria or for an activity fund, all money for public school purposes distributed to a school district, or collected by a county, school district or public school authorities for a school district, shall be delivered to and kept by a county treasurer or a board of finance of a school district in funds approved by the division. Disbursements from these funds shall only be made for matured debts by voucher and warrants or checks of the local school board. In no event shall any money be expended or debts incurred except as authorized by the Public School Finance Act. Money for a cafeteria or for an activity fund shall be deposited in a bank, or in a savings and loan association whose deposits are insured by an agency of the United States, or may be deposited in a credit union, as long as the credit union deposit is insured by an agency of the United States, approved by the local school board. The local school board may deposit any cafeteria funds, any activity funds or any other funds in one or more accounts with any such bank or insured savings and loan association in its county, but no local school board, in any official capacity, shall deposit any cafeteria funds, any activity funds or any other funds in any one such savings and loan association the

aggregate of which would exceed the amount of federal savings and loan insurance corporation insurance for a single public account. As used in this section, "deposit" includes share, share certificate and share draft.

**History:** 1953 Comp., § 77-6-41, enacted by Laws 1967, ch. 16, § 95; 1968, ch. 18, § 11; 1975, ch. 157, § 9; 1978, ch. 128, § 7; 1987, ch. 79, § 22.

## **22-8-38. Boards of finance; designation.**

A. Upon written application to and approval of the department, a local school board may be designated a board of finance for public school funds of the school district. A local school board designated as a board of finance may require all funds distributed to, allocated to or collected for the school district or the public schools under its jurisdiction to be deposited with it. The department shall designate a local school board as a board of finance if:

(1) the local school board shows to the satisfaction of the department that it has personnel properly trained to keep accurate and complete fiscal records;

(2) the local school board agrees to consult with the department on any matters not covered by the manual of accounting and budgeting before taking any action relating to funds held by it as a board of finance;

(3) the persons handling these funds are adequately bonded to protect the funds entrusted to them from loss; and

(4) the local school board making application has not been suspended and not reinstated as a board of finance within the past year.

B. A charter school applicant requesting a charter from the commission shall submit a plan detailing how its governing body will qualify for designation as a board of finance for public school funds of the charter school. The governing body of a proposed state-chartered charter school shall qualify as a board of finance before the first year of operation of the charter school. The governing body of a state-chartered charter school designated as a board of finance may require all funds distributed to, allocated to or collected for the state-chartered charter school to be deposited with the governing body. The commission shall designate the governing body of a state-chartered charter school as a board of finance if:

(1) the governing body shows to the satisfaction of the commission that it has personnel properly trained to keep accurate and complete fiscal records;

(2) the governing body agrees to consult with the division on any matters not covered by the manual of accounting and budgeting before taking any action relating to funds held by it as a board of finance;

(3) the persons handling these funds are adequately bonded to protect the funds entrusted to them from loss; and

(4) the governing body was not a governing body of a charter school or does not have a member who was a member of a governing body of a charter school that was suspended and not reinstated as a board of finance.

C. Failure of the governing body of a proposed state-chartered charter school to qualify for designation as a board of finance constitutes good and just grounds for denial, nonrenewal or revocation of its charter.

**History:** 1953 Comp., § 77-6-42, enacted by Laws 1967, ch. 16, § 96; 1988, ch. 64, § 35; 2006, ch. 94, § 23.

## **22-8-39. Boards of finance; suspension.**

The department may at any time suspend a local school board or governing body of a state-chartered charter school from acting as a board of finance if the department reasonably believes there is mismanagement, improper recording or improper reporting of public school funds under the local school board's or governing body of a state-chartered charter school's control. When a local school board or governing body of a state-chartered charter school is suspended from acting as a board of finance, the department shall:

A. immediately take control of all public school funds under the control of the local school board or governing body of a state-chartered charter school acting as a board of finance;

B. immediately have an audit made of all funds under the control of the local school board or governing body of a state-chartered charter school acting as a board of finance and charge the cost of the audit to the school district or state-chartered charter school;

C. act as a fiscal agent for the school district or state-chartered charter school and take any action necessary to conform the fiscal management of funds of the school district or state-chartered charter school to the requirements of law and good accounting practices;

D. report any violations of the law to the proper law enforcement officers;

E. act as fiscal agent for the school district or state-chartered charter school until the department determines that the local school board or governing body of a state-chartered charter school is capable of acting as a board of finance or until the department determines that the county treasurer should act as fiscal agent for the school district or state-chartered charter school;

F. inform the local school board or governing body of a state-chartered charter school in writing of the department's determination as to who is to act as board of finance or fiscal agent for the school district or state-chartered charter school and also inform the county treasurer in writing if it determines that the county treasurer should act as fiscal agent for the school district or state-chartered charter school; and

G. consider commencing proceedings before the commission to suspend, revoke or refuse to renew the charter of the state-chartered charter school in the case of a state-chartered charter school that has engaged in serious or repeated mismanagement, improper recording or improper reporting of public school funds under its control.

**History:** 1953 Comp., § 77-6-43, enacted by Laws 1967, ch. 16, § 97; 1988, ch. 64, § 36; 2006, ch. 94, § 24.

## **22-8-40. Deposit of public school funds; distribution; interest.**

A. All public money in the custody of school districts or state-chartered charter schools that have been designated as boards of finance shall be deposited in qualified depositories in accordance with the terms of this section.

B. Deposits of funds of the school district or state-chartered charter school may be made in noninterest-bearing checking accounts in one or more banks, savings and loan associations or credit unions, as long as the credit union deposits are insured by an agency of the United States, located within the geographical limits of the school district.

C. Deposits of funds of the school district or state-chartered charter school may be made in interest-bearing checking accounts, commonly known as "NOW" accounts, in one or more banks, savings and loan associations or credit unions, as long as the credit union deposits are insured by an agency of the United States, located within the geographical limits of the school district.

D. Public money placed in interest-bearing deposits, in banks and savings and loan associations, other than interest-bearing checking accounts as defined in Subsection C of this section, shall be equitably distributed among all banks and savings and loan associations having their main or manned branch offices within the geographical boundaries of the school district that have qualified as public depositories by reason of insurance of the account by an agency of the United States or by depositing collateral security or by giving bond as provided by law in the proportion that each such bank's or savings and loan association's net worth bears to the total net worth of all banks and savings and loan associations having their main office or a manned branch office within the geographical boundaries of the school district. The net worth of the main office of a savings and loan association and its manned branch offices within the geographical boundaries of a school district is the total net worth of the association multiplied by the percentage that deposits of the main office and the manned branch offices located within the geographical boundaries of the school district are of the total deposits of the association. The net worth of each manned branch office or aggregate of manned

branch offices of a savings and loan association located outside the geographical boundaries of the school district in which the main office is located is the total net worth of the association multiplied by the percentage that deposits of the branch or aggregate of branches located outside the geographical boundaries of the school district in which the main office is located are of the total deposits of the association. The director of the financial institutions division of the regulation and licensing department shall promulgate a formula for determining the net worth of banks' main offices and branches for the purposes of distribution of public money as provided for by this section. "Net worth" means assets less liabilities as reported by such banks and savings and loan associations on their most recent semiannual reports to the state or federal supervisory authority having jurisdiction.

E. Notwithstanding the provisions of Subsection D of this section, public money may be placed in interest-bearing deposits, other than interest-bearing checking accounts as defined in Subsection C of this section, at the discretion of the board of finance, in credit unions having their main or manned branch offices within the geographical boundaries of the school district to the extent such deposits are insured by an agency of the United States.

F. The rate of interest for all public money deposited in interest-bearing accounts in banks, savings and loan associations and credit unions shall be set by the state board of finance, but in no case shall the rate of interest be less than one hundred percent of the asked price on United States treasury bills of the same maturity on the date of deposit. Any bank or savings and loan association that fails to pay the minimum rate of interest at the time of deposit provided for herein for any respective deposit forfeits its right to an equitable share of that deposit under this section. If the deposit is part or all of the proceeds of a bond issue and the interest rate prescribed in this subsection materially exceeds the rate of interest of the bonds, the interest rate prescribed by this subsection shall be reduced on the deposit to an amount not materially exceeding the interest rate of the bonds if the bond issue would lose its tax exempt status under Section 103 of the United States Internal Revenue Code of 1954, as amended.

G. Public money in excess of that for which banks and savings and loan associations within the geographical boundaries of the school district have qualified may be deposited in qualified depositories, including credit unions, in other areas within the state under the same requirements for payment of interest as if the money were deposited within the geographical boundaries of the school district.

H. The board of finance of the school district or state-chartered charter school may temporarily invest money held in demand deposits and not immediately needed for the operation of the school district or state-chartered charter school. Such temporary investments shall be made only in securities that are issued by the state or by the United States government, or by their departments or agencies, and that are either direct obligations of the state or the United States or are backed by the full faith and credit of those governments.



I. The department of finance and administration may monitor the deposits of public money by school districts or state-chartered charter schools to assure full compliance with the provisions of this section.

**History:** 1953 Comp., § 77-6-44, enacted by Laws 1967, ch. 16, § 98; 1968, ch. 18, § 12; 1975, ch. 157, § 10; 1975, ch. 304, § 3; reenacted by 1977, ch. 136, § 2; 1978, ch. 128, § 8; 1980, ch. 151, § 49; 1981, ch. 332, § 18; 1983, ch. 191, § 2; 1987, ch. 79, § 23; 2006, ch. 94, § 25.

### **22-8-40.1. Deposit of public school funds; providing exception on interest rate limitation for "NOW" accounts.**

Notwithstanding the provisions of Subsection E of Section 22-8-40 NMSA 1978, the requirement for a rate of interest of not less than one hundred percent of the asked price on United States treasury bills of the same maturity on the day of deposit shall not apply to interest-bearing checking accounts.

**History:** 1978 Comp., § 22-8-40.1, enacted by Laws 1981, ch. 341, § 1.

### **22-8-41. Restriction on operational funds; emergency accounts; cash balances.**

A. A school district shall not expend money from its operational fund for the acquisition of a building site or for the construction of a new structure, unless the school district has bonded itself to practical capacity or the secretary determines and certifies to the legislative finance committee that the expending of money from the operational fund for this purpose is necessary for an adequate public educational program and will not unduly hamper the school district's current operations.

B. A school district or charter school may budget out of cash balances carried forward from the previous fiscal year an amount not to exceed five percent of its proposed operational fund expenditures for the ensuing fiscal year as an emergency account. Money in the emergency account shall be used only for unforeseen expenditures incurred after the annual budget was approved and shall not be expended without the prior written approval of the secretary.

C. In addition to the emergency account, school districts or charter schools may also budget operational fund cash balances carried forward from the previous fiscal year for operational expenditures, exclusive of salaries and payroll, upon specific prior approval of the secretary. The secretary shall notify the legislative finance committee in writing of the secretary's approval of such proposed expenditures.

D. Notwithstanding any provision of this section to the contrary, the secretary shall reduce school districts' and charter schools' fiscal year 2017 state equalization guarantee distributions as credit for excess fiscal year 2016 operational fund cash

balances in accordance with Section 2 of this 2017 act, and a school district or charter school whose distribution is accordingly reduced shall apply in the amount of that credit its audited fiscal year 2016 operational fund cash balance toward the school district's or charter school's fiscal year 2017 operations.

**History:** 1953 Comp., § 77-6-45, enacted by Laws 1967, ch. 16, § 99; 1983, ch. 56, § 1; 1985 (1st S.S.), ch. 15, § 19; 1988, ch. 64, § 37; 2003, ch. 155, § 1; 2004, ch. 60, § 1; 2006, ch. 95, § 2; 2007, ch. 122, § 1; 2011, ch. 39, § 1; 2017, ch. 3, § 1.

## **22-8-42. Violation of act; penalties.**

A. Any person violating any provision of the Public School Finance Act is guilty of a petty misdemeanor.

B. Any person diverting or expending any public school money contrary to the approved budget is, in addition to being subject to any other civil or criminal action, liable along with his sureties to the state for the amount diverted or expended.

C. Any person diverting any public school funds from the purpose for which the funds were raised or acquired, or embezzling public school funds, shall be removed from office by the court imposing the criminal penalty.

D. Any person falsifying any record, account or report required to be kept or filed pursuant to the Public School Finance Act or knowingly using any money budgeted or appropriated for public school use or for any other purposes than that provided in the appropriation or budget is guilty of a petty misdemeanor and shall, in addition to all other civil or criminal penalties, forfeit his office or employment.

E. Legal proceedings for violation of the Public School Finance Act shall be instituted by the state superintendent [secretary].

F. A certified school instructor or certified school administrator guilty of any of the violations provided by this section shall, upon conviction, have his certificate revoked by the state board [department].

G. Nothing in this section shall be interpreted to prevent the enforcement of any provision of the Public School Finance Act by means of mandamus or injunction.

**History:** 1953 Comp., § 77-6-46, enacted by Laws 1967, ch. 16, § 100; 1977, ch. 247, § 204; 1988, ch. 64, § 38.

## **22-8-43. Public school reading proficiency fund; created.**

The "public school reading proficiency fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants and donations. The fund shall be administered by the department, and money in the fund is appropriated to the

department to distribute awards to public middle, junior and senior high schools that implement innovative, scientifically based reading programs. The department shall develop procedures and rules for the application and award of money from the fund, including criteria upon which to evaluate innovative, scientifically based reading programs. Public schools receiving funds shall show evidence that they are using quality, scientifically based reading research to improve reading proficiency and shall develop individualized reading plans for students who fail to meet grade level reading proficiency standards. Disbursements of the fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the secretary or the secretary's authorized representative. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall not revert but shall remain to the credit of the fund.

**History:** Laws 2000 (2nd S.S.), ch. 14, § 2; 2001, ch. 289, § 2; 1978 Comp., § 22-2-6.12, amended and recompiled as § 22-8-43 by Laws 2003, ch. 153, § 30; 2007, ch. 307, § 5; 2007, ch. 308, § 5.

## **22-8-44. Educator licensure fund; distribution; appropriation.**

A. The "educator licensure fund" is created in the state treasury and shall be administered by the department. The fund shall consist of money collected from application fees for licensure or for renewal of licensure by the department.

B. Subject to legislative appropriation, money in the fund is appropriated to the department for the following purposes:

- (1) to fund the educator background check program;
- (2) to enforce educator ethics requirements; and
- (3) to process applications for licensure or for renewal of licensure, including review of professional development dossiers.

C. Money in the fund and any interest that may accrue to the fund shall not revert at the end of the fiscal year but shall remain to the credit of the fund.

**History:** Laws 1997, ch. 238, § 6; 1978 Comp., § 22-10-4.1, recompiled and amended as § 22-8-44 by Laws 2003, ch. 153, § 31; 2009, ch. 63, § 1.

## **22-8-45. Teacher professional development fund.**

A. The "teacher professional development fund" is created in the state treasury to provide funding for professional development programs and projects for public school teachers. The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the department of education [public

education department] and money in the fund is appropriated to the department to carry out the purposes of the fund.

B. The department of education [public education department] shall evaluate the success of each professional development program or project funded and report its findings to the legislative education study committee each year.

**History:** Laws 2003, ch. 157, § 1.

### **22-8-45.1. Beginning teacher mentorship fund; created.**

The "beginning teacher mentorship fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants and donations. Money in the fund is subject to appropriation by the legislature to provide funding to school districts and charter schools for their beginning teacher mentorship programs. The fund shall be administered by the public education department, and expenditures from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of public education or the secretary's authorized representative.

**History:** Laws 2020, ch. 24, § 1.

### **22-8-46. Repealed.**

**History:** Laws 2005, ch. 49, §1; 2006, ch. 56, § 1; repealed by Laws 2018, ch. 55, § 8.

### **22-8-47. New Mexico government education fund.**

A. The "New Mexico government education fund" is created in the state treasury.

B. The New Mexico government education fund shall consist of appropriations by the legislature, gifts, grants and donations.

C. The New Mexico government education fund shall be administered by the department. Money in the fund is appropriated to the department to contract for annual, week-long, high school civics courses focusing on New Mexico state government for boys and girls to be held at varying post-secondary educational institutions in New Mexico.

D. Disbursements from the New Mexico government education fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the secretary.

E. Any unexpended or unencumbered balance remaining in the fund at the end of a fiscal year shall not revert but shall remain to the credit of the New Mexico government education fund.

**History:** Laws 2005, ch. 207, § 1.

## **22-8-48. New school development fund; distribution.**

A. The "new school development fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year. Money in the fund is appropriated to the department for the purposes of making distributions pursuant to Subsection B of this section. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary.

B. Upon application to the department by a school district and subject to the availability of funds, the department may approve a distribution to the school district from the new school development fund to supplement district funds needed to pay for supplies, equipment and operating costs unique to the first year of operation of a new school, provided that the department shall not approve a distribution unless it determines that there are no other reasonably available federal, private or other public sources for the needed funding.

**History:** 1978 Comp. § 22-24-11, as enacted by Laws 2006, ch. 95, § 3; recompiled as § 22-8-48 by Laws 2007, ch. 366, § 25.

## **22-8-49. Teacher cost index; licensure-experience factor; report.**

A. The teacher cost index for each school district or charter school shall be calculated in accordance with instructions issued by the department. The teacher cost index for a school district in its first year of operations is 1.0. The teacher cost index for a school district or charter school in its second or subsequent year of operations is the greater of 1.0 or the average of the licensure-experience factors of all full-time-equivalent teachers on the school district's or charter school's payroll in October of that year who are assigned classroom teaching responsibilities. The licensure-experience factor of a teacher corresponds to the teacher's licensure level and years of experience and is as follows:

Licensure Level	Years of Experience				
	0 to 2	3 to 5	6 to 8	9 to 15	Over 15
1	0.755	0.785	0.800		
2		0.994	1.023	1.050	1.123
3			1.184	1.208	1.277.

B. Beginning in 2021, the department, legislative education study committee staff and legislative finance committee staff shall jointly prepare and submit a report by

November 1 of each year to the governor, the legislative education study committee and the legislative finance committee that includes:

- (1) data on the relationship of licensure-experience factors to actual teacher costs;
- (2) an analysis of the relationships among a teacher's licensure level, educational attainment, years of experience and salary; and
- (3) recommended changes, if any, to this section of the Public School Finance Act.

C. As used in this section:

- (1) "licensure level" is the teaching licensure level as defined in the School Personnel Act [Chapter 22, Article 10A NMSA 1978]; and
- (2) "years of experience" is as defined by department rule.

**History:** Laws 2018, ch. 55, § 5.

## **ARTICLE 8A**

### **Charter Schools (Repealed.)**

**22-8A-1. Repealed.**

**22-8A-2. Repealed.**

**22-8A-3. Repealed.**

**22-8A-4. Repealed.**

**22-8A-5. Repealed.**

**22-8A-6. Repealed.**

**22-8A-7. Repealed.**

## **ARTICLE 8B**

### **Charter Schools**

**22-8B-1. Short title.**

Chapter 22, Article 8B NMSA 1978 may be cited as the "Charter Schools Act".

**History:** Laws 1999, ch. 281, § 1; 2005, ch. 221, § 1; 2006, ch. 94, § 26.

## **22-8B-2. Definitions.**

As used in the Charter Schools Act:

A. "charter school" means a conversion school or start-up school authorized by the chartering authority to operate as a public school;

B. "chartering authority" means either a local school board or the commission;

C. "commission" means the public education commission;

D. "conversion school" means an existing public school within a school district that was authorized by a local school board to become a charter school prior to July 1, 2007;

E. "division" means the charter schools division of the department;

F. "enrollment preference" means filling a charter school's openings with students, or siblings of students, who have already been admitted to the school through an appropriate admission process or are continuing through subsequent grades;

G. "governing body" means the governing structure of a charter school as set forth in the school's charter;

H. "governing body training" means the training required pursuant to Section 22-8B-5.1 NMSA 1978 to educate governing body members and ensure compliance with all applicable laws, which training may be obtained from any source, individual or entity that has been approved by the department;

I. "management" means authority over the hiring, termination and day-to-day direction of a school's employees or contractors, whether they are licensed or not;

J. "material violation" means the act of failing to accomplish a requirement of a law, rule or contract or a charter school's bylaws that substantially affects the charter school's employees' or students' rights or privileges;

K. "nondiscretionary waiver" means a waiver of requirements or rules and the provisions of the Public School Code that the department shall grant pursuant to Section 22-8B-5 NMSA 1978 and for which a charter school shall not require separate approval by the department;

L. "performance indicator" means a measurement tool that enables selected issues or conditions to be monitored over time for the purposes of evaluating progress toward or away from a desired direction;

M. "performance target" means the specific rating to which the data from a school's performance indicators shall be compared to determine whether the school exceeds, meets, does not meet or falls far below that rating;

N. "siblings" means:

- (1) students living in the same residence at least fifty percent of the time in a permanent or semipermanent situation, such as long-term foster care placements; or
- (2) students related to each other by blood, marriage or cohabitation; and

O. "start-up school" means a public school developed by one or more parents, teachers or community members authorized by the chartering authority to become a charter school.

**History:** Laws 1999, ch. 281, § 2; 2006, ch. 94, § 27; 2015, ch. 108, § 8.

### **22-8B-3. Purpose.**

The Charter Schools Act is enacted to enable individual schools to structure their educational curriculum to encourage the use of different and innovative teaching methods that are based on reliable research and effective practices or have been replicated successfully in schools with diverse characteristics; to allow the development of different and innovative forms of measuring student learning and achievement; to address the needs of all students, including those determined to be at risk; to create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site; to improve student achievement; to provide parents and students with an educational alternative to create new, innovative and more flexible ways of educating children within the public school system; to encourage parental and community involvement in the public school system; to develop and use site-based budgeting; and to hold charter schools accountable for meeting the department's educational standards and fiscal requirements.

**History:** Laws 1999, ch. 281, § 3; 2006, ch. 94, § 28.

### **22-8B-4. Charter schools' rights and responsibilities; operation.**

A. A charter school shall be governed by a governing body in the manner set forth in the charter contract; provided that a governing body shall have at least five members; and provided further that no member of a governing body for a charter school that is initially approved on or after July 1, 2005 or whose charter is renewed on or after July 1, 2005 shall serve on the governing body of another charter school. No member of a



local school board shall be a member of a governing body for a charter school or employed in any capacity by a locally chartered charter school located within the local school board's school district during the term of office for which the member was elected or appointed.

B. A charter school shall be responsible for:

(1) its own operation, including preparation of a budget, subject to audits pursuant to the Audit Act [12-6-1 to 12-6-15 NMSA 1978]; and

(2) contracting for services and personnel matters.

C. A charter school may contract with a school district, a university or college, the state, another political subdivision of the state, the federal government or one of its agencies, a tribal government or any other third party for the use of a facility, its operation and maintenance and the provision of any service or activity that the charter school is required to perform in order to carry out the educational program described in its charter contract. Facilities used by a charter school shall meet the standards required pursuant to Section 22-8B-4.2 NMSA 1978.

D. A conversion school chartered before July 1, 2007 may choose to continue using the school district facilities and equipment it had been using prior to conversion, subject to the provisions of Subsection E of this section.

E. A school district that has available land or one or more available facilities not currently used for other educational purposes shall make facilities and may make land available for lease, lease-purchase or purchase to the charter schools located in the school district for the charter schools' operations and shall notify the charter schools of that availability no later than May 1 of each year. The public school facilities authority shall annually ensure that each school district with available land or one or more available facilities has provided that notification. A school district may develop a facility prioritization plan that identifies which charter schools may lease, lease-purchase or purchase available school district facilities. School-district-owned land shall not be considered available to a charter school if the school district has justified future use of that land through its five-year facilities master plan. An agreement for the use of school district facilities by a charter school may provide for reasonable lease payments; provided that the payments do not exceed the sum of the lease reimbursement rate provided in Paragraph (1) of Subsection I of Section 22-24-4 NMSA 1978 plus any reimbursement for actual direct costs incurred by the school district in providing the facilities; and provided further that any lease payments received by a school district may be retained by the school district and shall not be considered to be cash balances in any calculation pursuant to Section 22-8-41 NMSA 1978. The available facilities provided by a school district to a charter school shall meet all occupancy standards as specified by the public school capital outlay council. As used in this subsection, "other educational purposes" includes health clinics, daycare centers, teacher training centers,

school district administration functions and other ancillary services related to a school district's functions and operations.

F. A locally chartered charter school may pay the costs of operation and maintenance of its facilities or may contract with the school district to provide facility operation and maintenance services.

G. Locally chartered charter school facilities are eligible for state and local capital outlay funds and shall be included in the school district's five-year facilities plan.

H. A locally chartered charter school shall negotiate with a school district to provide transportation to students eligible for transportation under the provisions of the Public School Code [Chapter 22 NMSA 1978]. The school district, in conjunction with the charter school, may establish a limit for student transportation to and from the charter school site not to extend beyond the school district boundary.

I. A charter school shall be a nonsectarian, nonreligious and non-home-based public school.

J. Except as otherwise provided in the Public School Code, a charter school shall not charge tuition or have admission requirements.

K. With the approval of the chartering authority, a single charter school may maintain separate facilities at two or more locations within the same school district; but, for purposes of calculating program units pursuant to the Public School Finance Act [Chapter 22, Article 8 NMSA 1978], the separate facilities shall be treated together as one school.

L. A charter school shall be subject to the provisions of Section 22-2-8 NMSA 1978 and the Assessment and Accountability Act [Chapter 22, Article 2C NMSA 1978].

M. Within constitutional and statutory limits, a charter school may acquire and dispose of property; provided that, upon termination of the charter, all assets of the locally chartered charter school shall revert to the local school board and all assets of the state-chartered charter school shall revert to the state, except that, if all or any portion of a state-chartered charter school facility is financed with the proceeds of general obligation bonds issued by a local school board, the facility shall revert to the local school board.

N. The governing body of a charter school may accept or reject any charitable gift, grant, devise or bequest; provided that no such gift, grant, devise or bequest shall be accepted if subject to any condition contrary to law or to the terms of the charter. The particular gift, grant, devise or bequest shall be considered an asset of the charter school to which it is given.

O. The governing body may contract and sue and be sued. A local school board shall not be liable for any acts or omissions of the charter school.

P. A charter school shall comply with all state and federal health and safety requirements applicable to public schools, including those health and safety codes relating to educational building occupancy.

Q. A charter school is a public school that may contract with a school district or other party for provision of financial management, food services, transportation, facilities, education-related services or other services. The governing body shall not contract with a for-profit entity for the management of the charter school.

R. To enable state-chartered charter schools to submit required data to the department, an accountability data system shall be maintained by the department.

S. A charter school shall comply with all applicable state and federal laws and rules related to providing special education services. Charter school students with disabilities and their parents retain all rights under the federal Individuals with Disabilities Education Act and its implementing state and federal rules. Each charter school is responsible for identifying, evaluating and offering a free appropriate public education to all eligible children who are accepted for enrollment in that charter school. The state-chartered charter school, as a local educational agency, shall assume responsibility for determining students' needs for special education and related services. The division may promulgate rules to implement the requirements of this subsection.

**History:** Laws 1999, ch. 281, § 4; 2000, ch. 82, § 2; 2001, ch. 348, § 1; 2003, ch. 153, § 32; 2005, ch. 221, § 2; 2006, ch. 94, § 31; 2007, ch. 366, § 16; 2011, ch. 14, § 1; 2021, ch. 19, § 2; 2021, ch. 37, § 2; 2022, ch. 19, § 2; 2025, ch. 7, § 2.

## **22-8B-4.1. Charter schools' enrollment procedures.**

A. Start-up schools and conversion schools are subject to the following enrollment procedures:

(1) a start-up school may either enroll students on a first-come, first-served basis or through a lottery selection process if the total number of applicants exceeds the number of spaces available at the start-up school; and

(2) a conversion school shall give enrollment preference to students who are enrolled in the public school at the time it is converted into a charter school and to siblings of students admitted to or attending the charter school. The conversion school may either enroll all other students on a first-come, first-served basis or through a lottery selection process if the total number of applicants exceeds the number of spaces available at the conversion school.

B. In subsequent years of its operation, a charter school shall give enrollment preference to:

- (1) students who have been admitted to the charter school through an appropriate admission process and remain in attendance through subsequent grades;
- (2) children of employees employed by the charter school; and
- (3) siblings of students already admitted to or attending the same charter school.

**History:** 1978 Comp., § 22-8B-4.1, enacted by Laws 2000, ch. 82, § 3; 2021, ch. 28, § 1; 2023, ch. 33, § 2.

## **22-8B-4.2. Charter school facilities; standards.**

A. The facilities of a charter school that is approved on or after July 1, 2005 and before July 1, 2015 shall meet educational occupancy standards required by applicable New Mexico construction codes.

B. The facilities of a charter school whose charter has been renewed at least once shall be evaluated, prioritized and eligible for grants pursuant to the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978] in the same manner as all other public schools in the state; provided that for charter school facilities in leased facilities, grants may be used to provide additional lease payments for leasehold improvements made by the lessor.

C. On or after July 1, 2011, a new charter school shall not open and an existing charter school shall not relocate unless the facilities of the new or relocated charter school, as measured by the New Mexico condition index, receive a condition rating equal to or better than the average condition for all New Mexico public schools for that year or the charter school demonstrates, within eighteen months of occupancy or relocation of the charter, the way in which the facilities will achieve a rating equal to or better than the average New Mexico condition index.

D. On or after July 1, 2015, a new charter school shall not open and an existing charter shall not be renewed unless the charter school:

- (1) is housed in a building that is:
  - (a) owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or one of its agencies or a tribal government; or

(b) subject to a lease-purchase arrangement that has been entered into and approved pursuant to the Public School Lease Purchase Act [Chapter 22, Article 26A NMSA 1978]; or

(2) if it is not housed in a building described in Paragraph (1) of this subsection, demonstrates that:

(a) the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and

(b) either: 1) public buildings are not available or adequate for the educational program of the charter school; or 2) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

E. Without the approval of the public school facilities authority pursuant to Section 22-20-1 NMSA 1978, a charter school shall not enter into a lease-purchase agreement.

F. The public school capital outlay council:

(1) shall determine whether facilities of a charter school meet the educational occupancy standards pursuant to the requirements of Subsection A of this section or the requirements of Subsections B, C and D of this section, as applicable; and

(2) upon a determination that specific requirements are not appropriate or reasonable for a charter school, may grant a variance from those requirements for that charter school.

**History:** Laws 2005, ch. 221, § 3; 2005, ch. 274, § 2; 2007, ch. 366, § 17; 2009, ch. 258, § 1; 2011, ch. 69, § 2.

## **22-8B-5. Charter schools; status; local school board authority.**

A. The local school board may waive only locally imposed school district requirements for locally chartered charter schools.

B. A state-chartered charter school is exempt from school district requirements. A state-chartered charter school is responsible for developing its own written policies and procedures in accordance with this section.

C. The department shall waive requirements or rules and provisions of the Public School Code [Chapter 22 [except Article 5A] NMSA 1978] pertaining to individual class load, teaching load, length of the school day, staffing patterns, subject areas, purchase of instructional material, evaluation standards for school personnel, school principal duties and driver education. The department may waive requirements or rules and

provisions of the Public School Code pertaining to graduation requirements. Any waivers granted pursuant to this section shall be for the term of the charter granted but may be suspended or revoked earlier by the department.

D. A charter school shall be a public school accredited by the department and shall be accountable to the chartering authority for purposes of ensuring compliance with applicable laws, rules and charter provisions.

E. A local school board shall not require any employee of the school district to be employed in a charter school.

F. A local school board shall not require any student residing within the geographic boundary of its district to enroll in a charter school.

G. A student who is suspended or expelled from a charter school shall be deemed to be suspended or expelled from the school district in which the student resides.

**History:** Laws 1999, ch. 281, § 5; 2006, ch. 94, § 32.

### **22-8B-5.1. Governing body training.**

A. The department shall develop a mandatory training course for all governing body members that explains department rules, policies and procedures, statutory powers and duties of governing boards, legal concepts pertaining to public schools, finance and budget and other matters deemed relevant by the department. The department shall notify the governing body members of the dates of the training courses.

B. Governing body members in their first term shall complete at least ten hours of mandatory training during their first year serving on the governing body. Training for new members shall include:

(1) at least two hours covering laws and department policies and procedures affecting governing bodies or charter schools, including ethics and school personnel;

(2) at least two hours covering public school finance, budgeting and fiduciary responsibilities of governing bodies;

(3) at least two hours covering legal concepts pertaining to governing bodies and charter schools, including the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] and the Inspection of Public Records Act [Chapter 14, Article 3 NMSA 1978];

(4) at least two hours covering effective governance practices and effective methods of supporting and supervising a charter school leader; and

(5) at least two hours covering student achievement and student support services.

C. Mandatory training for all other governing body members shall include at least five hours per year and shall cover:

- (1) laws and department policies and procedures affecting governing bodies or charter schools, including ethics and school personnel;
- (2) public school finance, budgeting and fiduciary responsibilities of governing bodies and performance-based budgeting;
- (3) a governing body's role in evaluating and improving student academic achievement and using data to set individual school goals for student academic achievement in charter schools;
- (4) a governing body's role in providing a safe learning environment conducive to improving student outcomes;
- (5) legal concepts pertaining to governing bodies and charter schools, including the Open Meetings Act and the Inspection of Public Records Act;
- (6) effective governance practices and effective methods of supporting and supervising charter school leaders; and
- (7) other matters deemed relevant by the department.

**History:** Laws 2009, ch. 18, § 1; 2024, ch. 43, § 7.

## **22-8B-5.2. Governing body conflicts of interest.**

A. A person shall not serve as a member of a governing body of a charter school if the person or an immediate family member of the person is an owner, agent of, contractor with or otherwise has a financial interest in a for-profit or nonprofit entity with which the charter school contracts directly, for professional services, goods or facilities. A violation of this subsection renders the contract between the person or the person's immediate family member and the charter school voidable at the option of the chartering authority, the department or the governing body. A person who knowingly violates this subsection may be individually liable to the charter school for any financial damage caused by the violation.

B. No member of a governing body or employee, officer or agent of a charter school shall participate in selecting, awarding or administering a contract with the charter school if a conflict of interest exists. A conflict of interest exists when the member, employee, officer or agent or an immediate family member of the member, employee, officer or agent has a financial interest in the entity with which the charter school is contracting. A violation of this subsection renders the contract voidable.

C. Any employee, agent or board member of the chartering authority who participates in the initial review, approval, ongoing oversight, evaluation or charter renewal process of a charter school is ineligible to serve on the governing body of the charter school chartered by the chartering authority.

D. As used in this section, "immediate family member" means spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law or any other relative who is financially supported.

**History:** Laws 2011, ch. 14, § 7.

### **22-8B-5.3. Chartering authority; powers; duties; liability.**

A chartering authority shall:

- A. evaluate charter applications;
- B. actively pursue the utilization of charter schools to satisfy identified education needs and promote a diversity of educational choices;
- C. approve charter applications that meet the requirements of the Charter Schools Act;
- D. decline to approve charter applications that fail to meet the requirements of the Charter Schools Act or are otherwise inadequate;
- E. negotiate and execute, in good faith, charter contracts that meet the requirements of the Charter Schools Act with each approved charter school;
- F. monitor, in accordance with the requirements of the Charter Schools Act and the terms of the charter contract, the performance and legal compliance of charter schools under their authority;
- G. determine whether a charter school merits suspension, revocation or nonrenewal; and
- H. develop and maintain chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing, including:
  - (1) organizational capacity and infrastructure;
  - (2) evaluating charter applications;
  - (3) performance contracting;



- (4) charter school oversight and evaluation; and
- (5) charter school suspension, revocation and renewal processes.

**History:** Laws 2011, ch. 14, § 8.

#### **22-8B-5.4. Governing body authority over who may carry a firearm on charter school property.**

Only the governing body has the authority to authorize school security personnel to carry a firearm on any charter school premises or other charter school property. The decision shall be made in an open meeting and shall be formalized as a policy of the governing body.

**History:** Laws 2019, ch. 189, § 2.

#### **22-8B-5.5. Governing body meetings; webcasting and archiving.**

Except as otherwise provided in this section, live audio and video webcasts of governing body meetings shall be accessible through the charter school's website and shall include a user interface that allows members of the public to submit written or verbal comments. A webcast shall begin as soon as practicable after the chair has called the meeting to order and shall terminate as soon as practicable after the governing body has adjourned. Recordings of the webcasts and an electronic copy of any minutes approved at the meeting shall be posted on the charter school's website within one week of the meeting's conclusion and shall be publicly available for at least three years following the date of the meeting unless the state records retention schedule provides otherwise.

**History:** Laws 2024, ch. 43, § 8.

#### **22-8B-6. Charter school requirements; application process; authorization; state board of finance designation required; public hearings; subcommittees.**

A. A local school board has the authority to approve the establishment of a locally chartered charter school within that local school board's district.

B. No later than the second Tuesday of January of the year in which an application will be filed, the organizers of a proposed charter school shall provide written notification to the commission and the school district in which the charter school is proposed to be located of their intent to establish a charter school. Failure to notify may result in an application not being accepted.

C. A charter school applicant shall apply to either a local school board or the commission for a charter. If an application is submitted to a chartering authority, the chartering authority shall process the application. Applications for initial charters shall be submitted by June 1 to be eligible for consideration for the following fiscal year; provided that the June 1 deadline may be waived upon agreement of the applicant and the chartering authority.

D. An application shall include the total number of grades the charter school proposes to provide, either immediately or phased. A charter school may decrease the number of grades it eventually offers, but it shall not increase the number of grades or the total number of students proposed to be served in each grade.

E. An application shall include the total number of students the charter school proposes to serve in each of the charter school's first three years of operation. No later than June 15, each local school board and the commission shall notify the department as to the number of students each charter school applicant proposes to serve in each year.

F. An application shall include a detailed description of the charter school's projected facility needs, including projected requests for capital outlay assistance that have been approved by the director of the public school facilities authority or the director's designee. The director shall respond to a written request for review from a charter applicant within forty-five days of the request.

G. An application may be made by one or more teachers, parents or community members or by a public post-secondary educational institution or nonprofit organization. Municipalities, counties, private post-secondary educational institutions and for-profit business entities are not eligible to apply for or receive a charter.

H. An initial application for a charter school shall not be made after June 30, 2007 if the proposed charter school's proposed enrollment for all grades or the proposed charter school's proposed enrollment for all grades in combination with any other charter school's enrollment for all grades would equal or exceed ten percent of the total MEM of the school district in which the charter school will be geographically located and that school district has a total enrollment of not more than one thousand three hundred students.

I. A state-chartered charter school shall not be approved for operation unless its governing body has qualified to be a board of finance.

J. The chartering authority shall receive and review all applications for charter schools submitted to it. The chartering authority shall not charge application fees.

K. The chartering authority shall hold at least one public hearing in the school district in which the charter school is proposed to be located to obtain information and community input to assist it in its decision whether to grant a charter school application.

The chartering authority may designate a subcommittee of no fewer than three members to hold the public hearing, and, if so, the hearing shall be transcribed for later review by other members of the chartering authority. Community input may include written or oral comments in favor of or in opposition to the application from the applicant, the local community and, for state-chartered charter schools, the local school board and school district in whose geographical boundaries the charter school is proposed to be located.

L. The chartering authority shall rule on the application for a charter school in a public meeting by September 1 of the year the application was received; provided, however, that prior to ruling on the application for which a designated subcommittee was used, any member of the chartering authority who was not present at the public hearing shall receive the transcript of the public hearing together with documents submitted for the public hearing. If not ruled upon by that date, the charter application shall be automatically reviewed by the secretary in accordance with the provisions of Section 22-8B-7 NMSA 1978. The charter school applicant and the chartering authority may, however, jointly waive the deadlines set forth in this section.

M. A chartering authority may approve, approve with conditions or deny an application. A chartering authority may deny an application if:

- (1) the application is incomplete or inadequate;
- (2) the application does not propose to offer an educational program consistent with the requirements and purposes of the Charter Schools Act;
- (3) the proposed head administrator or other administrative or fiscal staff was involved with another charter school whose charter was denied or revoked for fiscal mismanagement or the proposed head administrator or other administrative or fiscal staff was discharged from a public school for fiscal mismanagement;
- (4) for a proposed state-chartered charter school, it does not request to have the governing body of the charter school designated as a board of finance or the governing body does not qualify as a board of finance;
- (5) for a proposed charter school on tribal land, it fails to receive approval from the tribal government; or
- (6) the application is otherwise contrary to the best interests of the charter school's projected students, the local community or the school district in whose geographic boundaries the charter school applies to operate.

N. If the chartering authority denies a charter school application or approves the application with conditions, it shall state its reasons for the denial or conditions in writing within fourteen days of the meeting. If the chartering authority grants a charter, the

approved charter shall be provided to the applicant together with any imposed conditions.

O. A charter school that has received a notice from the chartering authority denying approval of the charter shall have a right to a hearing by the secretary as provided in Section 22-8B-7 NMSA 1978.

**History:** Laws 1999, ch. 281, § 6; 2005, ch. 221, § 4; 2006, ch. 94, § 33; 2007, ch. 198, § 1; 2009, ch. 6, § 1; 2009, ch. 12, § 1; 2011, ch. 69, § 3; 2015, ch. 108, § 9; 2019, ch. 174, § 4; 2019, ch. 206, § 20; 2019, ch. 207, § 20.

## **22-8B-7. Appeal of denial, nonrenewal, suspension or revocation; procedures.**

A. The secretary, upon receipt of a notice of appeal or upon the secretary's own motion, shall review decisions of a chartering authority concerning charter schools in accordance with the provisions of this section.

B. A charter applicant or governing body that wishes to appeal a decision of the chartering authority concerning the denial, nonrenewal, suspension or revocation of a charter school or the imposition of conditions that are unacceptable to the charter school or charter school applicant shall provide the secretary with a notice of appeal within thirty days after the chartering authority's decision. The charter school applicant or governing body bringing the appeal shall limit the grounds of the appeal to the grounds for denial, nonrenewal, suspension or revocation or the imposition of conditions that were specified by the chartering authority. The notice shall include a brief statement of the reasons the charter school applicant or governing body contends the chartering authority's decision was in error. Except as provided in Subsection E of this section, the appeal and review process shall be as follows within sixty days after receipt of the notice of appeal, the secretary, at a public hearing that may be held in the school district in which the charter school is located or in which the proposed charter school has applied for a charter, shall review the decision of the chartering authority and make findings. If the secretary finds that the chartering authority acted arbitrarily or capriciously, rendered a decision not supported by substantial evidence or did not act in accordance with law, the secretary may reverse the decision of the chartering authority and order the approval of the charter with or without conditions. The decision of the secretary shall be final.

C. The secretary, on the secretary's own motion, may review a chartering authority's decision to grant a charter. Within sixty days after the making of a motion to review by the secretary, the secretary, at a public hearing that may be held in the school district in which the proposed charter school that has applied for a charter will be located, shall review the decision of the chartering authority and determine whether the decision was arbitrary or capricious or whether the establishment or operation of the proposed charter school would:

- (1) violate any federal or state laws concerning civil rights;
- (2) violate any court order; or
- (3) threaten the health and safety of students within the school district.

D. If the secretary determines that the charter would violate the provisions set forth in Subsection C of this section, the secretary shall deny the charter application. The secretary may extend the time lines established in this section for good cause. The decision of the secretary shall be final.

E. If a chartering authority denies an application or refuses to renew a charter because the public school capital outlay council has determined that the facilities do not meet the standards required by Section 22-8B-4.2 NMSA 1978, the charter school applicant or charter school may appeal the decision to the secretary as otherwise provided in this section; provided that the secretary shall reverse the decision of the chartering authority only if the secretary determines that the decision was arbitrary, capricious, not supported by substantial evidence or otherwise not in accordance with the law.

F. A person aggrieved by a final decision of the secretary may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** Laws 1999, ch. 281, § 7; 2005, ch. 221, § 5; 2006, ch. 94, § 34.

## **22-8B-8. Charter application; contents.**

The charter school application shall include:

- A. the mission statement of the charter school;
- B. the goals, objectives and student performance outcomes to be achieved by the charter school;
- C. a description of the charter school's educational program, student performance standards and curriculum that must meet or exceed the department's educational standards and must be designed to enable each student to achieve those standards;
- D. a description of the way a charter school's educational program will meet the individual needs of the students, including those students determined to be at risk;
- E. a description of the charter school's plan for evaluating student performance, the types of assessments that will be used to measure student progress toward achievement of the state's standards and the school's student performance outcomes, the time line for achievement of the outcomes and the procedures for taking corrective action in the event that student performance falls below the standards;

F. evidence that the plan for the charter school is economically sound, including a proposed budget for the term of the charter and a description of the manner in which the annual audit of the financial and administrative operations of the charter school is to be conducted;

G. evidence that the fiscal management of the charter school complies with all applicable federal and state laws and rules relative to fiscal procedures;

H. evidence of a plan for the displacement of students, teachers and other employees who will not attend or be employed in the conversion school;

I. a description of the governing body and operation of the charter school, including:

(1) how the governing body will be selected;

(2) qualification and terms of members, how vacancies on the governing body will be filled and procedures for changing governing body membership; and

(3) the nature and extent of parental, professional educator and community involvement in the governance and operation of the school;

J. an explanation of the relationship that will exist between the proposed charter school and its employees, including evidence that the terms and conditions of employment will be addressed with affected employees and their recognized representatives, if any;

K. the employment and student discipline policies of the proposed charter school;

L. an agreement between the charter school and the chartering authority regarding their respective legal liability and applicable insurance coverage;

M. a description of how the charter school plans to meet the transportation and food service needs of its students;

N. a description of both the discretionary waivers and the waivers provided for in Section 22-8B-5 NMSA 1978 that the charter school is requesting or that will be provided from the local school board or the department and the charter school's plan for addressing and using these waiver requests; and

O. a description of the facilities the charter school plans to use.

**History:** Laws 1999, ch. 281, § 8; 2006, ch. 94, § 35; 2011, ch. 14, § 2.

## **22-8B-9. Charter school contract; contents; rules.**

A. The chartering authority shall enter into a contract with the governing body of the applicant charter school within thirty days of approval of the charter application. The charter contract shall be the final authorization for the charter school and shall be part of the charter. If the chartering authority and the applicant charter school fail to agree upon the terms of or enter into a contract within thirty days of the approval of the charter application, either party may appeal to the secretary to finalize the terms of the contract; provided that such appeal must be provided in writing to the secretary within forty-five days of the approval of the charter application. Failure to enter into a charter contract or appeal to the secretary pursuant to this section precludes the chartering authority from chartering the school.

B. The charter contract shall include:

(1) all agreements regarding the release of the charter school from department and local school board rules and policies, including discretionary waivers provided for in Section 22-8B-5 NMSA 1978;

(2) any material term of the charter application as determined by the parties to the contract;

(3) the mission statement of the charter school and how the charter school will report on implementation of its mission;

(4) the chartering authority's duties to the charter school and liabilities of the chartering authority as provided in Section 22-8B-5.3 NMSA 1978;

(5) a statement of admission policies and procedures;

(6) signed assurances from the charter school's governing body members regarding compliance with all federal and state laws governing organizational, programmatic and financial requirements applicable to charter schools;

(7) the criteria, processes and procedures that the chartering authority will use for ongoing oversight of operational, financial and academic performance of the charter school;

(8) a detailed description of how the chartering authority will use the withheld two percent of the school-generated program cost as provided in Section 22-8B-13 NMSA 1978;

(9) the types and amounts of insurance liability coverage to be obtained by the charter school;

(10) the term of the contract;

(11) the process and criteria that the chartering authority intends to use to annually monitor and evaluate the fiscal, overall governance and student performance of the charter school, including the method that the chartering authority intends to use to conduct the evaluation as required by Section 22-8B-12 NMSA 1978;

(12) the dispute resolution processes agreed upon by the chartering authority and the charter school, provided that the processes shall, at a minimum, include:

(a) written notice of the intent to invoke the dispute resolution process, which notice shall include a description of the matter in dispute;

(b) a time limit for response to the notice and cure of the matter in dispute;

(c) a procedure for selection of a neutral third party to assist in resolving the dispute;

(d) a process for apportionment of all costs related to the dispute resolution process; and

(e) a process for final resolution of the issue reviewed under the dispute resolution process;

(13) the criteria, procedures and time lines, agreed upon by the charter school and the chartering authority, addressing charter revocation and deficiencies found in the annual status report pursuant to the provisions of Section 22-8B-12 NMSA 1978;

(14) if the charter school contracts with a third-party provider, the criteria and procedures for the chartering authority to review the provider's contract and the charter school's financial independence from the provider;

(15) all requests for release of the charter school from department rules or the Public School Code. Within ten days after the contract is approved by the local school board, any request for release from department rules or the Public School Code shall be delivered by the local school board to the department. If the department grants the request, it shall notify the local school board and the charter school of its decision. If the department denies the request, it shall notify the local school board and the charter school that the request is denied and specify the reasons for denial;

(16) an agreement that the charter school will participate in the public school insurance authority;

(17) if the charter school is a state-chartered charter school, a process for qualification of and review of the school as a qualified board of finance and provisions for assurance that the school has satisfied any conditions imposed by the commission;

(18) a listing of the charter school's nondiscretionary waivers; and



(19) any other information reasonably required by either party to the contract.

C. The process for revision or amendment to the terms of the charter contract shall be made only with the approval of the chartering authority and the governing body of the charter school. If they cannot agree, either party may appeal to the secretary as provided in Subsection A of this section.

**History:** Laws 1999, ch. 281, § 9; 2006, ch. 94, § 36; 2011, ch. 14, § 3; 2015, ch. 108, § 10.

## **22-8B-9.1. Performance framework.**

A. The performance provisions in the charter contract shall be based on a framework that clearly sets forth the academic and operations performance indicators and performance targets that will guide the chartering authority's evaluation of each charter school. The performance framework shall be a material term of the charter school contract and shall include performance indicators and performance targets for, at a minimum:

- (1) student academic performance;
- (2) student academic growth;
- (3) achievement gaps in both proficiency and growth between student subgroups;
- (4) attendance;
- (5) recurrent enrollment from year to year;
- (6) if the charter school is a high school, post-secondary readiness;
- (7) if the charter school is a high school, graduation rate;
- (8) financial performance and sustainability; and
- (9) governing body performance, including compliance with all applicable laws, rules and terms of the charter contract.

B. Annual performance targets shall be set by each chartering authority in consultation with its charter schools and shall be designed to help each charter school meet applicable federal, state and chartering authority expectations as set forth in the charter contracts to which the authority is a party.

C. The performance framework shall allow for the inclusion of additional rigorous, valid and reliable indicators proposed by a charter school to augment external

evaluations of its performance, provided that the chartering authority shall approve the quality and rigor of such proposed indicators and the indicators are consistent with the purposes of the Charter Schools Act.

D. The performance framework shall require the disaggregation of all student performance data collected in compliance with this section by student subgroup, including gender, race, poverty status, special education or gifted status and English language learner.

E. The chartering authority shall collect, analyze and report all data from state assessment tests in accordance with the performance framework set forth in the charter contract for each charter school overseen by that chartering authority.

**History:** Laws 2011, ch. 14, § 4; 2015, ch. 108, § 11.

## **22-8B-10. Charter schools; employees.**

A. A charter school shall hire its own employees. The provisions of the School Personnel Act [Chapter 22, Article 10A NMSA 1978] shall apply to such employees. The head administrator of the charter school shall employ, fix the salaries of, assign, terminate and discharge all employees of the charter school.

B. The head administrator of a charter school shall not initially employ or approve the initial employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law of a member of the governing body or the head administrator. The governing body may waive the nepotism rule for family members of a head administrator.

C. Nothing in this section shall prohibit the continued employment of a person employed on or before July 1, 2008.

**History:** Laws 1999, ch. 281, § 10; 2006, ch. 94, § 37; 2007, ch. 259, § 1; 2008, ch. 5, § 2; 2009, ch. 195, § 2.

## **22-8B-11. Charter schools; maximum number established.**

A. The commission shall authorize the approval of start-up charter schools.

B. No more than fifteen start-up schools may be established per year statewide. The number of charter school slots remaining in that year shall be transferred to succeeding years up to a maximum of seventy-five start-up schools in any five-year period.

**History:** Laws 1999, ch. 281, § 11; 2006, ch. 94, § 38.

**22-8B-12. Charter schools; term; oversight and corrective actions; site visits; renewal of charter; grounds for nonrenewal or revocation.**

A. A charter school may be approved for an initial term of six years; provided that the first year shall be used exclusively for planning and not for completing the application. A charter may be renewed for successive periods of five years each. Approvals of less than five years may be agreed to between the charter school and the chartering authority.

B. During the planning year, the charter school shall file a minimum of three status reports with the chartering authority and the department for the purpose of demonstrating that the charter school's implementation progress is consistent with the conditions, standards and procedures of its approved charter. The report content, format and schedule for submission shall be agreed to by the chartering authority and the charter school and become part of the charter contract.

C. Prior to the end of the planning year, the charter school shall demonstrate that its facilities meet the requirements of Section 22-8B-4.2 NMSA 1978.

D. A chartering authority shall monitor the fiscal, overall governance and student performance and legal compliance of the charter schools that it oversees, including reviewing the data provided by the charter school to support ongoing evaluation according to the charter contract. Every chartering authority may conduct or require oversight activities that allow the chartering authority to fulfill its responsibilities under the Charter Schools Act, including conducting appropriate inquiries and investigations; provided that the chartering authority complies with the provisions of the Charter Schools Act and the terms of the charter contract and does not unduly inhibit the autonomy granted to the charter schools that it governs.

E. As part of its performance review of a charter school, a chartering authority shall visit a charter school under its authority at least once annually to provide technical assistance to the charter school and to determine the status of the charter school and the progress of the charter school toward the performance framework goals in its charter contract.

F. If, based on the performance review conducted by the chartering authority pursuant to Subsection D of this section, a charter school's fiscal, overall governance or student performance or legal compliance appears unsatisfactory, the chartering authority shall promptly notify the governing body of the charter school of the unsatisfactory review and provide reasonable opportunity for the governing body to remedy the problem; provided that if the unsatisfactory review warrants revocation, the revocation procedures set forth in this section shall apply. A chartering authority may take appropriate corrective actions or exercise sanctions, as long as such sanctions do not constitute revocation, in response to the unsatisfactory review. Such actions or sanctions by the chartering authority may include requiring a governing body to develop

and execute a corrective action plan with the chartering authority that sets forth time frames for compliance.

G. Every chartering authority shall submit an annual report to the division, including a performance report for each charter school that it oversees, in accordance with the performance framework set forth in the charter contract.

H. The department shall review the annual report received from the chartering authority to determine if the department or local school board rules and policies from which the charter school was released pursuant to the provisions of Section 22-8B-5 NMSA 1978 assisted or impeded the charter school in meeting its stated goals and objectives. The department shall use the annual reports received from the chartering authorities as part of its report to the governor, the legislative finance committee and the legislative education study committee as required by the Charter Schools Act.

I. No later than two hundred seventy days prior to the date in which the charter expires, the governing body may submit a renewal application to the chartering authority. A charter school may apply to a different chartering authority for renewal. The chartering authority shall rule in a public hearing on the renewal application no later than one hundred eighty days prior to the expiration of the charter.

J. A charter school renewal application submitted to the chartering authority shall contain:

(1) a report on the progress of meeting the academic performance, financial compliance and governance responsibilities of the charter school, including achieving the goals, objectives, student performance outcomes, state standards of excellence and other terms of the charter contract, including the accountability requirements set forth in the Assessment and Accountability Act [Chapter 22, Article 2C NMSA 1978];

(2) a financial statement that discloses the costs of administration, instruction and other spending categories for the charter school that is understandable to the general public, that allows comparison of costs to other schools or comparable organizations and that is in a format required by the department;

(3) a copy of the charter contract executed in compliance with the provisions of Section 22-8B-9 NMSA 1978;

(4) a petition in support of the charter school renewing its charter status signed by not less than sixty-five percent of the employees in the charter school;

(5) a petition in support of the charter school renewing its charter status signed by at least seventy-five percent of the households whose children are enrolled in the charter school;

(6) a description of the charter school facilities and assurances that the facilities are in compliance with the requirements of Section 22-8B-4.2 NMSA 1978; and

(7) for charter schools located on tribal land, documentation of ongoing consultation pursuant to the Indian Education Act [Chapter 22, Article 23A NMSA 1978].

K. A charter may be suspended, revoked or not renewed by the chartering authority if the chartering authority determines that the charter school did any of the following:

(1) committed a material violation of any of the conditions, standards or procedures set forth in the charter contract;

(2) failed to meet or make substantial progress toward achievement of the department's standards of excellence or student performance standards identified in the charter contract;

(3) failed to meet generally accepted standards of fiscal management;

(4) for a charter school located on tribal land, failed to comply with ongoing consultations pursuant to the Indian Education Act; or

(5) violated any provision of law from which the charter school was not specifically exempted.

L. The chartering authority shall develop processes for suspension, revocation or nonrenewal of a charter that:

(1) provide the charter school with timely notification of the prospect of suspension, revocation or nonrenewal of the charter and the reasons for such action;

(2) allow the charter school a reasonable amount of time to prepare and submit a response to the chartering authority's action; and

(3) require the final determination made by the chartering authority to be submitted to the department.

M. If a chartering authority suspends, revokes or does not renew a charter, the chartering authority shall state in writing its reasons for the suspension, revocation or nonrenewal.

N. If a chartering authority suspends, revokes or does not renew the charter of a charter school located on tribal land, the chartering authority and charter school shall consult with the tribe pursuant to Subsections C and D of Section 3 [22-8B-12.2 NMSA 1978] of this 2019 act.

O. A decision to suspend, revoke or not to renew a charter may be appealed by the governing body pursuant to Section 22-8B-7 NMSA 1978.

**History:** Laws 1999, ch. 281, § 12; 2005, ch. 221, § 6; 2006, ch. 94, § 39; 2010, ch. 48, § 1; 2011, ch. 14, § 5; 2015, ch. 108, § 12; 2019, ch. 174, § 5.

### **22-8B-12.1. Charter school closure; chartering authority protocols; chartering authority duties; distribution of assets.**

A. Prior to any charter school closure decision, the chartering authority shall develop a charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools and proper disposition of school funds, property and assets in accordance with the provisions of Subsection C of this section. The protocol shall specify tasks, time lines and responsible parties, including delineating the respective duties of the charter school, the governing body and the chartering authority.

B. If a charter school is ordered closed for any reason, prior to closure, the chartering authority shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents according to the closure protocol.

C. When a charter school is closed, the assets of the school shall be distributed first to satisfy outstanding payroll obligations for employees of the school, then to creditors of the school and then to the state treasury to the credit of the current school fund. If the assets of the school are insufficient to pay all parties to whom the schools owes compensation, the prioritization of the distribution of assets may be determined by decree of a court of law.

**History:** Laws 2011, ch. 14, § 6.

### **22-8B-12.2. Charter schools; proposals to open or close a public school on tribal land; consultation with tribal leaders and members and families of students.**

A. If a charter school applicant wants to open a charter school on tribal land, it shall negotiate with and receive the tribal government's approval for the public school before the charter school authorizer acts on the application. The applicant shall also consult with tribal leaders and members and families of students who will be eligible to attend the public school.

B. Consultation shall include, among other actions, meetings in which the charter school applicant shall explain:

(1) how and why the applicant reached the decision to approach the tribe about opening a public school on tribal land; and

(2) the level of the charter school applicant's commitment to improving educational outcomes for Indian students by opening a public school and how that commitment will be manifested through:

(a) culturally and linguistically responsive school policies;

(b) rigorous and culturally meaningful curricula and instructional materials;

(c) sensitivity to the tribe's calendar of religious and tribal obligations when making the school calendar; and

(d) professional development for school personnel at the public school to ensure that the best practices used in teaching, mentoring, counseling and administration are culturally and linguistically responsive to students.

C. Whenever a charter school authorizer is contemplating closing a charter school on tribal land, for any reason, it shall consult with tribal leaders and members and families of students attending the charter school.

D. Consultation shall include, among other actions, open meetings in which the charter school authorizer and the head administrator of the charter school explain:

(1) the reasons for closing the charter school;

(2) the reasons why the charter school has not or cannot provide additional resources to keep the charter school open;

(3) locations of other public schools in the vicinity to which students will be sent and the plan to transport students to those schools;

(4) how the public school receiving new students will consult with tribal leaders and members and families of students attending the public school related to:

(a) culturally and linguistically responsive school policies;

(b) rigorous and culturally meaningful curricula and instructional materials;

(c) sensitivity to the tribe's calendar of religious and other tribal obligations when making the school calendar; and

(d) professional development for school personnel at the public school to ensure that the best practices used in teaching, mentoring, counseling and administration are culturally and linguistically responsive to students;

(5) how the educational outcomes for the Indian students will be improved by attending another public school;

(6) plans for the public school buildings that will be left empty by the closure; and

(7) any other matters the charter school governing body and head administrator believe provide an adequate explanation of the reasons for closing the charter school.

**History:** Laws 2019, ch. 174, § 3.

### **22-8B-13. Charter school financing.**

A. The amount of funding allocated to a charter school shall be not less than ninety-eight percent of the school-generated program cost. The school district or division may withhold and use two percent of the school-generated program cost for its administrative support of a charter school.

B. That portion of money from state or federal programs generated by students enrolled in a locally chartered charter school shall be allocated to that charter school serving students eligible for that aid. Any other public school program not offered by the locally chartered charter school shall not be entitled to the share of money generated by a charter school program.

C. When a state-chartered charter school is designated as a board of finance pursuant to Section 22-8-38 NMSA 1978, it shall receive state and federal funds for which it is eligible.

D. Charter schools may apply for all federal funds for which they are eligible.

E. All services centrally or otherwise provided by a local school district, including custodial, maintenance and media services, libraries and warehousing shall be subject to negotiation between the charter school and the school district. Any services for which a charter school contracts with a school district shall be provided by the district at a reasonable cost.

**History:** Laws 1999, ch. 281, § 13; 2006, ch. 94, § 40.

### **22-8B-14. Charter schools stimulus fund created.**

A. The "charter schools stimulus fund" is created in the state treasury. Money in the fund is appropriated to the department of education [public education department] to provide financial support to charter schools, whether start-up or conversion, for initial start-up costs and initial costs associated with renovating or remodeling existing buildings and structures for expenditure in fiscal year 2000 and subsequent fiscal years.



The fund shall consist of money appropriated by the legislature and grants, gifts, devises and donations from any public or private source. The department of education [public education department] shall administer the fund in accordance with rules adopted by the state board [department]. The department of education [public education department] may use up to three percent of the fund for administrative costs. Money in the fund shall not revert to the general fund at the end of a fiscal year.

B. If the charter school receives an initial grant and fails to begin operating a charter school within the next eighteen months, the charter school shall immediately reimburse the fund.

**History:** Laws 1999, ch. 281, § 14.

### **22-8B-14.1. Repealed.**

**History:** Laws 2007, ch. 214, § 3; repealed by Laws 2007, ch. 214, § 4.

### **22-8B-15. Repealed.**

**History:** Laws 1999, ch. 281, § 15.

### **22-8B-16. Public education commission; powers and duties.**

The commission shall receive applications for initial chartering and renewals of charters for charter schools that want to be chartered by the state and approve or disapprove those charter applications. The commission may approve, deny, suspend or revoke the charter of a state-chartered charter school in accordance with the provisions of the Charter Schools Act. The chartering authority for a charter school existing on July 1, 2007 may be transferred to the commission; provided, however, that if a school chartered under a previous chartering authority chooses to transfer its chartering authority, it shall continue to operate under the provisions of that charter until its renewal date unless it is suspended or revoked by the commission. An application for a charter school filed with a local school board prior to July 1, 2007, but not approved, may be transferred to the commission on July 1, 2007.

**History:** Laws 2006, ch. 94, § 29.

### **22-8B-17. Charter schools division; duties.**

The "charter schools division" is created in the department. The division shall:

- A. provide staff support to the commission;
- B. provide technical support to all charter schools;

C. review and approve state-chartered charter school budget matters; and

D. make recommendations to the commission regarding the approval, denial, suspension or revocation of the charter of a state-chartered charter school.

**History:** Laws 2006, ch. 94, § 30.

### **22-8B-17.1. Division; annual report.**

By December 1 annually, the division shall issue to the governor, the legislative finance committee and the legislative education study committee a report on the state's charter schools for the school year ending in the preceding calendar year, drawing from the annual reports submitted by every chartering authority as well as any relevant data compiled by the division. The annual report shall include a comparison of the performance of charter school students with the performance of academically, ethnically and economically comparable groups of students in noncharter public schools. The report shall also include an assessment of the successes, challenges and areas for improvement in meeting the purposes of the Charter Schools Act, including the division's assessment of the sufficiency of funding for charter schools, the efficacy of the state formula for chartering authority funding and any suggested changes to state law or policy necessary to strengthen the state's charter schools. The annual report shall be published on the department's web site.

**History:** Laws 2011, ch. 14, § 9.

### **22-8B-18. Policy of non-discrimination.**

A. A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, physical or mental handicap, serious medical condition, race, creed, color, sex, gender identity, sexual orientation, spousal affiliation, national origin, religion, ancestry or need for special education services and shall not allow for the imposition of discipline, discrimination or disparate treatment against a student based on the student's race, religion or culture or because of the student's use of protective hairstyles or cultural or religious headdresses.

B. Governing bodies of charter schools shall not prohibit a student who is enrolled, or eligible for enrollment, in a federally recognized Indian nation, tribe or pueblo from wearing tribal regalia or objects of cultural significance along with or attached to a cap or gown or wearing tribally significant footwear or other items of apparel under a gown at graduation ceremonies or public school events.

C. As used in this section:

(1) "cultural or religious headdresses" includes hijabs, head wraps or other headdresses used as part of a person's personal cultural or religious beliefs;

(2) "protective hairstyles" includes such hairstyles as braids, locs, twists, tight coils or curls, cornrows, bantu knots, afros, weaves, wigs or head wraps; and

(3) "tribal regalia" means a tribe's traditional dress or recognized objects of religious or cultural significance, including tribal symbols, jewelry, beading and feathers.

**History:** Laws 2025, ch. 7, § 3.

## **ARTICLE 8C**

### **Charter School Districts**

#### **22-8C-1. Repealed.**

**History:** Laws 1999, ch. 293, § 1; repealed by Laws 2005, ch. 292, § 9.

#### **22-8C-2. Repealed.**

**History:** Laws 1999, ch. 293, § 2; repealed by Laws 2005, ch. 292, § 9.

#### **22-8C-3. Repealed.**

**History:** Laws 1999, ch. 293, § 3; repealed by Laws 2005, ch. 292, § 9.

#### **22-8C-4. Repealed.**

**History:** Laws 1999, ch. 293, § 4; repealed by Laws 2005, ch. 292, § 9.

#### **22-8C-5. Repealed.**

**History:** Laws 1999, ch. 293, § 5; repealed by Laws 2005, ch. 292, § 9.

#### **22-8C-6. Repealed.**

**History:** Laws 1999, ch. 293, § 6; repealed by Laws 2005, ch. 292, § 9.

#### **22-8C-7. Repealed.**

**History:** Laws 1999, ch. 293, § 7; repealed by Laws 2005, ch. 292, § 9.

#### **22-8C-8. Charter school student participation in public school extracurricular activities.**

A. The New Mexico activities association and the local school board in the school district in which a charter school is located shall allow charter school students in grades seven through twelve to participate in school district extracurricular activities sanctioned by the New Mexico activities association if they meet eligibility requirements other than enrollment in a particular public school and if the charter school does not offer such activities sanctioned by the New Mexico activities association or any other association.

B. A charter school student otherwise eligible to participate in an extracurricular activity shall participate in the public school in the attendance zone in which the student lives, provided, however, that the student may choose only one public school in which to participate.

**History:** Laws 2005, ch. 97, § 1.

## **ARTICLE 8D**

### **Special Urban School District (Repealed.)**

#### **22-8D-1. Repealed.**

**History:** Laws 2003, ch. 434, § 1; repealed by Laws 2005, ch. 292, § 9.

#### **22-8D-2. Repealed.**

**History:** Laws 2003, ch. 434, § 2; repealed by Laws 2005, ch. 292, § 9.

#### **22-8D-3. Repealed.**

**History:** Laws 2003, ch. 434, § 3; repealed by Laws 2005, ch. 292, § 9.

#### **22-8D-4. Repealed.**

**History:** Laws 2003, ch. 434, § 4; repealed by Laws 2005, ch. 292, § 9.

#### **22-8D-5. Repealed.**

**History:** Laws 2003, ch. 434, § 5; repealed by Laws 2005, ch. 292, § 9.

#### **22-8D-6. Repealed.**

**History:** Laws 2003, ch. 434, § 6; repealed by Laws 2005, ch. 292, § 9.

#### **22-8D-7. Repealed.**

**History:** Laws 2003, ch. 434, § 7; repealed by Laws 2005, ch. 292, § 9.

# **ARTICLE 8E**

## **Charter School District Act of 2005**

### **22-8E-1. Short title.**

Sections 1 through 8 [22-8E-1 to 22-8E-8 NMSA 1978] of this act may be cited as the "Charter School District Act of 2005".

**History:** Laws 2005, ch. 292, § 1.

### **22-8E-2. Definition.**

As used in the Charter School District Act of 2005, "charter school district" means an existing school district that operates under a charter approved by the department, that is nonreligious, that does not charge tuition and that does not have admission requirements in addition to those found in the Public School Code [Chapter 22 [except Article 5A] NMSA 1978].

**History:** Laws 2005, ch. 292, § 2.

### **22-8E-3. Charter school district application requirements; process.**

A. Before a school district applies for a charter from the department, the local school board shall adopt a resolution approving the application plan and hold at least two public hearings on the matter. The school district shall advertise the charter school district application plan in the same manner as other legal notices of the school district. In addition, the school district shall send a notice to the principal of each school in the district, with instructions that each school distribute the notice to the families whose children are enrolled in the school. The local school board may amend the charter school district application after the public hearings. The local school board shall vote to approve the final application before the school district submits it to the department.

B. Not less than sixty-five percent of the employees of the school district must sign a petition in support of the school district becoming a charter school district.

C. The department shall establish by rule the process and requirements for applying for charter school district status and the process and requirements for renewing charter school district status. In each case, the department shall hold a public hearing.

D. The department shall approve no more than nine charter school districts altogether, three small, three medium and three large districts as determined by the department.

E. The department shall disapprove an initial application or application for renewal of charter school district status when it determines, after a hearing, that the application is not in the best interests of the students, the school district or the community.

**History:** Laws 2005, ch. 292, § 3.

## **22-8E-4. Charter contract.**

A. The local school board of a school district that meets the requirements for a charter school district shall enter into a contract with the department establishing its charter to operate as a charter school district for five years.

B. The contract shall reflect all agreements regarding the operation of the charter school district. The terms of the contract may be revised at any time with the approval of both the department and the charter school district.

C. The charter shall include:

(1) assurances that the charter school district shall comply with state laws pertaining to accreditation, state educational standards, assessment and accountability and financial requirements;

(2) a statement of mission and purpose for the operation of the charter school district, including the charter school district's goals and objectives;

(3) evidence that the charter school district's educational and operational plans are economically sound and comply with all state and federal laws and rules;

(4) a description of the charter school district's educational programs and student performance standards and curriculum that must meet or exceed department standards and must be designed to enable each student to achieve those standards;

(5) a description of the way the charter school district's educational program will meet the individual needs of the students, including students with disabilities and students determined to be at risk;

(6) an explanation of the relationship that will exist between the charter school district and its employees and a description of the way the terms and conditions of employment will be addressed with affected employees; and

(7) a description of all waivers from department rules requested and granted.

D. The charter school district shall:

(1) continue to operate as a public, nonsectarian public school district and operate in the same geographic boundaries that existed for the school district prior to becoming a charter school district;

(2) receive state money as provided in the Public School Code [Chapter 22 NMSA 1978];

(3) provide special education services as required by state and federal law;

(4) be liable for timely payment on its bonded indebtedness and subject to the same bonded indebtedness limitations as it was before becoming a charter school district; and

(5) be subject to all state and federal laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry or need for special education services.

E. The charter school district shall be accountable to the department for ensuring compliance with its charter and applicable state and federal laws and rules.

F. Employees of a charter school district shall be considered continuous employees without interruption of employment pursuant to the School Personnel Act [Chapter 22, Article 10A NMSA 1978] and shall be afforded procedural due process rights and protection.

G. The governing body of the charter school district shall continue to be the local school board.

**History:** Laws 2005, ch. 292, § 4.

### **22-8E-5. Charter school district responsibilities; exemptions from Public School Code.**

A. The charter school district shall promulgate policies to ensure that the individual needs of students and schools in the district are met.

B. The charter school district is exempt from provisions of the Public School Code [Chapter 22 NMSA 1978] and rules adopted pursuant to that act pertaining to the length of the school day, staffing patterns, subject areas and instructional materials.

C. The department may waive other requirements the secretary deems appropriate.

**History:** Laws 2005, ch. 292, § 5.

### **22-8E-6. Renewal of charter.**

A. A charter for a charter school district may be renewed for successive periods of five years each.

B. Before it submits an application for renewal to the department, the local school board shall hold a public hearing to adopt a resolution approving the application for renewal.

C. A charter school district renewal application submitted to the department shall contain:

(1) a report on the progress that the charter school district has made toward achieving the goals of its charter;

(2) a petition in support of the charter school district renewing its charter school district status signed by not less than sixty-five percent of the employees in the charter school district;

(3) a resolution by the local school board requesting renewal of the charter;  
and

(4) any other information that the department deems appropriate.

**History:** Laws 2005, ch. 292, § 6; 2015, ch. 58, § 12.

### **22-8E-7. Evaluation; grounds for nonrenewal, probation or revocation of charter.**

A. The department shall provide ongoing evaluation of the charter school district's compliance with accreditation and state laws pertaining to state educational standards, assessment and accountability and financial requirements. Department staff shall visit the charter school district at least once each year to provide technical assistance and to determine the status of the charter school district and the progress of the charter school district toward the goals of its charter.

B. If the department finds that the charter school district is not in compliance with its charter or with any applicable state or federal law or rules, or is not in the best interests of the students, the school district or the community, the department may deny renewal, revoke the charter or place the charter school district on probationary status.

**History:** Laws 2005, ch. 292, § 7.

### **22-8E-8. Report to the legislative education study committee and the governor.**



Each December, the department and each charter school district shall report to the legislative education study committee and the governor regarding the progress that each charter school district has made toward achieving the goals of its charter.

**History:** Laws 2005, ch. 292, § 8.

## **ARTICLE 8F**

### **Family Income Index**

#### **22-8F-1. Short title.**

This act [22-8F-1 to 22-8F-6 NMSA 1978] may be cited as the "Family Income Index Act".

**History:** Laws 2021, ch. 18, § 1.

#### **22-8F-2. Definitions.**

As used in the Family Income Index Act:

A. "above average income" means a household income of two hundred twenty-five percent or a higher percentage of the federal poverty level;

B. "extremely low income" means a household income of up to seventy-five percent of the federal poverty level;

C. "low income" means a household income of at least one hundred thirty percent but less than one hundred eighty-five percent of the federal poverty level;

D. "moderate income" means a household income of at least one hundred eighty-five percent but less than two hundred twenty-five percent of the federal poverty level;

E. "school district" includes a state-chartered charter school; and

F. "very low income" means a household income greater than seventy-five percent but less than one hundred thirty percent of the federal poverty level.

**History:** Laws 2021, ch. 18, § 2.

#### **22-8F-3. Family income index; income categories; calculation; information-sharing agreements.**

A. The department shall calculate a family income index for each public school, using the following information:

(1) the department shall obtain family income information sufficient to identify the total number of households in each public school in each of the income categories in Subsection C of this section, based on tax return data of families of students enrolled in that public school and for whose households the taxation and revenue department is able to locate tax return information;

(2) for students whose families the taxation and revenue department is unable to identify tax return data for pursuant to Paragraph (1) of this subsection, family income information sufficient to identify the total number of households in each public school in each of the income categories in Subsection C of this section, based on income information provided to the human services department [health care authority department] by families applying for benefits; and

(3) for a student whose family income is not available to the taxation and revenue department or the human services department [health care authority department], the department shall use income statistics from the most current census information for the reported address of the student to determine to which income category in Subsection C of this section the student is assigned.

B. The taxation and revenue department and the human services department [health care authority department] shall enter into information-sharing agreements with the department to provide the information requested by the department pursuant to Subsection A of this section.

C. Pursuant to Subsection D of this section, the department shall calculate the percentage of student households for each public school in each of the following income categories using information obtained as provided in Subsection A of this section:

- (1) extremely low income;
- (2) very low income;
- (3) low income;
- (4) moderate income; and
- (5) above average income.

D. The number of students from each public school in each category shall be divided by the public school's total enrollment to determine the percentage of students in each category. The family income index for each public school is as follows:

(1) for fiscal year 2022, the sum of the percentages of the public school's students in the extremely low and very low income categories during the preceding fiscal year;

(2) for fiscal year 2023, the average of the sum of the percentages of the public school's students in the extremely low and very low income categories during the immediately preceding two fiscal years; and

(3) for fiscal year 2024 and each subsequent fiscal year, the average of the sum of the percentages of the public school's students in the extremely low and very low income categories during the immediately preceding three fiscal years.

E. The department shall rank all public schools in the state from lowest family income index to highest family income index by October 31 of each year.

F. The department shall provide the percentage of students at each public school in each income category to the legislative education study committee and the legislative finance committee by November 15 of each year.

**History:** Laws 2021, ch. 18, § 3.

#### **22-8F-4. Threshold for funding distribution; distribution of family income index funds; allocations to eligible public schools.**

A. Except as provided in Subsection E of this section, each year, to determine the number of public schools that are eligible for family income index allocations through their respective school districts, the department shall:

(1) identify the school districts that have public schools within the fifty percent of public schools on the department's ranked list pursuant to Subsection E of Section 3 [22-8F-3 NMSA 1978] of the Family Income Index Act with the highest family income indices; and

(2) multiply the total number of public schools within each of the school districts that are identified in Paragraph (1) of this subsection by one-tenth, and if the product is:

(a) less than one, the product shall be rounded to one; and

(b) more than one, the product shall be rounded to the nearest whole number.

B. The number of eligible public schools within a school district identified in Paragraph (1) of Subsection A of this section for which funding may be allocated pursuant to this section is equal to the rounded product determined pursuant to Paragraph (2) of Subsection A of this section. Each year, the public schools that are eligible for an allocation are those public schools within each school district that have the highest family income indices.

C. An allocation for an eligible public school is limited to the greater of that public school's proportional share as determined pursuant to Subsection D of this section or twenty thousand dollars (\$20,000).

D. To determine the proportional share of funding that the department distributes to a school district for each eligible public school, the number of eligible students in each eligible public school shall be divided by the total number of eligible students at all eligible public schools. Each eligible public school's proportional share shall be multiplied by the total amount appropriated for distribution pursuant to the Family Income Index Act.

E. The legislature may establish a different percentage of public schools to be considered pursuant to Paragraphs (1) and (2) of Subsection A of this section.

F. A family income index distribution to a school district for allocation to an eligible public school shall be used exclusively at that public school for the interventions specified in Section 5 [22-8F-5 NMSA 1978] of the Family Income Index Act.

G. For the purposes of this section, "eligible students" means students with household incomes in the extremely low income or very low income categories.

**History:** Laws 2021, ch. 18, § 4.

## **22-8F-5. Uses of family income index distributions.**

A. Except as provided in Subsection B of this section, a public school shall use its family income index allocation on any of the following:

(1) evidence-based, structured literacy interventions that have been shown to improve reading and writing achievement of students;

(2) evidence-based mathematics instruction and interventions, including educational programming intended to improve career and college readiness of at-risk students, dual or concurrent enrollment and career and technical education;

(3) case management, tutoring and after-school and summer enrichment programs that are delivered by social workers, counselors, teachers or other professional staff;

(4) culturally relevant professional and curriculum development, including those necessary to support language acquisition and bilingual and multicultural education;

(5) whole school interventions, including social and emotional learning programs, multilayered systems of support, student nutrition programs, school-based health centers and community schools;

- (6) evidence-based, high-quality instructional resources and materials;
- (7) services to engage and support parents and families in the education of students; and
- (8) services to engage and support tribal communities in the education of Native American students.

B. A school district shall use distributions received for allowable uses specified in Subsection A of this section to expand or improve services provided as part of a public school's existing academic program, but not to replace existing services.

**History:** Laws 2021, ch. 18, § 5; 2023, ch. 23, § 1.

## **22-8F-6. Educational plan to include allowable uses for each public school; distributions; reporting.**

A. A school district shall establish, within its department-approved educational plan, the interventions identified in Section 5 [22-8F-5 NMSA 1978] of the Family Income Index Act that will be used in each of its eligible public schools. Each school district that receives a distribution shall provide a report to the department by August 1 after the fiscal year in which it receives a distribution that includes a description of the services the school district has provided for each public school that received an allocation to improve the academic success of students. The report shall include a detailed description of how each public school has used its allocation and the way in which the additional funding has impacted student academic outcomes.

B. The department shall evaluate how each public school used its allocation and the way in which each allocation impacted student academic outcomes and report its findings and recommendations to the legislative finance committee and the legislative education study committee by October 15 of each year beginning in fiscal year 2022.

**History:** Laws 2021, ch. 18, § 6.

## **ARTICLE 9 Federal Aid to Education**

### **22-9-1. Repealed.**

**History:** 1953 Comp., § 77-7-1, enacted by Laws 1967, ch. 16, § 101; repealed by Laws 2011, ch. 35, § 6.

### **22-9-2. Federal aid to education; state educational agency.**

The department shall be the sole educational agency of the state for the administration or for the supervision of the administration of any state plan established or funds received by the state by virtue of any federal statute relating to aid for education, school construction or school breakfast or lunch programs, except as is provided in Section 21-1-26 NMSA 1978 and as may otherwise be provided by law.

**History:** 1953 Comp., § 77-7-2, enacted by Laws 1967, ch. 16, § 102; 2004, ch. 27, § 22; 2011, ch. 35, § 2.

### **22-9-3. State educational agency; powers; duties.**

Whenever the department is the sole educational agency of the state pursuant to the provisions of Section 22-9-2 NMSA 1978, it may:

A. enter into an agreement with the proper federal agency to procure for the state the benefits of the federal statute;

B. establish a state plan, if required by the federal statute, which meets the requirements of the federal statute to qualify the state for the benefits of the federal statute;

C. provide for reports to be made to the federal agency as may be required;

D. provide for reports to be made to the department or its representative from agencies receiving federal funds;

E. make surveys and studies in cooperation with other agencies to determine the needs of the state in the areas where the federal funds are to be applied;

F. establish standards to which agencies must conform in receiving federal funds; and

G. give technical advice and assistance to any local educational agency in connection with that agency obtaining federal funds.

**History:** 1953 Comp., § 77-7-3, enacted by Laws 1967, ch. 16, § 103; 2004, ch. 27, § 23.

### **22-9-4. Limitation on accepting grants and gifts.**

Federal funds, gifts or grants relating to aid for education, school construction or school breakfast or lunch programs may be accepted by the state only if supervision and control of courses of instruction and the personnel of public schools is reserved to the state or its local subdivisions.

**History:** 1953 Comp., § 77-7-4, enacted by Laws 1967, ch. 16, § 104; 2011, ch. 35, § 3.

## **22-9-5. Custody of funds; budgets; disbursements.**

A. The state treasurer shall be the custodian of all funds received by the state by virtue of a federal statute, gift or grant relating to aid for education, school construction or school breakfast or lunch programs. The state treasurer shall hold these funds in separate accounts according to the purpose of the grant or gift.

B. All federal funds, gifts or grants administered by the department shall be budgeted, accounted for and disbursed as provided by law and by the rules of the department of finance and administration.

**History:** 1953 Comp., § 77-7-5, enacted by Laws 1967, ch. 16, § 105; 2011, ch. 35, § 4.

## **22-9-6. Authorization to receive federal grants and to submit a state plan.**

For purposes of receiving federal grants pursuant to Section 842 of Public Law 93-380, Assistance to States for State Equalization Plans, the state department of public education [department] is designated the state agency and is authorized to submit a state plan to the United States secretary of education.

**History:** 1953 Comp., § 77-7-6, enacted by Laws 1976, ch. 21, § 1; 1977, ch. 246, § 64; 1980, ch. 151, § 50; 1988, ch. 64, § 39.

## **22-9-7. Federal grant-in-aid funds; custody; deposit; disbursement.**

The state treasurer is the trustee for all funds apportioned to the state under any act of congress and he is directed to enter into agreements with, and to comply with the rules and regulations of, such agencies of the federal government as are necessary to procure for the state grants of federal aid to education. Any funds received under any act of congress shall be held by the state treasurer in special funds designated in accordance with the purposes of the grant made and shall be paid out by him only on warrant of the secretary of finance and administration. Warrants shall be issued only upon voucher of the superintendent of public instruction for disbursements other than for rural library service. Disbursements made for rural library service shall be made only upon voucher issued by the state librarian.

**History:** Laws 1939, ch. 162, § 2; 1941 Comp., § 55-519; 1953 Comp., § 73-6-32; Laws 1961, ch. 126, § 8; 1977, ch. 247, § 192.

## **22-9-8. State educational authorities for federal grant administration.**

The superintendent of public instruction [secretary] shall be the state educational authority to represent the state in administration of any funds received under any act of

congress to authorize grants to states in aid of education other than grants for aid to rural library service and, as to such grants and funds received thereunder, the state librarian shall be the authority to represent the state in the administration of the funds.

**History:** Laws 1939, ch. 162, § 3; 1941 Comp., § 55-520; 1953 Comp., § 73-6-33; Laws 1961, ch. 126, § 9.

## **22-9-9. Agencies for grants-in-aid; powers; duties.**

Whenever, under any act of the congress of the United States, federal aid to education is made available to the states:

A. the superintendent of public instruction [secretary] shall:

(1) enter into any agreements with the proper federal agency or agencies necessary to procure for this state all benefits which may be available under any such act of congress;

(2) provide for and install an adequate system of auditing for the expenditure of funds to be received through the provisions of any such act of congress and to be apportioned to local school jurisdictions and teacher-training institutions, to educational agencies and institutions, conducting adult education, and to the state educational authority for any other purpose or purposes;

(3) provide an adequate system of reports to be made to such superintendent from local school jurisdictions and teacher-preparation institutions, from educational agencies and institutions conducting adult education, and from such other jurisdictions, institutions and agencies as may be required;

(4) develop and provide a plan of apportioning among local school jurisdictions any funds received for expenditure within such jurisdictions in such manner as to assist effectively in equalizing educational opportunities in public elementary and secondary schools within the state, such plan to conform as near as may be to any requirements of the act of congress and rules and regulations issued thereunder;

(5) develop and provide a plan of apportioning any funds received for expenditures in eligible institutions based on recommendations of the board of educational finance;

(6) develop and provide a plan for apportioning funds received for expenditure for adult education among public educational agencies and institutions in this state in such manner as will effectively contribute to the development of an economical, effective and comprehensive program of adult education; and

(7) make surveys and prepare and maintain state standards for the development of improved administrative units and attendance areas for the public



elementary and secondary schools in anticipation of the availability of funds for the construction or alteration of buildings in connection with the public elementary and secondary schools, and for such purpose the superintendent may cooperate with any other public agency which he may designate; and

B. the state librarian of this state is hereby authorized and directed to:

(1) enter into any and all agreements with the proper federal agency or agencies necessary to procure for this state all benefits for rural or other library service which may be available under any such act of congress;

(2) make and administer all plans which may be necessary to carry out any provisions of any such act of congress which offers aid to library service;

(3) provide for and install an adequate system of auditing of the expenditure of funds to be received through the provisions of any such act of congress and to be apportioned to libraries and library services;

(4) provide for an adequate system of reports to be made to him from libraries and library services; and

(5) develop and provide a plan for apportioning any funds received for expenditure for library service which will provide for maintenance of a cooperative and integrated system of library service throughout the state, for suitable cooperative arrangements with school systems, cooperative agricultural extension services, and other appropriate agencies, and in such manner of apportioning as will effectively lessen inequalities of opportunity for library service.

**History:** Laws 1939, ch. 162, § 4; 1941 Comp., § 55-521; 1953 Comp., § 73-6-34; Laws 1961, ch. 126, § 10; 1961, ch. 217, § 1; 1977, ch. 246, § 48.

## **22-9-10. Reports; federal funds; federal agencies; legislature.**

A. Whenever required by any act of congress authorizing federal aid to education or any rules issued pursuant thereto:

(1) the state superintendent [secretary] shall make reports with respect to expenditure of funds received and progress of education generally, progress of adult education generally or any other matters in the form and containing information required by the appropriate federal agencies; and

(2) the state librarian shall make reports with respect to expenditure of funds received and progress of library service in the form and containing information required by the appropriate federal agencies.

B. Annually, by November 1, the state superintendent [secretary] shall submit to the legislative education study committee, the legislative finance committee and the library of the legislative council service a detailed report of all federal funds distributed to the state department of public education in the federal fiscal year ending September 30, one year prior to the date of the report, with a description of the purpose for which the state received the money and a detailed accounting of how the funds were expended.

**History:** Laws 1939, ch. 162, § 5; 1941 Comp., § 55-522; 1953 Comp., § 73-6-35; Laws 1961, ch. 126, § 11; 2001, ch. 313, § 2.

### **22-9-11. [School facility construction grants-in-aid; enforcement of labor standards.]**

In the event that the state shall accept any provision of any such act of congress which authorizes and grants aid in the construction of school facilities, the superintendent of public instruction [secretary] shall, by contract or otherwise, enforce labor standards not less beneficial to employees on such projects than those required under Sections 1 and 2 of the act of August 30, 1935 (49 Stat. 1011, ch. 825), as amended; provided, that the act of congress authorizing such aid shall so require.

**History:** Laws 1939, ch. 162, § 6; 1941 Comp., § 55-523; 1953 Comp., § 73-6-36.

### **22-9-12. Official notice of acceptance of federal acts for education and library service.**

The superintendent of public instruction [secretary] shall transmit to the proper federal agency designated in any act of congress authorizing federal aid to education, official notice of acceptance of any parts and titles of the act and transmit therewith certified copies of this act [22-9-7 to 22-9-12 NMSA 1978] and apportionment plans required in connection with the granting of any funds by any act of congress. In the case of aid to rural or other library service authorized in any act of congress, the official notice with the necessary certified copies as relate to library service shall be transmitted by the state librarian.

**History:** Laws 1939, ch. 162, § 9; 1941 Comp., § 55-524; 1953 Comp., § 73-6-37; Laws 1961, ch. 126, § 12.

### **22-9-13. [Superintendent of public instruction declared sole agency for administration of federal aid to education.]**

The superintendent of public instruction [secretary] is hereby designated as the sole agency of the state of New Mexico for the administration of any and all plans which may be established or funds which may be available to the state, or for which the state may be eligible by virtue of any legislation enacted by the federal government, to authorize

federal assistance to states and communities to enable them to increase public elementary and secondary school construction.

**History:** 1953 Comp., § 73-6-37.1, enacted by Laws 1955, ch. 135, § 1.

#### **22-9-14. [Promulgation of standards and procedures; sale of obligations; purposes for which payments may be used.]**

Said superintendent [secretary] shall, as required or necessary for such eligibility, set forth and promulgate standards and procedures, conforming to federal requirements, for determining eligibility of local educational agencies for payment under such federal legislation, and the amounts thereof, and the need for the facilities to be constructed, which standards and procedures shall provide reasonable assurance that:

A. such payments will be made only if, and to the extent, necessary to enable any local educational agency:

(1) to sell to the federal government or such agency as may be designated for such purpose obligation [obligations] in the amounts needed by such agency to construct the school facilities with respect to which the payments are made; or

(2) if such agency is legally unable to sell such obligations, to rent such facilities from a state school-building agency at rentals which the federal government or its designated agent determines to be comparable to those charged by state school-building agencies pursuant to agreements with the federal government or its designated agent; and,

B. such payments will be made only with respect to the construction of school facilities needed to relieve or prevent extreme overcrowding, double shifts or unhealthful or hazardous conditions.

**History:** 1953 Comp., § 73-6-37.2, enacted by Laws 1955, ch. 135, § 2.

#### **22-9-15. [Accounting, budgeting and other fiscal methods to be prescribed by superintendent.]**

Said superintendent [secretary] shall provide and require such accounting, budgeting and other fiscal methods and procedures as are necessary for the proper and efficient administration of such federal plan or plans.

**History:** 1953 Comp., § 73-6-37.3, enacted by Laws 1955, ch. 135, § 3.

#### **22-9-16. [Reports.]**

Said superintendent [secretary] shall provide for the making of such reports, in such form and containing such information as the federal government or its designated agent may from time to time reasonably require to carry out the provisions of applicable legislation, and for compliance with such provisions as may from time to time be necessary to assure the correctness and verification of such reports.

**History:** 1953 Comp., § 73-6-37.4, enacted by Laws 1955, ch. 135, § 4.

## **ARTICLE 10**

### **Certified School Personnel (Repealed, Recompiled.)**

#### **22-10-1. Recompiled.**

#### **22-10-2. Recompiled.**

#### **22-10-3. Repealed.**

**History:** 1953 Comp., § 77-8-1.2, enacted by Laws 1975, ch. 306, § 3; 1986, ch. 33, § 17; 1993, ch. 223, § 2.; 1999, ch. 249, § 3; 2000, ch. 38, § 1; 2002, ch. 41, § 1; 2002, ch. 81, § 1; repealed by Laws 2003, ch. 153, § 73.

#### **22-10-3.1. Repealed.**

**History:** 1978 Comp., § 22-10-3.1, enacted by Laws 1986, ch. 33, § 18; 1987, ch. 320, § 4; 1988, ch. 105, § 3; repealed by Laws 2003, ch. 153, § 73.

#### **22-10-3.2. Recompiled.**

#### **22-10-3.3. Recompiled.**

#### **22-10-3.4. Repealed.**

**History:** Laws 1997, ch. 238, § 2; repealed by Laws 2003, ch. 153, § 73.

#### **22-10-3.5. Repealed.**

**History:** Laws 1999, ch. 249, § 1; repealed by Laws 2003, ch. 153, § 73.

#### **22-10-3.6. Repealed.**

**History:** Laws 1999, ch. 249, § 2; repealed by Laws 2003, ch. 153, § 73.

#### **22-10-4. Repealed.**

**History:** 1953 Comp., § 77-8-2, enacted by Laws 1967, ch. 16, § 107; 1997, ch. 238, § 3; repealed by Laws 2003, ch. 153, § 73.

#### **22-10-4.1. Recompiled.**

#### **22-10-5. Repealed.**

**History:** 1953 Comp., § 77-8-3, enacted by Laws 1967, ch. 16, § 108; 1975, ch. 306, § 4; repealed by Laws 2003, ch. 153, § 73.

#### **22-10-6. Repealed.**

**History:** 1953 Comp., § 77-8-3.1, enacted by Laws 1973, ch. 135, § 1; repealed by Laws 2003, ch. 153, § 73.

#### **22-10-7. Repealed.**

**History:** 1953 Comp., § 77-8-4, enacted by Laws 1967, ch. 16, § 109; repealed by Laws 2003, ch. 153, § 73.

#### **22-10-8. Repealed.**

**History:** 1953 Comp., § 77-8-5, enacted by Laws 1967, ch. 16, § 110; 1975, ch. 306, § 5; repealed by Laws 2003, ch. 153, § 73.

#### **22-10-9. Repealed.**

**History:** 1953 Comp., § 77-8-6, enacted by Laws 1967, ch. 16, § 111; 1975, ch. 306, § 6; repealed by Laws 2003, ch. 153, § 73.

#### **22-10-10. Recompiled.**

#### **22-10-11. Recompiled.**

#### **22-10-12. Recompiled.**

#### **22-10-13. Recompiled.**

#### **22-10-14. Recompiled.**

#### **22-10-14.1. Recompiled.**

#### **22-10-15. Repealed.**

**22-10-16. Recompiled.**

**22-10-17. Recompiled.**

**22-10-17.1. Recompiled.**

**22-10-18. Recompiled.**

**22-10-19. Repealed.**

**22-10-20. Repealed.**

**22-10-21. Recompiled.**

**22-10-22. Recompiled.**

**22-10-23. Recompiled.**

**22-10-24. Recompiled.**

**22-10-25. Recompiled.**

**22-10-26. Recompiled.**

**22-10-27. Recompiled.**

## **ARTICLE 10A**

### **School Personnel**

#### **22-10A-1. Short title.**

Chapter 22, Article 10A NMSA 1978 may be cited as the "School Personnel Act".

**History:** 1953 Comp., § 77-8-1, enacted by Laws 1975, ch. 306, § 1; 1991, ch. 187, § 2; 1978 Comp., § 22-10-1, recompiled and amended as § 22-10A-1 by Laws 2003, ch. 153, § 33.

#### **22-10A-2. Definitions.**

As used in the School Personnel Act:

A. "child abuse" means a child:

(1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian, custodian or other adult;

(2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian, custodian or other adult;

(3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian, custodian or other adult;

(4) whose parent, guardian, custodian or other adult has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or

(5) whose parent, guardian, custodian or other adult has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;

B. "constitutional special school" means the New Mexico military institute, New Mexico school for the deaf and New Mexico school for the blind and visually impaired;

C. "contractor" means an individual who is under contract with a public school and is hired to provide services to the public school, but does not include a general contractor or a building or maintenance contractor who is supervised and has no access to students at the public school;

D. "discharge" means the act of severing the employment relationship with a licensed school employee prior to the expiration of the current employment contract;

E. "employed for three consecutive school years" means a licensed school employee has been offered and accepted in writing a notice of reemployment for the third consecutive school year;

F. "ethical misconduct" means the following behavior or conduct by school district personnel, school employees, school volunteers, contractors or contractors' employees:

(1) discriminatory practice based on race, age, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, mental or physical disability, marital status, religion, citizenship, domestic abuse reporting status or serious medical condition;

(2) sexual misconduct or any sexual offense prohibited by Chapter 30, Article 6A or 9 NMSA 1978 involving an adult or child, regardless of a child's enrollment status;

(3) fondling a child or student, including touching private body parts, such as breasts, buttocks, genitals, inner thighs, groin or anus; or

(4) any other behavior, including licentious, enticing or solicitous behavior, that is reasonably apparent to result in inappropriate sexual contact with a child or student or to induce a child or student into engaging in illegal, immoral or other prohibited behavior;

G. "governing authority" means the policy-setting body of a school district, charter school, constitutional special school or regional education cooperative, or the final decision maker of a state agency that provides educational services to a school-aged person;

H. "instructional support provider" means a person who is employed to support the instructional program of a public school, including educational assistant, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, marriage and family therapist, interpreter for the deaf, diagnostician, attendance coach, practical nurse, school health assistant, school business official, rehabilitation counselor, athletic coach, educational alcohol and drug abuse counselor and substance abuse associate;

I. "just cause" means a reason that is rationally related to a school employee's competence or turpitude or the proper performance of the school employee's duties and that is not in violation of the school employee's civil or constitutional rights;

J. "military service member" means a person who is:

(1) serving in the armed forces of the United States as an active duty member or in an active reserve component of the armed forces of the United States, including the national guard;

(2) the spouse of a person who is serving in the armed forces of the United States as an active duty member or in an active reserve component of the armed forces of the United States, including the national guard; or a surviving spouse of a member who at the time of death was serving on active duty; or

(3) the child of a person who is serving in the armed forces of the United States as an active duty member or in an active reserve component of the armed forces of the United States, including the national guard; provided that child is also a dependent of that person for federal income tax purposes;

K. "moral turpitude" means an act or behavior that gravely violates the accepted standards of moral conduct, justice or honesty and may include ethical misconduct;

L. "public school" means a school district, charter school, constitutional special school, regional education cooperative or the educational program of another state agency;



M. "responsibility factor" means a value of 1.25 for an elementary school principal, 1.45 for a middle school or junior high school principal, 1.65 for a high school principal, 1.15 for an assistant elementary school principal, 1.20 for an assistant middle school or assistant junior high school principal and 1.30 for an assistant high school principal;

N. "sabbatical leave" means leave of absence with pay as approved by the governing authority during all or part of a regular school term for purposes of study or travel related to a licensed school employee's duties and of direct benefit to the instructional program;

O. "school administrator" means a person licensed to administer in a school district, charter school, constitutional special school or regional education cooperative or a person employed with another state agency who administers an educational program and includes local superintendents, school principals, central district administrators, business managers, charter school head administrators and state agency education supervisors;

P. "school employee" includes licensed and unlicensed employees of a public school;

Q. "school premises" means:

(1) the buildings and grounds, including playgrounds, playing fields and parking areas and a school bus of a public school, in or on which school or school-related activities are being operated under the supervision of a local school board, charter school or state agency; or

(2) any other public buildings or grounds, including playing fields and parking areas that are not public school property, in or on which public school-related and -sanctioned activities are being performed;

R. "school volunteer" means a person, including a relative of a student, who commits to serve on a regular basis at a school district, charter school or other educational entity without compensation;

S. "state agency" means a regional education cooperative or state institution;

T. "state institution" means the New Mexico boys' school, girls' welfare home, New Mexico youth diagnostic and development center, Sequoyah adolescent treatment center, Carrie Tingley crippled children's hospital, New Mexico behavioral health institute at Las Vegas and any other state agency responsible for educating resident children;

U. "substitute teacher" means a person who holds a certificate to substitute for a teacher in the classroom;

V. "superintendent" means a local superintendent, head administrator of a charter school or regional education cooperative, superintendent or commandant of a special school or head administrator of the educational program of a state agency;

W. "teacher" means a person who holds a level one, level two or level three-A license and whose primary job is classroom instruction or the supervision, below the school principal level, of an instructional program or whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers;

X. "terminate" means the act of severing the employment relationship with a school employee;

Y. "unsupervised contact with children or students" means access to or contact with, or the opportunity to have access to or contact with, a child or student for any length of time in the absence of:

(1) a licensed staff person from the same school or institution;

(2) a school volunteer who has undergone a background check pursuant to Section 22-10A-5 NMSA 1978; or

(3) any adult relative or guardian of the child or student;

Z. "veteran" means a person who has received an honorable discharge or separation from military service in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard; and

AA. "working day" means every school calendar day, excluding Saturdays, Sundays and legal holidays.

**History:** 1953 Comp., § 77-8-1.1, enacted by Laws 1975, ch. 306, § 2; 1990, ch. 90, § 1; 1991, ch. 187, § 3; 1994, ch. 110, § 1; 1978 Comp., § 22-10-2, recompiled as § 22-10A-2 by Laws 2003, ch. 153, § 72; 2007, ch. 304, § 1; repealed and reenacted by Laws 2019, ch. 238, § 1; 2021, ch. 92, § 1; 2021, ch. 94, § 4; 2023, ch. 148, § 3; 2023, ch. 177, § 1.

### **22-10A-3. License or certificate required; application fee; general duties.**

A. Except as otherwise provided in this subsection, any person teaching, supervising an instructional program or providing instructional support services in a public school; any person administering in a public school; and any person providing health care and administering medications or performing medical procedures in a public school shall hold a valid license or certificate from the department authorizing the

person to perform that function. This subsection does not apply to a person performing the functions of a practice teacher or teaching intern as defined by the department. A person applying for a license or certificate from the department shall undergo a criminal history record check pursuant to Section 22-10A-5 NMSA 1978. The criminal history record check requirement shall apply to the following applicants:

- (1) applicants for level one licensure pursuant to Section 22-10A-7 NMSA 1978;
- (2) applicants for an alternative level one license pursuant to Section 22-10A-8 NMSA 1978;
- (3) applicants for level two licensure pursuant to Section 22-10A-10 NMSA 1978;
- (4) applicants for level three licensure pursuant to Section 22-10A-11 NMSA 1978;
- (5) applicants for an alternative level two or level three license pursuant to Section 22-10A-11.1 NMSA 1978;
- (6) applicants for alternative licensure pursuant to Section 22-10A-11.2 NMSA 1978;
- (7) applicants for level three-B provisional licensure pursuant to Section 22-10A-11.3 NMSA 1978;
- (8) applicants for level three-B administrator's licensure pursuant to Section 22-10A-11.4 NMSA 1978;
- (9) applicants for licenses granted on the basis of reciprocity pursuant to Section 22-10A-12 NMSA 1978;
- (10) applicants for expedited licensure pursuant to Section 22-10A-12.1 NMSA 1978;
- (11) applicants for Native American and culture certificates pursuant to Section 22-10A-13 NMSA 1978;
- (12) applicants for substitute teacher certificates pursuant to Section 22-10A-15 NMSA 1978;
- (13) applicants for instructional support provider certificates pursuant to Section 22-10A-17 NMSA 1978;

(14) applicants for educational assistant licensure pursuant to Section 22-10A-17.1 NMSA 1978; and

(15) applicants for alternative level three-B licensure pursuant to Section 22-10A-17.2 NMSA 1978.

B. In the event that the statutory section numbers referring to the licenses and certificates in Subsection A of this section are amended, the licensure and criminal history record check requirement shall remain in effect for the applicants. The department may require a federal bureau of investigation criminal history record check of a current licensee to analyze whether the department has good and just cause for suspension or revocation of a department-issued license. Applicants and current licensees shall pay the cost of obtaining a federal bureau of investigation criminal history record check. The department shall not share criminal history record check information with another entity unless expressly permitted by applicable federal law or federal regulation.

C. Except as provided in Subsection D of this section, the department shall charge a reasonable fee for each application for or the renewal of a license or certificate. The application fee may be waived if the applicant meets a standard of indigency established by the department.

D. No licensing or certificate fee shall be charged for the first three years a license or certificate required by this section is valid if the licensee or certificate holder is a military service member or a veteran.

E. A person performing the duties of a licensed school employee who does not hold a valid license or certificate or has not submitted a complete application for licensure or certification within the first three months from beginning employment duties shall not be compensated thereafter for services rendered until the person demonstrates that the person holds a valid license or certificate. This section does not apply to practice teachers or teaching interns as defined by rules of the department.

F. Each licensed school employee shall:

- (1) enforce all laws and rules applicable to the employee's public school;
- (2) if teaching, teach the prescribed courses of instruction;
- (3) exercise supervision over students on public school premises and while the students are under the control of the public school; and
- (4) furnish reports as required.

**History:** 1978 Comp., § 22-10A-3, enacted by Laws 2003, ch. 153, § 34; 2019, ch. 238, § 2; 2020, ch. 6, § 1; 2021, ch. 92, § 2; 2023, ch. 177, § 2.

#### **22-10A-4. Teachers and school administrators; professional status; licensure levels; salary alignment.**

A. Teaching and school administration are recognized as professions, with all the rights, responsibilities and privileges accorded professions, having their first responsibility to the public they serve. The primary responsibilities of the teaching and school administration professions are to educate the children of this state and to improve the professional practices and ethical conduct of their members.

B. The New Mexico licensure framework for teachers and school administrators is a progressive career system in which licensees are required to demonstrate increased competencies and undertake increased duties as they progress through the licensure levels. The minimum salary provided as part of the career system shall not take effect until the department has adopted increased competencies for the particular level of licensure and a highly objective uniform statewide standard of evaluation.

C. A level one license is a provisional license that gives a beginning teacher the opportunity, through a formal mentorship program, for additional preparation to be a quality teacher. A level two license is given to a teacher who is a fully qualified professional who is primarily responsible for ensuring that students meet and exceed department-adopted academic content and performance standards; a teacher may choose to remain at level two for the remainder of the teacher's career. A level three-A license is the highest level of teaching licensure for those teachers who choose to advance as instructional leaders in the teaching profession and undertake greater responsibilities such as curriculum development, peer intervention and mentoring. A level three-B license is for teachers who commence a new career path in school administration by becoming school administrators.

D. All teacher and school administrator salary systems shall be aligned with the licensure framework in a professional educator licensing and salary system.

E. All teachers and school administrators who hold teaching or administrator certificates on the effective date of the 2003 act shall meet the requirements for their level of licensure by September 1, 2006 and shall be issued licenses.

**History:** 1978 Comp., § 22-10A-4, enacted by Laws 2003, ch. 153, § 35; 2005, ch. 315, § 4; 2005, ch. 316, § 1.

#### **22-10A-5. Criminal history record check; known convictions; confidentiality; alleged ethical misconduct; reporting required; penalty for failure to report.**

A. To investigate the suitability of an applicant for licensure from the department, the department shall have access to criminal history record information furnished by the

department of public safety and the federal bureau of investigation, subject to any restrictions imposed by federal law.

B. An applicant for licensure from the department shall undergo a state and federal criminal history record check, and the applicant shall submit two fingerprint cards or the equivalent electronic set of fingerprints to the department of public safety for that purpose. The department of public safety shall conduct a check of state records and forward the fingerprints to the federal bureau of investigation for a national criminal history record check to determine the existence and content of a record of convictions in this state or other law enforcement jurisdictions and to generate a criminal history record check in accordance with rules of the department of public safety and regulations of the federal bureau of investigation. The department of public safety shall review the information obtained from the criminal history record check and shall compile and provide that information to the department. The department shall use the information resulting from the fingerprint-based criminal history record check to inform department decisions relating to the issuance or continuation of licensure. The applicant for initial licensure shall pay for the cost of obtaining the criminal history record check.

C. Governing authorities shall develop policies and procedures to require criminal history record checks on an applicant who has been offered employment or who applies to be a school volunteer or works for the public school as a contractor or a contractor's employee and who may have unsupervised contact with children or students on school premises. Nothing in this section shall preclude governing authorities from developing and implementing policies or procedures requiring or affecting other or additional background or criminal history record checks of personnel or applicants for employment.

D. An applicant who has been offered employment or a school volunteer, contractor or contractor's employee shall provide two fingerprint cards or the equivalent electronic fingerprints to the department of public safety to obtain the applicant's, school volunteer's, contractor's or contractor's employee's criminal history record check pursuant to Subsection B of this section. The public school shall pay for the criminal history record check for an applicant who has been offered employment. A school volunteer, contractor or contractor's employee may be required to pay for the cost of obtaining a criminal history record check.

E. Convictions of felonies or misdemeanors contained in the criminal history record check shall be used in accordance with the Criminal Offender Employment Act [Chapter 28, Article 2 NMSA 1978]; provided that other information contained in the criminal history record check, if supported by independent evidence, may form the basis for the employment decisions for just cause. The department shall not exclude an otherwise qualified person from licensure on the sole basis that the person has been previously arrested or convicted of a crime, unless that person has a disqualifying criminal conviction, pursuant to Section 61-1-36 NMSA 1978.

F. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the employment, volunteering or contracting decision affecting the specific applicant, school volunteer, contractor or contractor's employee who has been offered employment, a school volunteer position or a contract and will have unsupervised contact with children or students on school premises. Criminal history information received from the department of public safety or the federal bureau of investigation shall be confidential and shall not be considered a public record pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]. The department shall not authorize the receipt of criminal history information by a private entity pursuant to this section. Nothing in this subsection shall apply to compliance with discovery requests or subpoenas that are issued by a court of competent jurisdiction.

G. A superintendent shall report immediately to the department any known conviction of any felony or misdemeanor involving moral turpitude of school district personnel, a school employee, a school volunteer, a contractor or a contractor's employee.

H. A superintendent may appoint a designated representative to act on the superintendent's behalf. The superintendent or the designated representative shall investigate all allegations of ethical misconduct about any school district personnel, school employee, school volunteer, contractor or contractor's employee who resigns, is being discharged or terminated or otherwise leaves employment after an allegation has been made. If the investigation results in a finding of ethical misconduct by a licensed school employee, the superintendent or the superintendent's designated representative shall report the identity of the licensed school employee and attendant circumstances of the ethical misconduct on a standardized form to the department and the licensed school employee within thirty days following the separation from employment or immediately if the finding of ethical misconduct is sexual misconduct with an adult or child. The superintendent or the superintendent's designated representative shall also report allegations of sexual assault or sexual abuse involving any school district personnel, school employee, school volunteer, contractor or a contractor's employee to the appropriate law enforcement agency. No agreement between a departing school employee and the governing authority or superintendent shall diminish or eliminate the responsibility of investigating and reporting the alleged ethical misconduct to the department or, if legally mandated, to law enforcement, and any such agreement to the contrary is void.

I. Unless the department has commenced its own investigation of a licensed school employee prior to receipt of the form, the department shall serve the licensed school employee with a notice of investigation and a notice of contemplated action pursuant to the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] within sixty days of receipt of the form.

J. The department shall maintain a list of the names of persons reported to the department, as required by Subsection G of this section, who have been convicted of a

felony or misdemeanor involving moral turpitude and, as required by Subsection H of this section and Section 22-10A-5.1 NMSA 1978, who have been found to have committed ethical misconduct. The department shall update that list each month. The department shall provide that list to a governing authority upon request.

K. The secretary may initiate action to suspend, revoke or refuse to renew the license of:

(1) a superintendent who fails to report as required by Subsections G and H of this section or Section 22-10A-5.1 NMSA 1978;

(2) any licensed school district personnel or licensed school employee who fails to report child abuse or neglect pursuant to Section 32A-4-3 NMSA 1978; or

(3) any licensed school district personnel or school employee who fails to report ethical misconduct pursuant to Subsection H of this section or Section 22-10A-5.1 NMSA 1978.

L. As used in this section, "designated representative" means a representative chosen by a superintendent and may include the staff of a regional education cooperative.

**History:** Laws 1997, ch. 238, § 1; 1998, ch. 60, § 1; 1999, ch. 281, § 24; 2001, ch. 293, § 6; 1978 Comp., § 22-10-3.3, recompiled and amended as § 22-10A-5 by Laws 2003, ch. 153, § 36; 2007, ch. 263, § 1; 2019, ch. 209, § 2; 2019, ch. 238, § 3; 2021, ch. 94, § 5; 2023, ch. 177, § 3.

### **22-10A-5.1. Duty to report ethical misconduct; responsibility to investigate ethical misconduct; ethical misconduct report coordination.**

A. School district personnel, a school employee, a contractor or a contractor's employee who knows or has a reasonable suspicion that a child or student has been subject to ethical misconduct by school district personnel, a school employee, a school volunteer, a contractor or a contractor's employee shall report the matter immediately to:

(1) the superintendent; or

(2) the department.

B. If a superintendent receives a report pursuant to Subsection A of this section, the superintendent shall immediately transmit to the department by telephone the facts of the report and the name, address and telephone number of the reporter. The superintendent shall transmit the same information in writing within forty-eight hours.



C. If department staff receives a report pursuant to Subsection A of this section, department staff shall immediately transmit to the superintendent by telephone the facts of the report and the name, address and telephone number of the reporter. Department staff shall transmit the same information in writing within forty-eight hours.

D. A written report shall contain the name, address and age of the child or student; the child's or student's parents, guardians or custodians; the school district personnel, school employee, school volunteer, contractor or contractor's employee who is alleged to have committed ethical misconduct; and any evidence of ethical misconduct, including the nature and extent of any injuries and other information that the maker of the report believes might be helpful to investigate a report of ethical misconduct. The written report shall be submitted upon a standardized form developed by the department.

E. Upon receipt of a report of ethical misconduct pursuant to Subsection A of this section, the department shall immediately notify law enforcement if the allegation of ethical misconduct is criminal in nature; provided that the department shall notify a tribal law enforcement or social services agency for any Indian child residing in Indian country.

F. The recipient of a report pursuant to Subsection A of this section shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health or welfare of a student or child who is the subject of a report under Subsection A of this section. A school shall take immediate steps to ensure the safety of enrolled students.

G. After a report of suspected ethical misconduct against a student or child is made to a law enforcement agency, the department or a superintendent pursuant to this section, the office receiving the report shall notify the person making the report within five days after the report was made that the office receiving the report is investigating the matter. Mailing a notice within five days shall constitute compliance with this subsection.

H. A law enforcement agency, the department or a superintendent shall have access to any of the records pertaining to an ethical misconduct case maintained by any of the persons enumerated in Subsection A of this section.

I. A local school board shall adopt policies providing for the coordination and internal tracking of reports made pursuant to this section. Such policies shall include measures to protect the identity of any alleged victims. No policy shall relieve any person having a duty to report pursuant to this section from that duty.

**History:** Laws 2021, ch. 94, § 1.

## **22-10A-5.2. Applicants for school employment, contracts or volunteer positions; requirements for work history and other information.**

A. A public school shall require an applicant for employment to provide:

(1) a list of the applicant's current and former employers that were schools or that employed the applicant in a position involving unsupervised contact with children or students. The list shall include the name, address, telephone number and other relevant contact information for each of the applicant's listed employers;

(2) a written statement describing whether the applicant:

(a) has ever been under investigation for, or has been found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses prohibited in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated;

(b) has ever been under investigation for, or found to have violated, any ethical rule or policy approved by a former employer that previously employed the applicant, unless the allegations were false or unsubstantiated; or

(c) has ever had a professional license or certificate denied, suspended, surrendered or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation; and

(3) a written authorization that authorizes disclosure of information requested under Subsection B or D of this section and the release of related records by the applicant's previous employers, releasing the applicant's previous employers from any liability related to the disclosure or release of records.

B. A public school shall conduct a review of the applicant's employment history and contact the applicant's current and former employers listed under Subsection A of this section and request:

(1) the applicant's dates of employment; and

(2) a written statement describing whether the applicant:

(a) has ever been under investigation for, or has been found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses prohibited in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated;

(b) has ever been under investigation for, or found to have violated, any ethical rule or policy approved by a former employer that previously employed the applicant, unless the allegations were false or unsubstantiated; or

(c) has ever had a professional license or certificate denied, suspended, surrendered or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation.

C. An applicant's current or former employer shall disclose the information requested under Subsection B of this section within thirty days of receiving the request.

D. During the course of a public school's review of the applicant's employment history, an applicant's current or former employer may disclose any other information the applicant's current or former employer deems pertinent and substantive to the prospective employee's suitability for employment in a position that includes unsupervised contact with children or students.

E. A public school shall make and document efforts to:

(1) verify the information provided under Subsections A and B of this section; and

(2) obtain from an applicant's current or former out-of-state employer the information required under Subsection B of this section.

F. A public school may terminate an individual's employment or contract or rescind an applicant's offer of employment or offer of a contract if the applicant is offered or commences employment with a public school after the effective date of this 2021 act and information regarding the applicant's history of child abuse or ethical misconduct that is determined to disqualify the applicant from employment or a contract is subsequently obtained by the public school.

G. When a reference on a former or current employee, contractor or volunteer is requested, the employer shall respond and provide the requested information pursuant to Subsection B of this section.

H. An applicant who provides false information or willfully neglects to disclose information required under this section shall be subject to discipline including termination or denial of employment or action to deny, suspend or revoke a license.

I. For the purposes of this section, "applicant" means an applicant for employment, an individual who is being considered as a contractor, a contractor's employee or an individual who wants to be a school volunteer.

**History:** Laws 2021, ch. 94, § 2.

## **22-10A-6. Educational requirements for licensure.**

A. The department shall require a person seeking licensure or reciprocity in elementary, special, early childhood or secondary education to have completed the following minimum requirements in the college of arts and sciences:

- (1) nine semester hours in communication;
- (2) six semester hours in mathematics;
- (3) eight semester hours in laboratory science;
- (4) nine semester hours in social and behavioral science; and
- (5) nine semester hours in humanities and fine arts.

B. In addition to the requirements specified in Subsections A and C of this section, the department shall require that a person seeking standard or alternative elementary licensure shall have completed six hours of reading courses, and a person seeking standard or alternative secondary licensure shall have completed three hours of reading courses in subject matter content. The department shall establish requirements that provide a reasonable period of time to comply with the provisions of this subsection.

C. Except for licensure by reciprocity, the department shall require, prior to initial licensure, no less than sixteen weeks of student teaching, a portion of which shall occur in the first thirty credit hours taken in the college of education and shall be under the direct supervision of a teacher and a portion of which shall occur in the student's senior year with the student teacher being directly responsible for the classroom.

D. Nothing in this section shall preclude the department from establishing or accepting equivalent requirements for purposes of reciprocal licensure or minimum requirements for alternative licensure.

E. Vocational teacher preparatory programs may be exempt from Subsections A through C of this section upon a determination by the department that other licensure requirements are more appropriate for vocational teacher preparatory programs.

F. Before December 31, 2021, the department shall create a license endorsement in secondary computer science available to all teachers who hold a valid license and demonstrate sufficient content knowledge in computer science as determined by the department. The department shall consult with computer science education experts with experience in creating or supporting computer science endorsement pathways when developing computer science endorsement requirements.

**History:** 1978 Comp., § 22-2-8.7, enacted by Laws 1986, ch. 33, § 8; 1987, ch. 225, § 1; 2001, ch. 255, § 1; 2001, ch. 261, § 1; recompiled and amended as § 22-10A-6 by Laws 2003, ch. 153, § 37; 2009, ch. 272, § 1; 2015, ch. 97, § 1; 2021, ch. 102, § 1.

## **22-10A-7. Level one licensure.**

A. A level one license is a provisional five-year license for beginning teachers that requires as a condition of licensure that the licensee undergo a formal mentorship program for at least one full school year and an annual intensive performance evaluation by a school administrator for at least three full school years before applying for a level two license.

B. Each school district, in accordance with department rules, shall provide for the mentorship and evaluation of level one teachers. At the end of each year and at the end of the license period, the level one teacher shall be evaluated for competency. If the teacher fails to demonstrate satisfactory progress and competence annually, the teacher may be terminated as provided in Section 22-10A-24 NMSA 1978. If the teacher has not demonstrated satisfactory progress and competence by the end of the five-year period, the teacher shall not be granted a level two license.

C. Except in exigent circumstances defined by department rule, a level one license shall not be extended beyond the initial period.

D. The department shall issue a standard level one license to an applicant who is at least eighteen years of age who:

- (1) holds a baccalaureate degree from an accredited educational institution;
- (2) has successfully completed a department-approved teacher preparation program from a nationally accredited or state-approved educational institution;
- (3) has passed the New Mexico teacher assessments examination, including for elementary licensure beginning January 1, 2013, a rigorous assessment of the candidate's knowledge of the science of teaching reading; and
- (4) meets other qualifications for level one licensure, including clearance of the required background check.

E. The department shall issue a standard level one vocational license to an applicant who meets the requirements of Subsection D of this section or to an applicant who is at least twenty-three years of age and who:

- (1) has five or more years of professional experience in the vocational field in which the applicant will teach; and

(2) meets other qualifications for level one licensure, including clearance of a background check pursuant to Section 22-10A-5 NMSA 1978.

F. The department shall issue an alternative level one license to an applicant who meets the requirements of Section 22-10A-8 NMSA 1978.

G. The department shall establish competencies and qualifications for specific grade levels, types and subject areas of level one licensure, including early childhood, elementary, middle school, secondary, special and vocational education.

H. The minimum salary for a level one teacher, except for a teacher licensed pursuant to Subsection E of this section, is fifty thousand dollars (\$50,000) for a standard nine and one-half month contract; provided that teachers in an extended learning time program or K-5 plus program shall receive additional salary at the same rate as their base salary for that teaching time.

I. After the issuance of a license, a license holder shall not be required to meet changed requirements to maintain the license until such time as the license expires and the license holder seeks renewal of the license.

**History:** 1978 Comp., § 22-10A-7, enacted by Laws 2003, ch. 153, § 38; 2005, ch. 315, § 5; 2005, ch. 316, § 2; 2010, ch. 113, § 1; 2011, ch. 95, § 1; 2018, ch. 72, § 1; 2019, ch. 206, § 21; 2019, ch. 207, § 21; 2022, ch. 28, § 1; 2023, ch. 128, § 1.

## **22-10A-8. Alternative level one license.**

A. Except as provided in Subsection B of this section, the department shall issue an alternative level one license to a person who is at least eighteen years of age and who:

(1) has completed a baccalaureate degree at an accredited institution of higher education and has received a passing score on a state-approved subject-area examination in the subject area of instruction for which the person is applying for a license; or

(2) has completed a master's degree at an accredited institution of higher education, including completion of a minimum of twelve graduate credit hours in the subject area of instruction for which the person is applying for a license; or

(3) has completed a doctoral or law degree at an accredited institution of higher education; and

(4) has passed the New Mexico teacher assessments examination, including for elementary licensure beginning January 1, 2013, a rigorous assessment of the candidate's knowledge of the science of teaching reading; and

(5) within two years of beginning teaching, completes a minimum of twelve semester hours of instruction in teaching principles in a program approved by the department; or

(6) demonstrates to the department, in conjunction with the school district or state agency, that the person has met the department-approved competencies for level one teachers that correspond to the grade level that will be taught.

B. A person seeking an alternative level one special education license to teach students with disabilities shall be at least eighteen years of age and meet the educational and assessment requirements of Paragraphs (1) through (4) of Subsection A of this section, as applicable. In addition, the person shall serve a fifteen-week apprenticeship under a level two or three-A special education teacher while taking related and interwoven coursework at a post-secondary educational institution that is designed to connect pedagogical theory with teaching practice, including:

- (1) lesson planning;
- (2) classroom and behavior management for students with special needs;
- (3) learning theory;
- (4) foundations of special education; and
- (5) culturally and linguistically relevant teaching techniques.

C. A degree or examination referred to in Subsection A of this section shall correspond to the subject area of instruction and the particular grade level that will enable the applicant to teach in a competent manner as determined by the department.

D. An alternative level one or alternative level one special education teacher shall participate in the same mentorship, evaluation and other professional development requirements as other level one teachers.

E. A school district or state agency shall not discriminate against a teacher on the basis that the teacher holds an alternative level one license.

F. The department shall provide by rule for training and other requirements to support the use of unlicensed content area experts as resources in classrooms, team teaching, on-line instruction, curriculum development and other purposes.

**History:** 1978 Comp., § 22-10A-8, enacted by Laws 2003, ch. 153, § 39; 2007, ch. 264, § 1; 2011, ch. 36, § 1; 2011, ch. 95, § 2; 2021, ch. 129, § 1.

### **22-10A-8.1. Saving clause.**

Persons holding alternative level one special education licenses on July 1, 2022 are not required to apply for a new license.

**History:** Laws 2021, ch. 129, § 2.

## **22-10A-9. Teacher mentorship program for beginning teachers; purpose; department duties.**

A. The purpose of the teacher mentorship program is to provide beginning teachers with an effective transition into the teaching field, to build on their initial preparation and to ensure their success in teaching; to improve the achievement of students; and to retain capable teachers in the classroom and to remove teachers who show little promise of success.

B. The department shall develop a framework for a teacher mentorship program for all beginning teachers. The program shall provide mentorship services by level two or level three mentors to the beginning teacher for the full school year.

C. The department shall work with licensed school employees, representatives from teacher preparation programs and the higher education department to establish the framework.

D. The framework shall include:

(1) individual support and assistance for each beginning teacher from a designated mentor;

(2) structured training for mentors;

(3) an ongoing, formative evaluation that is used for the improvement of teaching practice;

(4) procedures for a summative evaluation of beginning teachers' performance during at least the first three years of teaching, including annual assessment of suitability for license renewal, and for final assessment of beginning teachers seeking level two licensure;

(5) support from local school boards or governing bodies of charter schools, school administrators and other school district or charter school personnel; and

(6) regular review and evaluation of the teacher mentorship program.

E. The department shall:

(1) require annual submission and approval of each school district's and charter school's teacher mentorship program;



(2) provide technical assistance to school districts and charter schools that do not have a well-developed teacher mentorship program in place;

(3) encourage school districts and charter schools to collaborate with teacher preparation program administrators at institutions of higher education, career educators, educational organizations, regional educational cooperatives and other state and community leaders in the teacher mentorship program; and

(4) distribute up to two thousand dollars (\$2,000) per year per beginning teacher from the beginning teacher mentorship fund for mentorship programs to school districts and charter schools; provided that no less than fifty percent of available funds shall be distributed on or before September 15 of each fiscal year according to the estimated number of teachers eligible to participate in their mentorship programs and, on or before January 15 of each fiscal year, distribute funding based on the actual number of eligible teachers participating in a mentorship program on the first reporting date of the school year, adjusted for any over- or under-estimation made in the first allocation.

F. Each school district and charter school shall submit as part of its teacher mentorship program submission:

(1) the number of teachers that have completed each of their mentorship programs the previous spring or summer and have been hired by the school district or charter school for the following school year; and

(2) a description of the mentorship services that will be provided to each of its teachers, including the name of the teacher, the grade level the teacher has been hired to teach and the name of the public school and, if applicable, school district where the teacher has been hired.

**History:** 1978 Comp., § 22-10A-9, enacted by Laws 2003, ch. 153, § 40; 2005, ch. 315, § 6; 2005, ch. 316, § 3; 2007, ch. 264, § 3; 2009, ch. 119, § 1; 2010, ch. 113, § 2; 2020, ch. 24, § 2.

## **22-10A-10. Level two licensure.**

A. A level two license is a nine-year license granted to a teacher who meets the qualifications for that level and who annually demonstrates essential competency to teach. If a level two teacher does not demonstrate essential competency in a given school year, the school district shall provide the teacher with additional professional development and peer intervention during the following school year. If by the end of that school year the teacher fails to demonstrate essential competency, a school district may choose not to contract with the teacher to teach in the classroom.

B. The department shall issue a level two license to an applicant who has successfully taught at least three, but no more than five, years as a level one teacher or

an alternative level one teacher, or a combination of the two, or is granted reciprocity as provided by department rules. An applicant for a level two license shall:

(1) demonstrate essential competency required by the department as verified by the local superintendent through the highly objective uniform statewide standard of evaluation; and

(2) meet other qualifications as required by the department.

C. The department shall provide for qualifications for specific grade levels, types and subject areas of level two licensure, including early childhood, elementary, middle, secondary, special and vocational education.

D. The minimum salary for a level two teacher, except for those teachers with a vocational education license, is sixty thousand dollars (\$60,000) for a standard nine and one-half month contract; provided that teachers in an extended learning time program or K-5 plus program shall receive additional salary at the same rate as their base salary for that teaching time.

**History:** 1978 Comp., § 22-10A-10, enacted by Laws 2003, ch. 153, § 41; 2005, ch. 315, § 7; 2005, ch. 316, § 4; 2018, ch. 72, § 2; 2019, ch. 191, § 1; 2019, ch. 206, § 22; 2019, ch. 207, § 22; 2022, ch. 28, § 2; 2023, ch. 128, § 2.

## **22-10A-11. Level three licensure; tracks for teachers.**

A. A level three-A license is a nine-year license granted to a teacher who meets the qualifications for that level and who annually demonstrates instructional leader competencies. If a level three-A teacher does not demonstrate essential competency in a given school year, the school district shall provide the teacher with additional professional development and peer intervention during the following school year. If by the end of that school year the teacher fails to demonstrate essential competency, a school district may choose not to contract with the teacher to teach in the classroom.

B. The department shall grant a level three-A license to an applicant who has been a level two teacher for at least three years and holds a post-baccalaureate degree or national board for professional teaching standards certification; demonstrates instructional leader competence as required by the department and verified by the local superintendent through the highly objective uniform statewide standard of evaluation; and meets other qualifications for the license.

C. The department shall grant a level three-A license to an applicant seeking a level three-A vocational education license who does not meet the requirements of Subsection B of this section, but who otherwise is eligible for a level three-A license, provided that the applicant:

(1) has been a level two teacher for at least three years;

(2) provides documentation from an accredited higher education institution of the applicant's eligibility to teach dual-credit courses at the post-secondary level in the field in which the applicant is teaching; or

(3) completes a department-approved career-technical education training certificate course of study that is a minimum of sixteen hours at an accredited higher education institution.

D. The minimum salary for a level three-A teacher, except teachers licensed pursuant to Subsection C of this section, is seventy thousand dollars (\$70,000) for a standard nine and one-half month contract; provided that teachers in an extended learning time program or K-5 plus program shall receive additional salary at the same rate as their base salary for that teaching time.

E. The minimum salary for a counselor who holds a level three or three-A license as provided in the School Personnel Act and rules promulgated by the department shall be the same as provided for level three-A teachers pursuant to Subsection D of this section.

**History:** 1978 Comp., § 22-10A-11, enacted by Laws 2003, ch. 153, § 42; 2005, ch. 315, § 8; Laws 2005, ch. 316, § 5; 2007, ch. 303, § 1; 2007, ch. 304, § 2; 2009, ch. 117, § 1; 2015, ch. 74, § 1; 2015, ch. 103, § 1; 2018, ch. 72, § 3; 2019, ch. 206, § 23; 2019, ch. 207, § 23; 2022, ch. 28, § 3; 2023, ch. 128, § 3.

### **22-10A-11.1. Alternative level two or level three license.**

A. At the end of an internship of at least one full school year, the department may issue an alternative level two license to a person who is at least eighteen years of age and who has a post-baccalaureate degree and at least five years' experience teaching at the post-secondary level if the person demonstrates to the department, in conjunction with the school district, charter school, private school or state agency, that the person has met other department-approved competencies for issuance of a level two license that correspond to the grade level and subject area that the person will teach.

B. At the end of an internship of at least one full school year, the department may issue an alternative level three-A or level three-B license to a person who is at least eighteen years of age and who has a post-baccalaureate degree and at least six years' experience teaching or administering at the post-secondary level if the person demonstrates to the department, in conjunction with the school district, charter school, private school or state agency, that the person has met other department-approved competencies for issuance of a level three-A license that correspond to the grade level and subject area that the person will teach or for issuance of a level three-B license for administration.

**History:** Laws 2007, ch. 146, § 1.

## **22-10A-11.2. Deaf and hard-of-hearing teachers; alternative licensure assessment; saving provision.**

A. A person who has a degree from an accredited teacher education program and who is deaf or hard of hearing may elect to demonstrate competency for a level one, two or three license through a portfolio assessment in lieu of all or part of the New Mexico teacher assessment. A person who is deaf or hard of hearing may apply for a lower level of licensure if the person's portfolio assessment does not qualify the person for a higher level. The department shall promulgate rules on the requirements for the portfolio assessment and for who is eligible for licensure pursuant to this section. The department shall provide a process for portfolio review that includes the designation of a review committee consisting of:

- (1) a teacher of deaf and hard-of-hearing students;
- (2) a sign language interpreter;
- (3) a school administrator from the New Mexico school for the deaf;
- (4) the parent of a deaf or hard-of-hearing student;
- (5) a deaf or hard-of-hearing teacher, if one is available; and
- (6) other appropriate persons as determined by the department.

B. Until the rules have been effective for a period deemed sufficient by the department for a deaf or hard-of-hearing person to submit a portfolio, any eligible deaf or hard-of-hearing person who has a degree from an accredited teacher education program shall be granted a temporary teaching license for the level of licensure for which the person will likely qualify when the person's portfolio is submitted to the department. The temporary teaching license shall be effective for no longer than two school years.

**History:** Laws 2009, ch. 10, § 1.

## **22-10A-11.3. Level three-B provisional licensure for school principals.**

A. A school district that has a shortage of qualified school principal candidates may request that the department issue a provisional three-B license to a level two teacher whom the school district believes has the potential to be an effective school principal.

B. To qualify for a provisional three-B license, the candidate shall:

- (1) meet the requirements for a level three-A license;

(2) be enrolled in a department-approved induction and mentoring program in the school district; and

(3) be accepted into a department-approved school administrator preparation program.

C. The provisional license is a four-year license and is not renewable. To maintain the provisional license, the licensee must receive satisfactory evaluations each year from the school district's mentoring program and from the school administrator preparation program. At the end of the four years, the provisional license may be converted to a regular level three-B license if the candidate:

(1) satisfactorily completes the school district's mentoring program; and

(2) satisfactorily completes the department-approved school administrator preparation program.

**History:** Laws 2009, ch. 117, § 2.

#### **22-10A-11.4. Level three-B administrator's license; tracks for school administrator licensure.**

A. A level three-B administrator's license is a five-year license granted to an applicant who meets the qualifications for that license. Licenses may be renewed upon satisfactory annual demonstration of instructional leader and administrative competency.

B. The department shall grant a level three-B administrator's license to an applicant who:

(1) has completed a department-approved administrator preparation program;

(2) holds a current level two or level three teacher's license; and

(3) holds a post-baccalaureate degree or national board for professional teaching standards certification.

C. The minimum annual salary for a licensed school principal or assistant school principal is the minimum salary for a level three-A teacher multiplied by the applicable responsibility factor.

D. The department shall adopt a highly objective uniform statewide standard of evaluation, including data sources linked to student achievement and an educational plan for student success progress, for school principals and assistant school principals and rules for the implementation of that evaluation system linked to the level of responsibility at each school level.

E. As used in this section, "level three-B administrator's license" means a five-year license granted to an applicant who meets the qualifications pursuant to this section and department rules.

**History:** Laws 2015, ch. 74, § 2; 2019, ch. 206, § 24; 2019, ch. 207, § 24.

## **22-10A-12. Limited reciprocity.**

A. A teacher or school principal licensed in another state may be granted a level two or level three license if the teacher or school principal has teaching experience, demonstrates the required competencies and meets other requirements and qualifications for the license for which the teacher or school principal applies, including clearance of the required background check. The local superintendent may require a mentorship period for the licensee if the superintendent deems it necessary. A teacher or school principal who holds an out-of-state license may apply for a lower level license if the teacher or school principal does not meet the requirements for the higher level.

B. The department may grant a level three-B license to a candidate who does not meet the other requirements and qualifications of that license if the candidate has a school administrator license issued in another state and has worked as a school administrator in good standing for at least six years.

**History:** 1978 Comp., § 22-10A-12, enacted by Laws 2003, ch. 153, § 43; 2019, ch. 80, § 1.

### **22-10A-12.1. Expedited licensure; military service members, spouses and dependents; waiver of fees; veterans.**

A. The department shall, no later than thirty days after a military service member or a veteran with a valid and current or an expired license from another jurisdiction files an application, and provides a background check if required, for a license or a substitute teacher certificate:

(1) process the application; and

(2) issue a license prima facie to a qualified applicant who submits satisfactory evidence that demonstrates the required competencies and meets other requirements and qualifications for the license for which the teacher or school employee applies, including clearance of the required background check. The local superintendent may require a mentorship period for the licensee or certificate holder if the local superintendent deems it necessary. A teacher or school employee who holds an out-of-state license may apply for a lower level license if the teacher or school employee does not meet the requirements for the higher level.

B. A license or a substitute teacher certificate issued pursuant to this section shall not be renewed unless the license or certificate holder satisfies the requirements for the

issuance and the renewal of the license or certificate for which the teacher applies. Upon the issuance of a license or certificate pursuant to this section, the department shall notify the license or certificate holder of the requirements for renewing the license or certificate in writing.

C. A military service member or a veteran who is issued a license or certificate pursuant to this section shall not be charged a licensing or certificate fee for the first three years a license or certificate issued pursuant to this section is valid.

D. A license or certificate issued pursuant to this section to an applicant with an expired license or certificate shall not be valid for more than one year.

E. Each entity that issues a license or certificate pursuant to the Public School Code, upon the conclusion of the state fiscal year, shall prepare a report on the number and type of licenses or certificates that were issued during the fiscal year under this section. The report shall be provided to the director of the office of military base planning and support not later than ninety days after the end of the fiscal year.

**History:** Laws 2018, ch. 8, § 1; 2020, ch. 6, § 2; 2021, ch. 92, § 3.

### **22-10A-13. Native American language and culture certificates.**

The department shall issue a Native American language and culture certificate to a person proficient in a Native American language and culture of a New Mexico tribe or pueblo who meets criteria established through a memorandum of agreement between the tribe or pueblo and the public education department. A baccalaureate degree is not required for the person applying for this certificate. The Native American language and culture certificate shall be issued and renewable in accordance with procedures established by the department based on the agreement made with the tribe or pueblo. The minimum annual salary for a person holding a Native American language and culture certificate and working full time in an instructional capacity shall be equal to the minimum annual salary for a level one licensed teacher.

**History:** 1978 Comp., § 22-10A-13, enacted by Laws 2003, ch. 153, § 44; 2022, ch. 40, § 1.

### **22-10A-14. Certificates of waiver.**

A. If a local superintendent or governing authority of a state agency certifies to the department that an emergency exists in the hiring of a qualified person, the department may issue a certificate of teaching waiver or assignment waiver.

B. The department may issue a certificate of teaching waiver to a person who holds a baccalaureate degree but does not meet other requirements for licensure as a level one teacher. Certificates of teaching waivers are one-year waivers and may be renewed

only if the holder provides satisfactory evidence of continued progress toward a level one license.

C. At the request of a local superintendent, the department may issue a certificate of assignment waiver to a licensed teacher who is assigned to teach outside the teacher's teaching endorsement area. A certificate of assignment waiver may be renewed each school year if the teacher provides satisfactory evidence of continued progress toward meeting the requirements for endorsement.

**History:** 1978 Comp., § 22-10A-14, enacted by Laws 2003, ch. 153, § 45; 2015, ch. 58, § 13.

### **22-10A-15. Substitute teacher certificate.**

The department shall provide by rule for the qualifications for a substitute teacher certificate. Substitute teacher certificates shall be issued by the department.

**History:** 1978 Comp., § 22-10A-15, enacted by Laws 2003, ch. 153, § 46; 2004, ch. 92, § 1.

### **22-10A-16. Parental notification.**

A. Within sixty calendar days from the beginning of each school year, every school district shall issue a notice to parents that they may obtain information regarding the professional qualifications of their children's teachers, instructional support providers and school principals. At a minimum, the information shall include:

- (1) whether the teacher has met state qualifications for licensure for the grade level and subjects being taught by the teacher;
- (2) whether the teacher is teaching under a teaching or assignment waiver;
- (3) the teacher's degree major and any other license or graduate degree held by the teacher; and
- (4) the qualifications of any instructional support providers if the student is served by educational assistants or other instructional support providers.

B. A local superintendent shall give written notice to the parents of those students who are being taught for longer than four consecutive weeks by a substitute teacher or by a person who is not qualified to teach the grade or subject.

C. The local superintendent shall:

- (1) ensure that the notice required by this section is provided by the end of the four-week period following the assignment of that person to the classroom;



(2) ensure that the notice required by this section is provided in a bilingual form to a parent whose primary language is not English;

(3) retain a copy of the notice required pursuant to this section; and

(4) ensure that information relating to teacher licensure is available to the public upon request.

**History:** 1978 Comp., § 22-10A-16, enacted by Laws 2003, ch. 153, § 47.

## **22-10A-17. Instructional support provider licenses.**

A. The following instructional support providers shall obtain appropriate licensure from the department: educational assistants, school counselors, school social workers, school nurses, speech-language pathologists, psychologists, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, recreational therapists, marriage and family therapists, interpreters for the deaf, diagnosticians, attendance coaches, practical nurses, school health assistants, school business officials, rehabilitation counselors, athletic coaches, educational alcohol and drug abuse counselors and substance abuse associates. The department may provide a professional licensing framework in which licensees can advance in their careers through the demonstration of increased competencies and the undertaking of increased duties.

B. The department shall provide by rule for the licensure requirements for any instructional support providers. If an instructional support provider practices a licensed profession, the provider shall provide evidence satisfactory to the department that the provider holds a current, unsuspended license in the profession for which the provider is applying to provide instructional support services.

C. An instructional support provider licensed by the department shall also hold a valid professional license or certificate issued by the instructional support provider's respective licensing or certifying authority, if applicable, and shall continuously hold such underlying professional licensure or certification for as long as the instructional support provider holds licensure issued by the department.

D. If the underlying professional license or certificate for any reason expires, is suspended, is revoked or is denied, a person seeking or holding an instructional support provider license shall notify the department in writing within fourteen calendar days of such suspension, revocation, denial or expiration.

E. Suspension, revocation, denial or expiration of an underlying professional license or certificate, or failure to notify the department of such, shall constitute just cause for discharge or termination from employment and for suspension, revocation or denial of an instructional support provider license.

**History:** 1978 Comp., § 22-10A-17, enacted by Laws 2003, ch. 153, § 48; 2004, ch. 27, § 24.; 2009, ch. 217, § 2; 2023, ch. 177, § 4.

### **22-10A-17.1. Educational assistants; licensing framework; qualifications; minimum salaries.**

A. All persons who perform services as educational assistants in public schools or in those special state-supported schools within state agencies shall hold valid educational assistant licensure issued by the department. Educational assistants shall be assigned, and serve as assistants, to school staff licensed by the department. While there may be brief periods when educational assistants are alone with and in control of a classroom of students, their primary use shall be to work alongside or under the direct supervision of licensed staff.

B. The department shall, through appropriate rules, institute a licensure system for educational assistants. The highest level of license shall ensure that educational assistants who hold that level of licensure meet the standard for paraprofessionals established in federal statute and regulation for employment in a Title 1 program.

C. A licensed educational assistant who is a resident of New Mexico, who is authorized to work in the United States, who has been employed by a public school in a position that works directly with students for at least two years and is in good standing with the school district and who is enrolled in or accepted by an undergraduate teacher preparation program at a regionally accredited public post-secondary educational institution in New Mexico shall be granted professional leave by that public school to attend a teacher preparation program in New Mexico; provided that the public school may require that the professional leave minimizes disruption to the school day and may require an educational assistant to make up hours in exchange for hours missed from the school day.

D. The minimum annual salary for licensed educational assistants shall be twenty-five thousand dollars (\$25,000) effective in the 2023-2024 school year.

E. The minimum salaries specified in Subsection D of this section may be adjusted in accordance with appropriations for that purpose in each school year as established by the secretary.

F. School districts shall initiate the implementation of a career salary framework that supports the licensure system in department rules in fiscal year 2005.

G. As used in this section, "teacher preparation program" means a program that has been formally approved as meeting the requirements of the department and that leads to level one teacher licensure, including a program in a two-year post-secondary educational institution that meets the requirements for a teacher education transfer module established pursuant to Subsection C of Section 21-1B-4 NMSA 1978.

**History:** Laws 2004, ch. 30, § 1; 2021, ch. 11, § 8; 2023, ch. 14, § 1.

## **22-10A-17.2. Alternative level three-B licensure; track for instructional support providers.**

A. An alternative level three-B license is a five-year license granted to a school administrator applicant who meets the qualifications for that level. Licenses may be renewed upon satisfactory annual demonstration of instructional leader and administrative competency.

B. The department shall grant an alternative level three-B license to an applicant who is licensed by the department as a school counselor, school social worker, school nurse, speech-language pathologist, psychologist, physical therapist, physical therapy assistant, occupational therapist, occupational therapy assistant, recreational therapist, marriage and family therapist, interpreter for the deaf or diagnostician and who:

- (1) holds a post-baccalaureate degree;
- (2) has satisfactorily completed department-approved courses in administration and a department-approved administration apprenticeship program; and
- (3) demonstrates instructional leader competence required by the department and verified by the local superintendent through the highly objective uniform statewide standard of evaluation.

C. The minimum annual salary for an alternative level three-B licensed school principal or assistant school principal shall be fifty thousand dollars (\$50,000) multiplied by the applicable responsibility factor.

**History:** Laws 2017, ch. 68, § 1.

## **22-10A-18. School principals; duties.**

In addition to other duties prescribed by law, a school principal shall:

A. under the general supervision of the local superintendent, assume administrative responsibility and overall instructional leadership for the public school to which he is assigned, including the discipline of students and the planning, operation, supervision and evaluation of the educational program of the school;

B. recommend to the local superintendent the employment, promotion, transfer, discharge and termination of school employees in his school;

C. evaluate the performance of school employees and develop professional development plans or job improvement plans to assist school employees to improve;

D. take disciplinary action against school employees;

E. develop a proposed budget for the public school, with input from the school council, and submit it to the local superintendent; and

F. perform other duties assigned to him by the local superintendent to implement the policies of the local school board.

**History:** 1978 Comp., § 22-10A-18, enacted by Laws 2003, ch. 153, § 49.

**22-10A-19. Teachers and school principals; accountability; evaluations; sick leave; professional development; peer intervention; mentoring.**

A. The department shall adopt criteria and minimum highly objective uniform statewide standards of evaluation for the annual performance evaluation of licensed school employees. The professional development plan for teachers shall include documentation on how a teacher who receives professional development that has been required or offered by the state or a school district or charter school incorporates the results of that professional development in the classroom.

B. The local superintendent shall adopt policies, guidelines and procedures for the performance evaluation process. Evaluation by other school employees shall be one component of the evaluation tool for school administrators. A teacher's use of personal leave and up to ten days of sick leave shall not affect that teacher's annual performance evaluation; provided that the leave is used consistently with the policy of the local school board or the governing body of the charter school that employs that teacher. An annual performance evaluation may reflect the lowest score with respect to teacher attendance for a teacher who is determined by a school district or charter school to be using sick leave days in a manner inconsistent with a local school board policy, charter school governing council policy, administrative regulation or an applicable collective bargaining agreement.

C. As part of the highly objective uniform statewide standard of evaluation for teachers, the school principal shall observe each teacher's classroom practice to determine the teacher's ability to demonstrate state-adopted competencies.

D. At the beginning of each school year, teachers and school principals shall devise professional development plans for the coming year, and performance evaluations shall be based in part on how well the professional development plan was carried out.

E. If a level two or three-A teacher's performance evaluation indicates less than satisfactory performance and competency, the school principal may require the teacher to undergo peer intervention, including mentoring, for a period the school principal deems necessary. If the teacher is unable to demonstrate satisfactory performance and

competency by the end of the period, the peer interveners may recommend termination of the teacher.

F. At least every two years, school principals shall attend a training program approved by the department to improve their evaluation, administrative and instructional leadership skills.

**History:** 1978 Comp., § 22-10A-19, enacted by Laws 2003, ch. 153, § 50; 2010, ch. 107, § 1; 2019, ch. 12, § 1.

### **22-10A-19.1. Professional development; systemic framework; requirements; department duties.**

A. The department shall develop a systemic framework for professional development that provides training to ensure quality teachers, school principals and instructional support providers and that improves and enhances student achievement. The department shall work with licensed school employees, the higher education department and institutions of higher education to establish the framework.

B. The framework shall include:

(1) the criteria for school districts to apply for professional development funds, including an evaluation component that will be used by the department in approving school district professional development plans;

(2) guidelines for developing extensive professional development activities for school districts that:

(a) improve teachers' knowledge of the subjects they teach and their ability to teach those subjects to all of their students;

(b) are an integral part of the public school and school district plans for improving student achievement;

(c) provide teachers, school administrators and instructional support providers with the strategies, support, knowledge and skills to help all students meet New Mexico academic standards;

(d) are high quality, sustained, intensive and focused on the classroom; and

(e) are developed and evaluated regularly with extensive participation of school employees, parents and organizations with specific subject-area expertise or professional development;

(3) guidelines for integrating career-technical education content into academic instructional practices, including training on best practices to understand state and

regional workforce needs and transitions to post-secondary education and the workforce; and

(4) guidelines for funding rigorous professional development for career-technical teachers and educational assistants in the same manner as for teachers and educational assistants of other subjects for which the department has promulgated standards and benchmarks.

C. The department and school districts shall use all available funding sources, including federal Every Student Succeeds Act Title 2 funding, to provide professional development for career-technical teachers and educational assistants.

**History:** Laws 2004, ch. 27, § 25; 2019, ch. 2, § 1.

## **22-10A-19.2. Educator accountability report.**

A. The department shall:

(1) design a uniform statewide educator accountability reporting system to measure and track teacher and administrator education candidates from pre-entry to post-graduation in order to benchmark the productivity and accountability of New Mexico's educator work force; provided that the system shall be designed in collaboration with:

(a) all public post-secondary teacher and administrator preparation programs in New Mexico, including those programs that issue alternative or provisional licenses;

(b) the teacher and administrator preparation programs' respective public post-secondary educational institutions; and

(c) the higher education department;

(2) require all public post-secondary teacher and administrator preparation programs to submit the data required for the uniform statewide educator accountability reporting system through the department's student teacher accountability reporting system;

(3) use the uniform statewide educator accountability reporting system, in conjunction with the department's student teacher education accountability reporting system, to assess the status of the state's efforts to establish and maintain a seamless pre-kindergarten through post-graduate system of education;

(4) adopt the format for reporting the outcome measures of each teacher and administrator preparation program in the state; and

(5) issue an annual statewide educator accountability report.

B. The annual educator accountability report format shall be clear, concise and understandable to the legislature and the general public. All annual program and statewide accountability reports shall ensure that the privacy of individual students is protected.

C. Each teacher and administrator preparation program's annual educator accountability report shall include the demographic characteristics of the students and the following indicators of program success:

- (1) the standards for entering and exiting the program;
- (2) the number of hours required for field experience and for student teaching or administrator internship;
- (3) the number and percentage of students needing developmental course work upon entering the program;
- (4) the number and percentage of students completing each program;
- (5) the number and types of degrees received by students who complete each program;
- (6) the number and percentage of students who pass the New Mexico teacher or administrator assessments for initial licensure on the first attempt;
- (7) a description of each program's placement practices; and
- (8) the number and percentage of students hired by New Mexico school districts.

D. The educator accountability report shall include an evaluation plan that includes high performance objectives. The plan shall include objectives and measures for:

- (1) increasing student achievement for all students;
- (2) increasing teacher and administrator retention, particularly in the first three years of a teacher's or administrator's career;
- (3) increasing the percentage of students who pass the New Mexico teacher or administrator assessments for initial licensure on the first attempt;
- (4) increasing the percentage of secondary school classes taught in core academic subject areas by teachers who demonstrate by means of rigorous content area assessments a high level of subject area mastery and a thorough knowledge of the state's academic content and performance standards;

(5) increasing the percentage of elementary school classes taught by teachers who demonstrate by means of a high level of performance in core academic subject areas their mastery of the state academic content and performance standards; and

(6) increasing the number of teachers trained in math, science and technology.

E. In addition to the specifications in Subsections C and D of this section, the annual educator accountability report shall also include itemized information on program revenues and expenditures, including staff salaries and benefits and the operational cost per credit hour.

F. The annual educator accountability report shall be adopted by each public post-secondary educational institution, reported in accordance with guidelines established by the department to ensure effective communication with the public and disseminated to the governor, legislators and other policymakers and business and economic development organizations by November 1 of each year.

**History:** Laws 2007, ch. 264, § 2; 2009, ch. 20, § 1.

### **22-10A-19.3. Anti-racism and racial sensitivity training and professional development.**

Each year, all school personnel shall successfully complete an online or in-person anti-racism, racial awareness and sensitivity training or professional development approved by the department that addresses race, racism and racialized aggression and demonstrates how to create and foster an equitable and culturally responsive learning environment for racial minority students.

**History:** Laws 2021, ch. 51, § 9.

### **22-10A-20. Staffing patterns; class load; teaching load.**

A. The individual class load for elementary school teachers shall not exceed twenty students for kindergarten; provided that any teacher in kindergarten with a class load of fifteen to twenty students shall be entitled to the assistance of an educational assistant.

B. The average class load for elementary school teachers at an individual school shall not exceed twenty-two students when averaged among grades one, two and three; provided that any teacher in grade one with a class load of twenty-one or more shall be entitled to the full-time assistance of an educational assistant.

C. The average class load for an elementary school teacher at an individual school shall not exceed twenty-four students when averaged among grades four, five and six.



D. The daily teaching load per teacher for grades seven through twelve shall not exceed one hundred sixty students, except the daily teaching load for teachers of required English courses in grades seven and eight shall not exceed one hundred thirty-five with a maximum of twenty-seven students per class and the daily teaching load for teachers of required English courses in grades nine through twelve shall not exceed one hundred fifty students with a maximum of thirty students per class.

E. Students receiving special education services integrated into a regular classroom for any part of the day shall be counted in the calculation of class load averages. Students receiving special education services not integrated into the regular classroom shall not be counted in the calculation of class load averages. Only classroom teachers charged with responsibility for the regular classroom instructional program shall be counted in determining average class loads. In elementary schools offering only one grade level, average class loads may be calculated by averaging appropriate grade levels between schools in the school district.

F. Class load limits provided for in this section do not apply to band or music classes or athletic electives.

G. The state superintendent [secretary] may waive the individual school class load requirements established in this section. Waivers shall be applied for annually and a waiver shall not be granted for more than two consecutive years. Waivers may only be granted if a school district demonstrates that:

- (1) no portable classrooms are available;
- (2) no other available sources of funding exist to meet its need for additional classrooms;
- (3) the school district is planning alternatives to increase building capacity for implementation within one year; and
- (4) the parents of all children affected by the waiver have been notified in writing:
  - (a) of the statutory class load requirements;
  - (b) that the school district has made a decision to deviate from these class load requirements; and
  - (c) of the school district plan to achieve compliance with the class load requirements.

H. If a waiver is granted pursuant to Subsection G of this section to an individual school, the average class load for elementary school teachers at that school shall not

exceed twenty students in grade one and shall not exceed twenty-five students when averaged among grades two, three, four, five and six.

I. Each school district shall report to the department the size and composition of classes subsequent to the fortieth day and the December 1 count. Failure to meet class load requirements within two years shall be justification for the disapproval of the school district's budget by the state superintendent [secretary].

J. The department shall report to the legislative education study committee by November 30 of each year regarding each school district's ability to meet class load requirements imposed by law.

K. Notwithstanding the provisions of Subsection G of this section, the state board [department] may waive the individual class load and teaching load requirements established in this section upon a demonstration of a viable alternative curricular plan and a finding by the state board that the plan is in the best interest of the school district and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff. The department shall evaluate the impact of each alternative curricular plan annually. Annual reports shall be made to the legislative education study committee.

L. Teachers shall not be required to perform noninstructional duties except in emergency situations as defined by the state board [department]. For purposes of this subsection, "noninstructional duties" means noon hall duty, noon ground duty and noon cafeteria duty.

**History:** 1978 Comp., § 22-2-8.2, enacted by Laws 1986, ch. 33, § 3; 1987, ch. 320, § 1; 1988, ch. 105, § 1; 1990 (1st S.S.), ch. 3, § 1; 1991, ch. 85, § 1; 1992, ch. 86, § 1; 1993, ch. 226, § 5; 1993, ch. 228, § 1; 1994, ch. 109, § 1; recompiled and amended as § 22-10A-20 by Laws 2003, ch. 153, § 51.

### **22-10A-20.1. Repealed.**

**History:** Laws 2014, ch. 77, § 1; repealed by Laws 2016, ch. 22, § 2.

### **22-10A-21. Licensed school employees; employment contracts; duration.**

A. All employment contracts between superintendents and licensed school employees shall be in writing on forms approved by the department. These forms shall contain and specify the term of service, the salary to be paid, the method of payment, the causes for discharge during the term of the contract and other provisions required by the rules of the department.

B. All employment contracts between superintendents and licensed school employees shall be for a period of one school year except:

(1) contracts for less than one school year are permitted to fill personnel vacancies that occur during the school year;

(2) contracts for the remainder of a school year are permitted to staff programs when the availability of funds for the programs is not known until after the beginning of the school year;

(3) contracts for less than one school year are permitted to staff summer school programs and to staff federally funded programs in which the federally approved programs are specified to be conducted for less than one school year;

(4) contracts not to exceed three years are allowed at the discretion of the governing authority for superintendents; and

(5) contracts not to exceed three years are allowed at the discretion of the governing authority for licensed school employees in public schools who have been employed for three consecutive school years.

C. Persons employed under contracts for periods of less than one school year as provided in Paragraphs (1) and (2) of Subsection B of this section shall be accorded all the duties, rights and privileges of the School Personnel Act.

D. In determination of eligibility for unemployment compensation rights and benefits for licensed school employees where those rights and benefits are claimed to arise from the employment relationship between governing authorities and licensed school employees, that period of a year not covered by a school year shall not be considered an unemployment period.

E. Except as provided in Section 22-10A-22 NMSA 1978, a licensed school employee employed by contract pursuant to this section has no legitimate objective expectancy of reemployment, and no contract entered into pursuant to this section shall be construed as an implied promise of continued employment pursuant to a subsequent contract.

**History:** 1953 Comp., § 77-8-8, enacted by Laws 1967, ch. 16, § 113; 1975, ch. 306, § 7; 1986, ch. 33, § 19; 1999, ch. 214, § 1; 1978 Comp., § 22-10-11, recompiled as § 22-10A-21 by Laws 2003, ch. 153, § 72; 2019, ch. 238, § 4.

## **22-10A-22. Licensed school employees; notice of reemployment; termination.**

On or before fifteen working days prior to the last day of the school year, the superintendent shall serve written notice of reemployment or termination on each licensed school employee employed by the public school. A notice of reemployment shall be an offer of employment for the ensuing school year. A notice of termination shall be a notice of intention not to reemploy for the ensuing school year. Failure of the

superintendent to serve a written notice of reemployment or termination on a licensed school employee shall be construed to mean that notice of reemployment has been served upon the licensed school employee for the ensuing school year according to the terms of the existing employment contract but subject to any additional compensation allowed other licensed school employees of like qualifications and experience. Nothing in this section shall be construed to mean that failure of a superintendent to serve a written notice of reemployment or termination shall automatically extend a licensed school employee's employment contract for a period in excess of one school year.

**History:** 1953 Comp., § 77-8-9, enacted by Laws 1967, ch. 16, § 114; 1975, ch. 306, § 8; 1986, ch. 33, § 20; 1978 Comp., § 22-10-12, recompiled as § 22-10A-22 by Laws 2003, ch. 153, § 72; 2019, ch. 238, § 5.

### **22-10A-23. Licensed school employees; reemployment; acceptance; rejection; binding contract.**

A. Each licensed school employee shall deliver to the superintendent a written acceptance or rejection of reemployment for the ensuing school year within fifteen days from the following:

(1) the date written notice of reemployment is served upon the licensed school employee; or

(2) the last day of the school year when no written notice of reemployment or termination is served upon the licensed school employee on or before fifteen working days prior to the last day of the school year.

B. Delivery of the written acceptance of reemployment by a licensed school employee creates a binding employment contract between the licensed school employee and the superintendent until the parties enter into a formal written employment contract. Written employment contracts between the superintendent and licensed school employees shall be executed by the parties not later than ten days before the first day of a school year.

**History:** 1953 Comp., § 77-8-10, enacted by Laws 1967, ch. 16, § 115; 1975, ch. 306, § 9; 1986, ch. 33, § 21; 1978 Comp., § 22-10-13, recompiled as § 22-10A-23 by Laws 2003, ch. 153, § 72; 2019, ch. 238, § 6.

### **22-10A-24. Termination decisions; local school board; governing authority of a state agency; procedures.**

A. A local school board or governing authority of a state agency may terminate a licensed school employee, excluding licensed educational assistants who have not been offered and accepted the third consecutive contract, for any reason it deems sufficient. A local school board or governing authority of a state agency may terminate

a nonlicensed school employee or a licensed educational assistant with less than one year of employment for any reason it deems sufficient. Upon request of the employee, the local superintendent or state agency administrator shall provide written reasons for the decision to terminate. The reasons shall be provided within ten working days of the request. The reasons shall not provide a basis for contesting the decision under the School Personnel Act.

B. Before terminating a nonlicensed school employee or a licensed educational assistant, the local school board or governing authority shall serve the employee or assistant with a written notice of termination.

C. A licensed school employee who has been employed by a school district or state agency for more than two consecutive years or a nonlicensed school employee or licensed educational assistant who has been employed for more than one year and who receives a notice of termination pursuant to either Section 22-10A-22 NMSA 1978 or this section may request an opportunity to make a statement to the local school board or governing authority on the decision to terminate the employee or assistant by submitting a written request to the local superintendent or state agency administrator within five working days from the date written notice of termination is served upon the employee or assistant. The employee or assistant may also request in writing the reasons for the termination action. The local superintendent or state agency administrator shall provide written reasons for the notice of termination to the employee or assistant within five working days from the date the written request for a meeting and the written request for the reasons were received by the local superintendent or state agency administrator.

D. A local school board or governing authority may not terminate a licensed school employee who has been offered and accepted a third-year contract or a nonlicensed school employee or licensed educational assistant who has been employed by a school district or state agency for more than one year without just cause.

E. The employee's request pursuant to Subsection C of this section shall be granted if the employee responds to the local superintendent's or state agency administrator's written reasons as provided in Subsection C of this section by submitting in writing to the local superintendent or state agency administrator a contention that the decision to terminate was made without just cause. The written contention shall specify the grounds on which it is contended that the decision was without just cause and shall include a statement of the facts that the employee believes support the employee's contention. This written statement shall be submitted within ten working days from the date the employee receives the written reasons from the local superintendent or state agency administrator. The submission of this statement constitutes a representation on the part of the employee that the employee can support the employee's contentions and an acknowledgment that the local school board or governing authority may offer the causes for its decision and any relevant data in its possession in rebuttal of the employee's contentions.

F. A local school board or governing authority shall meet to hear the employee's statement in no less than five or more than fifteen working days after the local school board or governing authority receives the statement. The hearing shall be conducted informally in accordance with the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]. The employee and the local superintendent or state agency administrator may each be accompanied by a person of the employee's and the local superintendent's or state agency administrator's choice. First, the local superintendent shall present the factual basis for the determination that just cause exists for the termination of the employee, limited to those reasons provided to the employee pursuant to Subsection C of this section. Then, the employee shall present the employee's contentions, limited to those grounds specified in Subsection E of this section. The local school board or governing authority may offer such rebuttal testimony as it deems relevant. All witnesses may be questioned by the local school board or governing authority, the employee or the employee's representative and the local superintendent or state agency administrator or the local superintendent's or state agency administrator's representative. The local school board or governing authority may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable. The local school board or governing authority shall notify the employee and the local superintendent or state agency administrator of its decision in writing within five working days from the conclusion of the meeting.

**History:** 1953 Comp., § 77-8-11, enacted by Laws 1967, ch. 16, § 116; 1975, ch. 306, § 10; 1979, ch. 86, § 1; 1983, ch. 103, § 1; reenacted by Laws 1986, ch. 33, § 22; 1987, ch. 320, § 5; 1990, ch. 90, § 2; 1991, ch. 187, § 4; 1993, ch. 226, § 27; 1994, ch. 110, § 2; 1978 Comp., § 22-10-14, recompiled as § 22-10A-24 by Laws 2003, ch. 153, § 72; 2019, ch. 232, § 1; 2021, ch. 94, § 6.

## **22-10A-25. Appeals; independent arbitrator; qualifications; procedure; binding decision.**

A. An employee who is still aggrieved by a decision of a local school board or governing authority rendered pursuant to Section 22-10A-24 NMSA 1978 may appeal the decision to an arbitrator. A written appeal shall be submitted to the local superintendent or administrator within five working days from the receipt of the local school board's or governing authority's written decision or the refusal of the board or authority to grant a hearing. The appeal shall be accompanied by a statement of particulars specifying the grounds on which it is contended that the decision was impermissible pursuant to Subsection E of Section 22-10A-24 NMSA 1978 and including a statement of facts supporting the contentions. Failure of the employee to submit a timely appeal or a statement of particulars with the appeal shall disqualify the employee for any appeal and render the local school board's or governing authority's decision final.

B. The local school board or governing authority and the employee shall meet within ten working days from the receipt of the request for an appeal and select an independent arbitrator to conduct the appeal. If the parties fail to agree on an

independent arbitrator, they shall request the presiding judge in the judicial district in which the employee's public school is located to select one. The presiding judge shall select the independent arbitrator within five working days from the date of the parties' request.

C. A qualified independent arbitrator shall be appointed who is versed in employment practices and school procedures and who preferably has experience in the practice of law. No person shall be appointed to serve as the independent arbitrator who has any direct or indirect financial interest in the outcome of the proceeding, has any relationship to any party in the proceeding, is employed by the local school board or governing authority or is a member of or employed by any professional or labor organization of which the employee is a member.

D. Appeals from the decision of the local school board or governing authority shall be decided after a de novo hearing before the independent arbitrator. The issue to be decided by the independent arbitrator is whether there was just cause for the decision of the local school board or governing authority to terminate the employee.

E. The de novo hearing shall be held within thirty working days from the selection of the independent arbitrator. The arbitrator shall give written notice of the date, time and place of the hearing, and such notice shall be sent to the employee and the local school board or governing authority.

F. Each party has the right to be represented by counsel at the hearing before the independent arbitrator.

G. Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the independent arbitrator.

H. The independent arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

I. The rules of civil procedure shall not apply to the de novo hearing, but it shall be conducted so that both contentions and responses are amply and fairly presented. To this end, the independent arbitrator shall permit either party to call and examine witnesses, cross-examine witnesses and introduce exhibits. The technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator shall require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

J. The local school board or governing authority has the burden of proof and shall prove by a preponderance of the evidence that, at the time the notice of termination was served on the employee, the local school board or governing authority had just cause to

terminate the employee. If the local school board or governing authority proves by a preponderance of the evidence that there was just cause for its action, then the burden shifts to the employee to rebut the evidence presented by the local school board or governing authority.

K. The independent arbitrator shall uphold the local school board's or governing authority's decision only if it proves by a preponderance of the evidence that, at the time the notice of termination was served on the employee, the local school board or governing authority had just cause to terminate the employee. If the local school board or governing authority fails to meet its burden of proof or if the employee rebuts the proof offered by the local school board or governing authority, the arbitrator shall reverse the decision of the local school board or governing authority.

L. Either party desiring a record of the arbitration proceedings may, at the party's own expense, record or otherwise provide for a transcript of the proceedings; provided, however, that the record so provided shall not imply any right of automatic appeal or review.

M. The independent arbitrator shall render a written decision affirming or reversing the action of the local school board or governing authority. The decision shall contain findings of fact and conclusions of law. The parties shall receive actual written notice of the decision of the independent arbitrator within ten working days from the conclusion of the de novo hearing.

N. The sole remedies available under this section shall be reinstatement or payment of compensation reinstated in full but subject to any additional compensation allowed other employees of like qualifications and experience employed by the school district or state agency and including reimbursement for compensation during the entire period for which compensation was terminated, or both, less an offset for any compensation received by the employee during the period the compensation was terminated.

O. Unless a party can demonstrate prejudice arising from a departure from the procedures established in this section and in Section 22-10A-24 NMSA 1978, such departure shall be presumed to be harmless error.

P. The decision of the independent arbitrator shall be binding on both parties and shall be final and nonappealable except where the decision was procured by corruption, fraud, deception or collusion, in which case it shall be appealed to the district court in the judicial district in which the public school or state agency is located.

Q. Each party shall bear its own costs and expenses. The independent arbitrator's fees and other expenses incurred in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.

R. School districts shall file a record with the department of all terminations and all actions arising from terminations annually.



**History:** 1978 Comp., § 22-10-14.1, enacted by Laws 1986, ch. 33, § 23; 1990, ch. 90, § 3; 1991, ch. 187, § 5; 1994, ch. 110, § 3; recompiled as § 22-10A-25 by Laws 2003, ch. 153, § 72; 2021, ch. 94, § 7.

## **22-10A-26. Excepted from provisions.**

Sections 22-10A-22 through 22-10A-25 NMSA 1978 do not apply to the following:

- A. a licensed school employee employed to fill the position of a licensed school employee entering military service;
- B. a licensed school administrator who is employed as a licensed school administrator;
- C. an unlicensed school employee employed to perform primarily district-wide management functions; or
- D. a person who does not hold a valid license or has not submitted a complete application for licensure within the first three months from beginning employment duties pursuant to Subsection C of Section 22-10A-3 NMSA 1978.

**History:** 1953 Comp., § 77-8-13, enacted by Laws 1967, ch. 16, § 118; 1975, ch. 191, § 1; 1983, ch. 103, § 2; 1991, ch. 187, § 6; 1993, ch. 226, § 28; 1994, ch. 110, § 4; 1978 Comp., § 22-10-16, recompiled as § 22-10A-26 by Laws 2003, ch. 153, § 72; 2019, ch. 238, § 7.

## **22-10A-27. Discharge hearing; licensed school employees; procedures.**

A. A superintendent may recommend to the governing authority the discharge of a licensed school employee during the term of a contract authorized pursuant to Section 22-10A-21 NMSA 1978 only for just cause according to the following procedure:

- (1) the superintendent shall serve a written notice of intent to recommend discharge on the licensed school employee in accordance with the law for service of process in civil actions; and
- (2) the superintendent shall state in the notice of intent to recommend discharge the cause for the recommendation and shall advise the licensed school employee of the licensed school employee's right to a discharge hearing before the governing authority as provided in this section. If the licensed school employee does not exercise that right to hearing, the superintendent shall discharge the licensed school employee.

B. A licensed school employee who receives a notice of intent to recommend discharge pursuant to Subsection A of this section may exercise the licensed school

employee's right to a hearing before the governing authority by giving the superintendent written notice of that election within ten working days of the licensed school employee's receipt of the notice of intent to recommend discharge.

C. The governing authority shall hold a discharge hearing no less than twenty and no more than forty working days after the superintendent receives the written election from the licensed school employee and shall give the licensed school employee at least ten days written notice of the date, time and place of the discharge hearing.

D. Each party, the superintendent and the licensed school employee, may each be accompanied by a person of the party's choice.

E. The parties shall complete and respond to discovery by deposition and production of documents prior to the discharge hearing.

F. The governing authority shall have the authority to issue subpoenas for the attendance of witnesses and to produce books, records, documents and other evidence at the request of either party and shall have the power to administer oaths.

G. The superintendent shall have the burden of proving by a preponderance of the evidence that, at the time of the notice of intent to recommend discharge, the superintendent had just cause to recommend discharge of the licensed school employee.

H. The superintendent shall present evidence first, with the licensed school employee presenting evidence thereafter. The governing authority shall permit either party to call, examine and cross-examine witnesses and to introduce documentary evidence.

I. An official record shall be made of the hearing. Either party may have one copy of the record at the expense of the governing authority.

J. The governing authority shall render its written decision within twenty days of the conclusion of the discharge hearing.

**History:** 1953 Comp., § 77-8-14, enacted by Laws 1967, ch. 16, § 119; 1975, ch. 306, § 12; reenacted by Laws 1986, ch. 33, § 24; 1989, ch. 281, § 1; 1990, ch. 90, § 4; 1991, ch. 187, § 7; 1978 Comp., § 22-10-17, recompiled as § 22-10A-27 by Laws 2003, ch. 153, § 72; 2019, ch. 238, § 8.

## **22-10A-28. Discharge appeals; licensed school employees; independent arbitrator; qualifications; procedure; binding decision.**

A. A licensed school employee aggrieved by a decision of the governing authority to discharge the licensed school employee after a discharge hearing held pursuant to Section 22-10A-27 NMSA 1978 may appeal the decision to an independent arbitrator.

A written notice of appeal shall be submitted to the governing authority within ten working days from the receipt of the copy of the written decision of the governing authority.

B. The governing authority may delegate responsibility for the arbitration to the superintendent. The superintendent as delegate of the governing authority and the licensed school employee shall meet within ten calendar days from the receipt of the notice of appeal and select an independent arbitrator to conduct the appeal, or, in the event the parties fail to agree on an independent arbitrator, they shall request the presiding judge in the judicial district in which the public school is located to select the independent arbitrator. The presiding judge shall select the independent arbitrator within five working days from the date of the parties' request.

C. A qualified independent arbitrator shall be appointed who is versed in employment practices and school procedures. No person shall be appointed to serve as the independent arbitrator who has any direct or indirect financial interest in the outcome of the proceeding, has any relationship to any party in the proceeding, is employed by the superintendent or is a member of or employed by any professional organization of which the licensed school employee is a member.

D. Appeals from the decision of the governing authority shall be decided after a de novo hearing before the independent arbitrator. The superintendent, as delegate of the governing authority, shall have the burden of proving by a preponderance of the evidence that, at the time of the notice of intent to recommend discharge, the superintendent had just cause to discharge the licensed school employee. The superintendent shall present evidence first, with the licensed school employee presenting evidence thereafter.

E. The hearing shall be held within thirty working days from the selection of the independent arbitrator. The independent arbitrator shall give written notice of the date, time and place of the hearing, and such notice shall be sent to the licensed school employee and the governing authority.

F. Each party has the right to be represented by counsel at the hearing before the independent arbitrator.

G. Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the independent arbitrator.

H. The independent arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action or in the manner provided by the American arbitration association's voluntary labor arbitration rules if that entity is used by the parties.

I. The rules of civil procedure shall not apply to the hearing, but it shall be conducted so that both contentions and responses are amply and fairly presented. To this end, the independent arbitrator shall permit either party to call and examine witnesses, cross-examine witnesses and introduce exhibits. The technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

J. An official record shall be made of the hearing. Either party may order a transcript of the record at the party's own expense.

K. The independent arbitrator shall render a written decision affirming or reversing the action of the governing authority. The decision shall contain findings of fact and conclusions of law. The parties shall receive the written decision of the independent arbitrator within thirty working days from the conclusion of the hearing.

L. Unless a party can demonstrate prejudice arising from a departure from the procedures established in this section and in Section 22-10A-27 NMSA 1978, such departure shall be presumed to be harmless error.

M. The decision of the independent arbitrator shall be final and binding on both parties and shall be nonappealable except where the decision was procured by corruption, fraud, deception or collusion, in which case it may be appealed to the court of appeals by filing a notice of appeal as provided by the New Mexico rules of appellate procedure.

N. Each party shall bear its own costs and expenses. The independent arbitrator's fees and other expenses incurred in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.

**History:** 1978 Comp., § 22-10-17.1, enacted by Laws 1986, ch. 33, § 25; 1990, ch. 90, § 5; 1991, ch. 187, § 8; recompiled as § 22-10A-28 by Laws 2003, ch. 153, § 72; 2019, ch. 238, § 9.

## **22-10A-29. Compensation payments to discharged personnel.**

A. Payment of compensation to a licensed school employee employed by a public school and payment of compensation to a superintendent employed by a governing authority shall terminate as of the date, after a hearing, that a written copy of the decision of the governing authority to discharge the licensed school employee or superintendent is served on the licensed school employee or superintendent. If the compensation of the licensed school employee or superintendent discharged during the term of a written employment contract is to be paid monthly during a twelve-month period for services to be performed during a period less than twelve months, the licensed school employee or superintendent shall be entitled to a pro rata share of the

compensation payments due for the period during the twelve months in which no services were to be performed.

B. In the event the action of the governing authority in discharging a licensed school employee or superintendent is reversed on appeal, payment of compensation to the licensed school employee or superintendent shall be reinstated in full but subject to any additional compensation allowed other licensed school employees or superintendents of like qualifications and experience employed by the public school and including reimbursement for compensation during the entire period the compensation was terminated less an offset for any compensation received by the licensed school employee or superintendent from the public school during the period the compensation was terminated.

**History:** 1953 Comp., § 77-8-15, enacted by Laws 1967, ch. 16, § 120; 1975, ch. 306, § 13; 1978 Comp., § 22-10-18, recompiled as § 22-10A-29 by Laws 2003, ch. 153, § 72; 2019, ch. 238, § 10.

## **22-10A-30. Supervision and correction procedures.**

The state board [department] shall prescribe by regulations procedures to be followed by a local school board or the governing authority of a state agency in supervising and correcting unsatisfactory work performance of certified school personnel before notice of intent to discharge is served upon them and by the governing authority of a state agency in supervising and correcting unsatisfactory work performance of certified school instructors before notice of intent to discharge is served upon them. These regulations shall provide that written records shall be kept on all action taken by a local school board or the governing authority of a state agency to improve any person's unsatisfactory work performance and all improvements made in the person's work performance. These written records shall be introduced as evidence at any hearing for the person conducted by the local school board or the governing authority of the state agency.

**History:** 1953 Comp., § 77-8-18, enacted by Laws 1967, ch. 16, § 123; 1975, ch. 306, § 16; 1986, ch. 33, § 26; 1978 Comp., § 22-10-21, recompiled as § 22-10A-30 by Laws 2003, ch. 153, § 72.

## **22-10A-31. Denial, suspension and revocation of licenses.**

In accordance with the procedures provided in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the department may deny, suspend or revoke a department-issued license for incompetency, moral turpitude, ethical misconduct or any other good and just cause.

**History:** 1953 Comp., § 77-8-19, enacted by Laws 1967, ch. 16, § 124; 1973, ch. 124, § 3; 1997, ch. 238, § 4; 1998, ch. 55, § 31; 1999, ch. 265, § 33; 1978 Comp., § 22-10-22,

recompiled and amended as § 22-10A-31 by Laws 2003, ch. 153, § 52; 2021, ch. 94, § 8.

## **22-10A-32. School district personnel, school employees, school volunteers, contractors and contractors' employees; required training program.**

A. All school district personnel, school employees, school volunteers, contractors and contractors' employees shall be required to complete training in the detection and reporting of child abuse and neglect, ethical misconduct, professional responsibilities, sexual abuse and assault and substance abuse. Except as otherwise provided in this subsection, this requirement shall be completed within the school district employee's, school employee's, school volunteer's, contractor's or contractor's employee's first year of employment.

B. The department shall develop or adopt training programs, including training materials and necessary training staff, to meet the requirements of Subsection A of this section to make the training available in every public school. The department shall promulgate rules for the administration of the training programs. The department shall coordinate the development of the programs with appropriate staff in school districts and at public schools, the human services department [health care authority department], the department of health, the early childhood education and care department and the children, youth and families department. The department shall consult with the federal centers for disease control and prevention when developing or adopting the evidence-based training component on child sexual abuse and assault to include methods and materials that have proven to be effective. At a minimum, training required under this section shall include:

- (1) reporting requirements, including minimal standards triggering reporting;
- (2) trauma-informed instruction;
- (3) identification of circumstances and factors that are indicators of likely abuse or inappropriate behaviors;
- (4) ethical misconduct;
- (5) professional responsibilities;
- (6) investigations and procedures; and
- (7) relevant legal and regulatory definitions.

C. The training programs developed or adopted pursuant to this section shall be made available by the department to the deans of every college of education in New

Mexico for use in providing such training to students seeking elementary and secondary education licensure.

**History:** Laws 1988, ch. 48, § 1; 1993, ch. 226, § 25; 1978 Comp., § 22-10-3.2, recompiled and amended as § 22-10A-32 by Laws 2003, ch. 153, § 53; 2014, ch. 9, § 1; 2021, ch. 94, § 9.

### **22-10A-33. Repealed.**

**History:** Laws 1989, ch. 344, § 2; 1978 Comp., § 22-1-7, recompiled and amended as § 22-10A-33 by Laws 2003, ch. 153, § 54; repealed by Laws 2017, ch. 65, § 4.

### **22-10A-34. Repealed.**

**History:** 1953 Comp., § 77-8-7, enacted by Laws 1967, ch. 16, § 112; 1977, ch. 45, § 1; 1993, ch. 226, § 26; 1978 Comp., § 22-10-10, recompiled as § 22-10A-34 by Laws 2003, ch. 153, § 72; 2015, ch. 116, § 3; repealed by Laws 2017, ch. 87, § 31.

### **22-10A-35. Local sabbatical leave program authorized.**

A local school board may provide as part of its compensation plan a program of sabbatical leave for its certified employees. The governing authority of a state agency may provide a program of sabbatical leave for its certified school instructors.

**History:** 1953 Comp., § 77-8-20, enacted by Laws 1969, ch. 116, § 1; 1975, ch. 306, § 17; 1978 Comp., § 22-10-23, recompiled as § 22-10A-35 by Laws 2003, ch. 153, § 72.

### **22-10A-36. Approved program required for sabbatical leave.**

Sabbatical leave may be granted only upon the presentation and approval by the state department of education [public education department] of a full program of study or travel related to the certified employee's duties and showing direct benefit to the instructional program.

**History:** 1953 Comp., § 77-8-22, enacted by Laws 1969, ch. 116, § 3; 1975, ch. 306, § 18; 1978 Comp., § 22-10-24, recompiled as § 22-10A-36 by Laws 2003, ch. 153, § 72.

### **22-10A-37. Minimum conditions for sabbatical leave.**

Any sabbatical leave program adopted by a local school district or a state agency shall provide the following as minimum conditions:

A. only those certified employees who have completed at least six years of continuous service in a certified capacity with the school district or those certified school instructors who have completed at least six years of continuous service in a certified

capacity with the state agency are eligible. For purposes of this section, a leave of absence without pay shall not be considered as an interruption of continuous service but the leave of absence without pay shall not be counted in determining the six-year requirement;

B. further sabbatical leave may be granted in the seventh year of service following a period of sabbatical leave under the same conditions as other sabbatical leaves are granted;

C. sabbatical leave shall be granted only upon agreement by the employee to return to the school system or state agency for at least two years following the leave or repayment to the school district or state agency of the salary received during the period of leave. Such agreement shall be placed in a supplementary contract executed prior to authorization for the sabbatical leave;

D. the maximum term of any one period of sabbatical leave shall be one year;

E. the employee shall be guaranteed an equivalent or better position upon return to the school system or state agency;

F. if regular salary increments for length of service are contained in the salary schedule, the period of leave shall be counted as period of service in the computation of future length of service increments; and

G. the employee may continue his participation in the educational retirement plan by making appropriate contributions as agreed by the local school board or the governing authority of the state agency and the educational retirement board.

**History:** 1953 Comp., § 77-8-23, enacted by Laws 1969, ch. 116, § 4; 1975, ch. 306, § 19; 1978 Comp., § 22-10-25, recompiled as § 22-10A-37 by Laws 2003, ch. 153, § 72.

## **22-10A-38. Pay for sabbatical leave.**

Sabbatical leave pay may be allowed in any amount up to one-half of the employee's regular salary for the year immediately preceding the leave and payment shall be made by one of the two following methods:

A. one-half to be paid at the end of the first year after return and one-half at the end of the second year after return; or

B. during the term of the leave upon the furnishing of security satisfactory to the local school board or the governing authority of the state agency assuring the employee's remaining in the system for two years after the leave or repayment to the school district or state agency of the salary received during the period of leave.



**History:** 1953 Comp., § 77-8-24, enacted by Laws 1969, ch. 119, § 5; 1975, ch. 306, § 20; 1978 Comp., § 22-10-26, recompiled as § 22-10A-38 by Laws 2003, ch. 153, § 72.

## **22-10A-39. Noncertified school personnel; salaries.**

Notwithstanding the provisions of Section 50-4-22 NMSA 1978, a local school district shall pay a minimum wage rate of six dollars (\$6.00) per hour to all noncertified school personnel.

**History:** Laws 1994, ch. 95, § 1; 1978 Comp., § 22-10-27, recompiled as § 22-10A-39 by Laws 2003, ch. 153, § 72.

## **22-10A-40. School security personnel; definitions; required training.**

A. As used in this section:

(1) "firearm" means a handgun recommended by the department of public safety and authorized by the public school insurance authority;

(2) "local school board" includes governing bodies of charter schools;

(3) "school district" includes charter schools;

(4) "school premises" means:

(a) the buildings and grounds, including playgrounds, playing fields and parking areas, and any school bus of a public school, whether owned by the school district or under contract, in or on which school or school-related activities are being conducted under the supervision of the local school board; or

(b) any other public buildings or grounds, including playing fields and parking areas that are not public school property, in or on which school-related and school-sanctioned activities are being performed; and

(5) "school security personnel" means retired or former certified and commissioned law enforcement officers who are employed by a school district and authorized by department rules and local school board policy to carry a firearm on school premises.

B. The department shall promulgate rules to carry out the purposes of this section.

C. The department shall promulgate rules pertaining to persons who are prohibited from employment as school security personnel, including:

(1) the applicability of Paragraph (1) or (3) of Subsection A of Section 28-2-4 NMSA 1978 for criminal offenders;

(2) the commitment of a felony; a misdemeanor involving moral turpitude that has bearing on the job of school security personnel; formal discipline for the use of excessive force; or misconduct or crimes that include inappropriate touching, sexual harassment, sexual assault, sexual abuse, discrimination, behavior intended to induce a child into engaging in illegal, immoral or other prohibited behavior, crimes against children and dependents or sexual exploitation of children; and

(3) negligent or illegal use of a firearm.

D. Prior to an offer of employment, the school district shall require for each potential school security personnel:

(1) proof that the retired or former law enforcement officer was certified and commissioned for no less than three years and left law enforcement in good standing;

(2) successful completion of school security personnel training;

(3) proof of up-to-date firearms training;

(4) a background check that indicates the person has not been convicted of a crime or engaged in behavior that violates the School Personnel Act; and

(5) any other conditions required by law, department rule or school district policy.

E. School security personnel shall not perform any other job in the school district, by title or duty, other than school security while carrying a firearm.

F. Prior to school security personnel being allowed to carry firearms authorized by department rules and local school board policy, the school security personnel must successfully pass a physical and psychological evaluation as prescribed by the department in consultation with the public school insurance authority to determine suitability to carry a firearm. The school district shall pay the cost of the physical and psychological evaluations for current and potential school security personnel.

G. The department and the public school insurance authority shall approve one or more school security personnel and firearms training programs. Approved programs must include working with students with special needs, cultural competency and prohibited profiling practices. The department of public safety shall make recommendations for firearms training.

**History:** Laws 2019, ch. 189, § 3

## **22-10A-40.1. Construction.**

Nothing in this 2019 act shall be construed as:

- A. allowing an armed school security personnel to carry firearms on school premises if doing so would be a violation of state or federal law; or
- B. applying to school resource officers.

**History:** Laws 2019, ch. 189, § 4.

## **ARTICLE 10B**

### **Teacher Residency**

#### **22-10B-1. Short title.**

This act [22-10B-1 to 22-10B-9 NMSA 1978] may be cited as the "Teacher Residency Act".

**History:** Laws 2020, ch. 25, § 1.

#### **22-10B-2. Definitions.**

As used in the Teacher Residency Act:

- A. "department-approved teacher preparation program" means a department-approved teacher preparation program at a public post-secondary educational institution or tribal college;
- B. "program" means a teacher residency program created pursuant to the Teacher Residency Act that is designed to result in teacher licensure; and
- C. "teaching resident" means a participant in a department-approved teacher residency program.

**History:** Laws 2020, ch. 25, § 2.

#### **22-10B-3. Teacher residency program; created.**

- A. On or before July 1 of each year, the secretary, in partnership with a department-approved teacher preparation program, shall establish and maintain department-approved New Mexico teacher residency programs at public post-secondary educational institutions and tribal colleges that have a department-approved teacher preparation program and have developed a commitment to investing in teacher

education. The secretary shall ensure that the department-approved New Mexico teacher residency programs include representation from rural, urban and suburban areas across the state.

B. The public post-secondary educational institution or tribal college shall form a partnership with one or more school districts or charter schools to coadminister the teacher residency program and to provide employment to residents in the program following completion of all licensure requirements.

C. The program shall be designed to:

(1) diversify the teaching profession with teaching residents that reflect the diversity of students in the public schools in the state or the geographic area where the school is located;

(2) fill high-need teaching positions within the state and ensure that teaching residents are prepared for a department-issued teaching license at the end of the program; and

(3) provide at least one full academic year of rigorous department-approved teacher preparation program coursework while concurrently providing a full academic year of guided apprenticeship in the classroom of a level two or level three teacher at the partner area school district or charter school.

D. The public post-secondary educational institution or tribal college shall ensure faculty or university supervisors who work with the teacher residency program visit residency sites no less than one time per month to monitor teacher residents' programs.

**History:** Laws 2020, ch. 25, § 3; 2022, ch. 17, § 1.

#### **22-10B-4. Teacher residency program components.**

A teacher residency program established pursuant to the Teacher Residency Act shall include:

A. competitive admission requirements with multiple criteria;

B. rigorous department-approved teacher preparation program coursework, which shall be offered while the teaching resident undertakes a full academic year of guided apprenticeship in the classroom of a level two or level three teacher at the partner area school district or charter school;

C. a co-teaching approach to expose teaching residents to a variety of teaching methods, philosophies and classroom environments;

D. clear criteria for the selection of level two and level three teachers based on measures of teacher effectiveness and the appropriate subject area knowledge;

E. providing level two and level three teachers with ongoing evidence-based training in coaching and mentoring teaching residents and compensation for time and added responsibility;

F. grouping teaching residents in cohorts to facilitate professional collaboration among residents and placing teaching residents in teaching schools or professional development programs that are organized to support a high-quality teacher learning experience in a supportive work environment;

G. measures of appropriate progress through the program;

H. a stipend of no less than thirty-five thousand dollars (\$35,000) per year for teaching residents;

I. a stipend of no less than two thousand dollars (\$2,000) per year for level two and level three teachers participating in the program;

J. a stipend of no less than two thousand dollars (\$2,000) per year for principals or head administrators at the partner school district or charter school;

K. funding of no less than fifty thousand dollars (\$50,000) per year for teacher residency program coordinators at each department-approved New Mexico teacher residency program;

L. a post-completion commitment by teaching residents to serve a minimum of three years at schools in the sponsoring school district;

M. an expectation of employment for the teaching resident from the partner school district or charter school;

N. support for teaching residents for not less than one year following the resident's completion of the program through the provision of mentoring, professional development and networking opportunities; and

O. demonstration of the integral role and responsibilities of the partner area school district or charter school in fulfilling the purpose of the program.

**History:** Laws 2020, ch. 25, § 4; 2022, ch. 17, § 2.

## **22-10B-5. Teacher residency program eligibility.**

To be eligible to be admitted and hired as a teaching resident under the program, an individual shall not hold a level one, two or three-A teaching license and shall:

A. be in the final year of a department-approved undergraduate teacher preparation program; or

B. hold a bachelor's degree, be a professional from outside the field of education and have strong content knowledge or a record of achievement.

**History:** Laws 2020, ch. 25, § 5; 2022, ch. 17, § 3.

### **22-10B-6. Teacher residency program participant selection requirements.**

The public post-secondary educational institution or tribal college shall establish criteria for selection of individuals to participate in the program. The selection criteria shall include:

A. a demonstration of comprehensive subject area knowledge or a record of accomplishment or professional experience in the field or subject area to be taught;

B. strong verbal and written communication skills, which may be demonstrated by performance on appropriate tests or performance assessments;

C. other dispositions linked to effective teaching, which may be determined by interviews or performance assessments; and

D. consideration given to a participant's ability to increase the racial, ethnic or linguistic diversity of the teacher workforce.

**History:** Laws 2020, ch. 25, § 6.

### **22-10B-7. Rulemaking authority.**

The department shall adopt rules as necessary to implement the Teacher Residency Act.

**History:** Laws 2020, ch. 25, § 7.

### **22-10B-8. Teacher residency fund; created; purpose.**

The "teacher residency fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants and donations to the fund. Money in the fund is subject to appropriation by the legislature to implement the provisions of the Teacher Residency Act. Disbursements from the fund shall be made by warrants of the secretary of finance and administration pursuant to vouchers signed by the secretary of public education or the secretary's authorized representative.

**History:** Laws 2020, ch. 25, § 8.

## **22-10B-9. Reporting requirements.**

Public post-secondary educational institutions and tribal colleges shall collaborate with their partner school district or charter school to submit data to the department no later than July 1 of each year. The department shall compile data from all residency sites and submit a report to the legislature no later than November of each year. The report shall include the following indicators of teacher residency program success:

- A. the standards for entering and exiting the program;
- B. the number of credit hours required to complete the program;
- C. the number and percentage of teaching residents completing the program;
- D. the number and types of teaching licenses teaching residents are obtaining, including endorsements;
- E. the educator evaluation rating for teaching residents during their first five years of teaching;
- F. the educator evaluation rating for level two and level three teachers during their time supporting a teacher resident;
- G. the number and percentage of teaching residents who continue to teach in New Mexico school districts or charter schools after one, two, three, four and five years;
- H. the percentage of teaching residents who are diverse candidates that reflect the diversity of the public schools in the state or the geographic area where the school is located;
- I. academic performance of pre-kindergarten through twelfth grade students in classes taught by residency graduates in comparison to students in classes taught by other trained teachers;
- J. principal perception surveys of teaching resident and level two and level three teacher effectiveness;
- K. state-student perception surveys;
- L. the residency program graduate achievement, as determined by first-time pass rates on the state teaching performance assessment; and
- M. other data as determined by the department.

**History:** Laws 2020, ch. 25, § 9; 2022, ch. 17, § 4.

## **ARTICLE 10C**

### **National Board Certification Scholarship**

#### **22-10C-1. Short title.**

This act [22-10C-1 to 22-10C-4 NMSA 1978] may be cited as the "National Board Certification Scholarship Act".

**History:** Laws 2020, ch. 26, § 1.

#### **22-10C-2. Definition.**

As used in the National Board Certification Scholarship Act, "school principal" includes a charter school head administrator.

**History:** Laws 2020, ch. 26, § 2.

#### **22-10C-3. Scholarship program; department powers and duties; qualifications; applications; preferences; reports.**

A. The department may award a "national board certification scholarship" to an eligible teacher seeking certification from the national board for professional teaching standards, which scholarship shall be equal to the certification fees assessed by the national board. A scholarship shall be for no longer than three years, paid annually upon notification that the teacher is still an active participant in the certification process, unless the department finds that exigent circumstances prevent the teacher from finishing the certification process within three years. The department shall provide by rule what circumstances qualify as exigent circumstances.

B. A teacher is eligible to apply for a national board certification scholarship if the teacher:

- (1) is a New Mexico resident;
- (2) holds a valid level two or higher teaching license;
- (3) is teaching in a New Mexico public school; and
- (4) submits a reference letter from the teacher's school principal.

C. Applications shall be submitted to the department on forms and in a manner provided by rule of the department.



D. The department may provide by rule for scholarship contractual terms and application evaluation and other criteria to implement the scholarship program, including subject matter and grade-level preferences if there are more applications than available funding. The department may interview applicants.

E. The department shall provide an annual report on the national board certification scholarship program to the governor and the legislature, including the:

- (1) number of teachers who receive scholarships each year and the value of each scholarship;
- (2) number of teachers who receive national board certification each year through the scholarship program;
- (3) length of time each teacher takes to receive certification;
- (4) educator evaluation rating for scholarship recipients during their first five years of teaching as board-certified teachers;
- (5) name of the school district and public school where the scholarship recipient is employed; and
- (6) performance of students in classes taught by scholarship-supported board-certified teachers in comparison to students taught by non-board-certified teachers in the school district or charter school.

**History:** Laws 2020, ch. 26, § 3.

## **22-10C-4. Fund created; method of payment.**

The "national board certification scholarship fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants and donations. The fund is subject to appropriation by the legislature. Money in the fund shall be expended solely for the purpose of awarding scholarships pursuant to the National Board Certification Scholarship Act. Payments from the fund shall be on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of public education or the secretary's authorized representative.

**History:** Laws 2020, ch. 26, § 4.

# **ARTICLE 11**

## **Educational Retirement**

### **22-11-1. Short title.**

Chapter 22, Article 11 NMSA 1978 may be cited as the "Educational Retirement Act".

**History:** 1953 Comp., § 77-9-1, enacted by Laws 1967, ch. 16, § 125; 1991, ch. 118, § 2.

## **22-11-2. Definitions.**

As used in the Educational Retirement Act:

A. "member" means an employee, except for a participant or a retired member, coming within the provisions of the Educational Retirement Act;

B. "regular member" means:

(1) a person regularly employed by a state educational institution, except for:

(a) a participant; or

(b) all employees of a general hospital or outpatient clinics thereof operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

(2) a person regularly employed by a junior college or community college created pursuant to Chapter 21, Article 13 NMSA 1978, except for a participant;

(3) a person regularly employed by a technical and vocational institute created pursuant to the Technical and Vocational Institute Act [Chapter 21, Article 16 NMSA 1978], except for a participant;

(4) a person regularly employed by the New Mexico boys' school, the girls' welfare home, the Los Lunas medical center or a school district or as a licensed school employee of a state institution or agency providing an educational program and holding a license issued by the department, except for a participant;

(5) a person regularly employed by the department holding a license issued by the department at the time of commencement of such employment;

(6) a member classified as a regular member in accordance with the rules of the board;

(7) a person regularly employed by the New Mexico activities association holding a license issued by the department at the time of commencement of such employment; or

(8) a person regularly employed by a regional education cooperative holding a license issued by the department at the time of commencement of such employment;

C. "provisional member" means a person described in Section 22-11-17 NMSA 1978;

D. "local administrative unit" means an employing agency however constituted that is directly responsible for the payment of compensation for the employment of members or participants;

E. "beneficiary" means a supplemental needs trust or a natural person having an insurable interest in the life of a member or a participant designated by written instrument duly executed by the member or participant and filed with the director to receive a benefit pursuant to the Educational Retirement Act that may be received by someone other than the member or participant;

F. "employment" means employment by a local administrative unit that qualifies a person to be a member or participant;

G. "service employment" means employment that qualifies a person to be a regular member;

H. "provisional service employment" means employment that qualifies a person to be a provisional member;

I. "prior employment" means employment performed prior to the effective date of the Educational Retirement Act that would be service employment or provisional service employment if performed thereafter;

J. "service credit" means that period of time with which a member is accredited for the purpose of determining the member's eligibility for and computation of retirement or disability benefits;

K. "earned service credit" means that period of time during which a member was engaged in employment or prior employment with which the member is accredited for the purpose of determining the member's eligibility for retirement or disability benefits;

L. "allowed service credit" means that period of time during which a member has performed certain nonservice employment with which the member may be accredited, as provided in the Educational Retirement Act, for the purpose of computing retirement or disability benefits;

M. "retirement benefit" means an annuity paid monthly to members whose employment has been terminated by reason of their age;

N. "disability benefit" means an annuity paid monthly to members whose employment has been terminated by reason of a disability;

O. "board" means the educational retirement board;

P. "fund" means the educational retirement fund;

Q. "director" means the educational retirement director;

R. "medical authority" means a medical doctor or medical review panel designated or employed by the board to examine medical records and report on the medical condition of applicants for or recipients of disability benefits;

S. "actuary" means a person trained and regularly engaged in the occupation of calculating present and projected monetary assets and liabilities under annuity or insurance programs;

T. "actuarial equivalent" means a sum paid as a current or deferred benefit that is equal in value to a regular benefit, computed upon the basis of interest rates and mortality tables;

U. "contributory employment" means employment for which contributions have been made by both a member and a local administrative unit pursuant to the Educational Retirement Act;

V. "qualifying state educational institution" means the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university, western New Mexico university, central New Mexico community college, Clovis community college, Luna community college, Mesalands community college, New Mexico junior college, northern New Mexico college, San Juan college, Santa Fe community college and southeast New Mexico college;

W. "participant" means:

(1) a person regularly employed as a faculty or professional employee of the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university or western New Mexico university who first becomes employed with such an educational institution on or after July 1, 1991, or a person regularly employed as a faculty or professional employee of the central New Mexico community college, Clovis community college, Luna community college, Mesalands community college, New Mexico junior college, northern New Mexico college, San Juan college or Santa Fe community college who is first employed by the institution on or after July 1, 1999, or a person regularly employed as a faculty or professional employee of southeast New Mexico college who

is first employed by the institution on or after July 1, 2023, and who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan; and

(2) a person regularly employed who performs research or other services pursuant to a contract between a qualifying state educational institution and the United States government or any of its agencies who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan; provided that the research or other services are performed outside the state;

X. "salary" means the compensation or wages paid to a member or participant by any local administrative unit for services rendered. "Salary" includes payments made for annual or sick leave and payments for additional service provided to related activities, but does not include payments for sick leave not taken unless the payment for the unused sick leave is made through continuation of the member on the regular payroll for the period represented by that payment and does not include allowances or reimbursements for travel, housing, food, equipment or similar items;

Y. "alternative retirement plan" means the retirement plan provided for in Sections 22-11-47 through 22-11-52 NMSA 1978;

Z. "retired member" means a person whose employment has been terminated by reason of age and who is receiving or is eligible to receive retirement benefits; and

AA. "supplemental needs trust" means a valid third-party irrevocable trust that is authorized by the federal Social Security Act, as amended, for the sole benefit and lifetime of a trust beneficiary who is disabled and is created for the purpose of providing, accounting for or receiving supplemental assets that do not supplant, impair or diminish any benefits or assistance of any federal, state or other government entity for which the beneficiary would otherwise be eligible.

**History:** 1953 Comp., § 77-9-2, enacted by Laws 1967, ch. 16, § 126; 1975, ch. 306, § 21; 1978, ch. 167, § 1; 1982, ch. 37, § 1; 1991, ch. 118, § 3; 1993, ch. 69, § 1; 1993, ch. 232, § 7; 1995, ch. 148, § 1; 1999, ch. 261, § 1; 2001, ch. 283, § 1; 2003, ch. 39, § 1; 2004, ch. 27, § 26; 2017, ch. 21, § 1; 2023, ch. 87, § 1; 2023, ch. 156, § 17.

### **22-11-3. Educational retirement board; members; terms; vacancies.**

A. The "educational retirement board" is created.

B. The board shall be composed of nine members, consisting of the following:

(1) the secretary of public education, or a designee of the secretary who:

(a) is a resident of New Mexico;

(b) is a current employee of the public education department; and

(c) possesses experience relevant to the financial or fiduciary aspects of pension or investment fund management;

(2) the state treasurer, or a designee of the treasurer who:

(a) is a resident of New Mexico;

(b) is a current employee of the state treasurer's office; and

(c) possesses experience relevant to the financial or fiduciary aspects of pension or investment fund management;

(3) one member to be elected for a term of four years by members of the New Mexico association of educational retirees;

(4) one member to be elected for a term of four years by the members of the national education association of New Mexico;

(5) one member to be elected for a term of four years by the New Mexico members of the American association of university professors;

(6) two members to be appointed by the governor for terms of four years each. Each member appointed pursuant to this paragraph shall have a background in investments, finance or pension fund administration;

(7) one member to be elected for a term of four years by the members of the American federation of teachers New Mexico; and

(8) the secretary of higher education, or a designee of the secretary who:

(a) is a resident of New Mexico;

(b) is a current employee of the higher education department; and

(c) possesses experience relevant to the financial or fiduciary aspects of pension or investment fund management.

C. A designee of a board member shall have the same responsibilities, duties, liabilities and immunities as the board member, including the indemnification provided by Subsection H of Section 22-11-13 NMSA 1978. The appointment of a designee does not relieve the board member of the member's responsibilities, duties, liabilities and immunities as a board member, and the board member shall be fully responsible and liable for the actions of the designee while serving on the board.

D. In the initial composition of the board, the member elected by the members of the American association of university professors shall serve for a term of three years; one

member appointed by the governor shall serve for a term of two years; and the other member appointed by the governor shall serve for a term of one year. In electing or appointing new members after the enactment of this 2021 act, the member elected by the American federation of teachers New Mexico shall serve an initial term of three years; thereafter, the members shall serve a term of four years.

E. Vacancies occurring in the terms of office of those members appointed by the governor or elected by an association shall be filled either by the governor appointing or the association electing a new member to fill the unexpired term.

**History:** 1953 Comp., § 77-9-3, enacted by Laws 1967, ch. 16, § 127; 1977, ch. 246, § 65; 1988, ch. 64, § 40; 2011, ch. 160, § 1; 2021, ch. 78, § 1.

#### **22-11-4. Board; regular and special meetings.**

A. The board shall hold regular meetings four times each year and may provide for additional regular meetings. Prior to each regular meeting, written notice shall be given to each member of the board specifying the time and place of the regular meeting.

B. Special meetings of the board may be called by the chair or by any three members of the board. Written notice of the special meeting shall be sent to each member of the board at least three days in advance of the special meeting.

C. If not in violation of Subsection A or B of this section, the rules of the board or the Open Meetings Act [Chapter 10, Article 15 NMSA 1978], the chair or any of three members of the board may cancel or reschedule a meeting.

**History:** 1953 Comp., § 77-9-4, enacted by Laws 1967, ch. 16, § 128; 2003, ch. 39, § 2; 2017, ch. 21, § 2.

#### **22-11-5. Board; record; quorum; compensation.**

A. The board shall elect from its membership a chairman and a vice chairman.

B. A record shall be taken and preserved of all meetings of the board.

C. A quorum of the board shall be required for the transaction of any business. A majority of the members of the board constitute a quorum. Each member of the board shall have one vote and a proposal shall pass by the affirmative vote of a majority of the members present at the meeting.

D. While performing their duties, each member of the board shall be entitled to receive per diem and mileage as provided by the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], and shall receive no other compensation, perquisite or allowance.

**History:** 1953 Comp., § 77-9-5, enacted by Laws 1967, ch. 16, § 129.

### **22-11-5.1. Restrictions on receipt of gifts.**

Except for gifts of food or beverage given in a place of public accommodation, consumed at the time of receipt, not exceeding fifty dollars (\$50.00) for a single gift and the aggregate value of which gifts may not exceed one hundred fifty dollars (\$150) in a calendar year, neither a board member nor an employee of the board shall receive or accept anything of value directly or indirectly from a person who:

- A. has a current contract with the board;
- B. is a potential bidder, offeror or contractor for the provision of services or personal property to the board;
- C. is authorized to invest public funds pursuant to state or federal law or is an employee or agent of such a person; or
- D. is an organization, association or other entity having a membership that includes persons described in Subsections A through C of this section.

**History:** Laws 1999, ch. 153, § 2; 2017, ch. 21, § 3.

### **22-11-6. Board; powers; duties.**

- A. The board shall:
  - (1) properly and uniformly enforce the Educational Retirement Act;
  - (2) hire employees and delegate administrative authority to these employees;
  - (3) make an actuarial report on the financial operation of the Educational Retirement Act to the legislature at each regular session every odd-numbered year;
  - (4) accept donations, gifts or bequests to the fund; and
  - (5) adopt regulations pursuant to the Educational Retirement Act.
- B. The board may:
  - (1) select and contract for the services of one or more custodial banks. For purposes of this subsection, "custodial bank" means a financial institution with the general fiduciary duties to manage, control and collect the assets of an investment fund, including receiving all deposits and paying all disbursements as directed by staff, safekeeping of assets, coordination of asset transfers, timely settlement of securities transactions and accurate and timely reporting by individual account and in total; and



(2) contract for legal services for litigation matters on a contingent fee basis, subject to the provisions of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978]; provided that:

(a) the board shall submit each proposed contract to the attorney general for review of the contingency fee. The attorney general shall review a proposed contract within thirty days after receiving the contract. The review shall take into account the complexity of the factual and legal issues presented by the claims to be pursued under the contract. If the attorney general advises the board that the proposed contingency fee is not reasonable, the board may nevertheless approve the contract and the contingency fee if no fewer than four members vote for approval;

(b) each prospective contractor seeking to represent the board on a contingency fee basis shall file with the board the disclosure required by Section 13-1-191.1 NMSA 1978 disclosing all campaign contributions made to the governor, attorney general, state treasurer or any member of the board, or to a political committee that is intended to aid or promote the nomination or election of any candidate to a state office if the committee is: 1) established by any of the foregoing persons or their agents; 2) established in consultation with or at the request of any of the foregoing persons or their agents; or 3) controlled by one of the foregoing persons or their agents; and

(c) nothing in this paragraph shall prejudice or impair the rights of a qui tam plaintiff pursuant to the Fraud Against Taxpayers Act [44-9-1 to 44-9-14 NMSA 1978].

**History:** 1953 Comp., § 77-9-6, enacted by Laws 1967, ch. 16, § 130; 2011, ch. 157, § 1; 2017, ch. 21, § 4.

## **22-11-7. Educational retirement director; bond.**

A. The board shall employ an educational retirement director. The director shall be the administrative officer for the board in carrying out the provisions of the Educational Retirement Act and shall have those additional duties provided in the rules of the board.

B. Before assuming the duties of office, the director shall obtain an official bond payable to the fund and conditioned upon the faithful performance of the director's duties during the director's term of office. The bond shall be executed by a corporate surety company authorized to do business in this state. The amount of the bond shall be not less than twenty-five thousand dollars (\$25,000). The board may elect to obtain a schedule or blanket corporate surety bond covering the director and employees of the board for any period not exceeding four years. The cost of a bond obtained pursuant to this section shall be paid from the fund. Any bond obtained shall be approved by the board and filed with the secretary of state.

**History:** 1953 Comp., § 77-9-7, enacted by Laws 1967, ch. 16, § 131; 2017, ch. 21, § 5.

## **22-11-8. Medical authority; fees.**

A. The board shall employ the services of a medical authority. The medical authority may examine, make reports of and certify the medical condition of applicants for and recipients of disability benefits pursuant to the Educational Retirement Act.

B. The board shall pay the medical authority a reasonable fee for professional services.

**History:** 1953 Comp., § 77-9-8, enacted by Laws 1967, ch. 16, § 132; 2017, ch. 21, § 6.

### **22-11-9. Actuary; fees.**

A. The board shall employ the services of an actuary. The actuary shall prepare a table of actuarial equivalents for use of the board and the director in computing the value of advanced, deferred or optional payment of benefits pursuant to the Educational Retirement Act. The actuary shall also study the financial operations of the Educational Retirement Act and shall make written reports thereon to the board.

B. The board shall pay the actuary a reasonable fee for professional services.

C. Unless otherwise required by the governmental accounting standards board of the American institute of certified public accountants, an actuarial report shall be conducted at least once every three years.

**History:** 1953 Comp., § 77-9-9, enacted by Laws 1967, ch. 16, § 133; 2003, ch. 39, § 3; 2017, ch. 21, § 7.

### **22-11-10. Salaries; fees; expenditures.**

A. The amount of salaries and fees to be paid by the board shall be fixed by the regulations of the board.

B. Salaries and fees paid, and all other necessary expenditures of the board, shall be paid out of the fund unless otherwise provided by law.

**History:** 1953 Comp., § 77-9-10, enacted by Laws 1967, ch. 16, § 134.

### **22-11-11. Educational retirement fund; suspense fund.**

A. The "educational retirement fund" and the "educational retirement suspense fund" are created.

B. The state treasurer shall be the custodian of the funds, and the board shall be the trustee of the funds.

C. All membership fees, contributions from members and local administrative units, securities evidencing the investment of money from the fund, interest, gifts, grants or bequests shall be deposited in the educational retirement fund.

D. All amounts received in satisfaction of a claim brought by private attorneys on behalf of the board shall be deposited into the educational retirement suspense fund. The board shall disburse the compensation due the private attorneys, together with reimbursement for reasonable costs and expenses, in accordance with the terms of the contract with the attorneys. After the disbursements have been made, the balance of each deposit shall be distributed to the educational retirement fund.

**History:** 1953 Comp., § 77-9-11, enacted by Laws 1967, ch. 16, § 135; 2011, ch. 157, § 2.

## **22-11-12. Fund; suspense fund; disbursements.**

The state treasurer shall make disbursements from the educational retirement fund or the educational retirement suspense fund only on warrants issued by the department of finance and administration or through any other process as approved by the department of finance and administration. Warrants for disbursements from the educational retirement fund or the educational retirement suspense fund shall be issued by the department of finance and administration only upon voucher of the director.

**History:** 1953 Comp., § 77-9-12, enacted by Laws 1967, ch. 16, § 136; 1993, ch. 69, § 2; 2011, ch. 157, § 3.

## **22-11-13. Board authority to invest the fund; prudent investor standard; indemnification of board.**

A. The board is authorized to invest or reinvest the fund in accordance with the Uniform Prudent Investor Act [45-7-601 to 45-7-612 NMSA 1978].

B. The board shall provide quarterly performance reports to the legislative finance committee and the department of finance and administration. Annually, the board shall ratify and provide its written investment policy, including any amendments, to the legislative finance committee and the department of finance and administration.

C. The board or its designated agent may enter into contracts for the temporary exchange of securities for the use by broker-dealers, banks or other recognized institutional investors, for periods not to exceed one year, for a specified fee or consideration. Such a contract shall not be entered into unless the contract is fully secured by a collateralized, irrevocable letter of credit running to the board, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. This collateral shall be delivered to the fiscal agent of New Mexico or its designee contemporaneously with the transfer of funds or delivery of the securities. Such contract may authorize the board to invest cash

collateral in instruments or securities that are authorized fund investments and may authorize payment of a fee from the fund or from income generated by the investment of cash collateral to the borrower of securities providing cash as collateral. The board may apportion income derived from the investment of cash collateral to pay its agent in securities lending transactions.

D. Commissions paid for the purchase or sale of any securities pursuant to the provisions of the Educational Retirement Act shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice.

E. Securities purchased for the fund shall be held in the custody of the state treasurer. At the direction of the board, the state treasurer shall deposit with a bank or trust company the securities for safekeeping or servicing.

F. The board may consult with the state investment council or the state investment officer; may request from the state investment council or the state investment officer any information, advice or recommendations with respect to investment of the fund; may utilize the services of the state investment council or the state investment officer; and may act upon any advice or recommendations of the state investment council or the state investment officer. The state investment council or the state investment officer shall render investment advisory services to the board upon request and without expense to the board. The board may also employ the investment management services and related management services of a trust company or national bank exercising trust powers or of an investment counseling firm or brokers for the purchase and sale of securities, commission recapture and transitioning services and may pay reasonable compensation for those services from funds administered by the board.

G. The board shall annually provide for its members no less than eight hours of training in pension fund investing, fiduciary obligations or ethics. A member elected or appointed to the board who fails to attend the training for two consecutive years shall be deemed to have resigned from the board.

H. Members of the board, including any designee authorized by Paragraph (1) or (2) of Subsection B of Section 22-11-3 NMSA 1978, jointly and individually, shall be indemnified from the fund by the state from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorney fees, and against all liability, losses and damages of any nature whatsoever that members shall or may at any time sustain by reason of any decision made in the performance of their duties pursuant to this section.

**History:** 1953, Comp., § 77-9-13, enacted by Laws 1967, ch. 16, § 137; 1969, ch. 203, § 1; 1970, ch. 81, § 3; 1975, ch. 211, § 5; 1987, ch. 71, § 1; 1989, ch. 22, § 1; 1993, ch. 69, § 3; 2001, ch. 190, § 1; 2005, ch. 240, § 6; 2009, ch. 288, § 13; 2011, ch. 160, § 2.

## **22-11-14. Fund; restrictions.**

A. No member of the board or employee of the board shall have any interest, directly or indirectly, in the gains or profits of any investments made by the board, except for regular salaries and per diem and mileage allowances authorized pursuant to the Educational Retirement Act.

B. No member of the board or employee of the board shall, directly or indirectly for himself or as an agent or partner for others, borrow from the fund or deposits of the board, or in any manner use the fund or deposits except to make current and necessary disbursements authorized by the board.

C. No member of the board or employee of the board shall become an endorser or surety or become in any manner an obligor for moneys loaned or borrowed by the board.

**History:** 1953 Comp., § 77-9-14, enacted by Laws 1967, ch. 16, § 138.

## **22-11-15. Fund; refunds; payments.**

A. After filing written demand with the director, a member is entitled to a refund of the total amount of the member's contributions plus interest at a rate set by the board, reduced by the sum of any disability benefits previously received by the member, if:

(1) the member terminates employment for reasons other than by retirement, disability or death;

(2) the member has been exempted from the Educational Retirement Act; or

(3) the member was not reemployed following a period of disability during which the member received disability benefits.

B. The director may, at the request of a member, make payment on behalf of the member for any or all of the refund to an individual retirement account or a qualified retirement plan that accepts rollovers.

C. If the amount of a deceased member's contribution or residual contribution does not exceed the sum of one thousand dollars (\$1,000) and no written claim is made to the board for it within one year from the date of the member's death, by the member's surviving beneficiary or the member's estate, payment thereof may be made to the named beneficiary or, if none is named, to the person the board determines to be entitled to the contribution under the laws of New Mexico. Any payment made by the board pursuant to this subsection shall be a bar to a claim by any other person or entity.

D. The interest provided for in Subsection A of this section shall apply only to contributions paid to the fund after July 1, 1971 and on deposit in the fund for a period of at least one fiscal year; provided that no such interest shall be allowed on refunds of contributions that were paid into the fund prior to July 1, 1971.

**History:** 1953 Comp., § 77-9-15, enacted by Laws 1967, ch. 16, § 139; 1971, ch. 12, § 1; 1984, ch. 19, § 1; 1993, ch. 69, § 4; 2003, ch. 39, § 4; 2023, ch. 156, § 18.

## **22-11-16. Regular membership.**

Except as otherwise provided in the Educational Retirement Act, being a regular member shall be a condition of employment and shall exclude membership and participation in any other state retirement program.

**History:** 1953 Comp., § 77-9-16, enacted by Laws 1967, ch. 16, § 140.

### **22-11-16.1. Regular membership continuation of certain transferred employees.**

Notwithstanding Subparagraph (b) of Paragraph (1) of Subsection B of Section 22-11-2 NMSA 1978, a regular member who is an employee of a local administrative unit that is a state educational institution named in Article 12, Section 11 of the constitution of New Mexico and who transfers to a general hospital or outpatient clinics of that hospital operated by the local administrative unit will have the option to continue his regular membership rather than become a member of a retirement plan offered by the general hospital or outpatient clinics of that hospital. The option shall be exercised by filing a written election with both the educational retirement director and the designated officer of the local administrative unit. This election shall be made within sixty days after the effective date of the regular member's transfer and shall be irrevocable as long as the employee is employed by the general hospital or outpatient clinics of that hospital operated by the local administrative unit.

**History:** 1978 Comp., § 22-11-16.1, enacted by Laws 1999, ch. 290, § 1.

### **22-11-16.2. Substitutes; membership status.**

An employee engaged on a day-to-day basis to replace another employee who is temporarily absent shall be considered a substitute and shall not be covered under the Educational Retirement Act. An employee engaged to fill a vacant position, including a position vacated by a leave of absence of at least ninety days, shall not be considered a substitute and is subject to the requirements of the Educational Retirement Act.

**History:** Laws 2019, ch. 258, § 7; repealed and reenacted by Laws 2020, ch. 10, § 2.

## **22-11-17. Provisional membership.**

A provisional member is a person who is employed by the board, the department, the New Mexico school for the deaf, the northern New Mexico state school, the New Mexico school for the blind and visually impaired, the girls' welfare home, the New Mexico boys' school or the Los Lunas medical center and who has the option of

qualifying for coverage under either the Educational Retirement Act or the public employees retirement association. This option shall be exercised by filing a written election with both the director and the executive secretary of the public employees retirement association. This election shall be made within six months after employment and shall be irrevocable regardless of subsequent employment or reemployment in any administrative unit enumerated in this section. Until this election is made, the provisional member shall be covered and shall be required to make contributions under the Educational Retirement Act.

**History:** 1953 Comp., § 77-9-17, enacted by Laws 1967, ch. 16, § 141; 1971, ch. 268, § 1; 1973, ch. 382, § 1; 1983, ch. 101, § 1; 1987, ch. 208, § 1; 1989, ch. 30, § 1; 1993, ch. 69, § 5; 2003, ch. 227, § 1; 2017, ch. 21, § 8.

## **22-11-18. Repealed.**

**History:** 1953 Comp., § 77-9-17.1, enacted by Laws 1971, ch. 73, § 1; repealed by Laws 2017, ch. 21, § 20.

## **22-11-19. Regular or provisional membership; optional coverage.**

A. Any person qualified to be a regular or provisional member covered by a retirement program established for federal civil service employees shall have six months after the commencement of employment to file a written notice with the director of his election not to be covered by the Educational Retirement Act. If the person so elects, he may withdraw any contributions made pursuant to the Educational Retirement Act.

B. Any person qualified to be a regular or provisional member and who was employed by a regional education cooperative on July 1, 1993 shall have the right to exempt himself from Educational Retirement Act coverage within thirty days and such exemption shall be irrevocable as long as the person is employed by a regional cooperative.

**History:** 1953 Comp., § 77-9-18, enacted by Laws 1967, ch. 16, § 142; 1993, ch. 232, § 8.

### **22-11-19.1. [Exemption of certain participants covered under Comprehensive Employment and Training Act.]**

All participants covered under the Comprehensive Employment and Training Act (Public Law 95-524) are exempt from coverage under the Educational Retirement Act, effective July 1, 1979, except for those employees who have vested in the plan by that date.

**History:** Laws 1979, ch. 316, § 1.

## **22-11-19.2. Regular or provisional membership; regional education cooperatives.**

Any person employed by a regional education cooperative and qualified to be a regular or provisional member shall have the right to acquire earned service credit for periods of employment with the regional education cooperative when the member was neither covered nor retired under the Educational Retirement Act, under the following conditions:

A. both the member and the administrative unit contributions, at the rates in effect during the periods of employment and applied to earnings of the member during such periods, are paid to the fund, together with interest, at a rate equal to the board's actuarial earnings assumption rate at the time of purchase;

B. both member and administrative unit contributions, together with interest, are paid by the member; or

C. the member tenders payment of his contributions, together with interest and the local administrative unit by which he was employed may, but shall not be obligated to, pay the administrative unit contributions, together with interest.

**History:** 1978 Comp., § 22-11-19.2, enacted by Laws 1993, ch. 232, § 9.

## **22-11-20. Repealed.**

## **22-11-21. Contributions; members; local administrative units.**

A. Except as provided in Subsection D of this section, for a member whose annual salary is greater than twenty-four thousand dollars (\$24,000), the member shall make contributions to the fund at the rate of ten and seven-tenths percent of the member's annual salary.

B. For a member whose annual salary is twenty-four thousand dollars (\$24,000) or less, the member shall make contributions to the fund at the rate of seven and nine-tenths percent of the member's annual salary.

C. Except as provided in Subsection D of this section, each local administrative unit shall make an annual contribution to the fund according to the following schedule:

(1) from July 1, 2021 through June 30, 2022, at the rate of fifteen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit;



(2) from July 1, 2022 through June 30, 2023, at the rate of seventeen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit; and

(3) on and after July 1, 2023, at the rate of eighteen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit.

D. If, in a calendar year, the salary of a member, initially employed by a local administrative unit on or after July 1, 1996, equals the annual compensation limit set pursuant to Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, then:

(1) for the remainder of that calendar year, no additional member contributions or local administrative unit contributions for that member shall be made pursuant to this section; provided that no member shall be denied service credit solely because contributions are not made by the member or on behalf of the member pursuant to this subsection; and

(2) the amount of the annual compensation limit shall be divided into four equal portions, and, for purposes of attributing contributory employment and crediting service credit, each portion shall be attributable to one of the four quarters of the calendar year.

**History:** 1953 Comp., § 77-9-20, enacted by Laws 1967, ch. 16, § 144; 1974, ch. 5, § 1; 1981, ch. 293, § 1; 1984, ch. 19, § 2; 1991, ch. 140, § 1; 1992, ch. 117, § 1; 2005, ch. 273, § 1; 2008, ch. 68, § 1; 2009, ch. 127, § 11; 2010, ch. 67, § 1; 2011, ch. 178, § 13; 2013, ch. 61, § 1; 2019, ch. 237, § 18; 2019, ch. 258, § 1; 2021, ch. 44, § 1; 2022, ch. 29, § 1.

## **22-11-21.1. Member contributions; tax treatment.**

Commencing on July 1, 1983, each local administrative unit shall, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code, pick up, for the purposes specified in that section, member contributions required by Subsection A of Section 22-11-21 NMSA 1978 for all annual salary earned by the member. Member contributions picked up under the provisions of this subsection shall be treated as local administrative unit contributions for purposes of determining income tax obligations under the Internal Revenue Code; however, such picked-up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Members' contributions picked up under this section shall continue to be designated member contributions for all purposes of the Educational Retirement Act and shall be considered as part of the member's annual salary for purposes of determining the amount of the member's contribution. The provisions of this section are mandatory, and the member shall have no option concerning the pickup or to receive the contributed amounts directly instead of having them paid by the local administrative unit to the educational retirement system.

**History:** 1978 Comp., § 22-11-21.1, enacted by Laws 1983, ch. 91, § 1.

### **22-11-21.2. Salary calculation; limitations.**

In establishing a member's average annual salary for determination of retirement benefits, salary in excess of limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, shall be disregarded. The limitation on compensation for eligible employees shall not be less than the amount allowed pursuant to the Educational Retirement Act in effect on July 1, 1993. For purposes of this section, "eligible employee" means an individual who was a member or participant of the educational retirement plan or alternative retirement plan prior to the first plan year beginning after December 31, 1995. For a member who first becomes a clinical faculty member of the university of New Mexico health sciences center on or after July 1, 1999, the limitation on compensation shall not be in excess of the member's base salary as specified in the member's annual faculty contract or the limitations set forth in Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, whichever is less.

**History:** 1978 Comp., § 22-11-21.2, enacted by Laws 1995, ch. 148, § 2; 1999, ch. 274, § 2.

### **22-11-21.3. Pick up; rollover.**

A. Commencing on July 1, 1998, each local administrative unit may, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code of 1986, pick up, for the purposes specified in that section, member contributions permitted by Section 22-11-17 NMSA 1978; Subsection C of Section 22-11-33 NMSA 1978; or Paragraph (4) of Subsection A of Section 22-11-34 NMSA 1978. Member contributions picked up under the provisions of this subsection shall be treated as local administrative unit contributions for purposes of determining income tax obligations under the Internal Revenue Code of 1986; however, such picked-up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Member contributions picked up under this section shall continue to be designated member contributions for all purposes of the Educational Retirement Act and shall be considered as part of the member's annual salary for purposes of determining the amount of the member's contribution. The provisions of this section are voluntary, and the member shall have no option concerning the pick up to receive the contributed amounts directly instead of having them paid by the local administrative unit to the fund. The contribution may be paid through the local administrative unit's payroll deduction.

B. Commencing July 1, 1998, the board may accept rollover contributions from other retirement funds solely for and subject to the restrictions set forth in Section 22-11-17 NMSA 1978 and Subsection B of Section 22-11-34 NMSA 1978 and the applicable restrictions set forth in the Internal Revenue Code of 1986 for pension plan qualification.

**History:** Laws 1998, ch. 38, § 1; 2003, ch. 227, § 2; 2017, ch. 21, § 9.

## **22-11-22. Payment; records; audits.**

A. Contributions shall be deducted from the salaries of members by the local administrative units as the salaries are paid. These contributions shall be forwarded monthly to the director for deposit in the fund.

B. Contributions of local administrative units shall be derived from revenue available to the local administrative unit and shall be forwarded monthly to the director for deposit in the fund. The board may assess an interest charge and a penalty charge on any remittance not made by its due date.

C. Each local administrative unit shall record and certify quarterly to the director an itemized account of the contributions paid by each member and the local administrative unit. The director shall keep a record of these itemized accounts.

D. The director or the director's authorized representative may audit the financial affairs, books and records, and may interview employees, of any local administrative unit at any time to ensure compliance with the Educational Retirement Act and rules adopted by the board. The local administrative unit shall cooperate with the director or the authorized representative and shall provide access to records, information and employees during regular business hours. If, during the course of the audit, the director or the director's designee finds discrepancies or violations of the Educational Retirement Act or rules adopted by the board, or if the director or the director's designee finds that a local administrative unit does not have adequate financial controls or procedures in place to allow the local administrative unit to properly account for and pay required contributions to the board:

(1) the director shall order the local administrative unit to implement measures to remedy those matters, including payment to the fund of any contributions not properly calculated or paid, together with interest thereon at a rate to be established by the board. The local administrative unit shall promptly comply with that order; and

(2) the director shall submit a report describing the discrepancy, violation or failure to maintain adequate financial controls or procedures to the board, the state auditor and the public education department or the higher education department as may be appropriate.

E. If the director or the director's designee finds or has reason to suspect criminal activity with respect to contributions, payments or the management of the funds of a local administrative unit, the director shall notify the attorney general, the state auditor and the appropriate law enforcement agency.

**History:** 1953 Comp., § 77-9-21, enacted by Laws 1967, ch. 16, § 145; 1984, ch. 19, § 3; 1993, ch. 69, § 6; 2009, ch. 209, § 1.

## **22-11-23. Retirement eligibility; initial membership prior to July 1, 2010.**

A. A member who was a member on June 30, 2010, or was a member at any time prior to that date and had not, on that date, been refunded all member contributions pursuant to Subsection A of Section 22-11-15 NMSA 1978, shall be eligible for retirement benefits when:

(1) the member is any age and has twenty-five or more years of earned and allowed service credit;

(2) the member is at least sixty-five years of age and has five or more years of earned service credit; or

(3) the sum of the member's age and years of earned service credit equals at least seventy-five; provided that a member who retires pursuant to this paragraph shall be subject to the benefit reductions provided in Subsection G of Section 22-11-30 NMSA 1978.

B. A member shall be subject to the provisions of Subsection A of this section as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment.

**History:** 1953 Comp., § 77-9-22, enacted by Laws 1967, ch. 16, § 146; 1971, ch. 12, § 2; 1974, ch. 5, § 2; reenacted by 1981, ch. 293, § 2; 1984, ch. 19, § 4; 1993, ch. 69, § 7; 2009, ch. 286, § 1; 2009, ch. 288, § 14; 2013, ch. 61, § 2.

## **22-11-23.1. Retirement eligibility; initial membership on or after July 1, 2010.**

A. A member who initially became a member on or after July 1, 2010, or a member who was a member at any time prior to that date and had, before that date, been refunded all member contributions pursuant to Subsection A of Section 22-11-15 NMSA 1978, shall be eligible for retirement benefits pursuant to the Educational Retirement Act when:

(1) the member is any age and has thirty or more years of earned service credit;

(2) the member is at least sixty-seven years of age and has five or more years of earned service credit; or

(3) the sum of the member's age and years of earned service credit equals at least eighty; provided that a member who retires pursuant to this paragraph shall be

subject to the benefit reductions provided in Subsection H of Section 22-11-30 NMSA 1978.

B. A member shall be subject to the provisions of this section as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment.

**History:** 1978 Comp., § 22-11-23.1, as enacted by Laws 2009, ch. 286, § 2; 2009, ch. 288, § 15; 2013, ch. 61, § 3.

### **22-11-23.2. Retirement eligibility membership on or after July 1, 2013.**

A. A member who initially became a member on or after July 1, 2013 or a member who was a member at any time prior to July 1, 2013 and had, before that date, been refunded all member contributions pursuant to Subsection A of Section 22-11-15 NMSA 1978, and had not restored all refunded contributions and interest before July 1, 2013, shall be eligible for retirement benefits when:

(1) the member is any age and has thirty or more years of earned service credit; provided that the benefits of a member who retires pursuant to this paragraph prior to attaining the age of fifty-five years shall be reduced to an amount equal to the actuarial equivalent of the benefit the member would receive if the member had retired at the age of fifty-five years. The board shall recalculate the actuarial factors on which benefits are reduced no less frequently than every ten years beginning July 1, 2013. The benefits of a retired member that have been reduced at the time of retirement pursuant to this paragraph shall not be subject to further change based upon the board's recalculation of the actuarial factors;

(2) the member is at least sixty-seven years of age and has five or more years of earned service credit; or

(3) the sum of the member's age and years of earned service credit equals at least eighty; provided that a member who retires pursuant to this paragraph shall be subject to the benefit reductions provided in Subsection I of Section 22-11-30 NMSA 1978.

B. A member shall be subject to the provisions of this section as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment.

**History:** 1978 Comp., § 22-11-23.2, enacted by Laws 2013, ch. 61, § 4.

### **22-11-23.3. Retirement eligibility; initial membership on or after July 1, 2019.**

A member who initially became a member on or after July 1, 2019 or a member who was a member before July 1, 2019 and had, before that date, been refunded all member contributions in accordance with Subsection A of Section 22-11-15 NMSA 1978 and had not restored all refunded contributions and interest before July 1, 2019, is eligible for retirement benefits when:

- A. the member is any age and has thirty or more years of earned service credit;
- B. the member is at least sixty-seven years of age and has five or more years of earned service credit; or
- C. the sum of the member's age and years of earned service credit equals at least eighty.

**History:** 1978 Comp., § 22-11-23.3, enacted by Laws 2019, ch. 258, § 2.

## **22-11-24. Retirement benefits; minimum contributory employment.**

A. A member must have acquired not less than five years of contributory employment to be eligible for retirement benefits pursuant to the Educational Retirement Act.

B. A member desiring to retire before having completed five years of contributory employment shall be limited to the maximum benefit he would have been entitled to receive under any statute repealed by the Educational Retirement Act. A member may acquire five years or less of contributory employment by contributing to the fund, for each year of contributory employment desired, a sum equal to the prevailing combined contributions of the member and the local administrative unit in effect at the time the contributory employment is acquired. This contribution shall be computed on the member's average annual salary for the last five years of employment plus an additional sum as interest from the effective date of the Educational Retirement Act as fixed by the board, but not to exceed three percent a year.

C. Years of contributory employment purchased pursuant to this section shall not be considered as an addition to service actually performed in computing the sum of the member's retirement benefit.

D. The retirement benefits of members retired pursuant to the Educational Retirement Act prior to July 1, 1959 and who have acquired contributory employment years by purchase, shall be computed upon the basis of the amount paid therefor.

**History:** 1953 Comp., § 77-9-23, enacted by Laws 1967, ch. 16, § 147.

## **22-11-25. Retirement; reemployment.**

A. A member retired pursuant to the provisions of the Educational Retirement Act may be removed from retirement status by returning to employment. A reemployed member shall make regular contributions pursuant to the Educational Retirement Act. Upon termination of reemployment, the member shall be eligible for retirement benefits again based upon all service credit acquired. In no case shall the retirement benefits be less than the member was receiving prior to the member's reemployment.

B. At the time of retirement following a period of reemployment, the member's retirement benefits shall be paid in accordance with the terms of the option selected at the time of the first retirement.

**History:** 1953 Comp., § 77-9-24, enacted by Laws 1967, ch. 16, § 148; 2017, ch. 21, § 10.

## **22-11-25.1. Return to employment; benefits; contributions.**

A. Except as otherwise provided in Subsections B, F, H and I of this section, until January 1, 2024, a retired member who begins employment with a local administrative unit at a level greater than one-quarter full-time employee, regardless of salary level, is required to suspend the member's retirement benefits until the end of that employment unless the member has not rendered service to a local administrative unit for at least twelve consecutive months after the date of retirement.

B. Until January 1, 2024, a retired member who retired on or before January 1, 2001, has not suspended or been required to suspend retirement benefits pursuant to the Educational Retirement Act and returns to employment with a local administrative unit is not required to suspend the member's retirement benefits.

C. A retired member who returns to employment with a local administrative unit in accordance with this section is entitled to receive retirement benefits during that employment but is not entitled to acquire or purchase service credit for that employment.

D. A retired member may return to employment with a local administrative unit only if the member submits an application to return to work, on a form prescribed by the board, the board approves the application and the applicant complies with other application rules promulgated by the board.

E. A retired member who returns to employment pursuant to Subsection A, B, F or I of this section shall make nonrefundable contributions to the fund as would be required by Section 22-11-21 NMSA 1978 if the retired member were a non-retired employee. The local administrative unit employing the retired member shall likewise make contributions as would be required by that section.

F. Until January 1, 2024, a retired member who retired on or before January 1, 2001, who suspended or was required to suspend retirement benefits under the

Educational Retirement Act is not required to suspend the member's retirement benefits if the retired member has not rendered service to a local administrative unit for an additional twelve or more consecutive months, not including any part of a summer or other scheduled break or vacation period, after the initial date of retirement.

G. A retired member who returns to employment with a local administrative unit shall make contributions to the retiree health care fund during the period of that employment and in the amount specified in Section 10-7C-15 NMSA 1978. The local administrative unit employing the retired member shall likewise make contributions during the period of that employment and in the amount specified in that section.

H. A retired member may return to employment with a local administrative unit without a suspension of the member's retirement benefits; provided that:

(1) the retired member has not rendered service to a local administrative unit for at least ninety days after the date of retirement;

(2) prior to the date of retirement, or within ninety days after the date of retirement, the retired member did not enter into any formal or informal agreement with a local administrative unit or with any contractor providing services to a local administrative unit to return to employment; and

(3) the retired member earns a salary of less than fifteen thousand dollars (\$15,000) per year.

I. A retired member may return to employment with a local administrative unit without a suspension of the member's retirement benefits; provided that:

(1) the retired member has not rendered service to a local administrative unit for at least ninety days after the date of retirement; and

(2) the retired member returns to employment for a period of no more than thirty-six consecutive or nonconsecutive months pursuant to this subsection.

J. As used in this section:

(1) "rendered service" includes employment, whether full or part time; substitute teaching; voluntarily performing duties that would otherwise be, or in the past have been, performed by a paid employee or independent contractor; and performing duties as an independent contractor or an employee of an independent contractor; and

(2) "local administrative unit" includes any entity incorporated, formed or otherwise organized by, or subject to the control of, a local administrative unit, regardless of whether the entity is created for profit or nonprofit purposes.



**History:** Laws 2001, ch. 283, § 2; 2003, ch. 80, § 1; 2003, ch. 145, § 1; 2009, ch. 288, § 16; 2011, ch. 6, § 1; 2019, ch. 258, § 3; 2020, ch. 10, § 1; 2021, ch. 44, § 2; 2022, ch. 20, § 1.

## **22-11-25.2. Persons receiving retirement benefits pursuant to the Public Employees Retirement Act.**

A. An employee who is retired pursuant to the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978] and who has not suspended retirement benefits received pursuant to that act shall not make contributions to the fund as otherwise required by the Educational Retirement Act. A local administrative unit that employs such a retiree shall make contributions to the fund as required by that act.

B. An employee who receives retirement benefits pursuant to the Public Employees Retirement Act is not entitled to acquire or purchase service credit for the period of employment with a local administrative unit.

**History:** Laws 2003, ch. 248, § 1; 2019, ch. 258, § 4; 2020, ch. 10, § 3.

## **22-11-26. Death during reemployment.**

If a member dies during a period of reemployment following retirement pursuant to the Educational Retirement Act, the benefits to be paid shall be determined according to the following:

A. if the member did not elect to exercise Option B or C pursuant to Subsection A of Section 22-11-29 NMSA 1978 at the time of first retirement, the member's beneficiary or estate shall receive an amount equal to the sum of the member's contributions, including contributions made by the member during the period of last reemployment, plus accumulated interest at the rate set by the board, less the total benefits received prior to the last reemployment; or

B. if a retirement benefit has been paid to the member pursuant to either Option B or Option C of Subsection A of Section 22-11-29 NMSA 1978 prior to reemployment, the reemployed member shall be considered as retiring on the day preceding the date of death, and the benefits due the surviving beneficiary, computed as of that date, shall be commenced effective on the date of death in accordance with the terms of the option elected.

**History:** 1953 Comp., § 77-9-25, enacted by Laws 1967, ch. 16, § 149; 1981, ch. 294, § 1; 1993, ch. 69, § 8; 1999, ch. 93, § 1; 2003, ch. 39, § 5.

## **22-11-27. Deferred retirement; restriction.**

A. A member who is eligible for retirement may continue in employment and shall continue to pay contributions as provided by the Educational Retirement Act.

B. Provided that the contributions that the member has made are left in the fund, a member eligible for retirement benefits pursuant to the provisions of Section 22-11-23, 22-11-23.1 or 22-11-23.2 NMSA 1978 may terminate employment and retire at any time upon satisfying the applicable age and earned service requirements for retirement.

C. A member shall not be on a retirement status while engaged in employment unless the employment falls within an exception established by statute or rule of the board.

**History:** 1953 Comp., § 77-9-26, enacted by Laws 1967, ch. 16, § 150; 1971, ch. 12, § 3; 1974, ch. 5, § 3; 2003, ch. 39, § 6; 2013, ch. 61, § 5.

## **22-11-28. Applications for retirement; effective date.**

A. Application for retirement shall be made by a member on forms provided by the board.

B. Retirement pursuant to the Educational Retirement Act shall become effective on July 1 following approval of the application for retirement by the board. With approval of the board and the local administrative unit employing the member, retirement pursuant to the Educational Retirement Act may become effective on the first day of any month during the year.

**History:** 1953 Comp., § 77-9-27, enacted by Laws 1967, ch. 16, § 151; 1975, ch. 191, § 2.

## **22-11-29. Retirement benefit options.**

A. Upon retirement pursuant to the Educational Retirement Act, a member may elect, and, except as provided in Subsection D or E of this section, such election shall be irrevocable, to receive the actuarial equivalent of the member's retirement benefit, as provided in Section 22-11-30 NMSA 1978, to be effective on the member's retirement in any one of the following optional forms:

(1) OPTION A. An unreduced retirement benefit pursuant to Section 22-11-30 NMSA 1978;

(2) OPTION B. A reduced annuity payable during the member's life with provision that upon the member's death the same annuity shall be continued during the life of and paid to the beneficiary designated by the member in writing at the time of electing this option; or

(3) OPTION C. A reduced annuity payable during the member's life with provision that upon the member's death one-half of this same annuity shall be continued during the life of and paid to the beneficiary designated by the member in writing at the time of electing this option.

B. In the case of Options B and C of Subsection A of this section, the actuarial equivalent of the member's retirement benefit shall be computed on the basis of the lives of both the member and the beneficiary or in the event that a supplemental needs trust is the designated beneficiary, the life of the member and the beneficiary of that trust.

C. In the event that the named beneficiary of a retired member who elected Option B or C of Subsection A of this section at the time of retirement predeceases the retired member or the supplemental needs trust terminates while the retired member is living, the annuity of the retired member shall be adjusted by adding an amount equal to the amount by which the annuity of the retired member was reduced at retirement as a result of the election of Option B or C. The adjustment authorized in this subsection shall be made as follows:

(1) beginning on the first month following the month in which the named beneficiary of a retiree dies or the beneficiary of a supplemental needs trust that is the named beneficiary dies or that trust otherwise terminates applicable to an annuity received by a retiree who retires after June 30, 1987; or

(2) beginning on July 1, 1987 applicable to an annuity received by a retiree who retired prior to July 1, 1987 and otherwise qualifies for the adjustment; provided, however, no adjustment shall be made retroactively.

D. A retired member who is being paid an adjusted annuity pursuant to Subsection C of this section because of the death of the named beneficiary or the death of the beneficiary of a supplemental needs trust or the termination of that trust may exercise a one-time irrevocable option to designate another beneficiary and may select either Option B or Option C of Subsection A of this section; provided that:

(1) the amount of the annuity under the option selected shall be recalculated and have the same actuarial present value, computed on the effective date of the designation, as the annuity being paid to the retired member prior to the designation;

(2) the designation and the amount of the annuity shall be subject to a court order as provided for in Subsection B of Section 22-11-42 NMSA 1978; and

(3) the retired member shall pay one hundred dollars (\$100) to the board to defray the cost of determining the new annuity amount.

E. A retired member who is being paid an annuity under Option B or C of Subsection A of this section with a living or operating designated beneficiary other than

the retired member's spouse or former spouse or the supplemental needs trust of the retired member's spouse or former spouse may exercise a one-time irrevocable option to deselect the designated beneficiary and elect to:

(1) designate another beneficiary; provided that:

(a) the retired member shall not have an option to change from the current form of payment;

(b) the amount of the annuity under the form of payment shall be recalculated and shall have the same actuarial present value, computed as of the effective date of the designation, as the amount of annuity paid prior to the designation; and

(c) the retired member shall pay one hundred dollars (\$100) to the board to defray the cost of determining the new annuity amount; or

(2) have future annuity payments made without a reduction as a result of Option B or C.

F. In the event of the death of the member who has not retired and who has completed at least five years' earned service credit, the member shall be considered as retiring on the first day of the month following the date of death, and the benefits due the surviving beneficiary, computed as of that date, shall, except as provided in Subsection J of this section, be commenced effective on the first day of such month in accordance with the terms of Option B of Subsection A of this section. In lieu of the provisions of Option B, the surviving beneficiary may elect to receive payment of all the contributions made by the member, plus interest at the rate set by the board reduced by the sum of any disability benefits previously received by the member, or the surviving beneficiary may choose to defer receipt of the survivor's benefit to whatever age the beneficiary chooses up to the time the member would have attained age sixty. If the benefit is thus deferred, it shall be calculated as though the member had retired on the first day of the month in which the beneficiary elects to receive the benefit. In the event of the death of the beneficiary or in the event that a supplemental needs trust is the designated survivor beneficiary, the termination of that trust or the death of the beneficiary of that trust after the death of the member and prior to the date on which the beneficiary has elected to receive the beneficiary's benefit, the estate of the beneficiary shall be entitled to a refund of the member's contributions plus interest at the rate earned by the fund during the preceding fiscal year, reduced by the sum of any disability benefits previously received by the member.

G. In the event of the death of a member who has not retired and who has completed at least five years' earned service credit, but who has not designated a beneficiary in writing pursuant to the Educational Retirement Act, the eligible surviving spouse or surviving domestic partner shall be the surviving beneficiary eligible for benefits in accordance with the provisions of Subsection F of this section.

H. In the case of death of a retired member who did not elect either Option B or C of Subsection A of this section and before the benefits paid to the member have equaled the sum of the member's accumulated contributions to the fund plus accumulated interest at the rate set by the board, the balance shall be paid to the beneficiary designated in writing to the director by the member or, if no beneficiary was designated, to the eligible surviving spouse or surviving domestic partner of the member or, if there is no eligible surviving spouse or domestic partner of the member, to the estate of the member.

I. No benefit shall be paid pursuant to this section if the member's contributions have been refunded pursuant to Section 22-11-15 NMSA 1978.

J. In the case of death of a member with less than five years' earned service credit or death of a member who has filed with the director a notice rejecting the provisions of Subsection F of this section, which notice shall be revocable by the member at any time prior to retirement, the member's contributions to the fund plus interest at the rate set by the board shall be paid to the beneficiary designated in writing to the director by the member or, if no beneficiary was designated, to the eligible surviving spouse or surviving domestic partner of the member or, if there is no eligible surviving spouse or domestic partner of the member, to the estate of the member.

**History:** 1953 Comp., § 77-9-28, enacted by Laws 1967, ch. 16, § 152; 1977, ch. 314, § 1; 1981, ch. 294, § 2; 1984, ch. 19, § 5; 1987, ch. 86, § 1; 1999, ch. 93, § 2; 2003, ch. 39, § 7; 2011, ch. 122, § 2; 2017, ch. 21, § 11; 2019, ch. 173, § 1; 2023, ch. 156, § 19.

## **22-11-30. Retirement benefits; reductions.**

A. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1967 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first four thousand dollars (\$4,000) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

B. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1967 but on or before June 30, 1971 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first six thousand six hundred dollars (\$6,600) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

C. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1971 but on or before June 30, 1974 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the member's average annual salary multiplied by the number of years of the member's total service credit.

D. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of one or more years shall be computed pursuant to Subsection E of this section. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of less than one year shall be computed pursuant to Subsection A of this section if the member's date of last retirement was on or before June 30, 1967 or pursuant to Subsection B of this section if the member's date of last retirement was on or after July 1, 1967 but not later than June 30, 1971 or pursuant to Subsection C of this section if the member's date of last retirement was on or after July 1, 1971 but not later than June 30, 1974.

E. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1974 but not later than June 30, 1987, shall be paid monthly and shall be one-twelfth of a sum equal to:

(1) one and one-half percent of the member's average annual salary multiplied by the number of years of service credit for:

(a) prior employment; and

(b) allowed service credit for service performed prior to July 1, 1957, except United States military service credit purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978; plus

(2) two percent of the member's average annual salary multiplied by the number of years of service credit for:

(a) contributory employment;

(b) allowed service credit for service performed after July 1, 1957; and

(c) United States military service credit for service performed prior to July 1, 1957 and purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978.

F. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1987 but not later than June 30, 1991, shall be paid monthly and shall be one-twelfth of a sum equal to two and fifteen-hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four quarters ending on June 30, 1987 without having accumulated not less than 1.0 years earned service credit after June 30, 1987.

G. Retirement benefits for a member who retires pursuant to Section 22-11-23 NMSA 1978 on or after July 1, 1991 shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that:

(1) the benefit for a member who retires pursuant to Paragraph (3) of Subsection A of Section 22-11-23 NMSA 1978 shall be reduced by:

(a) six-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty years but after the member attains the age of fifty-five years; and

(b) one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of fifty-five years;

(2) the benefit formula provided in this subsection shall not apply to any member who was retired in any of the four consecutive quarters ending on June 30, 1991 without having accumulated at least one year of earned service credit beginning on or after July 1, 1991; and

(3) a member shall be subject to the provisions of Paragraph (1) of this subsection as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment.

H. Retirement benefits for a member who retires pursuant to Section 22-11-23.1 NMSA 1978 shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that:

(1) the benefit for a member who retires pursuant to Paragraph (3) of Subsection A of Section 22-11-23.1 NMSA 1978 shall be reduced by:

(a) six-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty-five years but after the member attains the age of sixty years; and

(b) one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty years; and

(2) a member shall be subject to the provisions of Paragraph (1) of this subsection as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment.

I. Retirement benefits for a member who retires pursuant to Section 22-11-23.2 NMSA 1978 shall be paid monthly and shall be one-twelfth of a sum equal to two and

thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that:

(1) the benefit for a member retiring pursuant to Paragraph (3) of Subsection A of Section 22-11-23.2 NMSA 1978 shall be reduced by:

(a) six-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty-five years but after the member attains the age of sixty years; and

(b) one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member attaining the age of sixty years; and

(2) a member shall be subject to the provisions of Paragraph (1) of this subsection as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment.

J. Retirement benefits for a member who retires in accordance with Section 22-11-23.3 NMSA 1978 shall be paid monthly and:

(1) in an amount equal to one-twelfth of the sum of the following:

(a) for the first ten years of the member's service credit, one and thirty-five hundredths percent of the member's average annual salary multiplied by the member's years of service credit between one-fourth of a year and ten years;

(b) for that portion of the member's service credit earned after ten years of service credit and through twenty years of service credit, two and thirty-five hundredths percent of the member's average annual salary multiplied by the member's years of service credit between ten and twenty years;

(c) for that portion of the member's service credit earned after twenty years of service credit and through thirty years of service credit, three and thirty-five hundredths percent of the member's average annual salary multiplied by the member's years of service credit between twenty and thirty years; and

(d) for that portion of the member's service credit earned after thirty years of service credit, two and four-tenths percent of the member's average annual salary multiplied by the member's years of service credit over thirty years; or

(2) if the member retires in accordance with:

(a) Subsection A of Section 22-11-23.3 NMSA 1978 and is under fifty-eight years of age, in an amount equal to the result determined under Paragraph (1) of this subsection, but reduced to the actuarial equivalent, based on what is at the time of the member's retirement the most current set of actuarial factors determined by the board,



of the benefit the member would receive if the member had retired at fifty-eight years of age;

(b) Subsection C of Section 22-11-23.3 NMSA 1978 and is sixty years of age or older and under sixty-five, in an amount equal to the result determined under Paragraph (1) of this subsection, but reduced by six-tenths percent for each one-fourth, or portion thereof, year before the member reaches age sixty-five; or

(c) Subsection C of Section 22-11-23.3 NMSA 1978 and is younger than sixty years of age, in an amount equal to one and eight-tenths percent for each one-fourth, or portion thereof, year before the member reaches sixty years of age.

K. In determining a member's average annual salary for purposes of this section:

(1) the data set shall consist of the annual salary of each of the last five years, or any consecutive five years, for which contribution was made by the member, whichever produces a higher result; and

(2) lump-sum payments made after July 1, 2010 of accrued sick leave or annual leave shall be excluded from the calculation.

L. On and after July 1, 2019, if the member's average annual salary is greater than sixty thousand dollars (\$60,000):

(1) the salary in a first twelve-month interval that occurs beginning July 1, 2019 or thereafter of the five-year period used to determine the average annual salary shall be adjusted to exclude any increase in salary in excess of thirty percent of the salary in the twelve consecutive months of service credit preceding the five-year period; and

(2) the salary in each of the four succeeding twelve-month intervals that occur beginning July 1, 2019 or thereafter of the five-year period, as adjusted to exclude any increase in salary in the twelve months preceding each such succeeding twelve-month interval that is in excess of the thirty-percent limitation provided in this subsection, shall be used to determine if the salary in that succeeding twelve-month interval exceeds the thirty-percent limitation and to adjust the salary to exclude any increase in excess of that limitation in determining the average annual salary.

M. On July 1, 2020 and on each July 1 thereafter, the salary threshold for applying the thirty-percent limitation provided for in Subsection L of this section shall be adjusted by applying an adjustment factor equal to the change in the consumer price index between the next preceding calendar year and the preceding calendar year if there is an increase in the consumer price index between the next preceding calendar year and the preceding calendar year.

N. Notwithstanding any provision of the Educational Retirement Act, retirement benefits shall be distributed in accordance with Section 401(a)(9) of the federal Internal Revenue Code of 1986, as amended, and the regulations thereunder, including the minimum incidental death benefit restrictions of Section 401(a)(9)(G) of the Internal Revenue Code of 1986, as amended.

**History:** 1953 Comp., § 77-9-29, enacted by Laws 1967, ch. 16, § 153; 1971, ch. 12, § 4; 1974, ch. 5, § 4; 1985, ch. 170, § 1; 1987, ch. 86, § 2; 1991, ch. 140, § 2; 1993, ch. 69, § 9; 2003, ch. 39, § 8; 2009, ch. 286, § 3; 2009, ch. 288, § 17; 2013, ch. 61, § 6; 2019, ch. 258, § 5; 2023, ch. 87, § 2.

### **22-11-30.1. Educational retirement; qualified excess benefit.**

The educational retirement board, by rule, may establish and maintain a qualified excess benefit arrangement under Section 415(m) of the United States Internal Revenue Code of 1986 for employees hired before July 1, 1999. The amount of annual benefit that would be payable but for the limitation imposed by Section 415 of the United States Internal Revenue Code of 1986 to an employee hired before July 1, 1999 shall be paid from a qualified excess benefit arrangement established and maintained pursuant to this section.

**History:** Laws 1999, ch. 274, § 1.

### **22-11-31. Cost-of-living adjustment; eligibility; based on funded ratio; additional contributions.**

A. For the purposes of this section:

(1) "adjustment factor" means a multiplicative factor computed to provide an annuity adjustment pursuant to the provisions of Subsection B of this section;

(2) "annuity" means any benefit payable under the Educational Retirement Act or the Public Employees Retirement Reciprocity Act [Chapter 10, Article 13A NMSA 1978] as a retirement benefit, disability benefit or survivor benefit;

(3) "calendar year" means the full twelve months beginning January 1 and ending December 31;

(4) "consumer price index" means the average of the monthly consumer price indexes for a calendar year for the entire United States for all items as published by the United States department of labor;

(5) "funded ratio" means the ratio of the actuarial value of the assets of the fund to the actuarial accrued liability of the educational retirement system;

(6) "median adjusted annuity" means the median value of all annuities and retirement benefits paid pursuant to Section 22-11-29 or 22-11-30 NMSA 1978, as calculated each fiscal year; provided, however, that the benefits paid to a member pursuant to Section 22-11-38 NMSA 1978 shall not be included in the median adjusted annuity calculation;

(7) "next preceding calendar year" means the full calendar year immediately prior to the preceding calendar year; and

(8) "preceding calendar year" means the full calendar year preceding the July 1 on which a benefit is to be adjusted.

B. On or after July 1, 1984:

(1) the annuity of a member who retires pursuant to Subsection A of Section 22-11-23 NMSA 1978 or Subsection A of Section 22-11-23.1 NMSA 1978 shall be adjusted annually and cumulatively commencing on July 1 of the year in which a member attains the age of sixty-five years or on July 1 following the year a member retires, whichever is later; and

(2) the annuity of a member who retires pursuant to Subsection A of Section 22-11-23.2 NMSA 1978 shall be adjusted annually and cumulatively commencing on July 1 of the year in which the member attains the age of sixty-seven years or on July 1 following the year the member retires, whichever is later.

C. Beginning on July 1, 2013 and on each July 1 thereafter:

(1) if the funded ratio of the fund as reported by the board's actuary in the actuarial valuation report for the next preceding fiscal year is one hundred percent or greater, the annuity adjustments provided for under Subsection B of this section shall be adjusted by applying an adjustment factor based on the percentage increase of the consumer price index between the next preceding calendar year and the preceding calendar year. The adjustment factor shall be applied as follows:

(a) if the percentage increase of the consumer price index is less than two percent in absolute value, the adjustment factor shall be the same amount as the percentage increase of the consumer price index; and

(b) if the percentage increase of the consumer price index is two percent or greater in absolute value, the adjustment factor shall be one-half of the percentage increase; except that the adjustment shall not exceed four percent in absolute value nor be less than two percent in absolute value;

(2) if the funded ratio of the fund as reported by the board's actuary in the actuarial report for the next preceding fiscal year is greater than ninety percent but less than one hundred percent, except for a member who is on disability status in

accordance with Section 22-11-35 NMSA 1978 and whose benefit is adjusted as provided in Subsection G of this section or a member who is retired pursuant to Section 22-11-38 NMSA 1978, the adjustment factor provided for in Subsection B of this section shall be applied as follows:

(a) if the percentage increase in the consumer price index is less than two percent in absolute value, for a member who has twenty-five or more years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be ninety-five percent of the adjustment factor determined pursuant to Subparagraph (a) of Paragraph (1) of this subsection;

(b) if the percentage increase in the consumer price index is less than two percent in absolute value, for a member who has less than twenty-five years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, and for a member whose annuity is greater than the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be ninety percent of the adjustment factor determined pursuant to Subparagraph (a) of Paragraph (1) of this subsection;

(c) if the percentage increase in the consumer price index is greater than or equal to two percent in absolute value for a member who has twenty-five or more years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be ninety-five percent of the adjustment factor determined under Subparagraph (b) of Paragraph (1) of this subsection; and

(d) if the percentage increase in the consumer price index is greater than or equal to two percent in absolute value, for a member who has less than twenty-five years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, and for a member whose annuity is greater than the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be ninety percent of the adjustment factor determined under Subparagraph (b) of Paragraph (1) of this subsection;

(3) if the funded ratio of the fund as reported by the board's actuary in the actuarial valuation report for the next preceding fiscal year is ninety percent or less, except for a member who is on disability status in accordance with Section 22-11-35 NMSA 1978 and whose benefit is adjusted as provided in Subsection G of this section or a member who is retired pursuant to Section 22-11-38 NMSA 1978, the adjustment factor provided for in Subsection B of this section shall be applied as follows:

(a) if the percentage increase in the consumer price index is less than two percent in absolute value, for a member who has twenty-five or more years of service credit at retirement and whose annuity is less than or equal to the median adjusted

annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be ninety percent of the adjustment factor determined pursuant to Subparagraph (a) of Paragraph (1) of this subsection;

(b) if the percentage increase in the consumer price index is less than two percent in absolute value, for a member who has less than twenty-five years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, and for a member whose annuity is greater than the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be eighty percent of the adjustment factor determined pursuant to Subparagraph (a) of Paragraph (1) of this subsection;

(c) if the percentage increase in the consumer price index is greater than or equal to two percent in absolute value for a member who has twenty-five or more years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be ninety percent of the adjustment factor determined under Subparagraph (b) of Paragraph (1) of this subsection; and

(d) if the percentage increase in the consumer price index is greater than or equal to two percent in absolute value, for a member who has less than twenty-five years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, and for a member whose annuity is greater than the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be eighty percent of the adjustment factor determined under Subparagraph (b) of Paragraph (1) of this subsection; and

(4) an annuity shall not be decreased if there is a decrease in the consumer price index between the next preceding calendar year and the preceding calendar year.

D. A retired member whose benefit is subject to adjustment under the provisions of the Educational Retirement Act in effect prior to July 1, 1984 shall have the member's annuity readjusted annually and cumulatively under the provisions of that act in effect prior to July 1, 1984 until July 1 of the year in which the member attains the age of sixty-five years, when the member shall have the annuity readjusted annually and cumulatively under the provisions of this section.

E. A member who:

(1) retires pursuant to Subsection A of Section 22-11-23 NMSA 1978 or Subsection A of Section 22-11-23.1 NMSA 1978 after attaining the age of sixty-five years shall have the member's annuity adjusted as provided in Subsections B and C of this section commencing on July 1 of the year following the member's retirement; or

(2) retires pursuant to Subsection A of Section 22-11-23.2 NMSA 1978 after attaining the age of sixty-seven years shall have the member's annuity adjusted as provided in Subsections B and C of this section commencing on July 1 of the year following the member's retirement.

F. A retired member who returns to work and suspends retirement shall be subject to the provisions of this section as they exist at the time of the member's latest retirement.

G. Benefits of a member who is on a disability status in accordance with Section 22-11-35 NMSA 1978 or a member who is certified by the board as disabled at regular retirement shall be adjusted in accordance with Subsections B and C of this section, except that the benefits shall be adjusted annually and cumulatively commencing on July 1 of the third full year following the year in which the member was approved by the board for disability or retirement.

**History:** 1953 Comp., § 77-9-30, enacted by Laws 1967, ch. 16, § 154; 1971, ch. 12, § 5; 1974, ch. 5, § 5; reenacted by Laws 1979, ch. 333, § 2; 1981, ch. 293, § 3; 1984, ch. 19, § 6; 1987, ch. 86, § 3; 1991, ch. 140, § 3; 1999, ch. 9, § 1; 2010, ch. 81, § 1; 2013, ch. 61, § 7; 2017, ch. 21, § 12.

## **22-11-32. Adjustment of benefits.**

A. If retirement or disability benefits cause a decrease in the amount of monetary payments due to a member or beneficiary from any public agency, the retirement or disability benefits shall be reduced to result in the maximum total benefits to the member or beneficiary.

B. If there is a change in the effect of retirement or disability benefits on any monetary payments due to a member or beneficiary from any public agency, the retirement or disability benefits shall be adjusted to result in the maximum total benefits to the member or beneficiary. In no event shall the retirement or disability benefits be increased in an amount greater than that authorized by the Educational Retirement Act.

C. The provisions of this section are mandatory and are not subject to option or election by any member or beneficiary. Each member or beneficiary shall inform the director of all facts necessary for the director to carry out the provisions of this section.

D. If the director, in good faith, seeks to ascertain all facts necessary to comply with provisions of this section, but payment of retirement or disability benefits is made without making an adjustment as provided by this section, neither the board, the director or any public officer or employee shall be liable because of the payment.

E. As used in this section:

(1) "retirement or disability benefits" means retirement or disability benefits payable to a member or beneficiary pursuant to the Educational Retirement Act ;

(2) "public agency" includes the federal government, any department or agency of the federal government, any state and any department, agency and political subdivision of a state; and

(3) "total benefits" means retirement or disability benefits plus any other monetary payments due to the member or beneficiary from any public agency.

**History:** 1953 Comp., § 77-9-31, enacted by Laws 1967, ch. 16, § 155.

## **22-11-33. Earned service credit.**

A. Upon a member filing an application for retirement or disability benefits, earned service credit for the time of contributory employment shall be certified by the director and subject to the review of the board.

B. A member shall be certified to have earned service credit for that period of time when the member was engaged in prior employment. Earned service credit shall not be certified for that period of employment for which the contributions have been withdrawn from the fund by the member.

C. Earned service credit shall be certified for periods of employment interrupted for some cause other than retirement or disability. This shall be done if a member withdrawing contributions from the fund for this period returns to the fund, for each year of earned service credit desired, a sum equal to the member's contribution to the fund during this period and an additional sum as interest compounded annually from the date the contributions were withdrawn to the date of payment of the amount of returned contributions at the rate of interest set by the board.

**History:** 1953 Comp., § 77-9-33, enacted by Laws 1967, ch. 16, § 156; 2003, ch. 39, § 9; 2017, ch. 21, § 13.

## **22-11-34. Allowed service credit.**

A. A member shall be certified to have acquired allowed service credit pursuant to the Internal Revenue Code of 1986 for those periods of time when the member was:

(1) employed prior to July 1, 1967 in a federal educational program within New Mexico, including United States Indian schools and civilian conservation corps camps. This service credit shall be allowed without contribution;

(2) engaged in military service that interrupted the member's employment in New Mexico if the member returned to employment within eighteen months following honorable discharge. This service credit shall be allowed without contribution;

(3) engaged in United States military service or the commissioned corps of the public health service from which the member was honorably discharged; provided that:

(a) the member shall have five years or more of contributory employment to be eligible to purchase allowed service credit pursuant to this paragraph;

(b) the member shall contribute to the fund, for each year of service credit the member elects to purchase, a sum equal to the member's average annual actual salary for the five years preceding the date of the contribution multiplied by the sum of the member contribution rate and the employer contribution rate in effect at the time of the member's written election to purchase, subject to the federal Uniformed Services Employment and Reemployment Rights Act of 1994;

(c) full payment shall be made in a single lump sum within sixty days of the date that the member is informed of the amount of the payment; and

(d) the portion of the purchase cost derived from the employer's contribution rate shall be credited to the fund and, in the event that a member requests a refund of contributions pursuant to Section 22-11-15 NMSA 1978, the member shall not be entitled to a refund of that portion of the purchase cost derived from the employer contribution rate; or

(4) employed:

(a) in a public school or public institution of higher learning in another state, territory or possession of the United States;

(b) in a United States military dependents' school operated by a branch of the armed forces of the United States;

(c) as provided in Paragraph (1) of this subsection after July 1, 1967; or

(d) in a private school or institution of higher learning in New Mexico whose education program is accredited or approved by the department at the time of employment.

B. Effective July 1, 2001, the member or employer under Paragraph (4) of Subsection A of this section shall contribute to the fund for each year of allowed service credit desired an amount equal to the actuarial value of the service purchased as defined by the board. No allowed service credit shall be purchased pursuant to Paragraph (4) of Subsection A of this section unless the member is currently employed by a local administrative unit.

C. No member shall be certified to have acquired allowed service credit:



(1) under any single paragraph or the combination of only Paragraphs (1) and (4) or only Paragraphs (2) and (3) of Subsection A of this section in excess of five years; or

(2) in excess of ten years for any other combination of Paragraphs (1) through (4) of Subsection A of this section.

D. A member receiving service credit under Paragraph (3) or (4) of Subsection A of this section who enrolls in the retiree health care authority shall make contributions pursuant to Subsection C of Section 10-7C-15 NMSA 1978.

**History:** 1953 Comp., § 77-9-34, enacted by Laws 1967, ch. 16, § 157; 1975, ch. 321, § 1; 1977, ch. 331, § 2; 1981, ch. 291, § 1; 1986, ch. 48, § 1; 1989, ch. 30, § 2; 1993, ch. 69, § 10; 1997, ch. 103, § 1; 1998, ch. 38, § 3; 2003, ch. 39, § 10; 2009, ch. 288, § 18; 2017, ch. 21, § 14.

## **22-11-34.1. Sick leave service credit.**

A. Beginning on July 1, 2020, a member who has acquired the minimum number of years of contributory employment to be eligible for retirement benefits under the Educational Retirement Act may pay to have unused sick leave, earned from the member's contributory employment and for which the member has otherwise not received payment, converted to earned service credit, up to a maximum of:

- (1) six days of unused sick leave per year of contributory employment; and
- (2) four calendar quarters of earned service credit.

B. The following standards apply to the conversion of unused sick leave to earned service credit under this section:

- (1) eight hours of sick leave equals one day of sick leave;
- (2) thirty-eight to eighty-two days of sick leave equals one quarter of earned service credit;
- (3) eighty-three to one hundred twenty-seven days of sick leave equals two quarters of earned service credit;
- (4) one hundred twenty-eight to one hundred seventy-two days of sick leave equals three quarters of earned service credit; and
- (5) one hundred seventy-three or more days of sick leave equals four quarters of service credit.

C. A member who elects to convert unused sick leave to earned service credit under this section shall, in accordance with rules that the board shall establish, submit to the board verification from local administrative units of the member's unused sick leave.

D. The cost to a member of converting unused sick leave to earned service credit is the actuarial present value, as determined by the board, of the benefit attributable to the conversion. The board shall establish rules pertaining to payments for converting unused sick leave to earned service credit.

**History:** Laws 2019, ch. 31, § 1.

### **22-11-35. Disability benefit; eligibility; medical examination.**

A. A member shall be eligible for disability benefits if the member has acquired ten years or more of earned service credit and if the board certifies the member to be totally disabled to continue the member's employment and unable to obtain and retain other gainful employment commensurate with the member's background, education and experience.

B. Prior to any certification of disability by the board, the board shall require each applicant for disability benefits to submit medical records as required by the board in support of the applicant's disability claim.

**History:** 1953 Comp., § 77-9-35, enacted by Laws 1967, ch. 16, § 158; 2017, ch. 21, § 15.

### **22-11-36. Disability benefit; continued eligibility; re-examinations.**

A. Unless designated by the board as being permanently disabled, to continue to receive disability benefits, a member shall, on the anniversary date in each year of the member's being placed on a disability status, present current medical records to the medical authority in support of the applicant's continuing disability claim. The medical authority shall recommend to the board that the member either be placed on continuing annual disability or permanent disability or removed from disability status due to a substantial betterment of the member's condition. In the event a substantial betterment of the disability is reported, the board shall determine whether the member is totally disabled for employment and unable to obtain and retain other gainful employment commensurate with the member's background, education and experience. If the board determines that the member is no longer disabled, the payment of the disability benefits shall cease.

B. Payment of disability benefits to a member shall be suspended if the member fails to submit medical records to the medical authority within thirty days after the date upon which the member should have submitted the medical records and where the failure to submit the medical records was due to the unexcused failure or the refusal of

the member to do so. Payment of disability benefits shall be resumed only after the member has submitted current medical records to the board and the board has determined that the member is totally disabled. A member shall have no right or claim for benefits withheld during a period of suspension.

C. The board may, in its discretion, require that the member obtain an independent medical examination; provided that the examination is performed at the board's expense.

D. Upon a determination by the board, a member's status may be changed from permanently disabled to temporarily disabled or no longer disabled.

**History:** 1953 Comp., § 77-9-36, enacted by Laws 1967, ch. 16, § 159; 2003, ch. 39, § 11; 2017, ch. 21, § 16.

## **22-11-37. Disability benefit.**

A. The annual disability benefit shall be equal to two percent of the member's average annual salary multiplied by the number of years of the member's total service-credit if the result is greater than one-third of the member's average annual salary. If the result of that formula is less than one-third of the member's average annual salary, the annual disability benefit shall be equal to the lesser of the following amounts:

(1) two percent of the member's average annual salary multiplied by the sum of the member's total service-credit plus the number of years, calculated to the nearest completed quarter, from the effective date of the member's disability to the member's sixtieth birthday; or

(2) one-third of the member's average annual salary.

B. A member's average annual salary for the purpose of computing disability benefits shall be the average salary for the last five years of employment or for any other consecutive five-year period for which contribution was made by the member, whichever is higher.

C. The annual disability benefit shall be paid in equal monthly installments.

**History:** 1953 Comp., § 77-9-37, enacted by Laws 1967, ch. 16, § 160; 1973, ch. 350, § 1; 1991, ch. 140, § 4.

## **22-11-38. Disability retirement.**

A member receiving disability benefits upon attaining the age of sixty years shall be considered as retiring pursuant to the Educational Retirement Act at the rate of benefits received for the disability.

**History:** 1953 Comp., § 77-9-38, enacted by Laws 1967, ch. 16, § 161.

### **22-11-39. Report of improved health; penalty.**

A. A member receiving disability benefits shall report to the director in writing any substantial improvement in the member's disability within thirty days after the member has or reasonably should have knowledge of the improvement.

B. A member failing to report to the director as required by this section is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 77-9-39, enacted by Laws 1967, ch. 16, § 162; 2017, ch. 21, § 17.

### **22-11-40. Restoration to fund.**

If a member is obligated to restore any sum of money to the fund and fails or refuses to do so for a period of three months after written demand is made by the director, the member shall forfeit membership and receive no further benefits pursuant to the Educational Retirement Act. The director shall determine whether the former member's contributions to the fund exceed the total amount of disability or retirement benefits the member has received and shall withdraw from any such balance of contributions the amount of money the member is obligated to restore to the fund. Any balance of the contribution remaining in the fund shall be paid to the former member or the former member's beneficiary. In the event the money the former member is obligated to restore to the fund is not restored to the fund, the former member shall be subject to civil action by the board for its recovery.

**History:** 1953 Comp., § 77-9-40, enacted by Laws 1967, ch. 16, § 163; 2017, ch. 21, § 18.

### **22-11-41. Repealed.**

### **22-11-42. Nonassignability; division of funds as community property; child support obligations.**

A. Except as specifically provided in the Educational Retirement Act and the provisions of Subsections B and C of this section, contributions or benefits mentioned in the Educational Retirement Act shall not be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, guarantee fund or similar assessment or any other legal process.

B. A court of competent jurisdiction, solely for the purposes of effecting a division of community property, may provide by appropriate order for a determination and division of a community interest in the pensions or other benefits provided for in the Educational

Retirement Act. In so doing, the court shall fix the manner in which the warrants shall be issued, may order direct payments by the board to a person with a community interest in the pensions or benefits and may restrain the refund of member or participant contributions. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the board or a carrier or contractor for the alternative retirement plan, nor shall the court cause any increase in the actuarial present value of the pensions or other benefits to be paid by the board or a carrier or contractor for the alternative retirement plan. A payment, ordered by a court pursuant to this subsection, shall only be made when the member or participant terminates employment and requests a refund or when the member or participant retires or is otherwise entitled to receive benefits pursuant to the Educational Retirement Act. In no case shall a court order pursuant to this subsection result in more money being paid from the fund or from an alternative retirement plan, whether in a lump sum or in monthly benefits, than would otherwise be payable.

C. A court of competent jurisdiction, solely for the purposes of enforcing current or delinquent child support obligations, may provide by appropriate order for withholding amounts due in satisfaction of current or delinquent child support obligations from the pensions or other benefits provided for in the Educational Retirement Act and for payment of such amounts to third parties. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the board or a carrier or contractor for the alternative retirement plan. The court shall not cause any increase in the actuarial present value of the pensions or other benefits to be paid by the board or a carrier or contractor for the alternative retirement plan. Payments made pursuant to such orders shall only be made when the member or participant terminates employment and requests a refund of contributions or when the member or participant retires; in no case shall more money be paid out, either in a lump sum or in monthly benefits, of the fund or alternative retirement plan in enforcement of current or delinquent child support obligations than would otherwise be payable. In no case shall a court order pursuant to this subsection result in more money being paid from the fund or from an alternative retirement plan, whether in a lump sum or in monthly benefits, than would otherwise be payable.

**History:** 1953 Comp., § 77-9-42, enacted by Laws 1967, ch. 16, § 165; 1987, ch. 242, § 1; 1989, ch. 125, § 3; 1990, ch. 49, § 17; 1991, ch. 118, § 4; 2003, ch. 39, § 12.

## **22-11-43. Insurance or banking laws inapplicable.**

In the absence of specific provisions to the contrary, no law of this state regulating insurance policies, insurance companies or banking institutions shall apply to the administration of the Educational Retirement Act.

**History:** 1953 Comp., § 77-9-43, enacted by Laws 1967, ch. 16, § 166.

## **22-11-44. Saving clause; retirement benefits; disability benefits.**

A. Any person retired pursuant to the provisions of any laws repealed by the Educational Retirement Act shall be considered to have retired pursuant to the Educational Retirement Act and shall continue to receive retirement benefits in the same amount as received prior to the enactment of the Educational Retirement Act.

B. Any person receiving disability benefits pursuant to any laws repealed by the Educational Retirement Act shall continue to receive disability benefits in the same amount as received prior to the enactment of the Educational Retirement Act and shall be considered to have been granted disability benefits pursuant to and be subject to the provisions of the Educational Retirement Act.

C. Nothing in the Educational Retirement Act shall be construed to adversely affect any benefits being paid pursuant to any laws repealed by the Educational Retirement Act or any laws establishing the public employees retirement association.

D. No person who was covered under the provisions of any statute repealed by the Educational Retirement Act shall be retired at a monthly benefit that is less than the person would have received had the person's employment continued to be performed under such repealed provisions.

**History:** 1953 Comp., § 77-9-44, enacted by Laws 1967, ch. 16, § 167; 2017, ch. 21, § 19.

### **22-11-44.1. Repealed.**

### **22-11-45. Repealed.**

**History:** 1953 Comp., § 77-9-45, enacted by Laws 1967, ch. 16, § 168; repealed by Laws 2017, ch. 21, § 20.

### **22-11-46. Reserved.**

### **22-11-47. Alternative retirement plan; election of coverage.**

A. Beginning October 1, 1991, any employee of the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university or western New Mexico university who is eligible to become a participant may make within ninety days of that date an election to participate in the alternative retirement plan. Beginning October 1, 1999, an employee of central New Mexico community college, Clovis community college, Luna community college, Mesalands community college, New Mexico junior college, northern New Mexico college, San Juan college or Santa Fe community college who is eligible to become a participant may make an election to participate in the alternative retirement plan within ninety days of the initial date. Beginning October 1, 2023, an employee of southeast New Mexico college who is eligible to become a participant may make an

election to participate in the alternative retirement plan within ninety days of the initial date. Thereafter, any employee who is eligible to become a participant may make within the first ninety days of employment with a qualifying state educational institution an election to participate in the alternative retirement plan. Any employee who makes the election shall become a participant the first day of the first pay period following the election. Any employee who fails to make the election within ninety days of October 1, 1991, October 1, 1999 or October 1, 2023, whichever is applicable, or within the first ninety days of employment with a qualifying state educational institution shall become or remain a regular member if that employee is eligible to be a regular member and shall not later be eligible to elect to be a participant, regardless of whether the employee subsequently is employed in another position that is eligible for participation in the alternative retirement plan. Except as provided in Subsection D of this section, an election to become a participant is irrevocable.

B. Until the time an employee who is eligible to become a participant elects to participate in the alternative retirement plan, that employee shall be a regular member.

C. When an employee elects to become a participant, any employer and employee contributions made as a regular member shall be withdrawn from the fund and applied instead toward the alternative retirement plan as if the participant had been participating in the alternative retirement plan from the commencement of employment with the qualifying state educational institution.

D. On July 1, 2009, any participant who has made contributions to the alternative retirement plan for a cumulative total of seven years or more shall have a one-time option of electing to become a regular member. Thereafter, once a participant has made contributions to the alternative retirement plan for a cumulative total of seven years, a participant shall have a one-time option of electing to become a regular member. Participants electing to become regular members shall exercise that option within one hundred twenty days of the date of becoming eligible to elect to become a regular member. Any amounts on deposit in an employee's alternative retirement plan account when a participant becomes a regular member shall remain on deposit with the contractor or carrier subject to that plan's provisions, unless otherwise provided by law. An employee who elects to become a regular member under this subsection shall use the date on which the employee was first employed with a qualifying state educational institution for purposes of determining any retirement eligibility requirement, provided that the employee:

(1) may not purchase service credit for periods of employment during which the employee participated in the alternative retirement plan; and

(2) shall acquire not less than five years of contributory employment as a regular member as provided for in Section 22-11-24 NMSA 1978 to be eligible for retirement benefits pursuant to the Educational Retirement Act.

E. The board shall approve the positions at each qualifying state educational institution that are eligible for participation in the alternative retirement plan.

**History:** 1978 Comp., § 22-11-47, enacted by Laws 1991, ch. 118, § 5; 1999, ch. 261, § 2; 1999, ch. 274, § 3; 2008, ch. 68, § 2; 2009, ch. 9, § 1; 2023, ch. 87, § 3.

## **22-11-48. Alternative retirement plan; contributory employment.**

A. Contributions made by a qualifying state educational institution on behalf of a participant together with any interest accrued on those contributions shall be credited to the benefit of the participant and shall be distributed or treated as agreed upon between the contractor or carrier providing the alternative retirement plan benefits and the board.

B. Contributions of a participant who terminates employment together with any applicable interest accrued on those contributions shall remain the property of the participant and the contributions, interest and any benefits based on them shall be treated as agreed upon between the contractor or carrier providing the alternative retirement plan benefits and the board.

**History:** 1978 Comp., § 22-11-48, enacted by Laws 1991, ch. 118, § 6.

## **22-11-49. Alternative retirement plan; contributions.**

A. A participant shall contribute an amount equal to the percentage of the participant's salary that the participant would be required to contribute if the participant were, instead, a regular member. The contribution shall be made as provided by the board.

B. A qualifying state educational institution shall contribute on behalf of each participant an amount of the participant's salary equal to the contribution that would be required of the employer if the participant were, instead, a regular member. Of that contribution, a sum equal to the following percentage of the annual salary of each participant shall be paid to the fund, and the remainder of the contribution shall be paid to the alternative retirement plan as provided by the board:

- (1) from July 1, 2021 through June 30, 2022, four and one-fourth percent;
- (2) from July 1, 2022 through June 30, 2023, six and one-fourth percent; and
- (3) on and after July 1, 2023, seven and one-fourth percent; or

(4) if, on July 1 following any report by the actuary to the board that concludes that less than that percentage is required to satisfy the unfunded actuarial liability attributable to the participation of the participants in the alternative retirement plan, then the percentage the actuary determines is the minimum required to satisfy that liability.



C. Contributions required by this section may be made by a reduction in salary or by a public employer pick-up as provided in the Internal Revenue Code of 1986, as amended.

**History:** 1978 Comp., § 22-11-49, enacted by Laws 1991, ch. 118, § 7; 1999, ch. 261, § 3; 2019, ch. 258, § 6; 2021, ch. 44, § 3; 2022, ch. 29, § 2.

## **22-11-50. Alternative retirement plan; tax treatment.**

The board shall have the authority to determine whether the alternative retirement plan shall be qualified under Section 401(a) or 403(a) of the Internal Revenue Code of 1986, as amended, and shall make that determination based upon which choice is most advantageous to the participants as a whole.

**History:** 1978 Comp., § 22-11-50, enacted by Laws 1991, ch. 118, § 8.

## **22-11-51. Alternative retirement plans; benefits; transfer upon unemployment.**

A. No retirement, death or other benefit shall be paid by the board from the fund for services credited under the alternative retirement plan. Such benefits are payable to participants or their beneficiaries only by the appropriate alternative retirement plan contractor or carrier in accordance with the terms of the applicable contracts or certificates; provided, however, that retirement benefits shall, at the option of the participant, be paid in the form of a lifetime income, if held in an annuity contract; payments for a term of years; or a single-sum cash payment.

B. Upon termination of employment with a qualifying state educational institution, a participant may transfer or roll over the account balance to another eligible retirement plan or may withdraw the balance as permitted for a plan qualified under Section 401(a) of the Internal Revenue Code of 1986.

**History:** 1978 Comp., § 22-11-51, enacted by Laws 1991, ch. 118, § 9; 1999, ch. 261, § 4; 2009, ch. 9, § 2.

## **22-11-52. Alternative retirement plan; selection of contractor or carrier; administration.**

A. The board shall solicit and review proposals for providing retirement, death and any other benefits deemed desirable by the board for participants in the alternative retirement plan. The board shall solicit proposals for providing the benefits through contracts or investments held in trust or a custodial account that meets the requirements of Section 401(a) or 403(a) of the Internal Revenue Code of 1986, including, without limitation, annuity contracts or certificates that are fixed or variable in nature or some combination thereof.

B. The board, after consultation with the qualifying state educational institutions, shall select no less than two nor more than five contractors or carriers to provide the contracts or certificates. In making its selection, the board shall consider, among other things, the following criteria:

- (1) the portability of the benefits offered, based upon the number of states and institutions of higher education in which the offeror provides similar benefits;
- (2) the nature and extent of the rights and benefits that would be provided to the participants, including the right to maintain their accounts or to transfer the balance to another eligible retirement plan upon termination of employment with the qualifying educational institution, to the extent permitted for a plan qualified under Section 401(a) of the Internal Revenue Code of 1986;
- (3) the relation of the rights and benefits to the contributions that would be made by the participants and the qualifying state educational institutions;
- (4) the ability of the offeror to provide the rights and benefits;
- (5) the suitability of the rights and benefits for recruitment and retention of employees by the qualifying state educational institutions; and
- (6) compliance with the requirements of the Educational Retirement Act and Section 401(a) or 403(a) of the Internal Revenue Code of 1986.

C. The board shall provide for the administration and maintenance of the alternative retirement plan and may adopt rules and regulations for that purpose.

**History:** 1978 Comp., § 22-11-52, enacted by Laws 1991, ch. 118, § 10; 2009, ch. 9, § 3.

## **22-11-53. Correction of errors and omissions; estoppel.**

A. If an error or omission in an application for retirement or its supporting documents results in an overpayment to a member or the beneficiary of a member, the board shall correct the error or omission and adjust all future payments accordingly. The board shall recover all overpayments that are made.

B. A member or the beneficiary of a member who is paid more than the amount owed because that member or beneficiary provided fraudulent information on the application for retirement shall be liable for the repayment of that amount to the fund, interest on that amount at the rate set by the board and costs of collection, including attorney fees. Recovery of overpayments shall extend back to the date of the first payment that was made based on fraudulent information.

C. The board shall not be estopped from acting in accordance with applicable statutes because of statements of fact or law made by the board or its employees.

**History:** Laws 1998, ch. 38, § 2; 2023, ch. 156, § 20.

#### **22-11-54. Disclosure of third-party marketers; penalty.**

A. The board shall not make any investment, other than investments in publicly traded equities or publicly traded fixed-income securities, unless the recipient of the investment discloses the identity of any third-party marketer who rendered services on behalf of the recipient in obtaining the investment and also discloses the amount of any fee, commission or retainer paid to the third-party marketer for the services rendered.

B. Information disclosed pursuant to Subsection A of this section shall be included in the quarterly performance reports of the board.

C. Any person who knowingly withholds information required by Subsection A of this section is guilty of a fourth degree felony and shall be punished by a fine of not more than twenty thousand dollars (\$20,000) or by imprisonment for a definite term not to exceed eighteen months or both.

D. As used in this section, "third-party marketer" means a person who, on behalf of an investment fund manager or other person seeking an investment from the fund and under a written or implied agreement, receives a fee, commission or retainer for such services from the person seeking an investment from the fund.

**History:** Laws 2009, ch. 152, § 3.

#### **22-11-55. Disclosure of member or retired member information; penalty.**

A. Other than names of members and local administrative units by which a member was employed; dates of employment, retirement and reported death; service credit; reported salary; retirement and disability benefits; and amounts of contributions made by members and local administrative units, neither the board nor its employees or contractors shall allow public inspection or disclosure of any information regarding a member or retired member to anyone except:

(1) the member, retired member or the spouse or authorized representative of the member or retired member;

(2) other persons specifically identified in a prior release and consent, in the form prescribed by the board, executed by the member, retired member, spouse or authorized representative; or

(3) the attorney general, appropriate law enforcement agencies, the state auditor or the public education department or higher education department, if the information provided relates to contributions, payments or management of money received by, or the financial controls or procedures of, a local administrative unit.

B. No person receiving information disclosed by a violation of Subsection A of this section shall disclose that information to any other person unless authorized by an applicable confidentiality agreement, board rule or state law.

C. Whoever knowingly violates a provision of Subsection A or B of this section is guilty of a petty misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978.

**History:** Laws 2009, ch. 240, § 1; 2009, ch. 248, § 1; 2010, ch. 60, § 1.

## **ARTICLE 12**

### **Compulsory School Attendance (Repealed.)**

#### **22-12-1. Repealed.**

**History:** 1953 Comp., § 77-10-1, enacted by Laws 1967, ch. 16, § 169; 2003, ch. 153, § 55; repealed by Laws 2019, ch. 223, § 17.

#### **22-12-2. Repealed.**

**History:** 1953 Comp., § 77-10-2, enacted by Laws 1967, ch. 16, § 170; 1967, ch. 133, § 1; 1972, ch. 17, § 2; 1974, ch. 7, § 2; 1975, ch. 332, § 3; 1975, ch. 338, § 2; 1981, ch. 7, § 1; 1985, ch. 21, § 4; 1997, ch. 194, § 1; 2001, ch. 183, § 1; 2004, ch. 28, § 2; 2007, ch. 307, § 6; 2007, ch. 308, § 6; 2015, ch. 122, § 13; repealed by Laws 2019, ch. 223, § 17.

#### **22-12-2.1. Repealed.**

**History:** 1978 Comp., § 22-12-2.1, enacted by Laws 1986, ch. 33, § 27; 1987, ch. 305, § 1; 1988, ch. 20, § 1; 1993, ch. 27, § 1; 1997, ch. 239, § 1; 1997, ch. 245, § 1; repealed by Laws 2019, ch. 223, § 17.

#### **22-12-3. Repealed.**

**History:** 1953 Comp., § 77-10-2.1, enacted by Laws 1971, ch. 238, § 1; 1997, ch. 258, § 1; 2003, ch. 153, § 56; 2006, ch. 94, § 42; repealed by Laws 2019, ch. 223, § 17.

#### **22-12-3.1. Repealed.**

**History:** Laws 2013, ch. 198, § 1; repealed by Laws 2019, ch. 223, § 17.

#### **22-12-4. Repealed.**

**History:** 1953 Comp., § 77-10-3, enacted by Laws 1967, ch. 16, § 171; reenacted by Laws 1978, ch. 211, § 10; repealed by Laws 2019, ch. 223, § 17.

#### **22-12-5. Repealed.**

**History:** 1953 Comp., § 77-10-4, enacted by Laws 1967, ch. 16, § 172; 1979, ch. 55, § 1; 1990 (1st S.S.), ch. 9, § 11; repealed by Laws 2019, ch. 223, § 17.

#### **22-12-6. Repealed.**

**History:** 1953 Comp., § 77-10-6, enacted by Laws 1967, ch. 16, § 174; repealed by Laws 2007, ch. 307, § 11 and Laws 2007, ch. 308, § 11.

#### **22-12-7. Repealed.**

**History:** 1953 Comp., § 77-10-7, enacted by Laws 1967, ch. 16, § 175; 1975, ch. 332, § 4; 1981, ch. 7, § 2; 1986, ch. 33, § 28; 1987, ch. 222, § 1; 2004, ch. 28, § 3; 2006, ch. 94, § 43; 2009, ch. 193, § 2; repealed by Laws 2019, ch. 223, § 17.

#### **22-12-8. Repealed.**

**History:** 1978 Comp., § 22-12-8, enacted by Laws 1985, ch. 104, § 1; 2004, ch. 28, § 4; 2006, ch. 94, § 44; 2009, ch. 193, § 3; repealed by Laws 2019, ch. 223, § 17.

#### **22-12-9. Repealed.**

**History:** Laws 2004, ch. 28, § 1; 2005, ch. 260, § 2; 2006, ch. 94, § 45; 2009, ch. 193, § 4; 2011, ch. 146, § 1; repealed by Laws 2019, ch. 223, § 17.

#### **22-12-10. Repealed.**

**History:** Laws 2017, ch. 53, § 1 and Laws 2017, ch. 85, § 1; 2019, ch. 218, § 1; repealed by Laws 2019, ch. 223, § 17.

## **ARTICLE 12A**

### **Attendance for Success**

#### **22-12A-1. Short title.**

Sections 1 through 14 [22-12A-1 to 22-12A-14 NMSA 1978] of this act may be cited as the "Attendance for Success Act".

**History:** Laws 2019, ch. 223, § 1.

## **22-12A-2. Definitions.**

As used in the Attendance for Success Act:

A. "absent" means not in attendance for a class or school day for any reason, whether excused or not; provided that "absent" does not apply to participation in interscholastic extracurricular activities;

B. "attendance improvement plan" means a tiered data-informed system for public schools and school districts to identify students who are chronically or excessively absent and to aid public schools in developing whole-school prevention strategies and targeted interventions. Each of the tiers is defined as follows:

(1) "whole school prevention" means universal, whole-school prevention strategies for all students, including students who have missed less than five percent of classes or school days for any reason;

(2) "individualized prevention" means targeted prevention strategies for individual students who are missing five percent or more but less than ten percent of classes or school days for any reason;

(3) "early intervention" means interventions for students who are missing ten percent or more but less than twenty percent of classes or school days for any reason; and

(4) "intensive support" means interventions for students who are missing twenty percent or more of classes or school days for any reason;

C. "attendance team" means a group of school-based administrators, teachers, staff, other school personnel and community members who collaborate to implement an attendance improvement plan;

D. "chronic absence rate" means the percentage of students, in the aggregate and disaggregated by the subgroups required for reporting pursuant to the federal Every Student Succeeds Act, in a public school and a school district who have been enrolled for at least ten days and who have missed ten percent or more of school days since the beginning of the school year;

E. "chronically absent" or "chronic absenteeism" means that a student has been absent for ten percent or more of classes or school days for any reason, whether excused or not, when enrolled for more than ten days;

F. "excessively absent" or "excessive absenteeism" means a student who is identified as needing intensive support and has not responded to intervention efforts implemented by the public school;

G. "excused absence" means absence from a class or school day for a death in the family, medical absence, religious instruction or tribal obligations or any other allowable excuse pursuant to the policies of the local school board;

H. "interscholastic extracurricular activities" means those activities sponsored by a public school or an organization whose principal purpose is the regulation, direction, administration and supervision of interscholastic extracurricular activities in public schools;

I. "local school board" includes the governing body of a charter school;

J. "medical absence" or "medically absent" means that a student is not in attendance for a class or a school day for a parent- or doctor-authorized medical reason or the student is a pregnant or parenting student;

K. "school day" means a portion of the school day that is at least one-half of a student's approved program;

L. "school district" includes a charter school;

M. "school principal" includes the head administrator of a charter school; and

N. "unexcused absence" means an absence from a class or school day for which the student does not have an allowable excuse pursuant to the Attendance for Success Act or policies of the local school board.

**History:** Laws 2019, ch. 223, § 2.

### **22-12A-3. Right to education.**

A school-age person in the state shall have a right to a free public education as follows:

A. except for a school-age person who is detained in a state or local detention center or enrolled or residing in a state institution, other than a school-age person provided for in Subsection C of this section, a school-age person has a right to attend public school within the school district in which the school-age person resides;

B. except as provided in Subsection C of this section, a state or local detention center or state institution in which a school-age person is detained, enrolled or residing shall be responsible for providing educational services for the school-age person; and

C. a school-age person who is a client as defined in Section 43-1-3 NMSA 1978 in a state institution under the authority of the secretary of human services shall have a right to attend public school in the school district in which the institution in which the school-age person is a client is located if the school-age person has been recommended for placement in a public school:

(1) by the educational appraisal and review committee of the school district in which the institution is located; or

(2) as a result of the appeal process as provided in the special education rules of the department.

**History:** Laws 2019, ch. 223, § 3.

#### **22-12A-4. School attendance; responsibility; private school attendance policies.**

A. Except as otherwise provided in the Public School Code, a school-age person shall attend public school, private school, home school or a state institution until the school-age person is at least eighteen years of age unless that school-age person has graduated from high school, received a high school equivalency credential or withdrawn from school on a hardship waiver. A parent may give written, signed permission for the school-age person to leave school between the ages of sixteen and eighteen in case of hardship approved by the local superintendent or private school.

B. A school-age person subject to the provisions of the Attendance for Success Act shall attend school for at least the length of time of the school year that is established in that school-age person's school district, charter school or private school. The school district or private school shall not excuse a school-age person from attending school except as provided in that act.

C. The parent of a school-age person subject to the provisions of the Attendance for Success Act is responsible for the school attendance of that school-age person.

D. Local school boards and private schools shall enforce the provisions of the Attendance for Success Act for students enrolled in their respective schools.

E. A private school in this state shall have an attendance policy that as closely as practicable follows the law for public schools. A school-age person attending a private school and the school-age person's parent shall be given a copy of the private school's attendance policy each year.

**History:** Laws 2019, ch. 223, § 4.

#### **22-12A-5. Public school attendance.**



A. Local school boards may admit as students school-age persons who do not live within the school district to the public schools within the school district when there are sufficient school accommodations to provide for them.

B. Local school boards may allow students to transfer to a public school outside the student's attendance zone but within the school district when there are sufficient school accommodations to provide for them.

C. Local school boards shall charge a tuition fee for the right to attend public school within the school district to those school-age persons who do not live within the state. The tuition fee shall not exceed the amount generated by the public school fund for a student similarly situated within the school district for the current school year.

D. When the parent of a student not living in the state pays an ad valorem property tax for school purposes within a school district, the amount of the tuition payable for the school year shall be reduced by the district average ad valorem tax per student as determined by the ad valorem tax credit used in calculating the state equalization guarantee distribution.

**History:** Laws 2019, ch. 223, § 5.

## **22-12A-6. Public school attendance policies; reporting.**

A. A public school shall maintain an attendance policy that:

(1) establishes an early warning system that includes evidence-based metrics to identify students at risk of chronic absenteeism or excessive absenteeism;

(2) provides for early identification of chronically absent and excessively absent students;

(3) employs an attendance improvement plan that focuses on:

(a) keeping students in an educational setting;

(b) prohibiting out-of-school suspension or expulsion as the punishment for absences;

(c) assisting a student's family to remove barriers to the student's regular school attendance or attendance in another educational setting; and

(d) providing additional educational opportunities to students who are struggling with attendance;

(4) limits the ability of a student to withdraw to only after all intervention efforts by the public school or the children, youth and families department to keep the student in an educational setting have been exhausted;

(5) requires that accurate class attendance be taken for every instructional class and school day in a public school or school program;

(6) provides that a public school shall differentiate between different types of absences;

(7) requires a public school to document the following for each chronically or excessively absent student:

(a) attempts by the public school to notify a parent that the student was absent from class or the school day;

(b) attempts to improve attendance by talking to a student or parent to identify barriers to school attendance, identify solutions to improve the student's attendance behavior and discuss necessary interventions for the student or the student's family; and

(c) intervention strategies implemented to support keeping the student in an educational setting, including additional educational opportunities offered to the student;

(8) requires a student or the parent of a student who intends to claim excused absence because of medical condition, pregnancy or parenting to communicate the student's status to the appropriate school personnel and to provide required documentation; and

(9) encourages and supports compliant data sharing, pursuant to the federal Family Educational Rights and Privacy Act of 1974, between a public school and community-based organizations that provide services to students for the purpose of providing more personalized interventions and specialized supports as part of the public school's attendance improvement plan.

B. Local school boards shall review and approve their public school attendance policies.

C. School districts shall report absences, chronic absences and excessive absences data to the department at each reporting date and the end of the school year and shall document intervention efforts made to keep students in an educational setting. The department shall compile school district reports as provided in Section 13 [22-12A-13 NMSA 1978] of the Attendance for Success Act and require school districts to certify that the information is being reported consistently and correctly. The department shall share information from state-chartered charter schools with the commission.

D. A public school shall provide a copy of the public school's attendance policy to all parents of students in that school and publish the policy on the public school's website. The attendance policy shall include:

- (1) the rights and obligations of parents and students pursuant to the Attendance for Success Act;
- (2) the prevention strategies that will be implemented to ensure that students attend classes; and
- (3) details about consequences of failing to adhere to the attendance policy.

E. A public school shall provide a parent, within five days of the parent's written request, with access to the attendance data of that parent's child, including information about any intervention strategies that have been employed to help the student improve the student's attendance.

F. Upon request, school districts shall provide the chronic absence rate from the most current reporting date or end-of-year report, in the aggregate and disaggregated by subgroups, for all its public schools.

**History:** Laws 2019, ch. 223, § 6.

## **22-12A-7. Enforcement of Attendance for Success Act; district responsibilities; differentiation; district plan; additional support.**

A. School districts shall differentiate public schools based on their chronic absence rates into no fewer than four categories.

B. School districts shall differentiate student subgroups based on their chronic absence rates into no fewer than four categories.

C. Using the differentiation scheme pursuant to Subsections A and B of this section, a school district shall develop attendance improvement plans that include the following elements:

- (1) specific school district supports and resources available to public schools at each level to further the implementation of their attendance improvement plans;
- (2) attendance improvement targets for public schools or subpopulations with chronic absence rates of ten percent or greater, developed in collaboration with each public school; and
- (3) an attendance improvement target for school districts with chronic absence rates of ten percent or greater.

D. Each school district shall report its attendance improvement plan to the department no later than forty-five days after the beginning of the school year. The department may allow a school district to report its attendance improvement plan as part of the educational plan for student success.

E. At the end of each school year, each school district shall report to the local school board and to the public on the school district's website, the progress made on its attendance improvement plan, to include:

- (1) a description of the supports and resources provided to public schools at each tier of the attendance improvement plan;
- (2) the extent to which public schools with chronic absence rates greater than ten percent achieved their attendance improvement targets;
- (3) the extent to which the school district achieved its attendance improvement targets;
- (4) barriers and challenges to reducing chronic absence rates, as reported by the public school and school district personnel;
- (5) effective school-based practices, as evidenced by decreased chronic absence rates; and
- (6) recommendations for improvement during the next school year at both the public school and school district level.

F. Attendance teams may be formed in whole or in part from preexisting groups or teams within a public school or may be formed for the explicit purpose of improving school attendance. School districts shall reserve time for school personnel to collaborate as an attendance team.

G. School districts shall provide support and guidance to attendance teams on transportation and school scheduling options when these are identified as barriers to school attendance.

**History:** Laws 2019, ch. 223, § 7.

## **22-12A-8. Enforcement of Attendance for Success Act; attendance improvement plan; procedures.**

A. A public school shall initiate the enforcement of the provisions of the Attendance for Success Act for its enrolled students. The enforcement policies of a public school shall focus on prevention and intervention.

B. Beginning in the 2020-2021 school year, a public school with five percent or greater of students with a chronic absence rate during the prior school year, or with five percent or greater of one or more subgroups of students with a chronic absence rate during the prior school year, shall develop an attendance improvement plan to be submitted to the department as part of the public school's educational plan for student success.

C. A public school, regardless of its chronic absence rate, shall develop and implement a whole-school absence prevention strategy to be reported to the department as part of the public school's educational plan for student success.

D. An attendance improvement plan shall include:

(1) attendance data for each of the preceding two school years and the current school year, including:

- (a) the public school's overall absence rate;
- (b) chronic absence rates disaggregated by student subpopulation;
- (c) chronic absence rates disaggregated by grade level; and
- (d) student attendance for every day of the school year;

(2) school-wide identification of potential root causes of chronic and excessive absenteeism through one or more of the following:

- (a) national or local research;
- (b) analysis of supportive factors and barriers;
- (c) student surveys or focus groups;
- (d) youth participatory research; or
- (e) other appropriate school-based research methods;

(3) identification of strategies for each tier of the attendance improvement plan;

(4) identification of performance measures for each strategy; and

(5) a data-collection plan for performance measures.

E. A public school shall provide interventions to students who are absent or chronically absent, which may include:

- (1) assessing student and family needs and matching those needs with appropriate public or private providers, including civic and corporate sponsors;
- (2) making referrals to health care and social service providers;
- (3) collaborating and coordinating with health and social service agencies and organizations through school-based and off-site delivery systems;
- (4) recruiting service providers and business, community and civic organizations to provide needed services and goods that are not otherwise available to a student or the student's family;
- (5) establishing partnerships between the public school and community organizations, such as civic, business and professional groups and organizations and recreational, social and out-of-school programs;
- (6) identifying and coordinating age-appropriate resources for students in need of:
  - (a) counseling, training and placement for employment;
  - (b) drug and alcohol abuse counseling;
  - (c) family crisis counseling; and
  - (d) mental health counseling;
- (7) promoting family support and parent education programs; and
- (8) seeking out other services or goods that a student or the student's family needs to assist the student to stay in school and succeed.

F. Beginning on the first day of school, a classroom teacher or that teacher's adult designee shall be responsible for taking accurate attendance for every class and reporting absences to the attendance team.

**History:** Laws 2019, ch. 223, § 8.

## **22-12A-9. Medical appointments; illness; special situations; make-up work.**

A. A student may be excused for parent- or doctor-authorized medical reasons. A public school shall provide time for the student to make up the school work missed during the absence.

B. A school district shall maintain an attendance policy that:

(1) provides at least ten days of medical absences during the school year for a student who provides documentation of the birth of the student's child, and the public school shall provide time for the student to make up the school work missed during the absence; and

(2) provides four days of excused absences for a student who provides appropriate documentation of pregnancy or that the student is the parent of a child under the age of thirteen needing care, and the public school shall provide time for the student to make up the school work missed during the absence.

C. A school district that has an alternative public school for, among others, pregnant and parenting students and that allows for off-site attendance through online education shall not count students as absent as long as the students are online with the public school or other appropriate virtual course and complete their class assignments.

D. A student may, subject to the approval of the school principal, be absent from school to participate in religious instruction for not more than one class period per school day with the written consent of the student's parent at a time that is not in conflict with the academic program of the school. The public school shall provide time for the student to make up the school work missed during the absence. The school district or the public school shall not assume responsibility for the religious instruction of any student or permit religious instruction to be conducted on school property.

E. A public school student, with the written consent of the student's parent and subject to the approval of the school principal, may be absent from school to participate in tribal obligations. The public school shall provide time for the student to make up the school work missed during the absence.

**History:** Laws 2019, ch. 223, § 9.

## **22-12A-10. Interscholastic extracurricular activities; student participation.**

A. A public school student shall have at least a 2.0 grade point average on a 4.0 scale, or its equivalent, either cumulatively or for the grading period immediately preceding participation, to be eligible to participate in any interscholastic extracurricular activity. For purposes of this section, "grading period" is a period of time not less than six weeks. The provisions of this subsection shall not apply to students receiving C or D level special education services.

B. A student shall not be absent from school for interscholastic extracurricular activities in excess of fifteen days per semester, and no class shall be missed in excess of fifteen times per semester for interscholastic extracurricular activities.

C. The secretary may issue a waiver relating to the number of absences for participation in any state or national competition that is not an interscholastic

extracurricular activity. The secretary shall develop a procedure for petitioning cumulative provision eligibility cases, similar to other eligibility situations.

D. Student standards for participation in interscholastic extracurricular activities shall be applied beginning with a student's academic record in ninth grade.

**History:** 2019, ch. 223, § 10.

## **22-12A-11. Progressive interventions for absent, chronically absent and excessively absent students.**

A. A public school shall provide interventions for students who are missing school, depending on the number of absences. The process for notification and interventions is:

(1) for a student who has been identified as in need of individualized prevention, the attendance team shall:

(a) for an elementary student, talk to the parent and inform the parent of the student's attendance history, the impact of student absences on student academic outcomes, the interventions or services available to the student or family and the consequences of further absences, which may include referral to the children, youth and families department for excessive absenteeism; and

(b) for a middle or high school student, talk to the parent and the student about the student's attendance history and the impact of student absences on student academic outcomes, interventions or services available to the student or family and the consequences of further absences, which may include referral to the children, youth and families department for excessive absenteeism;

(2) for a student who has been identified as in need of early intervention, the attendance team shall notify the parent in writing by mail or personal service on the parent of the student's absenteeism. The notice shall include a date, time and place for the parent to meet with the public school to develop intervention strategies that focus on keeping the student in an educational setting. The attendance team shall be convened to establish a specific intervention plan for the student that includes establishing weekly progress monitoring and a contract for attendance; and

(3) for a student who has been identified as in need of intensive support, the attendance team shall:

(a) give written notice to the parent, including a date, time and place for the parent to meet with the school principal and the attendance team;

(b) establish nonpunitive consequences at the school level;



(c) identify appropriate specialized supports that may be needed to help the student address the underlying causes of excessive absenteeism; and

(d) apprise the student and the parent of the consequences of further absences.

B. The school principal shall consult with a student's teacher and initiate meetings with the teacher, the student and the parent if the alleged cause of absence from class is teacher-student incompatibility.

**History:** 2019, ch. 223, § 11.

## **22-12A-12. Excessive absenteeism; enforcement.**

A. Each local school board and each governing body of a charter school or private school shall initiate the enforcement of the provisions of the Attendance for Success Act for excessively absent students.

B. If unexcused absences continue after written notice of excessive absenteeism as provided in Section 11 [22-12A-11 NMSA 1978] of the Attendance for Success Act, the local school board or governing body of a charter school or private school, after consultation with the local superintendent or head administrator of a charter school or private school, shall report the excessively absent student to the probation services office of the judicial district in which the student resides for an investigation as to whether the student should be considered to be a neglected child or a child in a family in need of family services because of excessive absenteeism and, thus, subject to the provisions of the Children's Code. The record of the public school's interventions and the student's and parent's responses to the interventions shall be provided to the juvenile probation services office. The local superintendent or head administrator of a charter school or private school shall provide the documentation to the juvenile probation services office within ten business days of the student being identified as excessively absent.

C. If the juvenile probation services office determines that the student is a child in a family in need of family services, a caseworker from the child or family in need of family services program shall meet with the family at the public school in which the student is enrolled to determine if there are other intervention services that may be provided. The meeting shall involve the school principal or other school personnel and, unless the parent objects in writing, appropriate community partners that provide services to children and families. The children, youth and families department shall determine if additional interventions, including monitoring, will positively affect the student's behavior.

**History:** 2019, ch. 223, § 12.

## **22-12A-13. Reporting requirements.**

A. For each reporting date and at the end of the year, each school district shall report:

(1) the total number of days missed for excused and unexcused absences for each student in each public school, the total number of days each student was enrolled and in which tier each student with absences fell during the reporting period, along with the student's demographics; and

(2) the number of students at each public school who were referred to the children, youth and families department because of excessive absences, in the aggregate and disaggregated by subgroups.

B. The department shall compile a report by public school and school district that includes:

(1) the total number and percent of students who were in each tier of chronic absenteeism or were excessively absent at each public school and school district in the aggregate for each public school and school district and disaggregated by subgroups;

(2) the average number of excused and unexcused absences per student for all students and subgroups, not including interscholastic extracurricular activities; and

(3) a calculated chronic absenteeism rate for the school district for all students and for each subgroup.

**History:** 2019, ch. 223, § 13.

## **22-12A-14. Timely graduation and support for students who experience disruption in the student's education.**

A. For purposes of this section, "a student who has experienced a disruption in the student's education" means a student who experiences one or more changes in public school or school district enrollment during a single school year as the result of:

(1) homelessness as defined in the federal McKinney-Vento Homeless Assistance Act and as determined by the public school or school district;

(2) adjudication:

(a) as an abused or neglected child as determined by the children, youth and families department pursuant to the Abuse and Neglect Act [Chapter 32A, Article 4 NMSA 1978];

(b) as part of a family in need of court-ordered services voluntary placement pursuant to the Voluntary Placement and Family Services Act [Chapter 32A, Article 4 NMSA 1978]; or

(c) as a delinquent if the parent wishes to disclose the adjudication of delinquency; or

(3) placement in a mental health treatment facility or habilitation program for developmental disabilities pursuant to the Children's Mental Health and Developmental Disabilities Act [32A-6A-1 to 32A-6A-30 NMSA 1978] or placement in treatment foster care.

B. When a student who has experienced a disruption in the student's education transfers to a new public school or school district, the receiving public school or school district shall communicate with the sending public school or school district within two days of the student's enrollment. The sending public school or school district shall provide the receiving public school or school district with any requested records within two days of having received the receiving public school's or school district's communication.

C. A student who has experienced a disruption in the student's education because of transferring to a new public school as the result of circumstances set forth in this section shall have:

(1) priority placement in classes that meet state graduation requirements; and

(2) timely placement in elective classes that are comparable to those in which the student was enrolled at the student's previous public school or schools as soon as the public school or school district receives verification from the student's records.

D. For a student who has experienced a disruption in the student's education at any time during the student's high school enrollment, a school district and public schools shall ensure:

(1) acceptance of the student's state graduation requirements for a diploma of excellence pursuant to the Public School Code;

(2) equal access to participation in sports and other extracurricular activities, career and technical programs or other special programs for which the student qualifies;

(3) timely assistance and advice from counselors to improve the student's college or career readiness; and

(4) that the student receives all special education services to which the student is entitled.

E. A student who has experienced a disruption in the student's education and has transferred between public schools in different school districts or between public schools within the same school district shall receive credit for any work completed prior to the transfer, regardless of whether the transfer occurred at the end of a grading

period. The department shall promulgate and adopt a rule to determine how credit shall be awarded for courses that are partially completed, and school districts shall follow the department rule.

**History:** Laws 2019, ch. 223, § 14; 2020, ch. 50, § 1; 2023, ch. 90, § 1.

## **ARTICLE 13**

### **Courses of Instruction and School Programs**

#### **22-13-1. Subject areas; minimum instructional areas required; accreditation.**

A. The department shall require public schools to address department-approved academic content and performance standards when instructing in specific department-required subject areas as provided in this section. A public school or school district failing to meet these minimum requirements shall not be accredited by the department.

B. All kindergarten through third grade classes shall provide daily instruction in reading and language arts skills, including phonemic awareness, phonics and comprehension, and in mathematics. Students in kindergarten and first grades shall be screened and monitored for progress in reading and language arts skills, and students in second grade shall take diagnostic tests on reading and language arts skills.

C. All first, second and third grade classes shall provide instruction in art, music and a language other than English, and instruction that meets content and performance standards shall be provided in science, social studies, physical education and health education.

D. In fourth through eighth grades, instruction that meets academic content and performance standards shall be provided in the following subject areas:

- (1) reading and language arts skills, with an emphasis on writing and editing for at least one year and an emphasis on grammar and writing for at least one year;
- (2) mathematics;
- (3) language other than English;
- (4) communication skills;
- (5) science;
- (6) art;
- (7) music;

- (8) social studies;
- (9) New Mexico history;
- (10) United States history;
- (11) geography;
- (12) physical education; and
- (13) health education.

E. Beginning with the 2008-2009 school year, in eighth grade, algebra 1 shall be offered in regular classroom settings or through online courses or agreements with high schools.

F. In fourth through eighth grades, school districts shall offer electives that contribute to academic growth and skill development and provide career and technical education. In sixth through eighth grades, media literacy may be offered as an elective.

G. In ninth through twelfth grades, instruction that meets academic content and performance standards shall be provided in health education.

H. All health education courses shall include:

(1) age-appropriate sexual abuse and assault awareness and prevention training that meets department standards developed in consultation with the federal centers for disease control and prevention that are based on evidence-based methods that have proven to be effective; 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 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.

**History:** 1978 Comp., § 22-13-1, enacted by Laws 2003, ch. 153, § 57; 2005, ch. 315, § 9; 2007, ch. 307, § 7; 2007, ch. 308, § 7; 2009, ch. 267, § 1; 2014, ch. 9, § 2; 2016, ch. 17, § 1; 2016, ch. 18, § 1.

### **22-13-1.1. Graduation requirements; next-step plans.**

A. The purpose of the New Mexico diploma of excellence is to demonstrate that a student is ready for success in post-secondary education, gainful employment and citizenship and is equipped with the skills to be a lifelong learner. The purpose of the state's minimum graduation requirements is to establish rigorous expectations to support that success.

B. School districts and charter schools are encouraged to make available courses and programs of study that allow students to pursue a range of post-secondary opportunities and workforce opportunities and gain knowledge in entrepreneurship principles, as determined by the student's next-step plan and the school district's or charter school's graduate profile.

C. 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 be aligned to the graduate profile of the student's school district or charter school, shall be completed on a department-approved template, 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.

D. Each student must complete a final next-step plan during the senior year and prior to graduation. The plan shall be aligned to the graduate profile of the student's school district or charter school, shall be completed on a department-approved template, 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.

E. An individualized education plan that meets the requirements of Subsections C and D 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.

F. A local school board or governing body of a charter school shall ensure that each high school student develops 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, international baccalaureate 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.

G. The secretary shall:

- (1) establish specific accountability standards for administrators, counselors, teachers and other appropriate school district or charter school employees 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.

H. 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.

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

J. The department shall establish a procedure for students to be awarded credit through completion of specified career technical education 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.

K. 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; provided that department-approved work-based training or career and technical education courses that meet state English academic content performance standards shall qualify as one of the four required English units;

(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 or department-approved work-based training or career and technical education course that meets state mathematics academic content and performance standards shall qualify as one of the four required mathematics units;

(3) three units in science, two of which shall have a laboratory component; provided that department-approved work-based training or career and technical education courses that meet state science academic content and performance standards shall qualify as one of the three required science units;

(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 or charter school, 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.

L. For students entering the eighth grade in the 2012-2013 school year, one-half unit in health education is required prior to graduation. Health education may be required in either middle school or high school, as determined by the school district or charter school. Health education courses shall include:

(1) age-appropriate sexual abuse and assault awareness and prevention training that meets department standards developed in consultation with the federal centers for disease control and prevention that are based on evidence-based methods that have proven to be effective; 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 or charter school that the school district or charter school determines to be eligible to offer instruction 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.

M. 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 K of this section may comprise a computer science course 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 K of this section may comprise a computer science course if the course is not used to satisfy any part of the requirement set forth in Paragraph (2) of that subsection.

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

O. Beginning with students entering the ninth grade in the 2025-2026 school year, successful completion of a minimum of twenty-four units aligned to the state academic content and performance standards shall be required for graduation and the award of a diploma of excellence. These units shall be as follows:

(1) four units in English, which shall include a three-unit sequence; provided that department-approved work-based learning, career technical education or English language development courses that meet state English or English language development academic content and performance standards may qualify as required English units;

(2) four units in mathematics, two of which shall include a sequence of algebra 1 and geometry or another integrated pathway of mathematics equivalent to algebra 1 and geometry; provided that financial literacy courses or department-approved work-based learning or career technical education courses that meet state mathematics academic content and performance standards may qualify as required

mathematics units; and provided further that algebra 2 shall be offered as a mathematics course;

(3) three units in science, two of which shall have a laboratory component; provided that department-approved work-based learning or career technical education courses that meet state science academic content and performance standards may qualify as required science units;

(4) four units in social science, which shall include United States history and geography, which course content contains New Mexico history; government and economics and personal financial literacy, which course content contains civics; and world history and geography;

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

(6) one-half unit in health education; provided that this one-half unit may be earned in either middle or high school;

(7) five and one-half elective units that meet department academic content and performance standards and that shall include a two-unit pathway concentration of the student's choice in a language other than English, including American sign language; fine arts; health; military career preparation; a career technical education program; or community or service learning, a capstone course or work-based learning; provided that financial literacy, computer science, student service learning, career technical education courses and a sequence of languages other than English shall be offered as electives; and provided further that media literacy and pre-apprenticeship programs may be offered as electives; and

(8) two units set by each local school board or governing body of a charter school that meet department academic content and performance standards.

P. If a high school student who has taken one or both units provided in Paragraph (8) of Subsection O of this section moves from one school district or charter school to another, the receiving school district or charter school shall accept those earned units toward the student's graduation.

Q. For students entering the ninth grade in the 2025-2026 school year, one-half unit of health education is required prior to graduation. Health education courses shall include:

(1) age-appropriate sexual abuse and assault awareness and prevention training that meets department standards developed in consultation with the federal

centers for disease control and prevention that are based on evidence-based methods that have proven to be effective; 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 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.

R. Nothing in the minimum graduation requirements specified in Subsection O of this section affects:

(1) a school district's or charter school's authority to require more units for graduation than provided in this section; or

(2) a student's opportunity to take advanced placement or honors courses, international baccalaureate courses or distance learning courses offered by the public school or dual credit courses offered in cooperation with institutions of higher education.

S. Subject to the department's academic content and performance standards and other provisions of this section, every school district and charter school shall develop a graduate profile:

(1) that is specific to each community;

(2) that articulates the core academic competencies and subjects that are key to graduates' post-high-school success; and

(3) to which required units are aligned.

T. Units earned in health, algebra 1 and geometry prior to enrolling in high school shall satisfy unit requirements required to earn a New Mexico diploma of excellence.

U. The department shall adopt and promulgate rules to implement graduation requirements by no later than December 31, 2024. The rules shall include revisions to expand course offerings so that students have access to a range of rigorous academic

options and career technical education courses and to establish guidance for the development of graduate profiles.

V. As used in this section:

(1) "capstone course" means a multifaceted academic and intellectual experience that may take a wide variety of forms and that culminates in a final product, performance or presentation explaining how the final product, performance or presentation explicates the chosen course to an evaluation panel convened by the public school to evaluate the quality of course and the final product, performance or presentation;

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

(3) "career 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;

(4) "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;

(5) "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;

(6) "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;

(7) "graduate profile" means a document that a school district or charter school uses to specify the cognitive, personal and interpersonal competencies that students should have when they graduate;

(8) "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

(9) "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, international baccalaureate or honors courses;
- (b) dual-credit courses offered in cooperation with an institution of higher education;
- (c) distance learning courses;
- (d) career technical education or work-based learning courses; and
- (e) pre-apprenticeship programs.

W. The secretary may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code [Chapter 22 NMSA 1978].

**History:** 1978 Comp., § 22-2-8.4, enacted by Laws 1986, ch. 33, § 5; 1987, ch. 320, § 2; 1988, ch. 105, § 2; 1989, ch. 220, § 1; 1990 (1st S.S.), ch. 3, § 3; 1993, ch. 68, § 3; 1993, ch. 92, § 1; 1993, ch. 226, § 7; 1993, ch. 230, § 1; 1995, ch. 174, § 1; 1995, ch. 180, § 1; 1997, ch. 234, § 2; 2001, ch. 257, § 1; 2001, ch. 276, § 1; recompiled and amended as § 22-13-1.1 by Laws 2003, ch. 153, § 58; 2004, ch. 29, § 1; 2005, ch. 314, § 1; 2005, ch. 315, § 10; 2007, ch. 305, § 1; 2007, ch. 307, § 8; 2007, ch. 308, § 8; 2008, ch. 21, § 2; 2009, ch. 256, § 1; 2009, ch. 267, § 2; 2009, ch. 268, § 1; 2010, ch. 25, § 1; 2010, ch. 110, § 1; 2014, ch. 9, § 3; 2014, ch. 70, § 1; 2014, ch. 71, § 1; 2015, ch. 60, § 1; 2016, ch. 17, § 2; 2016, ch. 18, § 2; 2017, ch. 144, § 1; 2019, ch. 148, § 1; 2024, ch. 2, § 1.

## **22-13-1.2. Repealed.**

**History:** 1978 Comp., § 22-13-1.2, enacted by Laws 2003, ch. 153, § 59; repealed by Laws 2024, ch. 2, § 2.

## **22-13-1.3. Reading initiative; design.**

A. The department shall design and implement a statewide reading initiative to improve reading proficiency in the state. The design of the reading initiative shall be based upon quality, scientifically based reading research that has been shown to improve reading proficiency and shall include the following:

- (1) consistent assessment and evaluation of student reading levels;
- (2) appropriate professional staff development to assist licensed school employees in the instruction of reading;

(3) extra time in the student's day or year for implementation of reading programs;

(4) rewards provided to teachers and other applicable licensed school employees in public schools that improve student reading proficiency; and

(5) criteria for public schools to establish an individualized reading plan for students who fail to meet grade level reading proficiency standards.

B. The department shall use national experts to work with the department to develop an immediate reading initiative and a long-term plan for sustained reading improvement.

C. The department shall involve school district personnel, especially licensed elementary reading specialists, parents and other interested persons in the design of the reading initiative.

**History:** Laws 2000 (2nd S.S.), ch. 14, § 1; 2001, ch. 289, § 1; 1978 Comp., § 22-2-6.11, recompiled and amended as § 22-13-1.3 by Laws 2003, ch. 153, § 60.

#### **22-13-1.4. Honors or similar classes in mathematics and language arts; dual credit courses; languages other than English.**

A. Beginning with the 2006-2007 school year, each school district shall offer at least one honors or similar academically rigorous class each in mathematics and language arts in each high school.

B. Beginning in the 2008-2009 school year, each school district shall also offer a program of courses for dual-credit, in cooperation with an institution of higher education, and a program of distance learning courses.

C. Beginning with the 2009-2010 school year, each school district shall offer at least two years of a language other than English in each high school.

**History:** Laws 2005, ch. 78, § 1; 2007, ch. 307, § 9; 2007, ch. 308, § 9.

#### **22-13-1.5. Core curriculum framework; purpose; curriculum.**

A. School districts and charter schools may create core curriculum frameworks to provide high quality curricula in kindergarten through grade six to prepare students for pre-advanced placement and advanced placement coursework in grades seven through twelve.

B. The framework shall include:

(1) a curriculum that is aligned with state academic content and performance standards that is challenging, specific as to content and sequential from grade to grade, similar to a core curriculum sequence;

(2) in-depth professional development for teachers that includes vertical teaming in content areas; and

(3) content, materials and instructional strategies or methodologies that current research demonstrates are likely to lead to improved student achievement in pre-advanced placement and advanced placement coursework in grades seven through twelve.

C. The framework may be selected from previously developed curricula or may be developed by the school district or charter school.

D. A school district or charter school that meets department eligibility requirements may apply to the department for support of its core curriculum framework. Applications shall be in the form prescribed by the department and shall include the following information:

(1) a statement of need;

(2) goals and expected outcomes of the framework;

(3) a detailed description of the curriculum to be implemented;

(4) a detailed work plan and budget for the framework;

(5) documentation of the research upon which the anticipated success of the framework is based;

(6) a description of any partnership proposed to implement the framework, supported by letters of commitment from the partner;

(7) an evaluation plan; and

(8) any other information that the department requires.

E. The department shall award grants within ninety days of the deadline for receipt of grant applications.

F. The department shall adopt and promulgate rules to implement the provisions of this section.

**History:** Laws 2005, ch. 300, § 1.

### **22-13-1.6. Uniform grade and subject curricula; professional department [development].**

A. Each school district shall align its curricula to meet the state standards for each grade level and subject area so that students who transfer between public schools within the school district receive the same educational opportunity within the same grade or subject area.

B. Each school district's aligned grade level and subject area curricula shall be in place as follows:

- (1) for mathematics, by the 2008-2009 school year; and
- (2) for language arts and science, by the 2009-2010 school year.

C. Professional development relating to curricula for classroom teachers and educational assistants shall be aligned with state standards by each school district.

**History:** Laws 2007, ch. 178, § 1.

### **22-13-1.7. Elementary physical education.**

A. As used in this section:

(1) "eligible students" means students in kindergarten through grade six in a public school classified by the department as an elementary school; and

(2) "physical education" includes programs of education through which students participate in activities related to fitness education and assessment; active games and sports; and development of physical capabilities such as motor skills, strength and coordination.

B. Elementary physical education programs that serve eligible students are eligible for funding if those programs meet academic content and performance standards for elementary physical education programs.

C. In granting approval for funding of elementary physical education programs, the department shall provide that programs are first implemented in public schools that have the highest proportion of students most in need based on the percentage of students eligible for free or reduced-fee lunch or grade-level schools that serve an entire school district and in public schools with available space. If the department determines that an elementary physical education program is not meeting the academic content and performance standards for elementary physical education programs, the department shall notify the school district that the public school's failure to meet the academic content and performance standards will result in the cessation of funding for the following school year. The department shall compile the program results submitted



by the school districts each year and make an annual report to the legislative education study committee and the legislature.

D. An elementary physical education program that receives state financial support shall:

(1) provide for the physical education needs of students defined in this section; and

(2) use teachers with a license endorsement for physical education. The department shall annually determine the programs and the consequent number of students in elementary physical education that will receive state financial support in accordance with funding available in each school year.

**History:** Laws 2007, ch. 348, § 3; 2017, ch. 65, § 2.

## **22-13-2. Repealed.**

## **22-13-3. Early childhood education programs required.**

A. In accordance with state board [department] regulations, every local school board shall establish and conduct early childhood education programs.

B. The state board [department] shall adopt and promulgate regulations providing for:

(1) minimum standards for the conduct of early childhood education programs; and

(2) qualifications of any person teaching in those programs.

C. The cost of operating early childhood education programs shall be included in the budget prepared for the school district.

D. As used in this section, "early childhood education programs" means kindergarten programs for every child who has attained his fifth birthday prior to September 1 of the school year, except for those children who are eligible for and participating in federal headstart programs in any class B county with a population in excess of ninety-five thousand, established by a local school board for the development or enrichment of persons within the school district.

E. The provisions of this section shall be effective with the 1988-89 school year, and waivers may be granted upon the request of the parent or legal guardian pursuant to Section 22-12-2 NMSA 1978.

**History:** 1953 Comp., § 77-11-2, enacted by Laws 1967, ch. 16, § 181; reenacted by 1973, ch. 357, § 1; 1974, ch. 8, § 20; 1977, ch. 2, § 2; 1986, ch. 33, § 29; 1987, ch. 320, § 6; 1988, ch. 35, § 1; 1993, ch. 226, § 29.

### **22-13-3.1. Even start family literacy program; created; guidelines; benchmarks, performance standards and evaluations.**

A. The "even start family literacy program" is created in the department to provide funding for preschool reading readiness and parenting education. The purpose of the program is to support the educational and developmental needs of students in preschool; address cultural diversity; and provide family support that leads to improved literacy, improved ability for students to succeed in school and economic self-sufficiency. Priority for funding shall be provided to those public schools that have the highest proportion of limited English proficient students, students living in poverty and Native American students.

B. The department shall develop even start family literacy program benchmarks and performance standards, guidelines for program approval and funding approval criteria. The department shall disseminate the program information in all public schools and shall provide technical assistance to public schools in developing proposals.

C. The department shall distribute money to public schools with approved even start family literacy programs that meet the specified criteria based upon actual program costs to ensure the implementation of performance based budgeting measures.

**History:** Laws 2001, ch. 168, § 1; 2017, ch. 65, § 3.

### **22-13-3.2. Full-day kindergarten programs.**

A. The state board [department] shall adopt rules for the development and implementation of child-centered and developmentally appropriate full-day kindergarten programs. Establishment of full-day kindergarten programs shall be voluntary on the part of school districts and student participation shall be voluntary on the part of parents.

B. The department of education [public education department] shall require schools with full-day kindergarten programs to conduct age-appropriate assessments to determine the placement of students at instructional level and the effectiveness of child-centered, developmentally appropriate kindergarten.

C. The department of education [public education department] shall monitor full-day kindergarten programs and ensure that they serve the children most in need based upon indicators in the at-risk index. If the department of education [public education department] determines that a program is not meeting the benchmarks necessary to ensure the progress of students in the program, the department of education [public education department] shall notify the school district that failure to meet the benchmarks shall result in the cessation of funding for the following school year. The department of

education [public education department] shall compile the program results submitted by the school districts and make an annual report to the legislative education study committee and the legislature.

D. Full-day kindergarten programs shall be phased in over a five-year period as follows with priority given to those school districts that serve children in schools with the highest proportion of students most in need based upon indicators in the at-risk index or that serve children by means of grade-level schools that serve an entire school district:

(1) effective with the 2000-2001 school year, one-fifth of New Mexico's kindergarten classes may be full day;

(2) effective with the 2001-2002 school year, two-fifths of New Mexico's kindergarten classes may be full day;

(3) effective with the 2002-2003 school year, three-fifths of New Mexico's kindergarten classes may be full day;

(4) effective with the 2003-2004 school year, four-fifths of New Mexico's kindergarten classes may be full day; and

(5) effective with the 2004-2005 school year, all of New Mexico's kindergarten classes may be full day.

E. School districts shall apply to the department of education [public education department] to receive funding for full-day kindergarten programs. In granting approval for funding of full-day kindergarten programs, the department of education [public education department] shall ensure that full-day kindergarten programs are first implemented in schools that have the highest proportion of students most in need based upon the at-risk index and in schools with available classroom space.

**History:** Laws 2000, ch. 107, § 3; 2001, ch. 296, § 1; 1978 Comp., § 22-2-19, recompiled as § 22-13-3.2 by Laws 2003, ch. 153, § 72.

### **22-13-3.3. Short title.**

Sections 1 through 5 [22-13-3.3 to 22-13-3.7 NMSA 1978] of this act may be cited as the "Literacy For Children At Risk Act".

**History:** Laws 1989, ch. 113, § 1; 1978 Comp., § 22A-1-1, recompiled as § 22-13-3.3 by Laws 2003, ch. 153, § 72.

### **22-13-3.4. Purpose.**

The purpose of the Literacy For Children At Risk Act [22-13-3.3 to 22-13-3.7 NMSA 1978] is to promote greater literacy among children.

**History:** Laws 1989, ch. 113, § 2; 1978 Comp., § 22A-1-2, recompiled as § 22-13-3.4 by Laws 2003, ch. 153, § 72.

### **22-13-3.5. Definitions.**

As used in the Literacy For Children At Risk Act [22-13-3.3 to 22-13-3.7 NMSA 1978]:

A. "child at risk" means a child who attends public school in New Mexico and whose reading, writing or math literacy level, as determined by his school district, falls in the forty-ninth percentile or lower; and

B. "department" means the state department of public education.

**History:** Laws 1989, ch. 113, § 3; 1978 Comp., § 22A-1-3, recompiled as § 22-13-3.5 by Laws 2003, ch. 153, § 72.

### **22-13-3.6. Literacy for children at risk fund created; administration of fund.**

A. There is created in the state treasury a fund that shall be designated as the "literacy for children at risk fund" that shall be used to set up learning laboratories for the purpose of improving the reading, writing or math literacy level of any child at risk.

B. The literacy for children at risk fund shall be eligible to receive funds from sources that include, but are not limited to, the following:

- (1) appropriations;
- (2) grants, public and private; and
- (3) gifts, public and private.

All funds received by the department for the literacy for children at risk fund shall be used only to carry out the purposes of the Literacy For Children At Risk Act [22-13-3.3 to 22-13-3.7 NMSA 1978].

**History:** Laws 1989, ch. 113, § 4; 1978 Comp. § 22A-1-4, recompiled as § 22-13-3.6 by Laws 2003, ch. 153, § 72.

### **22-13-3.7. Disbursement of funds; approved projects.**

A. Any school district or state-chartered charter school may apply for a grant from the literacy for children at risk fund for the purpose of acquiring, equipping and staffing a learning laboratory.

B. The department shall adopt rules setting forth the criteria that a school district or state-chartered charter school shall meet in order to qualify for a grant from the literacy for children at risk fund. The criteria to qualify for a grant shall include, but are not limited to, the following:

- (1) the learning laboratory shall improve the reading, writing or math literacy levels of children at risk by at least one grade level per year, as demonstrated to the department's satisfaction;
- (2) the learning laboratory shall encompass the teaching of children in kindergarten through grade twelve who are reading below grade level;
- (3) the learning laboratory shall have reading diagnostic capabilities; and
- (4) the learning laboratory shall have the capability to self-monitor the performance of both the learning laboratory and the children at risk using the laboratory.

C. The amount of any grant awarded under Subsections A and B of this section shall be equal to eighty percent of the total cost of acquiring, equipping and staffing a learning laboratory. Any grant awarded is contingent upon the qualifying school district or state-chartered charter school demonstrating to the department's satisfaction that it can pay for twenty percent of the total cost of the learning laboratory.

D. Any school district or state-chartered charter school that establishes a learning laboratory under this section may use the laboratory for any other reading, writing or math literacy program when it is not in use for the purposes of the Literacy For Children At Risk Act [22-13-3.3 to 22-13-3.7 NMSA 1978].

E. The department, after approving the application of a school district or state-chartered charter school to receive a grant under the Literacy For Children At Risk Act, shall authorize a disbursement of funds, in an amount equal to the grant, from the literacy for children at risk fund directly to the approved school district or charter school.

**History:** Laws 1989, ch. 113, § 5; 1978 Comp. § 22A-1-4, recompiled as § 22-13-3.7 by Laws 2003, ch. 153, § 72; 2006, ch. 94, § 46.

## **22-13-4. Repealed.**

## **22-13-5. Special education.**

School districts shall provide special education and related services appropriate to meet the needs of students requiring special education and related services. Rules and standards shall be developed and established by the department for the provision of special education in the schools and classes of the public school system in the state and in all institutions wholly or partly supported by the state. The department shall monitor and enforce the rules and standards. School districts shall also provide services

for three-year-old and four-year-old preschool children with disabilities, unless the parent or guardian chooses not to enroll the child. Services for students age three through twenty-one may include, but are not limited to, evaluating particular needs, providing learning experiences that develop cognitive and social skills, arranging for or providing related services as defined by the department and providing parent education. The services may be provided by licensed school employees or contracted for with other community agencies and shall be provided in age-appropriate, integrated settings, including home, daycare centers, head start programs, schools or community-based settings.

**History:** 1953 Comp., § 77-11-3, enacted by Laws 1967, ch. 16, § 182; 1969, ch. 256, § 1; reenacted by 1972, ch. 95, § 1; 1978, ch. 211, § 11; 1985, ch. 7, § 1; 1985, ch. 93, § 2; 1989, ch. 135, § 1; 1995, ch. 69, § 2; 2011, ch. 166, § 1.

## **22-13-6. Special education; definitions.**

As used in the Public School Code:

A. "special education" means the provision of services additional to, supplementary to or different from those provided in the regular school program by a systematic modification and adaptation of instructional techniques, materials and equipment to meet the needs of exceptional children;

B. "exceptional children" means school-age persons whose abilities render regular services of the public school to be inconsistent with their educational needs;

C. "children with disabilities" means those children who are classified as developmentally disabled according to the Developmental Disabilities Act [28-16A-1 to 28-16A-18 NMSA 1978] and the federal Individuals with Disabilities Education Act;

D. "gifted child" means a school-age person who is determined to be gifted pursuant to Section 22-13-6.1 NMSA 1978 and standards adopted by the department pursuant to that section. Nothing in this section shall preclude a school district or charter school from offering additional gifted programs for students who fail to meet the eligibility criteria; however, the state shall only provide state funds for department-approved gifted programs for those students who meet the established criteria;

E. "dyslexia" means a specific learning disability that is neurobiological in origin and that is characterized by difficulty with accurate or fluent word recognition and by poor spelling and decoding abilities, which characteristics typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction and may result in problems in reading comprehension and reduced reading experience that may impede the growth of vocabulary and background knowledge;

F. "response to intervention" means a multitiered intervention model that uses a set of increasingly intensive academic or behavioral supports, matched to student need, as a framework for making educational programming and eligibility decisions; and

G. "student assistance team" means a school-based group whose purpose, based on procedures and guidelines established by the department, is to provide additional educational support to students who are experiencing difficulties that are preventing them from benefiting from general instruction.

**History:** 1953 Comp., § 77-11-3.1, enacted by Laws 1972, ch. 95, § 2; 1978, ch. 211, § 12; 1985, ch. 93, § 3; 1986, ch. 33, § 30; 1994, ch. 25, § 1; 1995, ch. 69, § 3; 2010, ch. 59, § 1; 2019, ch. 256, § 1.

## **22-13-6.1. Gifted children; determination.**

A. The department shall adopt standards pertaining to the determination of who is a gifted child and shall publish those standards as part of the educational standards for New Mexico schools.

B. In adopting standards to determine who is a gifted child, the department shall provide for the evaluation of selected school-age children by multidisciplinary teams from each child's school district. That team shall be vested with the authority to designate a child as gifted. The team shall consider information regarding a child's cultural and linguistic background and socioeconomic background in the identification, referral and evaluation process. The team also shall consider any disabling condition in the identification, referral and evaluation process.

C. Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a single districtwide advisory committee. The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. The advisory committee shall regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery and shall demonstrate support for the gifted program.

D. In determining whether a child is gifted, the multidisciplinary team shall consider diagnostic or other evidence of the child's:

- (1) creativity or divergent-thinking ability;
- (2) critical-thinking or problem-solving ability;
- (3) intelligence; and

- (4) achievement.

**History:** 1978 Comp., § 22-13-6.1, enacted by Laws 1994, ch. 25, § 2; 2005, ch. 25, § 1.

### **22-13-7. Special education; responsibility.**

A. The state board [department] shall make, adopt and keep current a state plan for special education policy, programs and standards.

B. The department of education [public education department] with the approval of the state board [department] shall set standards for diagnosis and screening of and educational offerings for exceptional children in public schools, in private, nonsectarian, nonprofit training centers and in state institutions under the authority of the secretary of health.

C. The state board [department] shall establish and maintain a program of evaluation of the implementation and impact of all programs for exceptional children in the public schools. This program shall be operated with the cooperation of local school districts. Portions of the program may be subcontracted, and periodic reports regarding the efficacy of programs for exceptional children shall be made to the legislative education study committee.

D. The department of education [public education department] shall coordinate programming related to the transition of persons with disabilities from secondary and post-secondary education programs to employment or vocational placement.

**History:** 1953 Comp., § 77-11-3.2, enacted by Laws 1972, ch. 95, § 3; 1978, ch. 211, § 13; 1990, ch. 94, § 4; 1993, ch. 229, § 1.

### **22-13-8. Special education; private educational training centers and residential treatment centers.**

A. Notwithstanding other provisions of the Public School Code [Chapter 22 NMSA 1978], as used in this section:

- (1) "qualified student" means a public school student who:

(a) has not graduated from high school;

(b) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and

(c) in terms of age: 1) is at least five years of age prior to 12:01 a.m. on September 1 of the school year or will be five years of age prior to 12:01 a.m. on September 1 of the school year if the student is enrolled in a public school extended-



year kindergarten program that begins prior to the start of the regular school year; 2) is at least three years of age at any time during the school year and is receiving special education pursuant to rules of the department; or 3) has not reached the student's twenty-second birthday on the first day of the school year and is receiving special education in accordance with federal law; and

(2) "school-age person" means a person who is not a qualified student but who meets the federal requirements for special education and who:

(a) will be at least three years old at any time during the school year;

(b) is not more than twenty-one years of age; and

(c) has not received a high school diploma or its equivalent.

B. The responsibility of school districts, state institutions and the state to provide a free appropriate public education for qualified students who need special education is not diminished by the availability of private schools and services. It is a state responsibility to ensure that all qualified students who need special education receive the education to which federal and state laws entitle them whether provided by public or private schools and services.

C. A school district in which a private, nonsectarian, nonprofit educational training center or residential treatment center is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.

D. For a qualified student in need of special education or school-age person who is placed in a private, nonsectarian, nonprofit educational training center or residential treatment center by a school district or by a due process decision, the school district in which the qualified student or school-age person lives, whether in-state or out-of-state, is responsible for the educational, nonmedical care and room and board costs of that placement.

E. For a school-age person placed in a private, nonsectarian, nonprofit educational training center or residential treatment center not as a result of a due process decision but by a parent who assumes the responsibility for such placement, the department shall ensure that the school district in which the facility is located is allocating and distributing the school-age person's proportionate share of the federal Individuals with Disabilities Education Act Part B funds but the state is not required to distribute state funds for that school-age person.

F. For a qualified student or school-age person in need of special education placed in a private, nonsectarian, nonprofit educational training center or residential treatment center by a New Mexico public noneducational agency with custody or control of the

qualified student or school-age person or by a New Mexico court of competent jurisdiction, the school district in which the facility is located shall be responsible for the planning and delivery of special education and related services, unless the qualified student's or school-age person's resident school district has an agreement with the facility to provide such services.

G. Except as provided in Subsection D of this section, the department shall determine which school district is responsible for the cost of educating a qualified student in need of special education who has been placed in a private, nonsectarian, nonprofit educational training center or residential treatment center outside the qualified student's resident school district. The department shall determine the reasonable reimbursement owed to the receiving school district.

H. A local school board, in consultation with the department, may make an agreement with a private, nonsectarian, nonprofit educational training center or residential treatment center for educating qualified students in need of special education and for whom the school district is responsible for providing a free appropriate public education under the federal Individuals with Disabilities Education Act and for providing payment for that education. All financial agreements between local school boards and private, nonsectarian, nonprofit educational training centers and residential treatment centers must be negotiated in accordance with rules promulgated by the department.

I. All agreements between local school boards and private, nonsectarian, nonprofit educational training centers and residential treatment centers must be reviewed and approved by the secretary. The agreements shall ensure that all qualified students placed in a private, nonsectarian, nonprofit educational training center or residential treatment center receive the education to which they are entitled pursuant to federal and state laws. All agreements must provide for:

- (1) student evaluations and eligibility;
- (2) an educational program for each qualified student that meets state standards for such programs, except that teachers employed by private schools are not required to be highly qualified;
- (3) special education and related services in conformance with an individualized education program that meets the requirements of federal and state law; and
- (4) adequate classroom and other physical space provided at the private, nonsectarian, nonprofit educational training center or residential treatment center that allows the school district to provide an appropriate education.

J. The agreements must also acknowledge the authority and responsibility of the local school board and the department to conduct on-site evaluations of programs and

student progress to ensure that the education provided to the qualified student is meeting state standards.

K. A qualified student for whom the state is required by federal law to provide a free appropriate public education and who is attending a private, nonsectarian, nonprofit educational training center or a residential treatment center is a public school student and shall be counted in the special education membership of the school district that is responsible for the costs of educating the student as provided in the individualized education program for the student.

L. The department shall adopt the format to report individual student data and costs for any qualified student or school-age person attending public or private educational training centers or residential treatment centers and shall include those reports in the student teacher accountability reporting system by using the same student identification number issued to a public school student pursuant to Section 22-2C-11 NMSA 1978 or by assigning a unique student identifier for school-age persons, including those who are not residents of this state but who are attending a private, nonsectarian, nonprofit educational training center or residential treatment center in this state. Every public and private educational training center and every public and private residential treatment center that serves school-age persons in this state shall comply with this provision.

M. The department shall promulgate rules to carry out the provisions of this section.

**History:** 1953 Comp., § 77-11-3.3, enacted by Laws 1972, ch. 95, § 4; 1974, ch. 8, § 21; 1977, ch. 81, § 1; 1978, ch. 211, § 14; 1978 Comp., § 22-13-8, repealed and reenacted by Laws 2009, ch. 162, § 1.

### **22-13-9. Repealed.**

**History:** 1953 Comp., § 77-11-4, enacted by Laws 1967, ch. 16, § 183; repealed by Laws 2007, ch. 307, § 11 and Laws 2007, ch. 308, § 11.

### **22-13-10. Repealed.**

**History:** 1953 Comp., § 77-11-5, enacted by Laws 1967, ch. 16, § 184; repealed by Laws 2007, ch. 307, § 11 and Laws 2007, ch. 308, § 11.

### **22-13-11. Repealed.**

**History:** 1953 Comp., § 77-11-6, enacted by Laws 1967, ch. 16, § 185.

### **22-13-12. Approved driver-education courses.**

A. The state board [department] or its designated representative shall adopt and promulgate minimum standards for approved driver-education and motorcycle driver-education courses taught in any school in the state.

B. A driver-education or motorcycle driver-education course shall provide to students legally entitled to operate the type of motor vehicle involved, classroom instruction and behind-the-wheel or on-the-motorcycle training in the safe operation of the motor vehicle.

C. An approved driver-education or motorcycle driver-education course is a course of instruction certified by the state superintendent [secretary] as meeting the minimum standards for such a driver-education course adopted by the state board [department] or its designated representative.

**History:** 1953 Comp., § 77-11-7, enacted by Laws 1967, ch. 16, § 186; 1973, ch. 381, § 4.

## **22-13-13. School lunch program.**

A. The state board [department] shall prescribe standards and regulations for the establishment and operation of school lunch programs in the state. The department of education [public education department] shall provide technical advice and assistance to any school district in connection with the establishment or operation of a school lunch program.

B. A local school board may accept gifts or grants for use in connection with a school lunch program in the school district.

C. A "school lunch program" means a program under which lunches are served by a public school in the state on a nonprofit basis to students attending the school.

**History:** 1953 Comp., § 77-11-8, enacted by Laws 1967, ch. 16, § 187.

### **22-13-13.1. Temporary provision; food and beverages sold outside of school meal programs.**

The public education department, in collaboration with the department of health and one representative each from the New Mexico action for healthy kids, parents, students, school food service directors, school boards, school administrators, agriculture, dairy producers and the food and beverage industry, shall adopt rules no later than December 31, 2005 governing foods and beverages sold in all public schools to students outside of federal department of agriculture school meal programs. The rules shall, at a minimum, address nutrition standards, portion sizes and times when students may access these items. Nothing in this section shall be construed to prohibit or limit the sale or distribution of any food or beverage item through fundraisers by students, teachers or groups when the items are intended for sale off the school campus.

**History:** Laws 2005, ch. 115, § 1.

## **22-13-13.2. Breakfast program required; waiver; distribution of funds.**

A. School districts and charter schools shall establish a "breakfast after the bell program" to provide free breakfast, after the instructional day has begun, to all students attending a public school in which eighty-five percent or more of the enrolled students were eligible for free or reduced-price lunch under the National School Lunch Act during the prior school year.

B. A school district or charter school that includes a public school in which fewer than eighty-five percent of the enrolled students were eligible for free or reduced-price lunch during the prior school year under the National School Lunch Act may establish a breakfast after the bell program to provide free breakfast, after the instructional day has begun, to all students attending that public school; provided that the program complies with all applicable department rules relating to the breakfast after the bell program authorized by this section.

C. Nothing in this section shall be interpreted to prohibit a school that establishes a breakfast after the bell program under the provisions of Subsection A or B of this section from beginning breakfast service before the start of the instructional day; provided that the school also serves breakfast after the beginning of the instructional day in the location of its choice, including the cafeteria, classroom, on the bus, or by providing a hand-carried breakfast.

D. The school district or charter school may apply to the department for a waiver of the breakfast after the bell program required under the provisions of Subsection A of this section if the school district or charter school can demonstrate that providing the program will result in undue financial hardship for the school district or charter school.

E. The department shall award funding to each school district or charter school that establishes a breakfast after the bell program under the provisions of this section for providing free breakfast to students on a per-meal basis at the federal maximum rate of reimbursement as set forth annually by the federal secretary of agriculture for educational grants awarded under the authority of the secretary. School districts and charter schools do not need to demonstrate their expenses to receive funding pursuant to this section.

F. Disbursements for the breakfast after the bell program shall be paid in sequential order, until the state breakfast after the bell funds are exhausted. School districts and charter schools whose public schools have the highest percentage of enrolled students eligible for free or reduced-price lunch under the National School Lunch Act shall be paid first. School districts and charter schools whose public schools have the lowest percentage of enrolled students eligible for free or reduced-price lunch under the National School Lunch Act shall be paid last.

G. By June 15 of each year, each school district and charter school seeking state breakfast after the bell funds shall submit to the department the following information:

- (1) the number of breakfasts served at no charge by each of its public schools during the previous school year; and
- (2) the federal reimbursement rate for each breakfast served.

H. When calculating the amount of breakfast after the bell program funding that is due a public school, the department shall assume that student participation will remain at the same level as the previous year. If a school district or charter school has not previously received state breakfast after the bell funding, the department shall assume that ninety percent of the student population of an eligible public school will participate in the breakfast after the bell program and shall fund the public school's program accordingly.

I. By August 1 of each year, the department shall inform eligible school districts and charter schools of the amount of breakfast after the bell funding they will receive during the upcoming school year.

J. The department shall promulgate rules necessary for implementation of this section, including:

- (1) standards for breakfast after the bell programs that meet federal school breakfast program standards;
- (2) procedures for waiver requests and the award of waivers as provided for in Subsection D of this section, including what constitutes financial hardship; and
- (3) procedures for funding school districts and charter schools.

K. The provisions of this section apply to the 2014-2015 and succeeding school years; provided, however, that the breakfast after the bell program for middle and high school students shall begin the first school year after the legislature provides funding for that portion of the program.

**History:** Laws 2011, ch. 35, § 5; 2014, ch. 16, § 1; 2016, ch. 26, § 1.

## **22-13-14. Emergency drills; requirement.**

A. An emergency drill shall be conducted in each public and private school of the state at least once each week during the first four weeks of the school year. During the first four weeks of the school year, each school shall conduct one shelter in place drill that includes preparation to respond to an active shooter, one evacuation drill and two fire drills. During the rest of the school year, each school shall conduct at least four more emergency drills, at least two of which shall be fire drills. It shall be the

responsibility of the person in charge of a school to carry out the provisions of this section.

B. In locations where a fire department is maintained, a member of the fire department shall be requested to be in attendance during the emergency drills for the purpose of giving instruction and constructive criticism.

C. The department shall determine penalties for any person failing to meet the provisions of this section.

**History:** 1953 Comp., § 77-11-9, enacted by Laws 1967, ch. 16, § 188; 1979, ch. 81, § 1; 2005, ch. 27, § 1; 2019, ch. 158, § 1.

### **22-13-15. Public school instruction; prohibition; penalty.**

A. No person shall teach sectarian doctrine in a public school.

B. Any person violating the provisions of this section by teaching sectarian doctrine in a public school shall be immediately discharged from further employment with a school district. The provisions of Sections 22-10-17 through 22-10-20 NMSA 1978 relating to the discharge of certified school personnel apply to this section.

**History:** 1953 Comp., § 77-11-10, enacted by Laws 1967, ch. 16, § 189.

### **22-13-16. Private school programs; solicitations; permit; penalty.**

A. It is unlawful for any private school, or its agent, to canvass a prospective student in New Mexico for the purpose of selling to the student a scholarship or collecting tuition from the student in advance of the date for registration for the school without first obtaining a permit from the state board [department]. This shall not be construed to prevent canvassing by schools for prospective students where no scholarship is sold or where no fee for tuition is collected in advance of registration. This shall also not be construed to prevent a school from advertising.

B. To obtain a permit as required by this section, an application shall be filed with the state board [department], signed by an authorized representative of the school, accompanied by any reasonable fee required by the state board and containing the following:

- (1) the name and location of the school seeking the permit;
- (2) the number of instructors employed by the school;
- (3) the courses of instruction offered by the school; and
- (4) any additional information required by the state board [department].

C. The state board may revoke, at any time, any permit issued by it for satisfactory cause.

D. Any person violating any provisions of this section is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 77-11-11, enacted by Laws 1967, ch. 16, § 190.

**22-13-17. Repealed.**

**22-13-18. Repealed.**

**22-13-19. Repealed.**

**22-13-20. Repealed.**

**22-13-21. Repealed.**

**22-13-22. Repealed.**

**22-13-23. Repealed.**

**22-13-24. Repealed.**

**22-13-25. Academic competitions.**

Each public school in each conference shall provide academic competitions similar to its athletic competitions. A student who participates in an academic competition shall qualify for an academic letter in the subject in which he competes. Academic competitions between schools shall be governed by the New Mexico activities association.

**History:** Laws 2001, ch. 70, § 1.

**22-13-26. Youth programs established.**

The children, youth and families department, the state department of public education [public education department], the department of health, the human services department [health care authority department] and the labor department shall each contract for programs, subject to appropriations provided for that purpose, funded through a public-private partnership, for community-based after-school and other prevention programs and services for youth. Each department shall ensure, prior to contracting for services, that private matching funding is available and committed for the purpose of the contract.



**History:** Laws 2003, ch. 161, § 1.

## **22-13-27. Recompiled.**

**History:** Laws 2003, ch. 162, § 2; § 22-13-27, recompiled as § 22-30-7 by Laws 2007, ch. 292, § 11 and Laws 2007, ch. 293, § 11.

## **22-13-28. Repealed.**

**History:** Laws 2007, ch. 12, § 1; 2012, ch. 21, § 1; 2013, ch. 175, § 1; 2015, ch. 75, § 1; 2017, ch. 19, § 1; repealed by Laws 2019, ch. 206, § 27 and Laws 2019, ch. 207, § 27.

### **22-13-28.1. Repealed.**

**History:** Laws 2012, ch. 21, § 2; repealed by Laws 2019, ch. 206, § 28 and Laws 2019, ch. 207, § 28.

### **22-13-28.2. Repealed.**

**History:** Laws 2016, ch. 62, § 1; repealed by Laws 2019, ch. 206, § 27 and Laws 2019, ch. 207, § 27.

## **22-13-29. Middle and high school literacy initiative.**

A. School districts and charter schools may create comprehensive, coordinated middle and high school literacy initiatives to provide scientifically based literacy programs to improve the reading and writing proficiency of students in grades six through twelve.

B. The design of a middle and high school literacy initiative shall be based upon scientific research that shows that using the methods and materials proposed is effective in improving reading proficiency beyond the primary grades and shall include, at a minimum:

- (1) instruction in nonfiction writing;
- (2) ongoing teacher and school administrator professional development equal to that which was validated in the supporting research;
- (3) use of student assessment data to guide and individualize instruction; and
- (4) a rigorous and thorough evaluation component.

C. A middle and high school literacy initiative shall also incorporate some or all of the following elements:

- (1) direct, explicit comprehension instruction;
- (2) teacher teams, including language arts and content area instructors who implement mutually reinforcing practices;
- (3) strategies to encourage motivation and self-directed learning;
- (4) text-based collaborative learning by groups of students;
- (5) strategic tutoring;
- (6) diverse texts;
- (7) a technology component; and
- (8) extended time for literacy.

D. School districts and charter schools that meet department eligibility requirements may apply to the department for awards from the public school reading proficiency fund for support for their middle and high school literacy initiatives. Applications shall be in a form prescribed by the department.

**History:** Laws 2007, ch. 307, § 10 and Laws 2007, ch. 308, § 10.

### **22-13-30. Vision screening.**

A school nurse or the nurse's designee, a primary care health provider or a lay eye screener shall administer a vision screening test for students enrolled in the school in pre-kindergarten, kindergarten, first grade and third grade and for transfer and new students in those grades, unless a parent affirmatively prohibits the visual screening.

**History:** Laws 2007, ch. 353, § 2 and Laws 2007, ch. 357, § 2.

### **22-13-31. Brain injury; protocols to be used by coaches for brain injuries received by students in school athletic activities; training of coaches and student athletes; information to be provided to coaches, student athletes and student athletes' parents or guardians; requiring acknowledgment of training and information; nonscholastic youth athletic activity on school district property; brain injury protocol compliance; certification.**

A. A coach shall not allow a student athlete to participate in a school athletic activity on the same day that the student athlete:

(1) exhibits signs, symptoms or behaviors consistent with a brain injury after a coach, a school official or a student athlete reports, observes or suspects that a student athlete exhibiting these signs, symptoms or behaviors has sustained a brain injury; or

(2) has been diagnosed with a brain injury.

B. A coach may allow a student athlete who has been prohibited from participating in a school athletic activity pursuant to Subsection A of this section to participate in a school athletic activity no sooner than two hundred forty hours from the hour in which the student athlete received a brain injury and only after the student athlete:

(1) no longer exhibits any sign, symptom or behavior consistent with a brain injury; and

(2) receives a written medical release from a licensed health care professional.

C. Each school district shall ensure that each coach participating in school athletic activities and each student athlete in the school district receives training provided pursuant to Paragraph (1) of Subsection D of this section.

D. The New Mexico activities association shall consult with the brain injury advisory council and school districts to promulgate rules to establish:

(1) protocols and content consistent with current medical knowledge for training each coach participating in school athletic activities and each student athlete to:

(a) understand the nature and risk of brain injury associated with athletic activity;

(b) recognize signs, symptoms or behaviors consistent with a brain injury when a coach or student athlete suspects or observes that a student athlete has received a brain injury;

(c) understand the need to alert appropriate medical professionals for urgent diagnosis or treatment; and

(d) understand the need to follow medical direction for proper medical protocols; and

(2) the nature and content of brain injury training and information forms and educational materials for, and the means of providing these forms and materials to, coaches, student athletes and student athletes' parents or guardians regarding the nature and risk of brain injury resulting from athletic activity, including the risk of continuing or returning to athletic activity after a brain injury.

E. At the beginning of each academic year or the first participation in school athletic activities by a student athlete during an academic year, a school district shall provide a brain injury training and information form created pursuant to Subsection D of this section to a student athlete and the student athlete's parent or guardian. The school district shall receive signatures on the brain injury training and information form from the student athlete and the student athlete's parent or guardian confirming that the student athlete has received the brain injury training required by this section and that the student athlete and parent or guardian understand the brain injury information before permitting the student athlete to begin or continue participating in school athletic activities for that academic year. The form required by this subsection may be contained on the student athlete sport physical form.

F. As a condition of permitting nonscholastic youth athletic activity to take place on school district property, the superintendent of a school district shall require the person offering the nonscholastic youth athletic activity to sign a certification that the nonscholastic youth athletic activity will follow the brain injury protocols established pursuant to Section 22-13-31.1 NMSA 1978.

G. As used in this section:

(1) "academic year" means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year;

(2) "brain injury" means a body-altering physical trauma to the brain, skull or neck caused by, but not limited to, blunt or penetrating force, concussion, diffuse axonal injury, hypoxia-anoxia or electrical charge;

(3) "licensed health care professional" means:

(a) a practicing physician or physician assistant licensed pursuant to the Medical Practice Act;

(b) a practicing osteopathic physician licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978];

(c) a practicing certified nurse practitioner licensed pursuant to the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978];

(d) a practicing osteopathic physician assistant licensed pursuant to the Medical Practice Act;

(e) a practicing psychologist licensed pursuant to the provisions of the Professional Psychologist Act [Chapter 61, Article 9 NMSA 1978];

(f) a practicing athletic trainer licensed pursuant to the provisions of the Athletic Trainer Practice Act [Chapter 61, Article 14D NMSA 1978]; or

(g) a practicing physical therapist licensed pursuant to the Physical Therapy Act [61-12D-1 to 61-12D-19 NMSA 1978];

(4) "nonscholastic youth athletic activity" means an organized athletic activity in which the participants, a majority of whom are under nineteen years of age, are engaged in an athletic game or competition against another team, club or entity, or in practice or preparation for an organized athletic game or competition against another team, club or entity. "Nonscholastic youth athletic activity" does not include an elementary school, middle school, high school, college or university activity or an activity that is incidental to a nonathletic program;

(5) "school athletic activity" means a sanctioned middle school, junior high school or senior high school function that the New Mexico activities association regulates; and

(6) "student athlete" means a middle school, junior high school or senior high school student who engages in, is eligible to engage in or seeks to engage in a school athletic activity.

**History:** Laws 2010, ch. 96 § 1; 2016, ch. 53, § 1; 2017, ch. 69, § 1; 2021, ch. 54, § 6.

## **22-13-31.1. Brain injury; protocols; training of coaches; brain injury education.**

A. A coach shall not allow a youth athlete to participate in a youth athletic activity on the same day that the youth athlete:

(1) exhibits signs, symptoms or behaviors consistent with a brain injury after a coach, a league official or a youth athlete reports, observes or suspects that a youth athlete exhibiting these signs, symptoms or behaviors has sustained a brain injury; or

(2) has been diagnosed with a brain injury.

B. A coach may allow a youth athlete who has been prohibited from participating in a youth athletic activity pursuant to Subsection A of this section to participate in a youth athletic activity no sooner than two hundred forty hours from the hour in which the youth athlete received a brain injury and only after the youth athlete:

(1) no longer exhibits any sign, symptom or behavior consistent with a brain injury; and

(2) receives a written medical release from a licensed health care professional.

C. Each youth athletic league shall ensure that each coach participating in youth athletic activities and each youth athlete in the league receives training provided pursuant to Paragraph (1) of Subsection D of this section.

D. The department of health shall consult with the brain injury advisory council to promulgate rules to establish:

(1) protocols and content consistent with current medical knowledge for training each coach participating in youth athletic activities and each youth athlete to:

(a) understand the nature and risk of brain injury associated with youth athletic activity;

(b) recognize signs, symptoms or behaviors consistent with a brain injury when a coach or youth athlete suspects or observes that a youth athlete has received a brain injury;

(c) understand the need to alert appropriate medical professionals for urgent diagnosis or treatment; and

(d) understand the need to follow medical direction for proper medical protocols; and

(2) the nature and content of brain injury training and information forms and educational materials for, and the means of providing these forms and materials to, coaches, youth athletes and youth athletes' parents or guardians regarding the nature and risk of brain injury resulting from youth athletic activity, including the risk of continuing or returning to youth athletic activity after a brain injury.

E. At the beginning of each youth athletic activity season or the first participation in youth athletic activities by a youth athlete during a youth athletic activity season, a youth athletic league shall provide a brain injury training and information form created pursuant to Subsection D of this section to a youth athlete and the youth athlete's parent or guardian. The youth athletic league shall receive signatures on the brain injury training and information form from the youth athlete and the youth athlete's parent or guardian confirming that the youth athlete has received the brain injury training required by this section and that the youth athlete and parent or guardian understand the brain injury information before permitting the youth athlete to begin or continue participating in youth athletic activities for the athletic season or term of participation.

F. As used in this section:

(1) "brain injury" means a body-altering physical trauma to the brain, skull or neck caused by blunt or penetrating force, concussion, diffuse axonal injury, hypoxia-anoxia or electrical charge;

(2) "licensed health care professional" means:

(a) a practicing physician or physician assistant licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978];

(b) a practicing osteopathic physician licensed pursuant to the Medical Practice Act;

(c) a practicing certified nurse practitioner licensed pursuant to the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978];

(d) a practicing osteopathic physician assistant licensed pursuant to the Medical Practice Act;

(e) a practicing psychologist licensed pursuant to the provisions of the Professional Psychologist Act [Chapter 61, Article 9 NMSA 1978];

(f) a practicing athletic trainer licensed pursuant to the provisions of the Athletic Trainer Practice Act [Chapter 61, Article 14D NMSA 1978]; or

(g) a practicing physical therapist licensed pursuant to the provisions of the Physical Therapy Act [61-12D-1 to 61-12D-19 NMSA 1978];

(3) "youth athlete" means an individual under nineteen years of age who engages in, is eligible to engage in or seeks to engage in a youth athletic activity; and

(4) "youth athletic activity" means an organized athletic activity in which the participants, a majority of whom are under nineteen years of age, are engaged in an athletic game or competition against another team, club or entity, or in practice or preparation for an organized athletic game or competition against another team, club or entity. "Youth athletic activity" does not include an elementary school, middle school, high school, college or university activity or an activity that is incidental to a nonathletic program.

**History:** Laws 2016, ch. 53, § 2; 2017, ch. 69, § 2; 2021, ch. 54, § 7.

## **22-13-31.2. Certification in cardiopulmonary resuscitation for coaches.**

A. All licensed coaches employed by school districts shall have current certification in cardiopulmonary resuscitation. The department shall promulgate rules regarding the implementation of this section. The certification program shall include training regarding the use of automated external defibrillators.

B. As used in this section, "school districts" includes charter schools.

**History:** Laws 2023, ch. 178, § 1.

## **22-13-32. Intervention for students displaying characteristics of dyslexia.**

A. Within the course of the 2019-2020 and 2020-2021 school years and in each subsequent school year, all first grade students shall be screened for dyslexia.

B. A student whose dyslexia screening demonstrates characteristics of dyslexia and who is having difficulty learning to read, write, spell, understand spoken language or express thoughts clearly shall receive appropriate classroom interventions or be referred to a student assistance team.

C. In accordance with department response to intervention procedures, guidelines and policies, each school district or charter school shall provide timely, appropriate, systematic, scientific, evidence-based interventions prescribed by the student assistance team, with progress monitoring to determine the student's response or lack of response.

D. A parent of a student referred to a student assistance team shall be informed of the parent's right to request an initial special education evaluation at any time during the school district's or charter school's implementation of the interventions prescribed by the student assistance team. If the school district or charter school agrees that the student may have a disability, the student assistance team shall refer the child for an evaluation. The student shall be evaluated within sixty days of receiving the parental consent for an initial evaluation. If the school district or charter school refuses the parent's request for an initial evaluation, the school district or charter school shall provide written notice of the refusal to the parent, including notice of the parent's right to challenge the school district's or charter school's decision as provided in state and federal law and rules.

E. Within the course of the 2019-2020 and 2020-2021 school years, every school district and charter school shall develop and implement a literacy professional development plan that includes a detailed framework for structured literacy training by a licensed and accredited or credentialed teacher preparation provider for all elementary school teachers and for training in evidence-based reading intervention for reading interventionists and special education teachers working with students demonstrating characteristics of dyslexia or diagnosed with dyslexia. The plan shall continue to be implemented each school year and may be updated as necessary. The department shall provide lists of recommended teacher professional development materials and opportunities for teachers and school administrators regarding evidence-based reading instruction for students at risk for reading failure and displaying the characteristics of dyslexia.

F. School districts and charter schools shall train school administrators and teachers who teach reading to implement appropriate evidence-based reading interventions. School districts and charter schools shall train special education teachers



to provide structured literacy training for students who are identified with dyslexia as a specific learning disability and who are eligible for special education services.

G. The department shall provide technical assistance for special education diagnosticians and other special education professionals regarding the formal special education evaluation of students suspected of having a specific learning disability, such as dyslexia.

H. The department shall adopt rules, standards and guidelines necessary to implement this section.

**History:** Laws 2010, ch. 59, § 2; 2019, ch. 256, § 2.

## **22-13-33. Appointing a point of contact person for certain students.**

A. As used in this section:

(1) "foster care" means twenty-four-hour substitute care for a student placed away from the student's parents or guardians and for whom the children, youth and families department has placement and care responsibility, including placements in foster family homes, foster homes of relatives, group homes, emergency shelters, treatment foster homes, residential facilities, child care institutions and preadoptive homes. For the purposes of this section, a student is in foster care regardless of whether the foster care facility is licensed and payments are made by the state, tribal or local agency for the care of the student, whether adoption subsidy payments are being made prior to the finalization of an adoption or whether there is federal matching of any payments that are made; and

(2) "involved in the juvenile justice system" means a student who has been referred to the children, youth and families department due to allegations that the student has committed a delinquent offense and voluntary or involuntary conditions have been imposed on the student, including a student who is participating in a diversion program, is under a consent decree or time waiver, is currently supervised by the children, youth and families department, has recently entered or left a juvenile or criminal justice placement or is on supervised release or parole.

B. Each school district and charter school authorized by the department shall designate an individual to serve as a point of contact for students in foster care and students involved in the juvenile justice system. Charter schools authorized by school districts shall use the district's point of contact. Multiple school districts or charter schools authorized by the department may share a single designated point of contact with approval from the department and from the children, youth and families department.

C. For students transferring into the school district or charter school authorized by the department, the point of contact person shall be responsible for:

(1) ensuring that a student is immediately enrolled regardless of whether the records normally required for enrollment are produced by the last school the student attended or by the student;

(2) ensuring that the enrolling school communicates with the last school attended by a transferring student to obtain relevant academic and other records within two business days of the student's enrollment;

(3) ensuring that the enrolling school performs a timely transfer of credits that the student earned in the last school attended; and

(4) collaborating with the education program staff in a juvenile or criminal justice placement and the educational decision maker appointed by the children's court to create and implement a plan for assisting the transition of a student to the school district or charter school authorized by the department to minimize disruption to the student's education.

D. For students transferring out of the school district or charter school authorized by the department, the point of contact person shall be responsible for providing all records to the new school within two business days of receiving a request from the receiving school.

E. For students in foster care, the point of contact person shall be responsible for:

(1) complying with state policies and developing school district or charter school policies in collaboration with the children, youth and families department for:

(a) best interest determinations about whether the student will remain in the school of origin;

(b) transportation policies to ensure that students receive transportation to their school of origin if it is in their best interest to remain in the school of origin; and

(c) dispute resolution;

(2) convening or participating in best interest determination meetings in collaboration with the children, youth and families department pursuant to state policies and the school district's or charter school authorized by the department's policies; and

(3) ensuring that transportation occurs to the student's school of origin pursuant to the school district's or charter school authorized by the department's policies and in compliance with state policies.

F. For students in foster care and students involved in the juvenile justice system, the point of contact person shall be responsible for:

(1) ensuring that a student has equal opportunity to participate in sports and other extracurricular activities, career and technical programs or other special programs for which the student qualifies;

(2) ensuring that a student in high school receives timely and ongoing assistance and advice from counselors to improve the student's college and career readiness;

(3) ensuring that a student receives all special education services and accommodations to which the student is entitled under state and federal law;

(4) identifying school staff at each school site who can ensure that students are appropriately supported throughout their enrollment;

(5) supporting communication among the school; the children, youth and families department; the student; the student's educational decision maker appointed by the children's court; caregivers; and other supportive individuals that the student identifies to ensure that the responsibilities listed in this subsection are implemented; and

(6) ensuring that other school staff and teachers have access to training and resources about the educational challenges and needs of system-involved youth, including trauma-informed practices and the impact of trauma on learning.

G. The children, youth and families department shall notify a school when a student in the school enters foster care or a student in foster care enrolls in a school.

H. The student or the student's educational decision maker may notify a school that the student is involved in the juvenile justice system to obtain support and services from the point of contact.

**History:** Laws 2017, ch. 64, § 1.

## **22-13-34. Purple star public schools program.**

A. The department shall develop a "purple star public schools program" that provides a mechanism for public schools to ease the transition of students of military families into new schools by providing academic, social and emotional support to those students or, for public schools not located near a military installation, those schools that want to recognize and celebrate military service and the accomplishments of active military and veterans.

B. A public school that has students from active-duty military families may apply to the department to be a purple star public school by:

- (1) designating school staff as a point of contact for military-related students and their families and for the military;
- (2) providing professional development for point-of-contact staff;
- (3) including a page on its school website that features resources and information for military families;
- (4) describing the academic, social and emotional supports available to assist transitioning military students; and
- (5) submitting a resolution to the local school board supporting military students and the public school's application to become a purple star public school.

C. A public school that does not have students from active-duty military families may apply to be a purple star public school by:

- (1) emphasizing the importance and honor of military service;
- (2) recognizing the service to the country and accomplishments of veterans, active-duty and reserve military and the national guard in their communities;
- (3) sponsoring special events recognizing military service;
- (4) celebrating students who have committed to serving in the military; and
- (5) submitting a resolution to the local school board supporting students of military families and the public school's application to become a purple star public school.

**History:** Laws 2021, ch. 75, § 1.

## **ARTICLE 13A**

### **Incentives for School Improvement (Repealed.)**

**Compiler's notes.** — Laws 2003, ch. 143, § 2, effective July 1, 2004, and contingent upon adoption of an amendment to N.M. Const., art. XII, § 6, repealed Articles 1, 2, 13, 13A and 15 of Chapter 22 NMSA 1978. The amendment to art. XII, § 6 was adopted at the special election held September 23, 2003. Laws 2003, ch. 153, § 73, repealed Article 13A, effective April 4, 2003.

#### **22-13A-1. Repealed.**

**History:** Laws 1989, ch. 137, § 1; 1997, ch. 236, § 1; repealed by Laws 2003, ch. 153, § 73.

## **22-13A-2. Repealed.**

**History:** Laws 1989, ch. 137, § 2; 1997, ch. 236, § 2; repealed by Laws 2003, ch. 153, § 73.

## **22-13A-3. Repealed.**

**History:** Laws 1989, ch. 137, § 3; repealed by Laws 2003, ch. 153, § 73.

## **22-13A-4. Repealed.**

**History:** Laws 1989, ch. 137, § 4; 1997, ch. 236, § 3; repealed by Laws 2003, ch. 153, § 73.

## **22-13A-5. Repealed.**

**History:** Laws 1989, ch. 137, § 5; 1997, ch. 236, § 4; repealed by Laws 2003, ch. 153, § 73.

## **22-13A-6. Repealed.**

**History:** Laws 1989, ch. 137, § 6; 1997, ch. 236, § 5; repealed by Laws 2003, ch. 153, § 73.

# **ARTICLE 13B**

## **Twenty-First Century Education (Repealed.)**

### **22-13B-1. Repealed.**

**History:** Laws 1990 (1st S.S.), ch. 9, § 1; repealed by Laws 1990 (1st S.S.), ch. 9, § 13.

### **22-13B-2. Repealed.**

**History:** Laws 1990 (1st S.S.), ch. 9, § 2; repealed by Laws 1990 (1st S.S.), ch. 9, § 13.

### **22-13B-3. Repealed.**

**History:** Laws 1990 (1st S.S.), ch. 9, § 3; repealed by Laws 1990 (1st S.S.), ch. 9, § 13.

### **22-13B-4. Repealed.**

**History:** Laws 1990 (1st S.S.), ch. 9, § 4; repealed by Laws 1990 (1st S.S.), ch. 9, § 13.

### **22-13B-5. Repealed.**

**History:** Laws 1990 (1st S.S.), ch. 9, § 5; repealed by Laws 1990 (1st S.S.), ch. 9, § 13.

### **22-13B-6. Repealed.**

**History:** Laws 1990 (1st S.S.), ch. 9, § 6; repealed by Laws 1990 (1st S.S.), ch. 9, § 13.

### **22-13B-7. Repealed.**

**History:** Laws 1990 (1st S.S.), ch. 9, § 7; repealed by Laws 1990 (1st S.S.), ch. 9, § 13.

### **22-13B-8. Repealed.**

**History:** Laws 1990 (1st S.S.), ch. 9, § 8; repealed by Laws 1990 (1st S.S.), ch. 9, § 13.

### **22-13B-9. Repealed.**

**History:** Laws 1990 (1st S.S.), ch. 9, § 9; repealed by Laws 1990 (1st S.S.), ch. 9, § 13.

## **ARTICLE 13C**

## **Healthy Hunger-Free Students' Bill of Rights**

### **22-13C-1. Short title.**

Chapter 22, Article 13C NMSA 1978 [except 22-13C-8 NMSA 1978] may be cited as the "Healthy Hunger-Free Students' Bill of Rights Act".

**History:** Laws 2017, ch. 117, § 1; 2023, ch. 30, § 1.

### **22-13C-2. Definitions.**

As used in the Healthy Hunger-Free Students' Bill of Rights Act:

A. "community eligibility provision" means the federal provision created pursuant to Subparagraph (F) of Paragraph (1) of Subsection (a) of 42 U.S.C. Section 1759a that allows school districts to choose to receive federal special assistance payments for school meals in exchange for providing free school meals to all students enrolled in all or selected schools of the school district;

B. "direct certification" means the process by which eligible children are certified for free meals without the need for a household application based on household participation in one or more means-tested federal assistance programs;

C. "eligible meals" means meals served to full price, paid students that qualify for reimbursement under the national school lunch program and the school breakfast program;

D. "federal free meal reimbursement" means the free meal reimbursement paid by the United States department of agriculture under 42 U.S.C. 1759a for meals that qualify for reimbursement pursuant to the national school lunch program and the school breakfast program;

E. "federal paid meal reimbursement rate" means the paid reimbursement rate as set annually by the United States department of agriculture under 42 U.S.C. 1759a for meals that qualify for reimbursement under the national school lunch program and the school breakfast program;

F. "identified student percentage" means the percentage of a school food authority's student enrollment that is certified as eligible for free meals based on a documentation of benefit of receipt or categorical eligibility as described in 7 C.F.R. Section 245.6;

G. "meal application" means an application for free or reduced-price meals pursuant to the national school lunch program and the school breakfast program;

H. "paid meal rate" means the paid student rate reported by the department to the United States department of agriculture based on the average paid meal rate charged by school food authorities in the prior school year;

I. "participating school food authority" means a school food authority that chooses to participate in the New Mexico grown grant program;

J. "program" means the healthy universal school meals program created pursuant to the Healthy Hunger-Free Students' Bill of Rights Act;

K. "school food authority" means school districts, charter schools, the United States department of the interior's bureau of Indian education schools, tribally controlled schools and private schools that operate the national school lunch program and the school breakfast program;

L. "unprocessed and minimally processed products" means raw or frozen products, products that retain their inherent character, such as shredded carrots or ground beef, and dried products, such as beans, but does not include any products that are heated, cooked or canned; and

M. "value-added processed products" means products that are altered from their unprocessed or minimally processed state through preservation techniques, including cooking, baking or canning.

**History:** Laws 2017, ch. 117, § 2; 2023, ch. 30, § 2.

### **22-13C-3. Meal application availability and clarity.**

A. A school shall provide:

(1) a free, printed meal application in every school enrollment packet, or if the school chooses to use an electronic meal application, provide in school enrollment packets an explanation of the electronic meal application process and instructions for how parents or guardians may request a paper application at no cost; and

(2) meal applications and instructions in a language that parents and guardians understand. If a parent or guardian cannot read or understand a meal application, the school shall offer assistance in completing the application.

B. If a school becomes aware that a student who has not submitted a meal application is eligible for free or reduced-fee meals, the school shall complete and file an application for the student under the authority granted by Title 7, Section 245.6(d) of the Code of Federal Regulations.

C. Subsections A and B of this section do not apply to a school that provides free meals to all students in a year in which the school does not collect meal applications from students.

D. The liaison required of a school pursuant to the federal McKinney-Vento Homeless Assistance Act shall coordinate with the nutrition department to make sure that a homeless student receives free school meals and shall be appropriately coded and entered in the student-teacher accountability reporting system. The requirements of this subsection do not apply to a private or religious school.

**History:** Laws 2017, ch. 117, § 3.

### **22-13C-4. Universal school meals for children.**

A. Public school districts and charter schools operating the national school lunch program and the school breakfast program shall establish a program to offer high-quality meals at no charge to all students. Bureau of Indian education schools, tribally controlled schools and private schools operating the national school lunch and the school breakfast program may establish a program to offer high-quality meals at no charge to students. All participating school food authorities shall offer one breakfast and one lunch at no cost to students during each school day to any student who requests a meal without consideration of the student's eligibility for a federally funded free or reduced-price meal, with a maximum of one free meal for each meal service period.

B. The department shall award funding to each school food authority that establishes a program pursuant to the provisions of Subsection E of this section as follows:



(1) for school food authorities that meet the meal quality improvement requirements established pursuant to Subsection E of this section, the department shall distribute to each such school food authority an amount that is equal to the federal free meal reimbursement rate multiplied by the total number of eligible meals served during the applicable budget year, minus an amount equal to the federal paid meal reimbursement for eligible meals served during the applicable budget year; or

(2) for school food authorities that do not meet by July 1, 2025 the meal quality improvement requirements established pursuant to Subsection E of this section, the department shall distribute to each such school food authority an amount that is equal to the paid meal rate multiplied by the total number of eligible meals served during the applicable budget year.

C. School food authorities shall use the money received pursuant to this section to purchase commodities necessary to improve meal quality, including food and other consumables, equipment, staffing, labor needs or training and technical assistance.

D. By August 1 of each year, the department shall inform eligible school food authorities of the amount of program funding they will receive during the upcoming school year. When calculating the amount of program funding that is due to a school food authority, the department shall assume that student participation will remain at the same level as the previous school year.

E. The department shall promulgate rules necessary for implementation of this section, including rules providing for:

(1) meal quality improvement requirements for the program, which may include purchasing New Mexico-produced food, freshly preparing scratch-cooked foods, providing culturally relevant meals and engaging student and family voices and choices in menu development; and

(2) procedures for annual certification.

F. School food authorities shall maximize access to federal funds for the cost of school breakfast and lunch programs by adopting the United States department of agriculture's community eligibility provision or any other federal provision that, in the opinion of the department, results in the most possible federal funding for meals served in that program. Each school food authority that has a school or site with an identified student percentage of at least forty percent, or an identified student percentage of less than forty percent if authorized by federal law, as determined annually by the deadline set by the United States department of agriculture, shall participate in the federal community eligibility provision in the subsequent school year and throughout the duration of the community eligibility provision's four-year cycle. School food authorities, to the extent practicable, shall group public schools for purposes of maximizing the number of schools eligible to participate in the community eligibility provision.

G. If a school food authority does not elect the community eligibility provision or any other federal provision that, in the opinion of the department, results in the most possible federal funding for meals served in that program, school meal applications shall be collected and direct certification shall be used to identify students receiving free, reduced-price and paid meals based on United States department of agriculture guidance.

H. School food authorities shall take steps to maximize federal revenues and minimize debt on families by, at least monthly, taking steps to directly certify students for free school meal status pursuant to protocol determined by the department.

**History:** Laws 2017, ch. 117, § 4; 2023, ch. 30, § 3.

### **22-13C-5. Anti-stigmatization and antidiscrimination practices.**

A. A school shall not:

(1) publicly identify or stigmatize a student who cannot pay for a meal or who owes a meal debt by, for example, requiring that a student wear a wristband or hand stamp; or

(2) require a student who cannot pay for a meal or who owes a meal debt to do chores or other work to pay for meals; provided that chores or work required of all students regardless of a meal debt is permitted.

B. A school shall direct communications about a student's meal debt to a parent or guardian and not the student. Nothing in this subsection prohibits a school from sending a student home with a letter addressed to a parent or guardian.

**History:** Laws 2017, ch. 117, § 5.

### **22-13C-6. Debt collection practices; uncollectable debt.**

A school shall not require a parent or guardian to pay fees or costs from collection agencies hired to collect a meal debt.

**History:** Laws 2017, ch. 117, § 6.

### **22-13C-7. Applicability.**

The Hunger-Free Students' Bill of Rights Act [Healthy Hunger-Free Students' Bill of Rights Act] applies to a public school district, a public school, a private school or a religious school that participates in the national school lunch program or school breakfast program.

**History:** Laws 2017, ch. 117, § 7.

## **22-13C-8. School meals; reduced-price copayments eliminated.**

A. As used in this section:

(1) "reduced-price copayment" means the amount a reduced-price-eligible student would be charged for a reduced-price meal; and

(2) "reduced-price-eligible student" means a student who meets the federal income eligibility guidelines for family-size income levels for meals at a reduced price pursuant to the national school lunch program and the federal school breakfast program.

B. School districts and charter schools that administer a school breakfast or school lunch program shall not charge a reduced-price-eligible student a reduced-price copayment for meals.

C. The department shall provide funding to each school district and charter school that administers a school breakfast or school lunch program to cover the cost of eliminating reduced-price copayments. Funding shall be based on a per-meal basis at the difference between the federal free meal rate and the reduced-price copayment rate. When calculating the amount due a school district or charter school, the department shall assume that the number of reduced-price-eligible students will remain at the same level as the previous year. If a school district or charter school has not previously had a school breakfast program or school lunch program in which meals were served to reduced-price-eligible students, the department shall work with the school district or charter school to determine an accurate estimate of funding for the program.

D. By August 1 of each year, the department shall inform school districts and charter schools of the amounts the school districts and charter schools will receive to offset the elimination of reduced-price copayments for the upcoming school year. School districts and charter schools are not required to demonstrate their expenses to receive funding pursuant to this section.

E. The department shall promulgate rules necessary to implement the provisions of this section, including procedures for reimbursing school districts and charter schools.

**History:** Laws 2020, ch. 12, § 1.

## **22-13C-9. Incentivize New Mexico-grown foods.**

A. School food authorities are eligible to receive an incentive grant pursuant to this section to purchase New Mexico-grown, -raised or -processed products. A participating school food authority may use the amount received pursuant to this section to support implementation of program requirements described in Subsection E of Section 3 [22-13C-4 NMSA 1978] of the Healthy Hunger-Free Students' Bill of Rights Act.

B. School food authorities shall use the money received pursuant to this section to purchase New Mexico-grown, -raised or -processed products. A minimum of seventy-five percent of funds shall be used to purchase unprocessed and minimally processed products. Up to twenty-five percent of funds may be used for value-added processed products.

C. By August 1 of each year, subject to available appropriations, the department shall distribute to each participating school food authority the greater of one thousand dollars (\$1,000) or an amount equal to ten cents (\$.10) multiplied by the number of lunches that qualified for federal free meal reimbursement that the participating school food authority served to students in the preceding school year. When calculating the amount of program funding that is due to a school food authority, the department shall assume that student participation will remain at the same level as the previous year.

**History:** Laws 2023, ch. 30, § 4.

## **22-13C-10. Addressing food waste.**

By no later than July 1, 2025, a school food authority shall seek to achieve the lowest level of food waste, which shall include all of the following:

A. students in grades kindergarten through five shall be allowed to have up to twenty minutes of seated lunch time each school day to provide sufficient lunch periods that are long enough to give all students adequate time to eat; and

B. share tables shall be provided where food service staff, students and parents may return allowable food. Allowable food placed on the share tables that is not taken by a student during the course of a regular school meal period shall be donated to students, food banks or other nonprofit charitable organizations.

**History:** Laws 2023, ch. 30, § 5.

## **ARTICLE 13D K-5 Plus (Repealed)**

### **22-13D-1. Repealed.**

**History:** Laws 2019, ch. 206, § 2; 2019, ch. 207, § 2; repealed by Laws 2023, ch. 19, § 5.

### **22-13D-2. Repealed.**

**History:** Laws 2019, ch. 206, § 3; 2019, ch. 207, § 3; 2021, ch. 134, § 3; repealed by Laws 2023, ch. 19, § 5.

### **22-13D-3. Repealed.**

**History:** Laws 2019, ch. 206, § 4; 2019, ch. 207, § 4; 2021, ch. 134, § 4; repealed by Laws 2023, ch. 19, § 5.

### **22-13D-4. Repealed.**

**History:** Laws 2019, ch. 206, § 5; 2019, ch. 207, § 5; 2021, ch. 134, § 5; repealed by Laws 2023, ch. 19, § 5.

## **ARTICLE 14**

### **Vocational Education or Rehabilitation**

#### **22-14-1. Definitions.**

As used in Sections 22-14-2 through 22-14-16 NMSA 1978:

A. "vocational education" means vocational or technical training or retraining conducted as part of a program designed to enable an individual to engage in a remunerative occupation. Vocational education may provide but is not limited to guidance and counseling, vocational instruction, training for vocational education instructors, transportation and training material and equipment;

B. "person with a disability" means a person with a physical or mental disability that constitutes a substantial handicap to employment but that is of such a nature that vocational rehabilitation may be reasonably expected to enable the person to engage in a remunerative occupation;

C. "vocational rehabilitation" means services or training necessary to enable a person with a disability to engage in a remunerative occupation. Vocational rehabilitation may provide but is not limited to medical or vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, customary occupational tools or equipment, maintenance and training material and equipment; and

D. "federal aid funds" means funds, gifts or grants received by the state under any federal aid for vocational education or vocational rehabilitation.

**History:** 1953 Comp., § 77-12-1, enacted by Laws 1967, ch. 16, § 191; 2007, ch. 46, § 11.

#### **22-14-2. Vocational education; state governing authority.**

A. The commission is the governing authority and shall establish policies for the conduct of all programs of the state and state plans established relating to vocational education unless otherwise provided by law.

B. The commission is the sole agency of the state for the administration or for the supervision of the administration of any state plan relating to vocational education or for any federal aid funds, except as may otherwise be provided by law.

C. The commission may delegate to the department its administrative functions relating to vocational education.

**History:** 1953 Comp., § 77-12-2, enacted by Laws 1967, ch. 16, § 192; 2005, ch. 328, § 1.

### **22-14-2.1. Vocational rehabilitation; state governing authority.**

A. The department is the governing authority and shall establish policies for the conduct of all programs of the state and state plans established relating to vocational rehabilitation, unless otherwise provided by law.

B. The department is the sole agency of the state for the administration or for the supervision of the administration of any state plan relating to vocational rehabilitation, or for any federal aid funds, except as may otherwise be provided by law.

**History:** Laws 2005, ch. 328, § 2.

### **22-14-3. State agency for vocational education; authority.**

The commission is the sole agency of the state for the supervision of the administration of federal aid funds relating to vocational education. The commission may:

A. enter into an agreement with the appropriate federal agency to procure for the state the benefits of the federal statute;

B. establish a state plan, if required by the federal statute, that meets the requirements of the federal statute to qualify the state for the benefits of the federal statute;

C. provide for reports to be made to the federal agency as may be required;

D. provide for reports to be made to the commission or the department from agencies receiving federal aid funds;

E. make surveys and studies in cooperation with other agencies to determine the needs of the state in the areas where the federal aid funds are to be applied;

F. establish standards to which agencies must conform in receiving federal aid funds;

G. give technical advice and assistance to any agency in connection with that agency obtaining federal aid funds;

H. coordinate as required by the federal agency with the state workforce development board; and

I. as required by the federal agency, make available a list of all school dropout, post-secondary and adult programs assisted pursuant to the state plan.

**History:** 1953 Comp., § 77-12-3, enacted by Laws 1967, ch. 16, § 193; 2005, ch. 328, § 3.

### **22-14-3.1. State agency for vocational rehabilitation; authority.**

The department is the sole agency of the state for the administration or the supervision of the administration of any federal aid funds pertaining to vocational rehabilitation. The department may:

A. enter into an agreement with the appropriate federal agency to procure for the state the benefits of the federal statute;

B. establish a state plan, if required by the federal statute, that meets the requirements of the federal statute to qualify the state for the benefits of the federal statute;

C. provide for reports to be made to the federal agency as may be required;

D. provide for reports to be made to the department from agencies receiving federal aid funds;

E. make surveys and studies in cooperation with other agencies to determine the needs of the state in the areas where the federal aid funds are to be applied;

F. establish standards to which agencies must conform in receiving federal aid funds; and

G. give technical advice and assistance to any agency in connection with that agency obtaining federal aid funds.

**History:** Laws 2005, ch. 328, § 4.

### **22-14-4. Repealed.**

**History:** 1953 Comp., § 77-12-4, enacted by Laws 1967, ch. 16, § 194; repealed by Laws 2005, ch. 328, § 9.

## **22-14-5. Instructional support and vocational education division; powers; duties.**

Subject to the policies of the commission, the instructional support and vocational education division of the department shall:

- A. provide vocational education to qualified persons;
- B. act as the representative of the commission in administering any state plan or federal aid funds relating to vocational education;
- C. cooperate and make agreements with public or private agencies to establish or to maintain a vocational education program;
- D. enter into reciprocal agreements with other states to provide vocational education;
- E. accept gifts or grants to be used for vocational education;
- F. enforce rules for the administration of laws relating to vocational education; and
- G. conduct research and compile statistics relating to vocational education.

**History:** 1953 Comp., § 77-12-5, enacted by Laws 1967, ch. 16, § 195; 1993, ch. 226, § 30; 2005, ch. 328, § 5.

## **22-14-6. Repealed.**

## **22-14-7. Vocational rehabilitation division; director.**

- A. The "vocational rehabilitation division" is created within the department.
- B. The secretary shall appoint a director of the vocational rehabilitation division to be known as the "director of vocational rehabilitation".

**History:** 1953 Comp., § 77-12-6, enacted by Laws 1967, ch. 16, § 196; 2005, ch. 328, § 6.

## **22-14-8. Vocational rehabilitation division; powers; duties.**

The vocational rehabilitation division of the public education department shall:



- A. provide vocational rehabilitation to qualified individuals;
- B. administer any state plan or federal aid funds relating to vocational rehabilitation;
- C. cooperate and make agreements with public or private agencies to establish or to maintain a vocational rehabilitation program;
- D. enter into reciprocal agreements with other states to provide vocational rehabilitation;
- E. accept gifts or grants to be used for vocational rehabilitation;
- F. enforce regulations for the administration of laws relating to vocational rehabilitation;
- G. conduct research and compile statistics relating to vocational rehabilitation; and
- H. ensure that behavioral health services, including mental health and substance abuse services, provided, contracted for or approved are in compliance with the requirements of Section 9-7-6.4 NMSA 1978.

**History:** 1953 Comp., § 77-12-7, enacted by Laws 1967, ch. 16, § 197; 1989, ch. 88, § 1; 1993, ch. 226, § 31; 1993, ch. 229, § 2; 2004, ch. 46, § 11.

## **22-14-9. Custody of funds; budgets; disbursements.**

- A. The state treasurer shall be the custodian of all federal aid funds. The state treasurer shall hold these funds in separate accounts according to the purposes of the funds.
- B. All state funds, federal aid funds or grants to the state relating to vocational education shall be budgeted and accounted for as provided by law and by the rules of the department of finance and administration. These funds or grants shall be disbursed by warrants of the department of finance and administration on vouchers issued by the director of the instructional support and vocational education division or the director's authorized representative.
- C. All state funds, federal aid funds or grants to the state relating to vocational rehabilitation shall be budgeted and accounted for as provided by law and by the rules of the department of finance and administration. These funds or grants shall be disbursed by warrants of the department of finance and administration on vouchers issued by the director of the vocational rehabilitation division or the director's authorized representative.

D. All federal aid funds received by the state to be used for vocational education or vocational rehabilitation programs may be expended in any succeeding year from the year received.

**History:** 1953 Comp., § 77-12-8, enacted by Laws 1967, ch. 16, § 198; 2005, ch. 328, § 7.

## **22-14-10. Recompiled.**

## **22-14-11. Vocational rehabilitation; eligibility.**

Vocational rehabilitation shall be provided to any person who:

A. is a resident of the state at the time of filing an application for vocational rehabilitation; and

B. qualifies for eligibility under a vocational rehabilitation program established by the state; or

C. qualifies for eligibility under the terms of an agreement that the state has with the federal government or with another state.

**History:** 1953 Comp., § 77-12-9, enacted by Laws 1967, ch. 16, § 199; 2005, ch. 328, § 8.

### **22-14-11.1. Third party liability.**

A. The vocational rehabilitation division shall make reasonable efforts to ascertain any legal liability of third parties who are or may be liable to pay all or part of the cost of rehabilitation services of an applicant or client of vocational rehabilitation.

B. When the division provides vocational rehabilitation services to qualified individuals, the division is subrogated to any right of the individual against a third party for recovery of costs incurred.

**History:** Laws 1983, ch. 60, § 1.

## **22-14-12. Hearings.**

A. A fair hearing shall be provided for any individual applying for or receiving vocational rehabilitation aggrieved by any action or inaction of the vocational rehabilitation division or of the director of vocational rehabilitation.

B. The state board [department] shall adopt regulations for the conduct of hearings pursuant to this section.

**History:** 1953 Comp., § 77-12-10, enacted by Laws 1967, ch. 16, § 200; 1983, ch. 60, § 2.

### **22-14-13. Nontransferable or nonassignable rights.**

The rights of any individual under the provisions of any state law relating to vocational rehabilitation are not transferable or assignable in law or in equity.

**History:** 1953 Comp., § 77-12-11, enacted by Laws 1967, ch. 16, § 201.

### **22-14-14. Limitations on political activities.**

No person engaged in administering any vocational education or vocational rehabilitation program pursuant to Sections 22-14-1 through 22-14-16 NMSA 1978 shall use his official authority or influence to permit the use of the vocational education or vocational rehabilitation program to interfere with any public election or partisan political campaign. Nor shall such person take any active part in the management of a political campaign, or participate in any political activity beyond the person's constitutional rights of voting and of free speech. Nor shall he be required to contribute or render service, assistance, subscription, assessment or contribution for any political purpose. Any person violating the provisions of this section shall be subject to discharge or suspension.

**History:** 1953 Comp., § 77-12-12, enacted by Laws 1967, ch. 16, § 202.

### **22-14-15. Repealed.**

### **22-14-16. Admission to state educational institutions; exemption from certain fees.**

Upon written request of the department, all state educational institutions shall accept for admission, without any charge for any fees except tuition charges, a person with a disability meeting the standards of the institution.

**History:** 1953 Comp., § 77-12-14, enacted by Laws 1967, ch. 16, § 204; 2007, ch. 46, § 12.

### **22-14-17. Repealed.**

### **22-14-18. Repealed.**

### **22-14-19. Repealed.**

## **22-14-20. New Mexico school for the visually handicapped; certain functions transferred.**

There is transferred to the services for the blind administrative unit of the vocational rehabilitation division of the department of education [public education department] those powers, fiscal responsibilities, duties, records, equipment, lands, buildings and personnel of the New Mexico school for the visually handicapped pertaining to the training, rehabilitating and employing of blind persons over the age of eighteen years in cooperation with any other federal or state agency.

**History:** 1953 Comp., § 73-23-1.2, enacted by Laws 1971, ch. 324, § 5; 1973, ch. 209, § 2; 1978 Comp., § 21-5-3, recompiled as § 22-14-20 by Laws 1983, ch. 60, § 3.

## **22-14-21. Products of clients of the commission for the blind; purchasing agent to determine value.**

It is the duty of the state purchasing agent to determine the fair market value of all products manufactured by clients of the commission for the blind and offered for sale to the state, or any other governmental agency or political subdivision thereof having its own purchasing agency, by the commission for the blind and approved for that use by the state purchasing agent, to revise the prices from time to time in accordance with changing market conditions and to make such rules and regulations regarding specifications, time of delivery and other relevant matters as are necessary to carry out the purpose of Sections 22-14-21 through 22-14-23 NMSA 1978.

**History:** 1941 Comp., § 6-410, enacted by Laws 1953, ch. 163, § 1; 1953 Comp., § 73-23-7; Laws 1977, ch. 159, § 1; 1978 Comp., § 21-5-9, recompiled as § 22-14-21 by Laws 1983, ch. 60, § 3; 1993, ch. 226, § 32.

## **22-14-22. Purchases by state agencies and subdivisions.**

Except as hereinafter provided, all products thereafter procured by or for the state, or any governmental agency or political subdivision thereof having its own purchasing agency, shall be procured in accordance with applicable specifications of the state purchasing agent from the commission for the blind or duly established agencies or branches thereof whenever the products are available at the price determined, as provided in Section 22-14-21 NMSA 1978, to be a fair market price for the product so manufactured, and no advertisement or notice for bids from other suppliers shall be necessary.

**History:** 1941 Comp., § 6-411, enacted by Laws 1953, ch. 163, § 2; 1953 Comp., § 73-23-8; 1977, ch. 159, § 2; 1978 Comp., § 21-5-10, recompiled as § 22-14-22 by Laws 1983, ch. 60, § 3; 1993, ch. 226, § 33.

## **22-14-23. Application of funds.**

All money received by the commission for the blind or any duly established agency or branch thereof from the sale of products manufactured by clients of the commission for the blind to the state, any subdivision thereof or any other purchaser shall be placed in a special fund, which shall be used only for ordinary and necessary business expenses and to purchase raw materials, supplies and capital improvements for the manufacturing of products and to pay such compensation to the clients manufacturing the products as may be determined to be reasonable by the commission for the blind.

**History:** 1941 Comp., § 6-412, enacted by Laws 1953, ch. 163, § 3; 1953 Comp., § 73-23-9; Laws 1977, ch. 159, § 3; 1981, ch. 71, § 1; 1978 Comp., § 21-5-11, recompiled as § 22-14-23 by Laws 1983, ch. 60, § 3; 1993, ch. 226, § 34.

## **22-14-24. Purpose.**

The purpose of Sections 22-14-24 through 22-14-29 NMSA 1978 is to provide blind persons with remunerative employment, to enlarge the economic opportunities for the blind and to stimulate them to greater efforts in striving to make themselves self-supporting, by authorizing blind persons licensed in accordance with the provisions of those sections to operate vending stands on any state property where vending stands may be properly and satisfactorily operated by blind persons, by granting blind persons a preference in the operation of vending stands on state property, by authorizing cooperation with the United States government in the administration of the vending stand program for the blind on federal property and by authorizing the commission to establish, maintain and operate a vending stand program for the blind.

**History:** 1953 Comp., § 59-12-1, enacted by Laws 1957, ch. 180, § 1; 1971, ch. 324, § 2; 1978 Comp., § 28-9-1, recompiled as § 22-14-24 by Laws 1983, ch. 60, § 3; 1986, ch. 108, § 10.

## **22-14-25. Definitions.**

For the purposes of Sections 22-14-24 through 22-14-29 NMSA 1978:

A. "blind person" means a person having not more than ten percent visual acuity in the better eye with correction. This means a person who has:

(1) not more than 20/200 central visual acuity in the better eye after correction; or

(2) an equally disabling loss of the visual field, i.e., a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees. Such blindness shall be certified by a duly licensed ophthalmologist, subject to approval of the New Mexico board of medical examiners;

B. "commission" means the commission for the blind;

C. "license" means a written instrument issued by the commission to a blind person pursuant to Sections 22-14-24 through 22-14-29 NMSA 1978, authorizing the blind person to operate a vending stand on state, federal or other property;

D. "state property" means any building or land owned, leased or occupied by any department or agency of the state or any instrumentality wholly owned by the state or by any county or municipality or by any other local governmental entity; and

E. "vending stand" means:

(1) such shelters, counters, shelving, display and wall cases, refrigerating apparatus and other appropriate auxiliary equipment as are necessary for the vending of such articles as may be approved by the commission, agency or person having control of the property on which the stand is to be located; and

(2) manual or coin-operated vending machines or similar devices for vending the articles mentioned in Paragraph (1) of this subsection.

**History:** 1953 Comp., § 59-12-2, enacted by Laws 1957, ch. 180, § 2; 1978 Comp., § 28-9-2, recompiled as § 22-14-25 by Laws 1983, ch. 60, § 3; 1986, ch. 108, § 11.

## **22-14-26. Repealed.**

## **22-14-27. Assuring preferences to blind persons.**

The head or governing body of each department or agency and of each county or municipality or other local governmental entity having control of state property shall:

A. adopt policies and take action as may be necessary to assure that blind persons licensed by the commission will be given a preference in the establishment and operation of vending stands on property under its control, when vending stands may be properly and satisfactorily operated by blind persons;

B. cooperate with the commission in surveys of property under its control to find suitable locations for the operation of vending stands by blind persons and, after it has been determined that there is need for a vending stand and after the commission has determined that the stand may be properly and satisfactorily operated by a blind person, issue to the commission a permit for the operation of a vending stand by a licensed blind person and cooperate with the commission in the installation of the vending stand; and

C. provide appropriate vending space and utility services for the operation of vending stands at no cost to the commission or to the blind licensee.

**History:** 1953 Comp., § 59-12-3, enacted by Laws 1957, ch. 180, § 3; 1978 Comp., § 28-9-4, recompiled as , § 22-14-27 by Laws 1983, ch. 60, § 3; 1985, ch. 233, § 1; 1986, ch. 108, § 12.

## **22-14-28. Powers and duties of the commission relating to the vending stand program.**

In carrying out the provisions of Sections 22-14-24 through 22-14-29 NMSA 1978, the commission:

A. shall prescribe regulations governing:

- (1) personnel standards;
- (2) the protection of records and confidential information;
- (3) eligibility for licensing of blind persons as vending stand operators;
- (4) termination of licenses;
- (5) the title to vending stand equipment and the interest in stocks of merchandise;
- (6) procedures for fair hearings; and
- (7) such other regulations as may be necessary to carry out the purposes of Sections 22-14-24 through 22-14-29 NMSA 1978;

B. shall appoint such personnel as may be necessary for the administration of the vending stand program;

C. shall make surveys to find locations where vending stands may be properly and satisfactorily operated by blind persons and shall establish vending stands as it deems appropriate;

D. shall furnish each vending stand established with adequate suitable equipment, shall be responsible for the maintenance and repair of the equipment and shall furnish each vending stand with an adequate initial stock of merchandise;

E. shall provide such management and supervisory services as are deemed necessary by the commission to assure that each vending stand will be operated in the most effective and productive manner possible;

F. shall cooperate with the United States department of education in the administration of the vending stand program on federal property and adopt such

methods of operation and take such action as may be required to secure the full benefits of that program;

G. shall prepare and submit to the governor annual reports of activities and expenditures and, prior to each regular session of the legislature, estimates of sums required for carrying out the purpose of Sections 22-14-24 through 22-14-29 NMSA 1978 and estimates of the amounts to be made available for this purpose from all sources;

H. shall take such other action as may be necessary or appropriate to carry out the purposes of Sections 22-14-24 through 22-14-29 NMSA 1978;

I. may enter into agreements with private nonprofit organizations for furnishing services to the vending stand program; provided that all such services and activities of the nonprofit organizations relating to the vending stand program shall be subject to the commission's supervision and control;

J. may, in its discretion, set aside funds from the operation of vending stands for such purposes as maintenance and replacement of equipment, the purchase of new equipment, the provision of management services, guaranteeing a fair minimum return to all vending stand operators and such other purposes as it may determine appropriate and which are not inconsistent with federal laws and regulations relating to the "setting aside of funds"; provided that in no case shall the amount set aside from any vending stand exceed a reasonable sum in relation to the net profit to the operator of the stand in the opinion of the executive officer of the agency; and

K. may accept gifts and donations made unconditionally, or subject to such conditions as it may determine appropriate, for the purposes of carrying out the provisions of Sections 22-14-24 through 22-14-29 NMSA 1978 and may use, hold, invest or reinvest such gifts for those purposes.

**History:** 1953 Comp., § 59-12-4, enacted by Laws 1957, ch. 180, § 4; 1978 Comp., § 28-9-5, recompiled as § 22-14-28 by Laws 1983, ch. 60, § 3; 1986, ch. 108, § 13.

## **22-14-29. Hearings.**

The commission shall provide an opportunity for a fair hearing to any licensed vending stand operator dissatisfied with any action arising from the operation or administration of the vending stand program.

**History:** 1953 Comp., § 59-12-5, enacted by Laws 1957, ch. 180, § 5; 1978 Comp., § 28-9-6, recompiled as § 22-14-29 by Laws 1983, ch. 60, § 3; 1986, ch. 108, § 14.

## **22-14-30. Vocational rehabilitation division; designated agency for federal funds.**



The vocational rehabilitation division of the department of education [public education department] is designated the sole state agency to administer and receive any federal funds relating to vocational rehabilitation of the blind.

**History:** 1953 Comp., § 77-12-8.1, enacted by Laws 1971, ch. 324, § 4; 1978 Comp., § 22-14-10, recompiled as § 22-14-30 by Laws 1993, ch. 226, § 53.

## **22-14-31. Pre-apprenticeship programs.**

A. As used in this section:

(1) "apprenticeable trade" means a skilled trade that possesses the following characteristics:

(a) it is customarily learned in a practical way through a structured, systematic program of on-the-job supervised training;

(b) it is clearly identified and commonly recognized throughout an industry;

(c) it involves manual, mechanical or technical skills and knowledge that require a minimum of two thousand hours of on-the-job work experience; and

(d) it requires related instruction to supplement on-the-job training;

(2) "apprenticeship" means a formal educational method for training a person in a skilled trade that combines supervised employment with classroom study;

(3) "course of instruction" means an organized and systematic program of study designed to provide the pre-apprentice with knowledge of the theoretical subjects related to one or more specific apprenticeable trades and that meets apprenticeship-related instruction requirements; provided that "course of instruction" may include hands-on training but does not include on-the-job training;

(4) "industry instructor" means a person who is:

(a) working or has worked in an apprenticeable trade for the number of years required by established industry practices of the particular trade to be an industry-recognized expert in the trade; or

(b) a career-technical faculty member at a public post-secondary educational institution;

(5) "local school board" includes the governing body of a charter school;

(6) "pre-apprentice" means a public school student who is enrolled in a pre-apprenticeship program;

(7) "pre-apprenticeship program" means a local school board-approved course of instruction offered through a provider that results, upon satisfactory completion of the program, in a certificate of completion that is acceptable to an apprenticeship training program registered with the apprenticeship council; and

(8) "provider" means a registered apprenticeship program, an employer of an apprenticeable trade, a union, a trade association, a post-secondary educational institution or other person approved by the local school board to provide a pre-apprenticeship program.

B. Any school district or charter school may allow pre-apprenticeship programs to be offered to qualified eleventh and twelfth grade students. The local school board shall only approve providers and pre-apprenticeship programs, including courses of instruction and industry instructors, that meet apprenticeship requirements of the apprenticeship council or the apprenticeship requirements of an appropriate nationally recognized trade organization. Pre-apprenticeship programs shall meet department content and performance standards and shall be provided at no cost to students.

C. A person may apply to the local school board to become a provider by submitting an application in the form prescribed by the local school board. The application shall include:

(1) the pre-apprenticeship program to be offered by the provider, including the course of instruction and the provision of tools, supplies and textbooks that will be provided by the pre-apprenticeship program;

(2) a description of the way in which a pre-apprentice's coursework and program participation will be evaluated and reported as grades to the high school;

(3) a description of the qualifications for pre-apprentices, the way in which students will be recruited and accepted into the pre-apprenticeship program and the circumstances under which a pre-apprentice may be dismissed from the pre-apprenticeship program;

(4) the names and qualifications of the pre-apprenticeship program's industry instructors;

(5) a description of the location where the pre-apprenticeship program will be conducted; and

(6) any other information the local school board deems necessary to determine the fitness of the applicant to deliver a pre-apprenticeship program and the appropriateness of the program in achieving school district or charter school goals.

D. In approving an application, the local school board shall include its approvals of the provider, the pre-apprenticeship program and the industry instructors. If a single

applicant proposes to offer more than one pre-apprenticeship program, each program and its industry instructors shall be approved by the local school board.

E. Pre-apprenticeship programs shall be designed so that pre-apprentices may earn elective credits toward high school graduation and meet requirements for apprenticeship-related supplemental instruction or post-secondary education course credits. Pre-apprenticeship programs shall be offered during the school day whenever possible. Programs may be conducted at industry locations, including union halls or other industry training facilities; at existing school facilities, if available; or at any other location approved by the local school board.

F. To qualify for a pre-apprenticeship program, a student must:

- (1) be at least sixteen years of age;
- (2) be in the eleventh or twelfth grade;
- (3) have at least the number of electives required for the pre-apprenticeship program applied for and commit those electives to the program; and
- (4) meet other requirements of the pre-apprenticeship program approved by the local school board.

G. Once a provider and pre-apprenticeship program have been approved, the provider shall recruit students and accept and retain or dismiss them as provided in the provider's approved application.

H. Once accepted into a pre-apprenticeship program, a student may withdraw only with the approval of the high school principal.

I. If a provider wishes to cease its pre-apprenticeship program, it shall notify the local school board, the superintendent and the principals of the pre-apprentices' high schools. The notification shall include a plan for the continuation of the pre-apprenticeship program of the pre-apprentices currently enrolled in the provider's program.

**History:** Laws 2009, ch. 256, § 2.

## **22-14-32. Licensure not required; background checks; school-sponsored activity and volunteers.**

A. The provisions of the School Personnel Act [Chapter 22, Article 10A NMSA 1978], including licensure requirements, shall not apply to industry instructors, except that they shall be required to undergo a background check as provided for licensed school employees in Section 22-10A-5 NMSA 1978. The school district or charter school may act on the information received from the background check and refuse to

approve a person as an industry instructor. An industry instructor shall provide for the safety of students under the industry instructor's care in the same manner as required of licensed school employees and shall not allow persons who have not been vetted through the background check process to have unsupervised contact with students.

B. For purposes of the public school insurance authority, each pre-apprenticeship program shall be considered a school-sponsored activity and each industry instructor shall be considered a school volunteer.

**History:** Laws 2009, ch. 256, § 3.

## **ARTICLE 15**

### **Instructional Material**

#### **22-15-1. Short title.**

Sections 22-15-1 through 22-15-14 NMSA 1978 may be cited as the "Instructional Material Law".

**History:** 1953 Comp., § 77-13-1, enacted by Laws 1967, ch. 16, § 205; 1975, ch. 270, § 1; 2005, ch. 80, § 1.

#### **22-15-2. Definitions.**

As used in the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978]:

- A. "division" or "bureau" means the instructional material bureau of the department;
- B. "director" or "chief" means the chief of the bureau;
- C. "instructional material" means school textbooks and other educational media that are used as the basis for instruction, including combinations of textbooks, learning kits, supplementary material and electronic media;
- D. "multiple list" means a written list of those instructional materials approved by the department;
- E. "membership" means the total enrollment of qualified students on the fortieth day of the school year entitled to the free use of instructional material pursuant to the Instructional Material Law;
- F. "additional pupil" means a pupil in a school district's, state institution's or private school's current year's certified forty-day membership above the number certified in the school district's, state institution's or private school's prior year's forty-day membership;

G. "school district" includes state-chartered charter schools; and

H. "other classroom materials" means materials other than textbooks that are used to support direct instruction to students.

**History:** 1953 Comp., § 77-13-2, enacted by Laws 1967, ch. 16, § 206; 1975, ch. 270, § 2; 1993, ch. 226, § 35; 2005, ch. 80, § 2; 2006, ch. 94, § 47; 2007, ch. 285, § 1.

### **22-15-3. Bureau; chief.**

A. The "instructional material bureau" is created within the department of education [public education department].

B. With approval of the state board [department], the state superintendent [secretary] shall appoint a chief of the bureau.

**History:** 1953 Comp., § 77-13-3, enacted by Laws 1967, ch. 16, § 207; 1975, ch. 270, § 3; 1993, ch. 226, § 36.

### **22-15-4. Bureau; duties.**

Subject to the policies and rules of the department, the bureau shall:

A. administer the provisions of the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978];

B. enforce rules for the handling, safekeeping and distribution of instructional material and instructional material funds and for inventory and accounting procedures to be followed by school districts, state institutions and private schools pursuant to the Instructional Material Law;

C. withdraw or withhold the privilege of participating in the free use of instructional material in case of any violation of or noncompliance with the provisions of the Instructional Material Law or any rules adopted pursuant to that law;

D. enforce rules relating to the use and operation of instructional material depositories in the instructional material distribution process; and

E. enforce rules that require local school boards to implement a process that ensures that parents and other community members are involved in the instructional material review process.

**History:** 1953 Comp., § 77-13-4, enacted by Laws 1967, ch. 16, § 208; 1975, ch. 270, § 4; 1993, ch. 226, § 37; 1997, ch. 100, § 1; 2005, ch. 80, § 3; 2009, ch. 221, § 3.

### **22-15-5. Instructional material fund.**

A. The state treasurer shall establish a nonreverting fund to be known as the "instructional material fund". The fund consists of appropriations, gifts, grants, donations and any other money credited to the fund. The fund shall be administered by the department, and money in the fund is appropriated to the department to carry out the provisions of the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978].

B. The instructional material fund shall be used for the purpose of paying for the cost of purchasing instructional material pursuant to the Instructional Material Law. Transportation charges for the delivery of instructional material to a school district, a state institution or a private school as agent and emergency expenses incurred in providing instructional material to students may be included as a cost of purchasing instructional material. Charges for rebinding of used instructional material that appears on the multiple list pursuant to Section 22-15-8 NMSA 1978 may also be included as a cost of purchasing instructional material.

**History:** 1953 Comp., § 77-13-5, enacted by Laws 1967, ch. 16, § 209; 1975, ch. 270, § 5; 1992, ch. 76, § 1; 1997, ch. 100, § 2; 2009, ch. 221, § 4.

## **22-15-6. Disbursements from the instructional material fund.**

Disbursements from the instructional material fund shall be by warrant of the department of finance and administration upon vouchers issued by the department of education [public education department].

**History:** 1953 Comp., § 77-13-6, enacted by Laws 1967, ch. 16, § 210; 1975, ch. 270, § 6; 1993, ch. 226, § 38.

## **22-15-7. Students eligible; distribution.**

A. Any qualified student or person eligible to become a qualified student attending a public school, a state institution or a private school approved by the department in any grade from first through the twelfth grade of instruction is entitled to the free use of instructional material. Any student enrolled in an early childhood education program as defined by Section 22-13-3 NMSA 1978 or person eligible to become an early childhood education student as defined by that section attending a private early childhood education program approved by the department is entitled to the free use of instructional material.

B. Instructional material shall be distributed to school districts, state institutions and private schools as agents for the benefit of students entitled to the free use of the instructional material.

C. Any school district, state institution or private school as agent receiving instructional material pursuant to the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978] is responsible for distribution of the instructional material for use by eligible students and for the safekeeping of the instructional material.

**History:** 1953 Comp., § 77-13-7, enacted by Laws 1967, ch. 16, § 211; 1975, ch. 270, § 7; 1977, ch. 99, § 1; 1993, ch. 226, § 39; 1997, ch. 100, § 3; 2003, ch. 394, § 5; 2009, ch. 221, § 5.

## **22-15-8. Multiple list; selection; review process.**

A. The department shall adopt a multiple list to be made available to students pursuant to the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978]. At least ten percent of instructional material on the multiple list concerning language arts and social studies shall contain material that is relevant to the cultures, languages, history and experiences of multi-ethnic students. The department shall ensure that parents and other community members are involved in the adoption process at the state level.

B. Pursuant to the provisions of the Instructional Material Law, each school district, state institution or private school as agent may select instructional material for the use of its students from the multiple list adopted by the department. Local school boards shall give written notice to parents and other community members and shall invite parental involvement in the adoption process at the district level. Local school boards shall also give public notice, which notice may include publication in a newspaper of general circulation in the school district.

C. The department shall establish by rule an instructional material review process for the adoption of instructional material on the multiple list. The process shall include:

(1) a summer review institute at which basal materials in the content area under adoption will be facilitated by content and performance experts in the content area and reviewed by reviewers;

(2) that level two and level three-A teachers are reviewers of record; provided that level one teachers, college students completing teacher preparation programs, parents and community leaders will be recruited and partnered with the reviewers of record;

(3) that reviewed materials shall be scored and ranked primarily against how well they align with state academic content and performance standards, but research-based effectiveness may also be considered; and

(4) the adoption of supplementary materials that are not reviewed.

D. Participants in the summer review institute shall receive a stipend commensurate with the level of responsibility and participation as determined by department rule.

E. The department shall charge a processing fee to vendors of instructional materials not to exceed the retail value of the instructional material submitted for adoption.

**History:** 1953 Comp., § 77-13-8, enacted by Laws 1967, ch. 16, § 212; 1975, ch. 270, § 8; 1986, ch. 33, § 31; 1993, ch. 226, § 40; 1997, ch. 100, § 4; 2003, ch. 146, § 1; 2005, ch. 80, § 4; 2009, ch. 221, § 6.

### **22-15-8.1. Instructional material adoption fund.**

The "instructional material adoption fund" is created in the state treasury. The fund consists of fees charged to publishers to review their instructional materials, income from investment of the fund, gifts, grants and donations. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the department and money in the fund is appropriated to the department to pay expenses associated with adoption of instructional material for the multiple list.

**History:** Laws 2005, ch. 80, § 5.

### **22-15-8.2. Reading materials fund; created; purpose; applications.**

A. The "reading materials fund" is created in the state treasury. The fund consists of appropriations, gifts, grants and donations. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the department, and money in the fund is appropriated to the department to assist public schools that want to change their elementary literacy materials from the current adoption. Money in the fund shall be disbursed on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of public education or the secretary's authorized representative.

B. A school district that wants to use a scientific research-based core comprehensive, intervention or supplementary reading program aligned with explicit, systematic, diagnostic, cumulative instruction in phonological and phonemic awareness, phonics, syllable types, morphology, semantics and syntax may apply to the department for money from the reading materials fund to purchase the necessary instructional materials for the selected program; provided that the school district selects no more than two comprehensive published core reading programs and the school district has established a literacy professional development plan that includes a detailed framework for structured literacy training and ongoing support in the effective use of the selected instructional materials. Materials eligible for funding shall be:

(1) core materials that are on the New Mexico kindergarten through eighth grade English language arts, Spanish language arts, English language development and world languages instructional materials adopted list and have received structured literacy recognition from the department; or

(2) intervention or supplemental materials that are on the advisory list of instructional programming created by the Colorado department of education or meet the criteria of the New Mexico structured literacy instructional review rubric.



**History:** Laws 2006, ch. 58, § 1; 2023, ch. 165, § 1.

## **22-15-9. Distribution of funds for instructional material.**

A. On or before April 1 of each year, the department shall allocate to each school district, state institution or private school as agent not less than ninety percent of its estimated entitlement as determined from the estimated forty-day membership for the next school year. A school district's, state institution's or private school's entitlement is that portion of the total amount of the annual appropriation less a deduction for a reasonable reserve for emergency expenses that its forty-day membership bears to the forty-day membership of the entire state. For the purpose of this allocation, additional pupils shall be counted as six pupils. The allocation for adult basic education shall be based on a full-time equivalency obtained by multiplying the total previous year's enrollment by .25. The department shall transfer the amount of the allocation for adult basic education to the adult basic education fund.

B. On or before January 15 of each year, the department shall recompute each entitlement using the forty-day membership for that year, except for adult basic education, and shall allocate the balance of the annual appropriation adjusting for any over- or under-estimation made in the first allocation.

C. An amount not to exceed fifty percent of the allocations attributed to each school district or state institution may be used for instructional material not included on the multiple list provided for in Section 22-15-8 NMSA 1978, and up to twenty-five percent of this amount may be used for other classroom materials. The local superintendent may apply to the department for a waiver of the use of funds allocated for the purchase of instructional material either included or not included on the multiple list. If the waiver is granted, the school district shall not be required to submit a budget adjustment request to the department. Private schools may expend up to fifty percent of their instructional material funds for items that are not on the multiple list; provided that no funds shall be expended for religious, sectarian or nonsecular materials; and provided further that all instructional material purchases shall be through an in-state depository.

D. The department shall establish procedures for the distribution of funds directly to school districts and state institutions. Prior to the final distribution of funds to any school district or charter school, the department shall verify that the local school board or governing body has adopted a policy that requires that every student have a textbook for each class that conforms to curriculum requirements and that allows students to take those textbooks home.

E. The department shall provide payment to an in-state depository on behalf of a private school for instructional material.

F. A school district or state institution that has funds remaining for the purchase of instructional material at the end of the fiscal year shall retain those funds for expenditure in subsequent years. Any balance remaining in an instructional material account of a

private school at the end of the fiscal year shall remain available for reimbursement by the department for instructional material purchases in subsequent years.

**History:** 1953 Comp., § 77-13-9, enacted by Laws 1967, ch. 16, § 213; 1969, ch. 180, § 26; 1975, ch. 270, § 9; 1977, ch. 99, § 2; 1979, ch. 125, § 1; 1992, ch. 76, § 2; 1993, ch. 226, § 41; 1997, ch. 100, § 5; 1999, ch. 237, § 1; 2005, ch. 80, § 6; 2007, ch. 284, § 1.; 2007, ch. 285, § 2; 2009, ch. 221, § 7.

## **22-15-10. Sale or loss or return of instructional material.**

A. With the approval of the chief, instructional material acquired by a school district, state institution or private school pursuant to the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978] may be sold at a price determined by officials of the school district, state institution or private school. The selling price shall not exceed the cost of the instructional material to the state.

B. A school district, state institution or private school may hold the parent or student responsible for the loss, damage or destruction of instructional material while the instructional material is in the possession of the student. A school district may withhold the grades, diploma and transcripts of the student responsible for damage or loss of instructional material until the parent or student has paid for the damage or loss. When a parent or student is unable to pay for damage or loss, the school district shall work with the parent or student to develop an alternative program in lieu of payment. Where a parent is determined to be indigent according to guidelines established by the department, the school district shall bear the cost.

C. A school district or state institution that has funds remaining for the purchase of instructional material at the end of the fiscal year shall retain those funds for expenditure in subsequent years.

D. All money collected by a private school for the sale, loss, damage or destruction of instructional material received pursuant to the Instructional Material Law shall be sent to the department.

E. Upon order of the chief, a school district, state institution or private school shall transfer to the department or its designee instructional material, purchased with instructional material funds, that is in usable condition and for which there is no use expected by the respective schools.

**History:** 1953 Comp., § 77-13-10, enacted by Laws 1967, ch. 16, § 214; 1975, ch. 270, § 10; 1989, ch. 280, § 1; 1993, ch. 226, § 42; 1997, ch. 100, § 6; 2009, ch. 221, § 8.

## **22-15-11. Record of instructional material.**

Each school district, state institution or private school shall keep accurate records of all instructional material, including cost records, on forms and by procedures prescribed by the bureau.

**History:** 1953 Comp., § 77-13-11, enacted by Laws 1967, ch. 16, § 215; 1975, ch. 270, § 11; 1997, ch. 100, § 7; 2009, ch. 221, § 9.

## **22-15-12. Repealed.**

**History:** 1953 Comp., § 77-13-12, enacted by Laws 1967, ch. 16, § 216; 1975, ch. 270, § 12; 1993, ch. 226, § 43; 1997, ch. 100, § 8; 2005, ch. 80, § 7; 2009, ch. 221, § 10; repealed by Laws 2017, ch. 65, § 4.

## **22-15-13. Contracts with publishers.**

A. The department may enter into a contract with a publisher or a publisher's authorized agent for the purchase and delivery of instructional material selected from the multiple list adopted by the department.

B. Payment for instructional material purchased by the department shall be made only upon performance of the contract and the delivery and receipt of the instructional material.

C. Each publisher or publisher's authorized agent contracting with the state for the sale of instructional material shall agree:

(1) to file a copy of each item of instructional material to be furnished under the contract with the department with a certificate attached identifying it as an exact copy of the item of instructional material to be furnished under the contract;

(2) that the instructional material furnished pursuant to the contract shall be of the same quality in regard to paper, binding, printing, illustrations, subject matter and authorship as the copy filed with the department; and

(3) that if instructional material under the contract is sold elsewhere in the United States for a price less than that agreed upon in the contract with the state, the price to the state shall be reduced to the same amount.

D. Each contract executed for the acquisition of instructional material shall include the right of the department to transcribe and reproduce instructional material in media appropriate for the use of students with visual impairment who are unable to use instructional material in conventional print and form. Publishers of adopted textbooks also shall be required to provide those materials to the department or its designated agent in an electronic format specified by the department that is readily translatable into Braille and also can be used for large print or speech access within a time period specified by the department.

E. Beginning with instructional material for the 2013-2014 school year, publishers of instructional material on the multiple list shall be required to provide those materials in both written and electronic formats.

**History:** 1953 Comp., § 77-13-13, enacted by Laws 1967, ch. 16, § 217; 1975, ch. 270, § 13; 1993, ch. 156, § 6; 1993, ch. 226, § 44; 2011, ch. 114, § 1.

## **22-15-14. Reports; budgets.**

A. Annually, the department of education [public education department] shall submit a budget for the ensuing fiscal year to the department of finance and administration showing the expenditures for instructional material to be paid out of the instructional material fund, including reasonable transportation charges and emergency expenses.

B. Upon request, the department of education [public education department] shall make reports to the state board [department] concerning the administration and execution of the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978].

**History:** 1953 Comp., § 77-13-14, enacted by Laws 1967, ch. 16, § 218; 1975, ch. 270, § 14; 1993, ch. 226, § 45.

## **22-15-15. Short title.**

This act [22-15-15 to 22-15-20 NMSA 1978] may be cited as the "Historical Codes Act".

**History:** Laws 1981, ch. 29, § 1.

## **22-15-16. Purpose.**

It is the purpose of the Historical Codes Act [22-15-15 to 22-15-20 NMSA 1978] to promote an appreciation, necessary to a complete education, for the heritage and history of our civilization through the posting of historical codes pursuant to the provisions of the Historical Codes Act.

**History:** Laws 1981, ch. 29, § 2.

## **22-15-17. Funding.**

Each local school board is authorized to accept contributions from private sources in order to carry out the provisions of the Historical Codes Act [22-15-15 to 22-15-20 NMSA 1978].

**History:** Laws 1981, ch. 29, § 3.

## **22-15-18. Posting of copy.**

Each local school board may, to the extent funds are available pursuant to Section 3 [22-15-17 NMSA 1978] of the Historical Codes Act, post, in a nondiscriminatory manner not favoring one religious or ethno-cultural background over another, durable, permanent copies of the historical codes in each regular instructional classroom in the school district.

**History:** Laws 1981, ch. 29, § 4.

## **22-15-19. Other funds prohibited.**

No funds from any other source other than those accepted pursuant to Section 3 [22-15-17 NMSA 1978] of the Historical Codes Act shall be used to carry out the provisions of Section 4 [22-15-18 NMSA 1978] of that act.

**History:** Laws 1981, ch. 29, § 5.

## **22-15-20. Definition.**

As used in the Historical Codes Act [22-15-15 to 22-15-20 NMSA 1978], "historical codes" means:

- A. the ten commandments;
- B. the code of Hammurabi;
- C. any injunctive compendium from the Koran;
- D. any compendium of Confucian teachings;
- E. any excerpts from the Bhagavad-Gita;
- F. the teachings of Gautama Buddha or his followers; or

G. any other teachings representing disparate ethno-cultural or religious backgrounds.

**History:** Laws 1981, ch. 29, § 6; .

## **22-15-21. Repealed.**

**History:** Laws 1993, ch. 156, § 1; repealed by Laws 2003, ch. 313, § 7.

## **22-15-22. Repealed.**

**History:** Laws 1993, ch. 156, § 2; repealed by Laws 2003, ch. 313, § 7.

### **22-15-23. Repealed.**

**History:** Laws 1993, ch. 156, § 3; repealed by Laws 2003, ch. 313, § 7.

### **22-15-24. Repealed.**

**History:** Laws 1993, ch. 156, § 4; repealed by Laws 2003, ch. 313, § 7.

### **22-15-25. Repealed.**

**History:** Laws 1993, ch. 156, § 5; repealed by Laws 2003, ch. 313, § 7.

### **22-15-26. Short title.**

This act [22-15-26 to 22-15-31 NMSA 1978] may be cited as the "Braille Access Act".

**History:** Laws 2003, ch. 313, § 1.

### **22-15-27. Purposes.**

The purposes of the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978] are to:

- A. enhance literacy;
- B. increase braille proficiency;
- C. improve employability for blind and visually impaired students; and
- D. reduce the cost of acquiring braille and other alternate accessible format materials.

**History:** Laws 2003, ch. 313, § 2.

### **22-15-28. Definitions.**

As used in the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978]:

- A. "alternate accessible format" means one of several alternatives to traditional print, including braille, large print and computer text files;
- B. "braille" means the tactile system of reading and writing used by persons who are blind and visually impaired, as defined by the braille authority of North America;

C. "department" means the state department of public education;

D. "educational institution" means a public school or public post-secondary educational institution;

E. "instructional materials" means textbooks, workbooks, teacher manuals or editions, blackline masters, transparencies, test packets, software, CD-ROMs, videotapes and cassette tapes;

F. "structural integrity" means all of the printed instructional materials, including the text of the material, sidebars, table of contents, chapter headings and subheadings, footnotes, indexes, glossaries and bibliographies. "Structural integrity" need not include nontextual elements such as pictures, illustrations, graphs or charts, though the publisher should include a brief textual description of any such nontextual element when it is practical to do so and mention of the nontextual element when a description is not practical;

G. "student" means a blind or visually handicapped person accepted, enrolled or attending an educational institution; and

H. "textbook" means a book, a system of instructional materials or a combination of a book and supplementary instructional material that conveys information to the student or otherwise contributes to the learning process, including electronic textbooks.

**History:** Laws 2003, ch. 313, § 3.

## **22-15-29. Instructional materials.**

A. A publisher that prints instructional materials for students attending educational institutions shall provide, upon request of the educational institution, any printed instructional materials in an electronic format mutually agreed upon by the publisher and the educational institution.

B. The formats used shall include any nationally recognized standard for conversion of publishing files to braille, such as DAISY/NISO XML.

C. If no nationally recognized standard is appropriate, as determined by the department, publishers shall provide the file in another mutually agreed upon computer or electronic format, such as Microsoft Word, ASCII text or LaTeX.

D. The educational institution may use the electronic version of printed instructional materials that is provided pursuant to the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978] to transcribe or arrange for the transcription of the printed instructional materials into an alternate accessible format. The educational institution has the right to provide the alternate accessible format copy of the printed instructional materials to

students as permitted by federal copyright law, including the provisions of Section 316 of Public Law 104-197.

E. The electronic version of the printed instructional materials shall:

- (1) comply with any applicable federal standard;
- (2) otherwise maintain the structural integrity of the printed instructional materials; and
- (3) include the latest corrections and revisions of the printed instructional materials as necessary.

F. The publisher shall provide the electronic versions of the printed instructional materials to the educational institution at no additional cost and within ten business days after receipt of a written request that does all of the following:

(1) certifies that the educational institution or the student has purchased the printed instructional materials for use by the student;

(2) certifies that the student is unable to use printed instructional materials;

(3) certifies that the printed instructional materials are for use by the student in connection with a course at the educational institution; and

(4) is signed by the:

(a) person responsible for providing educational services pursuant to the federal Individuals with Disabilities Education Act;

(b) coordinator of services for students with disabilities at the educational institution;

(c) person responsible for monitoring the educational institution's compliance with the federal Americans with Disabilities Act of 1990 or Section 504 of the federal Rehabilitation Act of 1973; or

(d) vocational rehabilitation counselor responsible for providing services under an individualized plan for employment created pursuant to the federal Rehabilitation Act of 1973.

G. A publisher may require that the request include a statement signed by the educational institution agreeing that:

(1) the electronic copy of the printed instructional materials will be used solely for the student's educational purposes; and



(2) the student or educational institution will not copy, publish or in any other way distribute the printed instructional materials for use by anyone other than the original student, except that the educational institution may provide the instructional materials to another qualifying student who has signed a statement agreeing to the terms contained in this section and unless it is otherwise permitted by federal law.

H. A publisher who manufactures instructional materials using any type of video or audio format, CD ROM [CD-ROM] or other digital format for students attending educational institutions shall, to the maximum extent practicable, upon request, provide an accessible version of the instructional materials or, if an accessible version is not available, provide other electronic versions of the instructional materials, subject to the same conditions and limitations for printed instructional materials.

I. Nothing in the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978] shall be deemed to authorize any use of instructional materials that would constitute an infringement of copyright pursuant to applicable federal copyright law.

**History:** Laws 2003, ch. 313, § 4.

## **22-15-30. Guidelines.**

The department, in consultation with representatives from educational institutions and publishers, shall adopt guidelines consistent with the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978] for the implementation and administration of that act. The guidelines shall address all of the following:

A. the designation of instructional materials deemed required or essential to student success;

B. definitions clarifying what constitutes nontextual mathematics or science instructional materials that use mathematical notations and clarifying a publisher's obligations in regard to such instructional materials;

C. definitions clarifying what is required to maintain structural integrity and requirements for textual descriptions of pictures, illustrations, graphs and charts;

D. requirements for approval and procurement of textbooks that are available in a computer or electronic format and procedures for suspension of publishers from the procurement process if the publisher fails to comply with the provisions of the Braille Access Act;

E. an administrative complaint process to be followed for complaints against a publisher;

F. definitions clarifying what constitutes "educational purposes"; and

G. any other matters the department deems necessary or appropriate to carry out the purposes of the Braille Access Act.

**History:** Laws 2003, ch. 313, § 5.

## **22-15-31. Private right of action.**

A student who contends that there has been a violation of the Braille Access Act [22-15-26 to 22-15-31 NMSA 1978] has the right to pursue a private right of action in the district court if the student has exhausted the administrative complaint process. Organizations representing the interests of persons who are blind or who have other disabilities shall have standing to assert any right afforded in the Braille Access Act and shall be subject to the same requirements and terms as a student. Should the student or organization prevail in a lawsuit, the student or organization shall be entitled to injunctive relief and reasonable attorney fees and costs. No other type of monetary damages shall be available.

**History:** Laws 2003, ch. 313, § 6.

# **ARTICLE 15A**

## **Digital Equity in Education**

### **22-15A-1. Short title.**

Chapter 22, Article 15A NMSA 1978 may be cited as the "Digital Equity in Education Act".

**History:** Laws 1994, ch. 96, § 1; 2005, ch. 222, § 1; 2023, ch. 161, § 1.

### **22-15A-2. Definitions.**

As used in the Digital Equity in Education Act:

A. "council" means the council on technology in education;

B. "digital citizenship" means the safe, ethical, responsible and informed use of technology and encompasses a range of skills and literacies, including internet safety, privacy and security; recognition and reporting of cyberbullying; online reputation management; communication skills; information literacy; and creative credit and copyright;

C. "digital equity" means a condition in which every learner has the information, support and skills to equitably access affordable, reliable and high-speed internet; adequate internet-enabled devices; digital literacy training; quality technical support;

and evidence-based applications and content designed to facilitate both self-sufficient and collaborative learning;

D. "educational technology" means all applications of technology in the learning process, including internet connectivity, digital information, electronic devices and evidence-based software applications used to facilitate and enhance teaching and learning;

E. "large school district" means a school district with a membership of twelve thousand or more students, using an average of the membership on the second and third reporting dates of the prior year; and

F. "small school district" means a school district with a membership of fewer than twelve thousand students, using an average of the membership on the second and third reporting dates of the prior year.

**History:** Laws 1994, ch. 96, § 2; 2023, ch. 161, § 2.

### **22-15A-3. Repealed.**

**History:** Laws 1994, ch. 96, § 3; repealed by Laws 2023, ch. 161, § 8.

### **22-15A-4. Department duties.**

The department shall:

A. administer the provisions of the Digital Equity in Education Act;

B. require school districts and charter schools to develop, implement and submit to the department educational technology plans for utilizing educational technology in the school system, which shall include descriptions of:

- (1) how digital equity is being addressed for students;
- (2) the replacement and repair process for devices issued to students, teachers and families;
- (3) internet service connectivity support, including access to internet services for at-risk students;
- (4) information technology support available to students, teachers and parents;
- (5) professional development provided to teachers regarding digital citizenship;

(6) cybersecurity protection provided for the devices and applications issued to teachers and students; and

(7) identity protection provided to teachers and students; and

C. promulgate rules to establish parameters and procedures for distributions from the educational technology fund.

**History:** Laws 1994, ch. 96, § 4; 2023, ch. 161, § 3.

## **22-15A-5. Council on technology in education; created; purpose.**

The "council on technology in education" is created. The council shall advise the department regarding the establishment of appropriate educational technology standards, technology-enhanced curricula, instruction, appropriations for educational technology and methods for addressing digital equity in public schools.

**History:** Laws 1994, ch. 96, § 5; 2023, ch. 161, § 4.

## **22-15A-6. Council membership.**

A. The council shall be composed of thirteen members. Members shall be appointed by the department for terms of four years. As designated by the department at the time of initial appointment, the terms of four members shall expire at the end of two years, the terms of four members shall expire at the end of three years and the terms of five members shall expire at the end of four years.

B. When appointing members, the department shall appoint:

(1) one member from state government who shall have expertise in information technology;

(2) the director of the office of broadband access and expansion of the department of information technology or the director's designee;

(3) two members who shall have expertise in school district administration, one member who shall be from a large school district and one member who shall be from a small school district;

(4) two members who shall have expertise in providing technology-based instruction in elementary or secondary schools;

(5) one member from a large school district who shall have expertise in the education of Native American, English language learner, low-income or special education students;

(6) one member from a small school district who shall have expertise in the education of Native American, English language learner, low-income or special education students;

(7) one member who shall be a parent of a school-age child;

(8) two members who shall be public school secondary students, one member who shall be from a large school district and one member from a small school district; and

(9) two members at large.

C. In making appointments to the council, the department shall give due consideration to gender and ethnicity to achieve a membership representative of the geographic and cultural diversity of New Mexico.

D. Members of the council shall elect a chair from among the membership. The council shall meet at the call of the chair not less than quarterly.

E. Members of the council shall receive per diem and mileage pursuant to the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

**History:** Laws 1994, ch. 96, § 6; 2023, ch. 161, § 5.

## **22-15A-7. Council duties.**

The council shall:

A. advise the department on implementation of the provisions of the Digital Equity in Education Act;

B. work with the department to conduct periodic assessments of the need for educational technology in the public school system to support on-site and distance learning and make recommendations to the department on how to meet those needs; and

C. promote the collaborative development and implementation of educational technologies, projects and practices to enhance on-site and distance learning instruction capabilities.

**History:** Laws 1994, ch. 96, § 7; 2007, ch. 292, § 8; 2023, ch. 161, § 6.

## **22-15A-8. Educational technology fund; created.**

The "educational technology fund" is created in the state treasury. Money in the fund is appropriated to the department for the purpose of implementing the provisions of the Digital Equity in Education Act. Money in the fund shall be distributed by the department for the purposes stated in the Digital Equity in Education Act to school districts and charter schools for educational technology. Money in the fund shall only be expended pursuant to warrants issued by the department of finance and administration pursuant to vouchers signed by the secretary. Money in the fund shall not revert at the end of the fiscal year.

**History:** Laws 1994, ch. 96, § 8; 2023, ch. 161, § 7.

### **22-15A-9. Repealed.**

**History:** Laws 1994, ch. 96, § 9; 2000, ch. 89, § 1; 2003, ch. 147, § 11; 2004, ch. 125, § 5; 2005, ch. 274, § 3; repealed by Laws 2023, ch. 161, § 8.

### **22-15A-10. Repealed.**

**History:** Laws 1994, ch. 96, § 10; 2003, ch. 147, § 12; repealed by Laws 2023, ch. 161, § 8.

### **22-15A-11. Repealed.**

**History:** Laws 2005, ch. 222, § 2; 2007, ch. 290, § 23; 2007, ch. 292, § 9; 2007, ch. 293, § 9; 2007, ch. 294, § 1; repealed by Laws 2023, ch. 161, § 8.

### **22-15A-12. Repealed.**

**History:** Laws 2005, ch. 222, § 3; repealed by Laws 2023, ch. 161, § 8.

### **22-15A-13. Repealed.**

**History:** Laws 2007, ch. 292, § 10; 2007, ch. 293, § 10; repealed by Laws 2023, ch. 161, § 8.

## **ARTICLE 15B**

### **Educational Technology Opportunity Program (Repealed)**

#### **22-15B-1. Repealed.**

**History:** Laws 1999, ch. 234, § 1; repealed by Laws 2023, ch. 161, § 8.

## **22-15B-2. Repealed.**

**History:** Laws 1999, ch. 234, § 2; repealed by Laws 2023, ch. 161, § 8.

# **ARTICLE 15C**

## **School Library Materials**

### **22-15C-1. Short title.**

Chapter 22, Article 15C NMSA 1978 may be cited as the "School Library Material Act".

**History:** Laws 2003, ch. 149, § 1; 2006, ch. 94, § 48.

### **22-15C-2. Definitions.**

As used in the School Library Material Act:

A. "additional student" means a student in the certified forty-day membership of the current year for a school district or state institution above the number certified in the forty-day membership of the prior year for the school district or state institution;

B. "bureau" means the instructional material bureau of the department;

C. "bureau of Indian education" means the bureau of Indian education of the United States department of the interior;

D. "fund" means the school library material fund;

E. "governmentally controlled school" means a bureau of Indian education school that is governmentally owned and controlled, is located in New Mexico, provides instruction for first through twelfth grades and is not sectarian or denominational;

F. "library material processing" means cataloging of school library material, including in electronic format, according to nationally accepted standards, and the application of bar code labels and call-number classification labels to the material;

G. "membership" means the total enrollment of qualified students on the fortieth day of the school year entitled to the free use of school library material pursuant to the School Library Material Act;

H. "qualified student" means a public school or governmentally controlled school student who:

- (1) has not graduated from high school;

(2) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students or by the bureau of Indian education for students enrolled in a governmentally controlled school; and

(3) in terms of age:

(a) is at least five years of age prior to 12:01 a.m. on September 1 of the school year; or

(b) is at least three years of age at any time during the school year and is receiving special education services pursuant to regulation of the department;

I. "school library material" means books and other educational media, including online reference and periodical databases, that are made available in a school library to students for circulation and use in the library; and

J. "school district" includes state-chartered charter schools.

**History:** Laws 2003, ch. 149, § 2; 2006, ch. 94, § 49; 2009, ch. 134, § 1.

### **22-15C-3. School library material fund; creation.**

The "school library material fund" is created in the state treasury. The purpose of the fund is to provide an account from which the department may distribute money to school districts, state institutions and governmentally controlled schools to pay for the cost of purchasing school library material. The cost of purchasing school library material may include shipping and handling charges for the delivery of school library material. The fund shall consist of appropriations, gifts, grants, donations and bequests. Money in the fund is appropriated to the department to pay for the cost of purchasing school library material. Disbursements from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the secretary or the secretary's designated representative. Money in the fund shall not revert to the general fund at the end of a fiscal year.

**History:** Laws 2003, ch. 149, § 3; 2009, ch. 134, § 2.

### **22-15C-4. Administration of the school library material fund; bureau; duties.**

Subject to the policies and rules of the department, the bureau shall:

A. administer the provisions of the School Library Material Act;

B. enforce rules for the handling, safekeeping and distribution of school library material and money from the fund;



C. enforce inventory and accounting procedures to be followed by school districts, state institutions and governmentally controlled schools; and

D. withdraw or withhold the privilege of participating in the free use of school library material in case of noncompliance with the provisions of the School Library Material Act or rules adopted pursuant to that act.

**History:** Laws 2003, ch. 149, § 4; 2009, ch. 134, § 3.

## **22-15C-5. Students eligible; distribution.**

A. A qualified student or person eligible to become a qualified student attending a public school, a state institution or a governmentally controlled school in a grade from the first through the twelfth grade of instruction is entitled to the free use of school library material. A student enrolled in an early childhood education program as defined in Section 22-13-3 NMSA 1978 is also entitled to the free use of school library material.

B. A school district, a state institution or a governmentally controlled school shall purchase school library material as an agent for the benefit of students entitled to the free use of school library material.

C. A school district, a state institution or a governmentally controlled school receiving school library material pursuant to the School Library Material Act is responsible for circulation of the school library material for use by eligible students and for the safekeeping of the school library material.

**History:** Laws 2003, ch. 149, § 5; 2009, ch. 134, § 4.

## **22-15C-6. Distribution of money for school library material.**

A. On or before July 1 of each year, the department shall allocate from the fund at least ninety percent of the estimated entitlement for each school district, state institution or governmentally controlled school as determined from the estimated forty-day membership for the next school year to each school district, state institution and governmentally controlled school. The entitlement of a school district, a state institution or a governmentally controlled school is the portion of the total amount of the annual appropriation less a deduction for a reasonable reserve for emergency expenses that its forty-day membership bears to the forty-day membership of the entire state. Additional students shall be counted as six students for the purpose of the allocation.

B. On or before January 15 of each year, the department shall recompute each entitlement using the forty-day membership for that year and shall allocate the balance of the annual appropriation adjusting for any over- or under-estimation made in the first allocation.

C. The department shall establish procedures to distribute funds directly to school districts, state institutions and governmentally controlled schools.

D. A school district, a state institution or a governmentally controlled school that has funds remaining for the purchase of school library material at the end of a fiscal year shall retain those funds for expenditure in subsequent years.

**History:** Laws 2003, ch. 149, § 6; 2005, ch. 213, § 1; 2009, ch. 134, § 5.

## **22-15C-7. Sale or loss or return of school library material.**

A. With the approval of the bureau, school library material acquired by a school district, a state institution or a governmentally controlled school pursuant to the School Library Material Act may be sold at a price determined by officials of the school district, state institution or governmentally controlled school. The selling price shall not exceed the cost of school library material to the state.

B. A school district, a state institution or a governmentally controlled school may hold a parent, guardian or student responsible for loss, damage or destruction of school library material while the school library material is in the possession of a student. A school district or a governmentally controlled school may withhold the grades, diploma and transcripts of a student responsible for damage or loss of school library material until the parent, guardian or student has paid for the damage or loss. When a parent, guardian or student is unable to pay for the damage or loss, the school district shall work with the parent, guardian or student to develop an alternative program in lieu of payment. Where a parent or guardian is determined to be indigent according to guidelines established by the department, the school district shall bear the cost.

C. A school district, a state institution or a governmentally controlled school that has funds remaining for the purchase of school library material at the end of a fiscal year shall retain the funds for expenditure in subsequent years.

**History:** Laws 2003, ch. 149, § 7; 2009, ch. 134, § 6.

## **22-15C-8. Record of school library material.**

A school district, a state institution or a governmentally controlled school shall keep an accurate record of school library material that includes a cost record. A school district, a state institution or a governmentally controlled school shall comply with record-keeping procedures prescribed by the bureau.

**History:** Laws 2003, ch. 149, § 8; 2009, ch. 134, § 7.

## **22-15C-9. Annual report.**

Annually, at a time specified by the department, each local school district, state institution or governmentally controlled school acquiring school library material pursuant to the School Library Material Act shall file a report with the department.

**History:** Laws 2003, ch. 149, § 9; 2009, ch. 134, § 8.

## **22-15C-10. Reports; budgets.**

A. Annually, the department shall submit a budget for the next fiscal year to the department of finance and administration showing expenditures for school library material to be paid from the fund, including reasonable shipping and handling charges and library material processing expenses.

B. Upon request, the department shall make reports to the public education commission concerning the administration and execution of the School Library Material Act.

**History:** Laws 2003, ch. 149, § 10; 2009, ch. 134, § 9.

# **ARTICLE 15D**

## **Fine Arts Education**

### **22-15D-1. Short title.**

Chapter 22, Article 15D NMSA 1978 may be cited as the "Fine Arts Education Act".

**History:** Laws 2003, ch. 152, § 1; 2006, ch. 94, § 50.

### **22-15D-2. Purpose.**

A. The purpose of the Fine Arts Education Act is to encourage school districts and state-chartered charter schools to offer opportunities for elementary school students to participate in fine arts activities, including visual arts, music, theater and dance.

B. Participation in fine arts programs encourages cognitive and affective development by:

- (1) focusing on a variety of learning styles and engaging students who might otherwise fail;
- (2) training students in complex thinking and learning;
- (3) helping students to devise creative solutions for problems;
- (4) providing students new challenges; and

(5) teaching students how to work cooperatively with others and to understand and value diverse cultures.

**History:** Laws 2003, ch. 152, § 2; 2006, ch. 94, § 51.

### **22-15D-3. Definition.**

As used in the Fine Arts Education Act, "fine arts education programs" includes programs of education through which students participate in activities related to visual arts, music, theater and dance.

**History:** Laws 2003, ch. 152, § 3.

### **22-15D-4. Department; powers and duties.**

The department shall issue guidelines for the development and implementation of fine arts education programs. The department shall:

- A. administer and enforce the provisions of the Fine Arts Education Act; and
- B. assist school districts and charter schools in developing and evaluating programs.

**History:** Laws 2003, ch. 152, § 4; 2006, ch. 94, § 52.

### **22-15D-5. Program plan and evaluation.**

- A. A school district or charter school may prepare and submit to the department a fine arts education program plan in accordance with guidelines issued by the department.
- B. At a minimum, the plan shall include the fine arts education programs being taught, the ways in which the fine arts are being integrated into the curriculum and an evaluation component.
- C. At yearly intervals, the school district or charter school, the department and a parent advisory committee from the school district or charter school shall review the goals and priorities of the plan and make appropriate recommendations to the secretary.

**History:** Laws 2003, ch. 152, § 5; 2006, ch. 94, § 53; 2015, ch. 108, § 13.

### **22-15D-6. Fine arts education programs; eligibility for state financial support.**

A. To be eligible for state financial support, a fine arts education program shall:

- (1) provide for the educational needs of students in the areas of visual arts, music, theater or dance;
- (2) integrate the fine arts into the curriculum;
- (3) use certified school instructors to supervise those who are teaching the program if those persons do not hold valid teaching licenses in one or more of the disciplines included in fine arts education; and
- (4) require background checks in accordance with Section 22-10-3.3 NMSA 1978 [recompiled].

B. A fine arts education program shall meet each requirement of Subsection A of this section and be approved by the department of education [public education department] to be eligible for state financial support.

**History:** Laws 2003, ch. 152, § 6.

## **ARTICLE 15E**

### **Mathematics and Science Education Act**

#### **22-15E-1. Short title.**

This act [Chapter 22, Article 15E NMSA 1978] may be cited as the "Mathematics and Science Education Act".

**History:** Laws 2007, ch. 44, § 1 and Laws 2007, ch. 239, § 1.

#### **22-15E-2. Definitions.**

As used in the Mathematics and Science Education Act:

- A. "bureau" means the mathematics and science bureau;
- B. "chief" means the chief of the bureau; and
- C. "council" means the mathematics and science advisory council.

**History:** Laws 2007, ch. 44, § 2 and Laws 2007, ch. 239, § 2.

#### **22-15E-3. Bureau created; duties.**

A. The "mathematics and science bureau" is created in the department. The secretary shall appoint the chief as provided in the Public Education Department Act [Chapter 9, Article 24 NMSA 1978].

B. The bureau shall:

- (1) administer the provisions of the Mathematics and Science Education Act;
- (2) provide staff support for and coordinate the activities of the council;
- (3) work with the council to develop a statewide strategic plan for mathematics and science education in the public schools and coordinate education activities with other state agencies, the federal government, business consortia and public or private organizations or other persons;
- (4) ensure that school districts' plans include goals for improving mathematics and science education aligned to the department's strategic plan;
- (5) recommend funding mechanisms that support the improvement of mathematics and science education in the state, including web-based mathematics and science curricula, mentoring and web-based homework assistance;
- (6) promote partnerships among public schools, higher education institutions, government, business and educational and community organizations to improve the mathematics and science education in the state;
- (7) develop and evaluate curricula, instructional programs and professional development programs in mathematics and science aligned with state academic content and performance standards; and
- (8) assess the outcomes of efforts to improve mathematics and science education using existing data.

**History:** Laws 2007, ch. 44, § 3 and Laws 2007, ch. 239, § 3.

#### **22-15E-4. Mathematics and science advisory council; created; members; terms; vacancies.**

A. The "mathematics and science advisory council" is created, composed of twelve members. Members of the council shall be appointed by the secretary for staggered terms of four years; provided that for the initial appointments, four members shall be appointed for two years, four members shall be appointed for three years and four members shall be appointed for four years. Members shall serve until their successors have been appointed and qualified. A vacancy shall be filled by appointment by the secretary for the unexpired term.

B. Using a statewide application process, the secretary shall appoint members from throughout the state so as to ensure representation of the state's demographics, including geographic distribution, gender and ethnic diversity and as follows:

(1) four members from public schools, including at least two mathematics and science teachers and a school district administrator with experience in mathematics and science curricula;

(2) three members from public post-secondary educational institutions with expertise in mathematics or science education;

(3) four members from the private sector, including the national laboratories, museums and science- and engineering-based businesses; and

(4) one member who represents the New Mexico partnership for mathematics and science education.

C. Members of the council shall elect a chair from among the membership. The council shall meet at the call of the chair not less than quarterly.

D. Members of the council are entitled to receive per diem and mileage pursuant to the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance.

**History:** Laws 2007, ch. 44, § 4; 2007, ch. 239, § 4.

## **22-15E-5. Council duties.**

The council shall:

A. advise the bureau on implementation of the bureau's duties pursuant to the Mathematics and Science Education Act;

B. make recommendations to the bureau and the department regarding the statewide strategic plan for improving mathematics and science education and advise on its implementation and incorporation into the department's five-year strategic plan for public elementary and secondary education in the state;

C. advise the bureau, the department and the legislature regarding appropriations for mathematics and science education, administration, resources and services, including programs for public school students and staff;

D. work with the bureau to determine the need for improvement in mathematics and science achievement of public school students and make recommendations to the department on how to meet these needs; and

E. produce an annual report on public elementary and secondary mathematics and science student achievement to be submitted to the department, the governor and the legislature no later than November 30 of each year.

**History:** Laws 2007, ch. 44, § 5 and Laws 2007, ch. 239, § 5.

## **22-15E-6. Mathematics and science proficiency fund; created; purpose; annual reports.**

A. The "mathematics and science proficiency fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of public education or the secretary's authorized representative.

B. The fund shall be administered by the department, and money in the fund is appropriated to the department to provide awards to public schools, school districts, public post-secondary educational institutions and persons that implement innovative, research-based mathematics and science curricula and professional development programs. The department shall promulgate rules for the application and award of money from the fund, including criteria to evaluate innovative, research-based mathematics and science programs and professional development programs.

C. Each award recipient shall provide an annual report to the bureau that includes a detailed budget report, a description of the services provided and documented evidence of the stated outcomes of the program funded by the mathematics and science proficiency fund and that provides other information requested by the bureau.

**History:** Laws 2007, ch. 44, § 6; 2007, ch. 239, § 6.

## **ARTICLE 15F**

### **New Mexico School for the Arts**

#### **22-15F-1. Short title.**

Chapter 22, Article 15F NMSA 1978 may be cited as the "New Mexico School for the Arts Act".

**History:** Laws 2008, ch. 15, § 1; 2013, ch. 108, § 1.

#### **22-15F-2. Purpose of act.**

The purpose of the New Mexico School for the Arts Act is to provide for the establishment of the "New Mexico school for the arts" as a statewide residential state-



chartered charter high school that provides New Mexico students who have demonstrated artistic abilities and potential with the educational opportunity to pursue a career in the arts.

**History:** Laws 2008, ch. 15, § 2.

### **22-15F-3. Definitions.**

As used in the New Mexico School for the Arts Act:

- A. "board" means the governing body of the school; and
- B. "school" means the New Mexico school for the arts.

**History:** Laws 2008, ch. 15, § 3.

### **22-15F-4. Purpose of school; school exempt from certain provisions of the Charter Schools Act.**

A. The commission may charter a "New Mexico school for the arts" as a statewide residential state-chartered charter school for grades nine through twelve to offer intensive preprofessional instruction in the performing and visual arts combined with a strong academic program that leads to a New Mexico diploma of excellence.

B. The school and the board are subject to all the provisions of the Charter Schools Act [Chapter 22, Article 8B NMSA 1978], except Subsection K of Section 22-8B-4 NMSA 1978 and Section 22-8B-4.1 NMSA 1978. The school shall not charge tuition, except as otherwise provided in the Public School Code [Chapter 22 NMSA 1978]. The school shall be supported by state funds in the same manner as other charter high schools authorized by the commission.

**History:** Laws 2008, ch. 15, § 4.

### **22-15F-5. Board created; powers and duties; solicitation of gifts, grants and donations.**

The school shall be governed by a board of at least five members constituted as provided in the school's application for charter. No member of the board shall serve as a member of another charter school. The board shall have such powers and perform such duties as required by state and federal law and the school's charter, including soliciting and receiving gifts, grants and donations to further the purposes of the school and to assist the school in providing free or reduced-fee room and board for those residential students who cannot pay all or part of residential costs.

**History:** Laws 2008, ch. 15, § 5.

## **22-15F-6. Admissions criteria; equal opportunity; outreach.**

A. The admissions criteria shall be designed to admit students who show exceptional promise or aptitude in the arts and a strong desire to pursue a career in the arts. The admissions process shall be conducted in a way that provides equal opportunity for admission to each prospective student regardless of that student's exposure to previous artistic training and without regard to the student's ability to pay residential costs.

B. The board shall ensure, to the greatest extent possible and without jeopardizing admissions standards, that an equal number of students is admitted to the school from each of the state's congressional districts.

C. The board shall submit an annual report to the charter schools division and the commission that includes demographic information about both applicants and students admitted to the school, including the counties and the congressional districts represented by the students enrolled and the makeup of the student body in terms of socioeconomic status, gender and ethnicity.

D. The school shall conduct outreach activities throughout the state to acquaint potential students with the programs offered by the school. The outreach activities shall include programs for middle school students and workshops for teachers. There shall be no admissions criteria established for participation in outreach activities.

**History:** Laws 2008, ch. 15, § 6.

## **22-15F-7. Room and board charges.**

A. The school shall charge residential students a fee to cover the costs of room and board. The board shall establish a sliding-fee scale based on the student's ability to pay. The commission shall approve room and board charges and the sliding-fee scale during the planning year of the school and may approve changes to the charges and scale as requested by the board.

B. The school shall report each year to the charter schools division and the commission on the number of students requiring financial assistance for room and board; the amount of financial assistance provided; and the amount and source of gifts, grants and donations received by the school to provide that financial assistance.

**History:** Laws 2008, ch. 15, § 7.

## **22-15F-8. Room and board costs; outreach activities; use of state equalization guarantee distributions prohibited.**

The school, either through a foundation or other private or public funding sources, shall obtain funding to ensure that the school has adequate revenue to pay for all expenses associated with outreach activities provided for in Section 22-15F-6 NMSA 1978 and for room and board costs for those students who are not able to pay the full cost of room and board as provided in Section 22-15F-7 NMSA 1978. The school shall account separately for the costs of outreach activities and room and board and for the revenue received from private or public sources to pay those costs. The school shall not use money received from the state equalization guarantee distribution for these purposes. Failure of the school to secure adequate funding for these purposes shall be grounds for denial or revocation of a charter.

**History:** Laws 2008, ch. 15, § 8; 2013, ch. 108, § 2.

## **ARTICLE 16**

### **Transportation of Students**

#### **22-16-1. State transportation division; director.**

A. The "state transportation division" is created within the department of education [public education department].

B. The state superintendent [secretary] shall appoint a director of the state transportation division to be known as the "state transportation director".

C. The state board [department] may delegate to the state superintendent [secretary] its administrative functions relating to public school transportation.

**History:** 1953 Comp., § 77-14-1, enacted by Laws 1967, ch. 16, § 219; 1995, ch. 208, § 4.

#### **22-16-2. State transportation division; duties.**

Subject to the policies of the state board [department], the state transportation division of the department of education [public education department] shall:

A. establish standards for school bus transportation;

B. establish standards for school bus design and operation pursuant to provisions of Section 22-16-11 NMSA 1978;

C. establish procedures pertaining to the resolution of transportation issues in areas where local school districts are engaged in school district boundary disputes;

D. enforce those regulations adopted by the state board [department] relating to school bus transportation;

E. audit records of school bus contractors or school district-owned bus operations in accordance with regulations promulgated by the state transportation director;

F. establish standards and certify for safety, vehicles that are defined as school buses by the Motor Vehicle Code [Articles 1 to 8 of Chapter 66 [except 66-7-102.1] NMSA 1978]; and

G. establish regulations for the purpose of permitting commercial advertisements on school buses.

**History:** 1953 Comp., § 77-14-2, enacted by Laws 1967, ch. 16, § 220; 1975, ch. 342, § 3; 1976 (S.S.), ch. 20, § 3; 1978, ch. 200, § 2; 1978, ch. 211, § 15; 1979, ch. 53, § 1; 1979, ch. 305, § 5; 1993, ch. 226, § 46; 1995, ch. 208, § 5; 1997, ch. 233, § 2.

### **22-16-3. School bus service contracts.**

A. A school district may provide transportation services to students through the use of school bus service contracts. School districts may enter into school bus service contracts with individual school bus owner-operators or with school bus fleet owners or with both. A school district shall not enter into any school bus fleet service contract with any person who is simultaneously employed by that school district as an individual school bus owner-operator.

B. All contracts entered into by a school district to provide school bus service to students attending public school within the school district shall be approved by the local school board. The contracts shall be in writing on forms approved by the department and the department shall require documentation that the school district has filed a lien on each school bus as provided in Section 22-8-27 NMSA 1978.

C. In addition to approving the form of the contract, the department shall, by rule, establish the parameters of school bus service contracts to include recognition of fuel costs, operation and maintenance costs and employee salary and benefits costs. In entering into school bus service contracts, school districts shall give preference to in-state service providers and the use of multiple providers. Upon request, the department shall provide assistance to local school districts in the negotiation and award of school bus service contracts.

D. A school district may enter into a school bus service contract for a term not to exceed five years. A school bus service contract may provide, at the expiration of the term of the contract, for annual renewal of the school bus service contract on the same terms and conditions at the option of the local school board.

E. In the event a contract with a school bus operator is terminated or not renewed by either party, the buses owned by the operator that are used pursuant to the operator's school bus service contract shall be appraised by three qualified appraisers appointed by the local school board and approved by the state transportation director.

The operator succeeding to the contract shall purchase, with the approval of the operator whose contract was terminated, all of the buses owned by the former operator at their appraised value.

**History:** 1953 Comp., § 77-14-3, enacted by Laws 1967, ch. 16, § 221; 1993, ch. 226, § 47; 1995, ch. 208, § 6; 2009, ch. 92, § 2.

#### **22-16-4. School bus routes; limitations; exceptions; minimum requirements.**

A. Bus routes shall be established by the local school district.

B. Except as provided in Subsections C and E of this section, no school bus route shall be maintained for distances less than:

- (1) one mile one way for students in grades kindergarten through six;
- (2) one and one-half miles one way for students in grades seven through nine; and
- (3) two miles one way for students in grades ten through twelve.

C. In school districts having hazardous walking conditions as determined by the local school board and confirmed by the state transportation director, students of any grade may be transported a lesser distance than that provided in Subsection B of this section. General standards for determining hazardous walking conditions shall be established by the state transportation division of the department with the approval of the department, but the standards shall be flexibly and not rigidly applied by the local school board and the state transportation director to prevent accidents and help ensure student safety.

D. A school district with from one to six students enrolled in the school district whose residence, within the boundaries of the school district, is five or more miles from the student's or students' school or schools shall be able to provide transportation to and from school by means of a school-district-owned, minimum six-passenger, full-size, extended-length, sport utility vehicle driven by a school district employee certified as an activity driver by the district with both the vehicle and driver insured by the public school insurance authority; provided that the local superintendent is able to demonstrate a need. The department shall adopt rules to provide for the safety of students transported in a sport utility vehicle pursuant to this section.

E. Exceptional children whose handicaps require transportation and three- and four-year-old children who meet the department-approved criteria and definition of developmentally disabled may be transported a lesser distance than that provided in Subsection B of this section.

**History:** 1953 Comp., § 77-14-4, enacted by Laws 1967, ch. 16, § 222; 1975, ch. 342, § 4; 1987, ch. 149, § 3; 1993, ch. 234, § 1; 1995, ch. 208, § 7; 2017, ch. 94, § 1.

#### **22-16-4.1. Repealed.**

#### **22-16-5. Repealed.**

**History:** 1953 Comp., § 77-14-5, enacted by Laws 1967, ch. 16, § 223; 1975, ch. 342, § 5; repealed by Laws 1995, ch. 208, § 16.

#### **22-16-6. Reimbursement of parents or guardians.**

A local school board may, subject to regulations adopted by the state board [department], provide per capita or per mile reimbursement to a parent or guardian in cases where regular school bus transportation is impractical because of distance, road conditions or sparseness of population or in cases where the local school board has authorized a parent to receive reimbursement for travel costs incurred by having a child attend a school outside the child's attendance zone.

**History:** 1953 Comp., § 77-14-6, enacted by Laws 1967, ch. 16, § 224; 1973, ch. 337, § 1; 1990 (1st S.S.), ch. 9, § 12; 1993, ch. 226, § 48; 1995, ch. 208, § 8.

#### **22-16-7. Repealed.**

#### **22-16-8. Cattle guards on school bus routes.**

The board of county commissioners of each county shall construct cattle guards where privately owned fences intersect school bus routes on county roads when consent is obtained from each owner of real property upon which the cattle guards are to be constructed. The cost of constructing the cattle guards shall be paid out of the county road fund as other county road expenses are paid.

**History:** 1953 Comp., § 77-14-8, enacted by Laws 1967, ch. 16, § 226; 2009, ch. 49, § 1.

#### **22-16-9. School buses; termination of use; resale.**

A. When a school bus is being operated for purposes other than to actually transport students to and from school or on school activity trips, all markings indicating "school bus" shall be covered or removed.

B. When a school bus is sold to be used exclusively for purposes other than the transportation of students, all school bus identification shall be removed. In addition, unless the motor vehicle is painted a different color than that prescribed by the state board [department] for school buses, a series of diagonal black stripes shall be painted

on the rear of the motor vehicle. The stripes shall be at least three feet long, four inches wide, and shall be spaced not more than ten inches apart.

C. The provisions of this section shall apply to any school bus that is operated on any public street or highway, except for the purpose of taking it to a place to be painted or moving it to a place of storage.

**History:** 1953 Comp., § 77-14-9, enacted by Laws 1967, ch. 16, § 227.

## **22-16-10. Use of state or county equipment for snow removal.**

The state or any county may, in order to provide for the public health, safety and welfare, use its road equipment for snow removal on any school bus route.

**History:** 1953 Comp., § 77-14-10, enacted by Laws 1975, ch. 79, § 1.

## **22-16-11. Regulations relative to school buses.**

A. The state transportation director, appointed as provided in Section 22-16-1 NMSA 1978, shall adopt and enforce regulations adopted by the state board [department] not inconsistent with the Motor Vehicle Code [Articles 1 to 8 of Chapter 66 [except 66-7-102.1] NMSA 1978] to govern the design and operation of all school buses, used for the transportation of school children, when owned and operated by any school district or privately owned and operated under contract with any school district in this state, and the regulations shall by reference be made a part of any such contract with a school district. Every school district, its officers and employees and every person employed under contract by a school district shall be subject to the regulations.

B. Any officer or employee of any school district who violates any of the regulations or fails to include obligation to comply with the regulations in any contract executed by him on behalf of a school district is guilty of misconduct and subject to removal from office or employment. Any person operating a school bus, under contract with a school district, who fails to comply with any of the regulations is guilty of breach of contract, and the contract may be canceled after notice and hearing by the state transportation director acting in conjunction with the responsible officers of the school district.

C. Any driver of a school bus who fails to comply with any of the regulations is guilty of a misdemeanor.

**History:** 1953 Comp., § 64-7-365, enacted by Laws 1978, ch. 35, § 469; 1978 Comp., § 66-7-365, recompiled as § 22-16-11 by Laws 1993, ch. 226, § 53; 1995, ch. 208, § 9.

## **22-16-12. School transportation training fund; created.**

The "school transportation training fund" is created in the state treasury. The fund consists of payments from school districts and charter schools for school transportation

training workshops and other types of school transportation training described in rule provided by the public education department, income from investment of the fund and money otherwise accruing to the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The public education department shall administer the fund, and money in the fund is subject to appropriation by the legislature to the public education department to provide public school transportation workshops and training services to school districts and charter schools, including supplies and professional development for public education department staff. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of public education or the secretary's authorized representative.

**History:** Laws 2014, ch. 74, § 1.

## **ARTICLE 17**

### **Emergency Transportation**

#### **22-17-1. Short title.**

Chapter 22, Article 17 NMSA 1978 may be cited as the "Emergency Transportation Act".

**History:** 1953 Comp., § 77-14A-1, enacted by Laws 1974, ch. 38, § 1; 2023, ch. 100, § 8.

#### **22-17-2. Department of transportation permits.**

A. Subject to the Emergency Transportation Act, the department of transportation may approve a permit application of a school district operating its own school buses or of an independent school bus operator who operates school buses under contract with a school district for the operation of such buses for general public transportation if the department of transportation determines that:

(1) the school district operating its own school buses or the independent school bus operator has complied with laws, regulations and other requirements governing transportation of the general public;

(2) existing public or private transportation systems will not be adversely affected by the use of school buses for general public transportation; and

(3) a public transportation emergency exists within the proposed area of operation necessitating the use of school buses for general public transportation.



B. Notice of approval or denial of the permit application shall be submitted to the state transportation director and to the applicant within ten days of final determination by the department of transportation.

C. As used in the Emergency Transportation Act, "public transportation emergency" includes an event:

- (1) that is open to the public;
- (2) that, if in a class A county, is expected to attract over fifty thousand visitors and residents;
- (3) that has such insurance or surety as is necessary to insure against all losses and damages proximately caused by or resulting from the negligent operation, maintenance or use of school buses or for loss of or damage to property of others; and
- (4) for which school buses are needed to transport the public to the event because:
  - (a) existing public transportation systems cannot adequately and timely transport the public to the event;
  - (b) private transportation systems are unavailable or prohibitively expensive;or
  - (c) the event and the surrounding area are likely to suffer economic hardship if school buses are not utilized pursuant to the Emergency Transportation Act.

**History:** 1953 Comp., § 77-14A-2, enacted by Laws 1974, ch. 38, § 2; 2001, ch. 48, § 2; 2023, ch. 100, § 9.

### **22-17-3. State transportation director; approval.**

A. Upon the receipt of approval of the permit application from the department of transportation, the state transportation director may grant a permit to operate school buses for general public transportation to a school district that operates its own school buses or to the independent school bus operator who operates school buses under contract with a school district if the director determines that:

- (1) school bus service to students will not be adversely affected by issuance of the permit;
- (2) the operation of school buses for general public transportation service by the school district or the independent operator will not provide unnecessary duplication of a general public transportation service by school buses of another school district or independent school bus operator contracting with another school district; and

(3) there has been compliance with the rules and regulations of the state transportation director issued pursuant to the Emergency Transportation Act.

B. The state transportation director subject to the approval of the secretary shall by regulation provide for application fees, forms and permit procedures pursuant to the Emergency Transportation Act.

C. A permit issued under this section shall be valid for one year and shall be annually renewed upon payment of a reasonable application fee to the state transportation division and certification by the department of transportation of the permittee's compliance with all applicable laws. Notice of renewal of the permit shall be delivered by the state transportation division to the department of transportation and the local school board concerned.

**History:** 1953 Comp., § 77-14A-3, enacted by Laws 1974, ch. 38, § 3; 2023, ch. 100, § 10.

#### **22-17-4. Termination of permit.**

A permit issued pursuant to the Emergency Transportation Act shall be terminated by the state transportation director upon thirty days' written notice to the holder of the permit if the state transportation director receives written notice from:

A. the department of transportation that it has determined that a public transportation emergency in the area in which the permittee provides general public transportation no longer exists or that public or private transportation systems are being adversely affected in the area; or

B. the local school board that the local school board has determined that school bus service to students is being adversely affected by providing general public transportation under the permit.

**History:** 1953 Comp., § 77-14A-4, enacted by Laws 1974, ch. 38, § 4; 2023, ch. 100, § 11.

## **ARTICLE 18**

### **General Obligation Bonds of School Districts**

#### **22-18-1. General obligation bonds; authority to issue.**

A. After consideration of the priorities for the school district's capital needs as shown by the facility assessment database maintained by the public school facilities authority and subject to the provisions of Article 9, Section 11 of the constitution of New Mexico and Sections 6-15-1 and 6-15-2 NMSA 1978, a school district may issue general obligation bonds for the purpose of:

- (1) erecting, remodeling, making additions to and furnishing school buildings, including teacher housing;
- (2) purchasing or improving school grounds;
- (3) purchasing computer software and hardware for student use in public schools;
- (4) providing matching funds for capital outlay projects funded pursuant to the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978]; or
- (5) any combination of these purposes.

B. The bonds shall be fully negotiable and constitute negotiable instruments within the meaning and for all purposes of the Uniform Commercial Code [Chapter 55 NMSA 1978].

**History:** 1953 Comp., § 77-15-1, enacted by Laws 1967, ch. 16, § 228; 1996, ch. 67, § 1; 2005, ch. 274, § 14; 2007, ch. 173, § 21; 2009, ch. 132, § 1; 2021, ch. 52, § 7.

## **22-18-2. Bond elections; qualification of voters; calling for bond elections.**

A. Before any general obligation bonds are issued, a local school board of a school district shall submit to a vote of the qualified electors of the school district the question of creating a debt by issuing the bonds, and a majority of those persons voting on the question shall vote for issuing the general obligation bonds.

B. The election on the question of creating a debt by issuing general obligation bonds shall be held pursuant to the provisions of the Local Election Act [Chapter 1, Article 22 NMSA 1978]. The question shall be submitted to a vote at a district election upon the initiative of a local school board or upon a petition being filed with a local school board signed by qualified electors of the school district. The number of signatures required on the petition shall be at least ten percent of the number of votes cast for governor in the school district in the last preceding general election. For the purpose of determining the number of votes cast for governor in the school district at the last preceding general election, any portion of a voting division within the school district shall be construed to be wholly within the school district. A local school board shall call for a bond election at the next regular local or special election within ninety days following the date a properly signed petition is filed with it; provided that the timing of the election does not conflict with the provisions of Section 1-24-1 NMSA 1978.

**History:** 1953 Comp., § 77-15-2, enacted by Laws 1967, ch. 16, § 229; 2001, ch. 61, § 1; 2018, ch. 79, § 91; 2019, ch. 212, § 220.

## **22-18-3. Repealed.**

#### **22-18-4. Bond elections; conduct.**

A. A person is required to be a qualified elector to vote in a bond election in a school district.

B. Bond elections in a school district shall be conducted pursuant to the Local Election Act [Chapter 1, Article 22 NMSA 1978].

**History:** 1953 Comp., § 77-15-4, enacted by Laws 1967, ch. 16, § 231; 1970, ch. 6, § 7; 2001, ch. 61, § 2; 2018, ch. 79, § 92; 2019, ch. 212, § 221.

#### **22-18-5. Bond elections; ballots.**

A. The question on the ballot of creating a debt by issuing general obligation bonds shall state the purpose or purposes for which the bonds are to be issued and the amount of the bond issue. Two or more separate questions may be submitted to the voters at a bond election, in which case, the vote on each question shall be separately counted, canvassed and certified.

B. Bond election ballots shall contain a place for a vote "For the school district bonds" and "Against the school district bonds" for each bond issue.

C. If paper ballots are used at a bond election, all questions to be voted on at the bond election shall be listed on one ballot.

**History:** 1953 Comp., § 77-15-5, enacted by Laws 1967, ch. 16, § 232.

#### **22-18-6. Repealed.**

#### **22-18-7. Authority to issue bonds.**

If a majority of those persons voting on a question submitted to the voters in a bond election vote for creating a debt by issuing general obligation bonds, the local school board may, subject to the approval of the attorney general, proceed to issue the bonds.

**History:** 1953 Comp., § 77-15-7, enacted by Laws 1967, ch. 16, § 234.

#### **22-18-8. Restriction on bond elections.**

In the event a majority of those persons voting on a question submitted to the voters in a bond election votes against creating a debt by issuing general obligation bonds, no bond election shall be held on the same question for a period of two years from the date of the bond election.

**History:** 1953 Comp., § 77-15-8, enacted by Laws 1967, ch. 16, § 235; 2018, ch. 79, § 93.

### **22-18-9. Approval of bond issue by attorney general.**

No issue of bonds shall be valid or binding on any school district unless prior to the issuance of the bonds the attorney general approves the bond issue as to form and legality. The written approval of the attorney general shall be made a part of the transcript of the proceedings in connection with each bond issue. The local school board of each school district proposing to issue bonds shall provide the attorney general with all information necessary for this consideration of the form and legality of the bond issue.

**History:** 1953 Comp., § 77-15-9, enacted by Laws 1967, ch. 16, § 236.

### **22-18-10. Bond election contests.**

No action concerning any question placed on the ballot at a bond election shall be maintained in the district court unless the action is filed within ten days after the publication of the certificate of results of the bond election by the superintendent of schools.

**History:** 1953 Comp., § 77-15-10, enacted by Laws 1967, ch. 16, § 237.

### **22-18-11. General obligation bonds; issuance; sale.**

A. General obligation bonds of a school district shall be issued and sold pursuant to the provisions of Sections 6-15-3 through 6-15-10 NMSA 1978.

B. Except as is otherwise provided by law, general obligation bonds issued by a school district shall be of the denomination or denominations, shall be payable at the place or places within or without the state or both, shall be in such form and shall bear such terms and conditions as the local school board of the school district determines.

C. General obligation bonds issued by a school district shall be signed by the president and attested by the secretary of the local school board, unless the bonds are issued in book entry or similar form without the delivery of physical securities. Any coupons appertaining to the bonds shall be signed by the president of the local school board either manually or by facsimile signature.

D. The general obligation bonds issued by a school district may be executed in the manner provided by the provisions of the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978].

**History:** 1953 Comp., § 77-15-11, enacted by Laws 1967, ch. 16, § 238; 1983, ch. 265, § 47.

## **22-18-12. Budgetary provisions; payment of principal and interest.**

A. A local school board shall establish adequate budgetary provisions, approved by the public school finance division [secretary], to promptly pay, as it becomes due, all principal and interest on general obligation bonds issued by the school district.

B. The full faith and credit of a school district shall be pledged to the payment of the principal and interest on general obligation bonds issued by the school district.

C. The board of county commissioners shall levy and collect upon all taxable property within a school district in the county such tax as is necessary to pay the interest and principal on general obligation bonds issued by the school district as the interest and principal become due, without limitation as to rate or amount.

**History:** 1953 Comp., § 77-15-12, enacted by Laws 1967, ch. 16, § 239.

## **22-18-13. Timely payment of school district obligations.**

A. Whenever a paying agent has not received payment of principal or interest on school district general obligation bonds on the business day immediately prior to the date on which the payment is due, the paying agent shall so notify the department of finance and administration, the department and the school district by telephone, facsimile or other similar communication, followed by written verification, of the payment status. The department of finance and administration shall immediately contact the school district and determine whether the school district will make the payment by the date on which it is due.

B. Except as provided in Subsection C of this section, if the school district indicates that it will not make the payment by the date on which it is due, the department of finance and administration shall forward the amount in immediately available funds necessary to make the payment due on the bonds to the paying agent and shall withhold an equal amount from the next succeeding payment of the state equalization guarantee distribution. If the amount of the next succeeding payment is insufficient to pay the amount due, the department of finance and administration shall withhold amounts from each succeeding payment of the state equalization guarantee distribution, including payments to be made in succeeding fiscal years but not more than twelve consecutive months of payments, until the total payment of principal and interest due has been withheld.

C. For a payment due on a bond issued on or after the effective date of this 2007 act, if the school district indicates that it will not make the payment by the date on which it is due, the department of finance and administration shall forward the amount in immediately available funds necessary to make the payment due on the bonds to the paying agent from the current fiscal year's undistributed state equalization guarantee distribution to that school district and, if not otherwise repaid by the school district from other legally available funds, withhold the distributions from the school district until the

amount has been recouped by the department of finance and administration, provided that, if the amount of the undistributed state equalization guarantee distribution in the current fiscal year is less than the payment due on the bond, the department of finance and administration shall:

(1) forward in immediately available funds to the paying agent an amount equal to the total amount of the school district's undistributed state equalization guarantee distribution and, if not otherwise repaid by the school district from other legally available funds, withhold all distributions to the school district for the remainder of the fiscal year; and

(2) on July 1 of the following fiscal year, forward in immediately available funds an amount equal to the remaining amount due to the paying agent from that year's state equalization guarantee distribution and, if not otherwise repaid by the school district from other legally available funds, withhold an equal amount from the distribution to the school district until the amount paid has been recouped in full.

D. The amounts forwarded to the paying agent by the department of finance and administration shall be applied by the paying agent solely to the payment of the principal or interest due on the general obligation bonds of the school district. The department of finance and administration shall notify the department, the chief financial officer of the school district, the department of finance and administration, the legislative finance committee and the legislative education study committee of amounts withheld and payments made pursuant to this section.

E. Upon the issuance of general obligation bonds by a school district, the school district shall file with the department of finance and administration a copy of the resolution that authorizes the issuance of the bonds, a copy of the official statement or other offering document for the bonds, the agreement, if any, with the paying agent for the bonds and the name, address and telephone number of the paying agent; provided, however, that the failure of a school district to file the information shall not affect the obligation of the department of finance and administration to withhold the state equalization guarantee distribution pursuant to this section.

F. The state hereby covenants with the purchasers and holders of general obligation bonds issued by school districts that it will not repeal, revoke or rescind the provisions of this section or modify or amend the same so as to limit or impair the rights and remedies granted by this section; provided that nothing in this subsection shall be deemed or construed to require the state to continue the payment of a state equalization guarantee distribution to any school district or to limit or prohibit the state from repealing, amending or modifying any law relating to the amount of state equalization guarantee distributions to school districts or the manner of payment or the timing thereof. Nothing in this section shall be deemed or construed to create a debt of the state with respect to the bonds within the meaning of any state constitutional provision or to create any liability except to the extent provided in this section.

G. Whenever the department of finance and administration is required by this section to make a payment of principal or interest on bonds on behalf of a school district, the department shall initiate an audit of the school district to determine the reason for the nonpayment and to assist the school district, if necessary, in developing and implementing measures to ensure that future payments will be made when due.

H. Whenever the department of finance and administration makes a payment of principal and interest on bonds or other obligations of a school district and withholds amounts from the state equalization guarantee distribution pursuant to this section because of the failure to collect property taxes, the school district may transfer delinquent property taxes later collected out of the school district's bond redemption fund and into its general fund.

I. This section applies to general obligation bonds issued by a school district on or after July 1, 2003.

**History:** Laws 2003, ch. 46, § 1; 2007, ch. 102, § 1.

## **ARTICLE 18A**

### **School District Loans**

#### **22-18A-1. Short title.**

Sections 1 through 4 [22-18A-1 to 22-18A-4 NMSA 1978] of this act may be cited as the "School District Loan Act".

**History:** Laws 1989, ch. 134, § 1.

#### **22-18A-2. Purpose.**

The purpose of the School District Loan Act is to provide school districts with financial assistance to make payment of principal and interest due on outstanding school district general obligation indebtedness.

**History:** Laws 1989, ch. 134, § 2.

#### **22-18A-3. Fund created; administration.**

A. There is created in the state treasury a revolving loan fund to be known as the "public school district general obligation bonds loan fund". The fund is established as an additional source for payments of principal and interest due on public school district general obligation indebtedness already incurred or incurred in the future or for payments of any other obligations arising in connection with that indebtedness. The fund shall be drawn upon only in the event ad valorem taxes or other revenues of the public school district available for the described payments are either insufficient or are



not received by the public school district at the time due or anticipated. The state department of public education [public education department] shall administer the fund and may make loans from the fund in accordance with the School District Loan Act. Money remaining in the fund at the end of any fiscal year shall not revert to the general fund.

B. The state department of public education [public education department] shall deposit in the fund all receipts from the repayment of loans made pursuant to the School District Loan Act.

C. Each July 1, balances in the public school district general obligation bonds loan fund in excess of one million dollars (\$1,000,000) shall be transferred to the state-support reserve fund.

**History:** Laws 1989, ch. 134, § 3.

#### **22-18A-4. Loan program; duties of the state department of public education.**

A. The state department of public education [public education department] shall adopt regulations to govern the application procedure and requirements for making loans under the School District Loan Act.

B. The state department of public education [public education department] may make a loan to a school district if the local school district board certifies to the state department of public education that there are insufficient ad valorem taxes or other school district revenues to meet a payment of principal or interest, or both, due on the school district's general obligation indebtedness or to meet any other obligation arising in connection with that indebtedness lawfully payable from ad valorem taxes, or that the receipt of ad valorem taxes to make any such payment will be delayed and not be available to make the payment when due.

C. A loan shall be made for a period of time not to exceed five years with an annual interest rate to be the lesser of five percent or the rate of interest determined by the state department of public education [public education department], so that the interest rate shall comply with federal arbitrage requirements. A loan shall be repaid in annual installments as determined by the state board [department] of public education. Loans shall be made by the state department of public education [public education department] pursuant to this section only, with the prior approval of the state board of finance.

**History:** Laws 1989, ch. 134, § 4.

#### **22-18A-5. Temporary transfer of funds.**

If it is determined by the state department of public education [public education department] and the department of finance and administration that there are insufficient ad valorem taxes or other public school district revenues to meet a payment of principal or interest due on public school district general obligation indebtedness or to meet any other obligation arising in connection with that indebtedness lawfully payable from ad valorem taxes, or that the receipt of ad valorem taxes or other revenues to be used to make any such payment will be delayed and not be available to make the payment when due, the state department of public education [public education department] and the department of finance and administration may request the state board of finance to direct a temporary transfer of a sufficient amount of money from the state-support reserve fund or the general fund operating reserve to the public school district general obligation bonds loan fund so that the payment becoming due may be made and a default avoided. In determining the order of transfer, money in the state-support reserve fund shall be transferred first, and if that amount is insufficient then the general fund operating reserve shall be used. If such a transfer is directed by the state board of finance, the state department of public education [public education department] shall use the amount transferred to the state public school district general obligation bonds loan fund to make the payment.

**History:** Laws 1989, ch. 134, § 5.

## **ARTICLE 18B**

### **Qualified School Bonds**

#### **22-18B-1. Short title.**

Sections 1 through 5 [22-18B-1 to 22-18B-5 NMSA 1978] of this act may be cited as the "Qualified School Bonds Act".

**History:** Laws 1999, ch. 225, § 1.

#### **22-18B-2. Findings and purpose.**

A. The legislature finds that:

(1) the condition of public school facilities has a direct effect on the safety of teachers and students and on the ability of students to learn;

(2) public schools in rapidly growing urban areas of New Mexico and public schools in sparsely populated rural areas are unable to meet the capital needs for modernization of existing school facilities to meet the growing school-age population in New Mexico under present funding authorizations;

(3) additional funding options are necessary to meet the needs for teacher training to improve student achievement levels and to meet the needs of the work place by providing sufficient student training in the use of advanced technology;

(4) encouraging active community participation and private sector contributions to the public schools will enhance learning opportunities for New Mexico students;

(5) authorizing additional forms of financing for school modernization and construction will permit eligible taxpayers to take advantage of tax credits not currently available to bondholders and will increase the market options for state and local bonds;

(6) encouraging active community participation in the development of resources to build and modernize schools, to enhance educational technology and to enhance teacher training is essential to the success of students in the twenty-first century; and

(7) authorizing additional alternative procedures for the sale of bonds will allow New Mexico public schools and eligible taxpayers to participate in available tax credits and to leverage additional funds for the improvement of public school facilities.

B. The purpose of the Qualified School Bonds Act is to implement a state program that allows eligible taxpayers to take advantage of available tax credits by expanding the incentives to purchase and hold bonds and thereby increasing the financing alternatives for modernization and rehabilitation of public school facilities and enhancing teacher training.

**History:** Laws 1999, ch. 225, § 2.

## **22-18B-3. Definitions.**

As used in the Qualified School Bonds Act:

A. "allocation" means New Mexico's allocation of the national zone academy bond limitation pursuant to Section 1397E(e)(2) of the Internal Revenue Code of 1986;

B. "council" means the public school capital outlay council;

C. "eligible taxpayer" means an entity that qualifies as an eligible taxpayer under Section 1397E(d)(6) of the Internal Revenue Code of 1986 and includes a bank, insurance company or corporation actively engaged in the business of lending money;

D. "qualified contribution" means a contribution meeting the requirements of Section 1397E(d)(2) of the Internal Revenue Code of 1986, from a private entity to the qualifying school and includes:

- (1) equipment for use in the qualifying school, including state-of-the-art technology and vocational equipment;
- (2) technical assistance in developing curriculum or in training teachers in order to promote appropriate market-driven technology in the classroom;
- (3) services of employees as volunteer mentors;
- (4) internships, field trips or other educational opportunities outside the qualifying school for students; and
- (5) any other property or service specified by the governing body of the qualifying school;

E. "qualified school bond" means a bond issued by the state or a political subdivision of the state that meets all of the requirements of Section 4 [22-18B-4 NMSA 1978] of the Qualified School Bonds Act and the requirements for a qualified zone academy bond pursuant to Section 1397E(d)(1) of the Internal Revenue Code of 1986;

F. "qualified purpose" means a purpose of a bond issue that meets the requirements of Section 1397E(d)(5) of the Internal Revenue Code of 1986 and Article 9, Section 11 of the constitution of New Mexico; and

G. "qualifying school" means a public school, a New Mexico state educational institution providing education or training below the post-secondary level or a program within such a public school or educational institution and which school, institution or program meets the requirements for a qualified zone academy pursuant to Section 1397E(d)(4) of the Internal Revenue Code of 1986.

**History:** Laws 1999, ch. 225, § 3.

## **22-18B-4. Qualified school bonds; designation; terms; sale.**

A. The state or a political subdivision of the state that has been authorized to issue bonds may designate all or any part of the bonds as qualified school bonds if:

- (1) at least ninety-five percent of the proceeds from the sale of the proposed qualified school bonds are to be used for a qualified purpose at a qualifying school within the jurisdiction of the state or political subdivision;
- (2) the state or the political subdivision has the written approval of the governing body of the qualifying school to issue the proposed qualified school bonds;
- (3) the governing body of the qualifying school has written commitments from private entities for qualified contributions having a present value of not less than ten

percent of the value of the proceeds from the sale of the proposed qualified school bonds; and

(4) the council has reserved to the qualifying school an amount of the allocation equal to the proceeds from the sale of the proposed qualified school bonds.

B. Notwithstanding any law requiring bonds to be sold at a public sale, qualified school bonds may be sold at a private sale to eligible taxpayers.

C. In addition to any other requirement of law applicable to the term of the bonds, qualified school bonds shall not be issued for a term longer than the term fixed pursuant to Section 1397E(d)(3) of the Internal Revenue Code of 1986 for qualified zone academy bonds issued during the month that the qualified school bonds are issued.

D. Qualified school bonds shall not bear interest.

**History:** Laws 1999, ch. 225, § 4.

## **22-18B-5. Public school capital outlay council; allocation.**

A. The aggregate face amount of all qualified school bonds issued in a calendar year shall not exceed the allocation for that year.

B. The council is designated the state education agency pursuant to Section 1397E(e)(2) of the Internal Revenue Code of 1986 and is responsible for ensuring compliance with the limitation of Subsection A of this section.

C. If the state or a political subdivision desires to designate bonds as qualified school bonds, it shall, by July 1 of the calendar year in which the bonds are to be issued, submit an application for reservation of an allocation to the council. The application shall include evidence that the requirements of Paragraphs (1), (2) and (3) of Subsection A of Section 4 [22-18B-4 NMSA 1978] of the Qualified School Bonds Act have been satisfied.

D. If, for a calendar year, the allocation for that year exceeds the amount of qualified school bonds designated and issued in that year, the excess shall be carried forward and included in the allocation for the subsequent year.

E. In the event the face amount of all proposed qualified school bonds for a calendar year exceeds the allocation, the council shall ratably apportion the allocation among the state and political subdivisions that have timely filed valid applications for that year.

**History:** Laws 1999, ch. 225, § 5.

# **ARTICLE 18C**

## **Qualified School Construction Bonds Act**

### **22-18C-1. Short title.**

Chapter 22, Article 18C NMSA 1978 may be cited as the "Qualified School Construction Bonds Act".

**History:** Laws 2009, ch. 154, § 1; 2010, ch. 56, § 1.

### **22-18C-2. Definitions.**

As used in the Qualified School Construction Bonds Act:

A. "allocation" means New Mexico's allocation of the national qualified school construction bond limitation pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009;

B. "council" means the public school capital outlay council;

C. "qualified school construction bond" means a bond issued by the state or a school district that meets all of the requirements of Section 22-18C-3 NMSA 1978 and the requirements for a qualified school construction bond pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009; and

D. "qualifying school" means a public school, a New Mexico state educational institution providing education or training below the post-secondary level or a program within such a public school or educational institution and which school, institution or program meets the requirements of Section 1521 of the federal American Recovery and Reinvestment Act of 2009.

**History:** Laws 2009, ch. 154, § 2; 2010, ch. 56, § 2.

### **22-18C-3. Qualified school construction bonds; designation; terms; sale.**

A. The state or a school district that has been authorized to issue bonds may designate all or any part of the bonds as qualified school construction bonds if:

(1) one hundred percent of the available project proceeds from the issuance of the bonds are to be used for:

(a) the construction, rehabilitation or repair of a qualifying school facility;

(b) the acquisition of land on which such a facility is to be constructed with part of the proceeds; or

(c) the acquisition of equipment to be used in the portion of the qualifying school facility that is being constructed, rehabilitated or repaired with the proceeds;

(2) the bonds are issued by the state or a school district within the jurisdiction of which the qualifying school is located; and

(3) the issuer is:

(a) a school district to which a direct allocation is made pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009 and the amount of the bonds designated as qualified school construction bonds does not exceed the direct allocation; or

(b) the state or a school district that has received an allocation distribution from the council pursuant to Section 22-18C-4 NMSA 1978.

B. Notwithstanding any law requiring bonds to be sold at a public sale or at not less than par, qualified school construction bonds may be sold at a public or private sale to the state, the New Mexico finance authority or any other purchaser and may be sold at par, or at less than or greater than par.

C. In addition to any other requirement of law applicable to the term of the bonds, qualified school construction bonds shall not be issued for a term longer than the term fixed pursuant to the Internal Revenue Code of 1986, as amended, and applicable state law.

**History:** Laws 2009, ch. 154, § 3; 2010, ch. 56, § 3.

## **22-18C-4. Allocation.**

A. The aggregate face amount of all qualified school construction bonds issued in a calendar year shall not exceed the available allocation, including any carry-forward allocation, for that year.

B. Except for the portion of the allocation required by Section 1521 of the federal American Recovery and Reinvestment Act of 2009 to be made to particular school districts, the council is designated the state education agency responsible for ensuring compliance with the limitation of Subsection A of this section.

C. If the state or a school district that has been authorized to issue bonds, or is in the process of obtaining authorization to issue bonds, desires to designate all or any portion of the bonds as qualified school construction bonds, it shall submit an application to the council for an allocation distribution. For bonds to be issued in

calendar year 2010, the application shall be submitted no later than the last day of the third month following the month in which this 2010 act is first effective; and, for bonds to be issued in any subsequent year in which an allocation exists, the application shall be submitted no later than March 1 of that year. The application shall include evidence that the requirements of Paragraphs (1) and (2) of Subsection A of Section 22-18C-3 NMSA 1978 have been satisfied; provided, however, that any school district to which a direct allocation is made pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009 shall be exempt from the application requirement to the extent that the amount of qualified school construction bonds to be issued by that district does not exceed the direct allocation.

D. If, for a calendar year, the allocation for that year exceeds the amount of qualified school construction bonds designated and issued in that year, the excess shall revert to the council and shall be carried forward and included in the allocation for the subsequent year as follows:

(1) any excess attributable to the portion of the allocation required by Section 1521 of the federal American Recovery and Reinvestment Act of 2009 to be made to a particular school district shall be allocated to that school district in the subsequent year; and

(2) any excess not allocated pursuant to Paragraph (1) of this subsection shall revert to the council and be distributed pursuant to Subsection C of this section in the subsequent year.

E. In the event that the face amount of all proposed qualified school construction bonds for a calendar year exceeds the allocation remaining after deducting the direct allocations made to particular school districts pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009, the council shall, after considering the factors listed in Subsection F of this section, decide how the remaining allocation shall be distributed to applicants that have timely filed valid applications for that year; provided, however, that the distribution shall not reduce the direct allocation to any particular school district pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009.

F. In deciding how the remaining allocation shall be distributed to applicants pursuant to Subsection E of this section, the council shall consider:

(1) the dates anticipated for the initial expenditure of bond proceeds and for completion of the project;

(2) the percent of the bond proceeds that are likely to be expended within three years of the date of the issuance of the bonds;

(3) whether the bond proceeds, together with all other money available for the project, are sufficient to complete the project; and



(4) the priority ranking of the project, as determined by applying the deviation from the statewide adequacy standards pursuant to Section 22-24-5 NMSA 1978.

**History:** Laws 2009, ch. 154, § 4; 2010, ch. 56, § 4.

## **ARTICLE 19**

### **School Revenue Bonds**

#### **22-19-1. Short title.**

Sections 22-19-1 through 22-19-16 NMSA 1978 may be cited as the "School Revenue Bond Act".

**History:** 1953 Comp., § 77-16-1, enacted by Laws 1967, ch. 16, § 240.

#### **22-19-2. Definitions.**

As used in the School Revenue Bond Act:

A. "income project" means purchasing, erecting, improving, repairing or furnishing a building, improvement or facility, including the land upon which it is situated, which will produce an income to the school district;

B. "net income from the income project" means all income derived from an income project, including the income pledged pursuant to the School Revenue Bond Act, less the operating costs of the income project; and

C. "operating costs" means expenses of operating, maintaining and keeping in repair an income project, including the cost of heating, electricity, insurance, service employees and equipment replacement.

**History:** 1953 Comp., § 77-16-2, enacted by Laws 1967, ch. 16, § 241.

#### **22-19-3. Income projects.**

A local school board may borrow money to finance income projects of the school district pursuant to the School Revenue Bond Act.

**History:** 1953 Comp., § 77-16-3, enacted by Laws 1967, ch. 16, § 242.

#### **22-19-4. Bonds; mortgages.**

A. A local school board may issue bonds or other special obligations to finance the repayment of all money borrowed for an income project pursuant to the School Revenue Bond Act.

B. A local school board may execute a mortgage, deed of trust or a security agreement upon the income project to secure payment of any bonds or other special obligations issued pursuant to the School Revenue Bond Act.

**History:** 1953 Comp., § 77-16-4, enacted by Laws 1967, ch. 16, § 243.

### **22-19-5. Determination by local school board.**

Prior to borrowing money and issuing evidences of indebtedness to finance an income project, a local school board shall make a determination that the income project is necessary and that sufficient income will be produced by the income project to repay all money borrowed and to discharge any bonds or other special obligations issued for the repayment of the money borrowed.

**History:** 1953 Comp., § 77-16-5, enacted by Laws 1967, ch. 16, § 244.

### **22-19-6. Report to state board [department].**

Prior to borrowing any money to finance an income project, a local school board shall furnish to the state board [department] the following information:

- A. a detailed description of the income project;
- B. an explanation of the necessity for the income project;
- C. an estimate of the total cost of the income project;
- D. an estimate of the amount of income anticipated from the income project;
- E. an estimate of the amount of income from existing buildings, improvements or facilities that will be pledged to pay for the income project;
- F. an estimate of the yearly operating cost of the income project; and
- G. an estimate of the anticipated yearly net income from the income project.

**History:** 1953 Comp., § 77-16-6, enacted by Laws 1967, ch. 16, § 245.

### **22-19-7. State board [department] approval; determination by state board.**

A. A local school board shall obtain written approval of the state board [department] before it borrows money, issues bonds or other special obligations, or executes mortgages, deeds of trust or security agreements for financing an income project pursuant to the School Revenue Bond Act.

B. Prior to giving written approval to an income project, the state board [department] shall determine that the income project is necessary and that sufficient income will be produced by the income project to repay all money borrowed and to discharge any bonds or other special obligations issued for the repayment of the money borrowed.

**History:** 1953 Comp., § 77-16-7, enacted by Laws 1967, ch. 16, § 246.

### **22-19-8. Records; restriction on use of income.**

A. A local school board shall retain complete and accurate records of:

- (1) the net income from the income project; and
- (2) the operating costs of the income project.

B. All income from the income project shall be used solely for the following purposes:

- (1) to pay the principal, interest and service charges on any bonds or other special obligations issued pursuant to the School Revenue Bond Act; and
- (2) to pay the operating costs of the income project.

**History:** 1953 Comp., § 77-16-8, enacted by Laws 1967, ch. 16, § 247.

### **22-19-9. Bonds; pledge of income; satisfaction of indebtedness.**

A. Bonds or other special obligations issued pursuant to the School Revenue Bond Act shall irrevocably pledge, for the prompt payment of the principal, interest and service charges thereof, the net income from the income project for which the bonds or other special obligations were issued. The bonds or other special obligations shall be equally and ratably secured, without priority, by this pledge of the net income from the income project.

B. A local school board shall operate the income project so as to insure a sufficient income to promptly pay the principal, interest and service charges, as they become due, on the bonds or other special obligations issued, after the payment of operating costs of the income project. A local school board shall establish a reserve fund not exceeding ten thousand dollars (\$10,000) to be used for the repayment of any money borrowed.

C. Satisfaction of any indebtedness created by any bonds or other special obligations issued pursuant to the School Revenue Bond Act shall be limited solely to foreclosure of the income project upon which a mortgage, deed of trust or security agreement was executed, without the right to a deficiency judgment.

**History:** 1953 Comp., § 77-16-9, enacted by Laws 1967, ch. 16, § 248.

## **22-19-10. Proceeds of bond sales; retirement fund.**

A. Proceeds from the sale of bonds or other special obligations issued by a local school board pursuant to the School Revenue Bond Act shall be deposited into a separate account to be used solely for the specific purposes for which the money was borrowed. All costs incident to issuing and selling bonds or other special obligations may be paid out of the proceeds of this account.

B. A local school board, at the time of issuing any bonds or other special obligations, shall establish a fund to be known as the "retirement fund". All net income from the income project and all proceeds remaining after completion of the income project shall be deposited into the retirement fund. All proceeds in the retirement fund shall be used solely for the purpose of repaying the principal, interest and service charges on any bonds or other special obligations issued for the income project.

**History:** 1953 Comp., § 77-16-10, enacted by Laws 1967, ch. 16, § 249.

## **22-19-11. Bonds; form; requirements.**

All bonds or other special obligations issued pursuant to the School Revenue Bond Act shall:

A. be fully negotiable within the provisions of the Uniform Commercial Code [Chapter 55 NMSA 1978];

B. have a duration of time not to exceed forty years from their date of issuance;

C. bear interest at a rate not to exceed a net of six percent a year, interest payable semiannually;

D. be sold at a price which does not result in an actual net interest cost to maturity, computed on the basis of standard tables of bond values, in excess of six percent a year;

E. have the principal thereof paid in yearly amounts beginning not later than two years from their date of issuance; and

F. be sold at public or private sale, with or without a discount as provided by Subsection D of this section.

**History:** 1953 Comp., § 77-16-11, enacted by Laws 1967, ch. 16, § 250.

## **22-19-12. Pledge of additional revenue.**

A local school board may pledge, as security for the payment of the principal and interest on any bonds or other special obligations issued pursuant to the School Revenue Bond Act, a part or the whole amount of income derived from an existing building, improvement or other facility subject to the control of the local school board. A local school board may pledge this income whether or not the existing building, improvement or facility is to be improved, repaired or furnished by the proceeds of the bonds or other special obligations.

**History:** 1953 Comp., § 77-16-12, enacted by Laws 1967, ch. 16, § 251.

## **22-19-13. Refunding bonds.**

A. A local school board may issue refunding bonds for the purpose of refunding, for not less than the principal amount thereof, bonds issued pursuant to the provisions of the School Revenue Bond Act or any act repealed thereby, or for the purpose of providing additional funds for any income project for which bonds have been authorized by a local school board, or for both purposes.

B. Except as otherwise provided in the School Revenue Bond Act, refunding bonds shall conform to the provisions of the School Revenue Bond Act which provide for the issuance of other revenue bonds by a local school board.

C. A refunding bond issued by a local school board may have the same security or source of payment as was pledged for the payment of the bond being refunded but no source of payment shall be pledged which is not authorized by the School Revenue Bond Act.

D. A refunding bond may be delivered in exchange for a bond authorized to be refunded, sold at a public or private sale for not less than the par value of the bond or sold in part and exchanged in part. If the refunding bond is sold, the proceeds shall be immediately applied to the retirement of the bond to be refunded, or the proceeds or the obligations in which the proceeds are permitted by law to be invested shall be placed in trust to be held and applied to payment of the bond to be refunded.

**History:** 1953 Comp., § 77-16-13, enacted by Laws 1967, ch. 16, § 252.

## **22-19-14. Refunding bonds; issuance; sale; proceeds.**

A. No bond shall be refunded pursuant to the School Revenue Bond Act unless it matures or is callable for prior redemption under its terms within fifteen years from the date of issuance of the refunding bond, or unless the holder of the bond voluntarily surrenders it for exchange or payment.

B. Outstanding bonds of more than one issue may be refunded by refunding bonds of one or more issue. Refunding bonds and any other bonds authorized pursuant to the School Revenue Bond Act may be issued separately or in combinations of one or more series.

C. If any officer whose signature or facsimile signature appears on any bond or coupon authorized by the School Revenue Bond Act ceases to hold office before delivery of the bond, the signature or facsimile signature shall be valid for all purposes as if he had remained in office until delivery.

D. When a refunding bond is sold, the net proceeds may, in the discretion of the local school board, be invested in obligations of the federal government or any agency of the federal government or in obligations fully guaranteed by the federal government, but the obligations purchased must have a maturity and bear a rate of interest payable at times to ensure the existence of sufficient money to pay the bond to be refunded when it becomes due or redeemable pursuant to a call for redemption, together with interest and redemption premiums, if any.

E. All obligations purchased with the net proceeds from refunding bonds shall be deposited in trust with a bank doing business in the state and which is a member of the federal deposit insurance corporation. The obligations shall be held, liquidated and the proceeds of the liquidation paid out for payment of the principal, interest and redemption premium of the bonds to be refunded as the bonds to be refunded become due, or where the bonds are subject to redemption under a call for redemption previously made, or where there is a voluntary surrender with the approval of the local school board.

F. The determination of the local school board issuing refunding bonds that the issuance has been in compliance with the School Revenue Bond Act is conclusively presumed correct in the absence of fraud or arbitrary and gross abuse of discretion.

G. As used in this section, "net proceeds" means the gross proceeds of the refunding bonds after deducting all accrued interest and expenses incurred in connection with the authorization and issuance of the refunding bonds and the refunding of outstanding bonds, including fiscal agent fees, commissions and all discounts incurred in the resale of the refunding bonds to the original purchaser.

**History:** 1953 Comp., § 77-16-14, enacted by Laws 1967, ch. 16, § 253.

## **22-19-15. Exchange of bonds.**

In authorizing any bonds pursuant to the School Revenue Bond Act, a local school board, in its authorization resolution, may provide for exchange of any bonds issued for refunding bonds of larger or smaller denominations. Refunding bonds in the changed denominations shall be exchanged for the original bonds in the same aggregate principal amounts so that there is no overlapping of interest paid. Refunding bonds in changed denominations shall bear interest at the same rates, mature on the same

dates, be in the same form and be identical with the original bonds surrendered for exchange in all respects except as to denominations, serial numbers and a recital as to the exchange. Where any exchange of bonds is made pursuant to the School Revenue Bond Act, the bonds surrendered by the holders at the time of exchange shall be cancelled [canceled]. The exchange shall be made only at the request of the holder of the bond to be surrendered, and the local school board may require the holder of the bond to pay all expenses incurred in connection with the exchange, including those of authorization and issuance of the refunding bonds.

**History:** 1953 Comp., § 77-16-15, enacted by Laws 1967, ch. 16, § 254.

## **22-19-16. Tax exemption; no charge against state.**

A. Bonds or other special obligations issued pursuant to the School Revenue Bond Act are exempt from taxation by the state or any of its political subdivisions.

B. No obligation created pursuant to the School Revenue Bond Act shall be a charge against or a debt of the state or any of its political subdivisions.

**History:** 1953 Comp., § 77-16-16, enacted by Laws 1967, ch. 16, § 255.

# **ARTICLE 19A**

## **Teacher Housing Revenue Bond**

### **22-19A-1. Short title.**

This act [22-19A-1 to 22-19A-12 NMSA 1978] may be cited as the "Teacher Housing Revenue Bond Act".

**History:** Laws 2002, ch. 22, § 1.

### **22-19A-2. Definitions.**

As used in the Teacher Housing Revenue Bond Act:

A. "bonds" means teacher housing revenue bonds;

B. "federal payment" means a payment, grant, subsidy, contribution or other money from the United States or any of its agencies or instrumentalities that is not otherwise restricted as to use and that the federal government allows to be pledged or used to pay debt service on bonds; provided that for federal forest reserve or P.L. 874 funds, "federal payment" means that portion of the funds for which the state does not take credit for the state equalization guarantee pursuant to Section 22-8-25 NMSA 1978;

C. "housing project" means a residential housing facility for teachers, including land and land improvements;

D. "net income from the housing project" means all income derived from a housing project less the operating costs of the housing project;

E. "operating costs" means expenses of operating, maintaining and keeping in repair a housing project, including the cost of utilities, insurance, service employees and equipment replacement; and

F. "pledgeable revenue" means net income from the housing project and federal payments.

**History:** Laws 2002, ch. 22, § 2.

### **22-19A-3. Bonds not general obligations of school district or state.**

A. A local school board may issue bonds to finance the purchase, construction, renovation, equipping and furnishing of a housing project and may irrevocably pledge any or all pledgeable revenue to the payment of those bonds and to the debt service reserve fund if one is established for the bonds.

B. Bonds shall be payable solely from pledgeable revenue and shall not constitute an indebtedness or general obligation of the school district, the state or other political subdivisions of the state.

**History:** Laws 2002, ch. 22, § 3.

### **22-19A-4. Determination by local school board; federal payments.**

A. Prior to issuing bonds to finance the purchase, construction, renovation, equipping or furnishing of a housing project, a local school board shall make a determination that the housing project is necessary and that estimated pledgeable revenue pledged to the bonds is sufficient to repay the bonds.

B. Revenue from federal payments may be pledged even if the federal payments are subject to annual appropriation. Federal payments shall not be pledged unless such use is allowed by federal law. The local school board shall include in its determination a statement as to the legality of pledging the federal payments and what other revenue will be available to make bond payments if federal payments are not appropriated.

**History:** Laws 2002, ch. 22, § 4.

### **22-19A-5. Report to state board [department]; state board approval.**



A. Prior to issuing bonds to finance a housing project, a local school board shall furnish to the state board [department] the following information:

- (1) a detailed description of the housing project;
- (2) an explanation of the necessity for the housing project;
- (3) an estimate of the total cost of the housing project;
- (4) an estimate of the net income from the housing project and other revenues that will be pledged to pay for the housing project; and
- (5) an estimate of the yearly operating cost of the housing project.

B. A local school board shall obtain written approval of the state board [department] before it issues bonds to finance a housing project pursuant to the Teacher Housing Revenue Bond Act.

C. Prior to giving written approval to a housing project, the state board [department] shall determine that the housing project is necessary and that estimated pledgeable revenue pledged to the bonds is sufficient to repay the bonds.

**History:** Laws 2002, ch. 22, § 5.

## **22-19A-6. Records; restriction on use of income.**

A. A local school board shall retain complete and accurate records of:

- (1) the net income from the housing project;
- (2) receipt and amount of federal payments pledged to the repayment of the bonds; and
- (3) the operating costs of the housing project.

B. Pledgeable revenue that is pledged to the repayment of bonds shall first be used to pay the principal, interest and service charges on the bonds issued pursuant to the Teacher Housing Revenue Bond Act and to fund a debt service reserve fund, if applicable.

**History:** Laws 2002, ch. 22, § 6.

## **22-19A-7. Bonds; pledge of income.**

A. Bonds shall be payable solely from any or all pledgeable revenue, and the local school board shall irrevocably pledge that revenue to the prompt payment of the

principal, interest and service charges on the bonds. The bonds shall be equally and ratably secured, without priority, by this pledge of pledgeable revenue.

B. If the bonds are payable solely from the net income of the housing project being financed, the local school board shall operate the housing project so as to ensure a sufficient income to promptly pay the principal, interest and service charges as they become due on the bonds.

C. The state pledges and agrees with the holders of bonds issued by a local school board and payable from pledgeable revenue that the state will not limit or alter the rights of the local school board to receive, collect and account for pledgeable revenue and to fulfill the terms of any agreement made with the bondholders or in any way impair the rights and remedies of the bondholders until the bonds, together with the interest on the bonds, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of those bondholders, are fully paid and discharged.

**History:** Laws 2002, ch. 22, § 7; 2003, ch. 158, § 1.

### **22-19A-8. Proceeds of bond sales; retirement fund; reserve fund.**

A. Proceeds from the sale of bonds shall be deposited into a separate account to be used solely for the specific purposes for which the bonds were issued, including a debt service reserve fund. All costs incident to issuing and selling the bonds may be paid out of the proceeds of the bonds.

B. The local school board shall establish a "debt service fund" to be used solely for the payment of principal, interest and service charges on the bonds. Sufficient amounts from the pledged revenue shall be deposited in the debt service fund at least annually so that timely payments of principal, interest and service charges may be made. All proceeds remaining after completion of the housing project shall be deposited into the debt service fund.

C. The local school board may establish a "debt service reserve fund" to be used to pay bond payments in case the pledged revenue is insufficient.

**History:** Laws 2002, ch. 22, § 8.

### **22-19A-9. Bonds; form; requirements.**

All bonds issued pursuant to the Teacher Housing Revenue Bond Act shall:

A. be fully negotiable within the provisions of the Uniform Commercial Code [Chapter 55 NMSA 1978];

B. have a duration of time not to exceed forty years from their date of issuance;

C. have interest, appreciated principal value or any part thereof payable at intervals or at maturity as determined by the local school board;

D. be sold at a price that does not result in a net effective interest rate in excess of twelve percent a year unless a higher rate of interest is approved by the state board of finance pursuant to the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978];

E. have a principal maturity schedule as determined by the local school board; and

F. be sold at public or private sale at, above or below par.

**History:** Laws 2002, ch. 22, § 9.

## **22-19A-10. Refunding bonds.**

A. A local school board may issue refunding bonds to refund outstanding bonds.

B. Except as otherwise provided in the Teacher Housing Revenue Bond Act, refunding bonds shall conform to the provisions of that act that provide for the issuance of teacher housing revenue bonds by a local school board.

C. A refunding bond issued by a local school board may have the same security or source of payment as was pledged for the payment of the bond being refunded, but no source of payment shall be pledged that is not authorized by the Teacher Housing Revenue Bond Act.

D. A refunding bond may be delivered in exchange for a bond authorized to be refunded, sold at a public or private sale or sold in part and exchanged in part as provided in the Supplemental Public Securities Act [6-14-8 to 6-14-11 NMSA 1978]. If the refunding bond is sold, the proceeds shall be immediately applied to the retirement of the bond to be refunded or the proceeds shall be placed in trust to be held and applied to payment of the bonds to be refunded.

**History:** Laws 2002, ch. 22, § 10.

## **22-19A-11. Refunding bonds; issuance; sale; proceeds.**

A. A bond shall not be refunded unless it matures or is callable for prior redemption under its terms within fifteen years from the date of issuance of the refunding bond or unless the holder of the bond voluntarily surrenders it for exchange or payment.

B. Outstanding bonds of more than one issue may be refunded by refunding bonds of one or more issue. Bonds and refunding bonds may be issued separately or in combinations of one or more series.

C. When a refunding bond is sold, the net proceeds may, in the discretion of the local school board, be invested in obligations of the federal government or an agency of the federal government or in obligations fully guaranteed by the federal government, but the obligations purchased shall have a maturity and bear a rate of interest payable at times to ensure the existence of sufficient money to pay the bond to be refunded when it becomes due or redeemable pursuant to a call for redemption, together with interest and redemption premiums, if any.

D. All obligations purchased with the net proceeds from refunding bonds shall be deposited in trust with a bank that has trust powers and that is a member of the federal deposit insurance corporation. The obligations shall be held, liquidated and the proceeds of the liquidation paid out for payment of the principal, interest and redemption premium of the bonds to be refunded as the bonds to be refunded become due or where the bonds are subject to redemption under a call for redemption previously made or where there is a voluntary surrender with the approval of the local school board.

E. The determination of the local school board issuing refunding bonds that the issuance has been in compliance with the Teacher Housing Revenue Bond Act is conclusively presumed correct in the absence of fraud or arbitrary and gross abuse of discretion.

F. As used in this section, "net proceeds" means the gross proceeds of the refunding bonds after deducting all accrued interest and expenses incurred in connection with the authorization and issuance of the refunding bonds and the refunding of outstanding bonds, including fiscal agent fees, commissions and all discounts incurred in the resale of the refunding bonds to the original purchaser.

**History:** Laws 2002, ch. 22, § 11.

## **22-19A-12. Tax exemption; no charge against state.**

Bonds are exempt from taxation by the state or any of its political subdivisions. No obligation created pursuant to the Teacher Housing Revenue Bond Act shall be a charge against or a debt of the state or any of its political subdivisions.

**History:** Laws 2002, ch. 22, § 12.

# **ARTICLE 19B**

## **School District Bond Anticipation Notes**

### **22-19B-1. Short title.**

This act [22-19B-1 to 22-19B-9 NMSA 1978] may be cited as the "School District Bond Anticipation Notes Act".

**History:** Laws 2002, ch. 54, § 1.

## **22-19B-2. Purpose.**

The purpose of the School District Bond Anticipation Notes Act is to provide a mechanism for school districts to obtain short-term financing for capital projects that are needed by the school district to meet the educational needs of students in the school district and to promote the health, safety, security and general welfare of the students in the school district.

**History:** Laws 2002, ch. 54, § 2.

## **22-19B-3. Definitions.**

As used in the School District Bond Anticipation Notes Act:

A. "bond anticipation note" means a security evidencing an obligation of the school district that precedes the issuance of general obligation bonds; and

B. "general obligation bond" means indebtedness issued by a school district that constitutes a debt for the purpose of Article 9, Section 11 of the constitution of New Mexico.

**History:** Laws 2002, ch. 54, § 3.

## **22-19B-4. Issuance of bond anticipation notes.**

A. A school district may issue bond anticipation notes for any purpose for which general obligation bonds are authorized to be issued.

B. The principal amount of bond anticipation notes shall be payable solely from the proceeds of the general obligation bonds for which the bond anticipation notes are issued and shall not be considered debt of the school district for purposes of Article 9, Section 11 of the constitution of New Mexico.

**History:** Laws 2002, ch. 54, § 4.

## **22-19B-5. Bond anticipation note details.**

A. Bond anticipation notes shall be authorized by resolution of the local school board and may be issued in such denominations as determined by the local school board.

B. Bond anticipation notes shall mature no later than one year from the date of issuance. The local school board shall covenant in the resolution authorizing the

issuance of the bond anticipation notes to issue general obligation bonds in an amount necessary to retire the bond anticipation notes.

C. The annual interest rate and yield on the bond anticipation notes shall be stated in the resolution that authorizes the issuance of the bond anticipation notes; provided that the maximum net effective interest rate on bond anticipation notes shall not exceed ten percent a year.

D. Bond anticipation notes may be sold at, above or below par at a public sale, in a negotiated sale or to the New Mexico finance authority.

**History:** Laws 2002, ch. 54, § 5.

## **22-19B-6. Limitations on issuance of bond anticipation notes.**

Bond anticipation notes shall not be issued:

A. unless the general obligation bonds for which bond anticipation notes are contemplated have been authorized at an election as required by Article 9, Section 11 of the constitution of New Mexico;

B. in a principal amount in excess of the amount of the general obligation bonds authorized to be issued at an election or, if some portion of the bonds authorized at that election have been issued, in a principal amount in excess of the amount of the authorized but unissued general obligation bonds;

C. in a principal amount in excess of the amount of outstanding general obligation bonds of the school district maturing within one year of the date of issuance of the bond anticipation notes; and

D. unless the proceeds of the bond anticipation notes are to be used for the same purpose for which the general obligation bonds are authorized.

**History:** Laws 2002, ch. 54, § 6.

## **22-19B-7. Publication of notice; validation; limitation of action.**

After adoption of a resolution authorizing issuance of bond anticipation notes, the local school board shall publish notice of the adoption of the resolution once in a newspaper of general circulation in the school district. After thirty days from the date of publication, any action attacking the validity of the proceedings had or taken by the local school board preliminary to and in the authorization and issuance of the bond anticipation notes described in the notice is perpetually barred.

**History:** Laws 2002, ch. 54, § 7.

## **22-19B-8. Cumulative and complete authority.**

The School District Bond Anticipation Notes Act is an additional and alternative method for obtaining funding for capital projects by a school district and constitutes full authority for the exercise of powers granted to a local school board by that act. Powers conferred by the School District Bond Anticipation Notes Act are supplemental and additional to powers conferred by other laws of the state, without reference to such other laws of the state.

**History:** Laws 2002, ch. 54, § 8.

## **22-19B-9. Liberal interpretation.**

The School District Bond Anticipation Notes Act shall be liberally construed to effect the purposes of the act.

**History:** Laws 2002, ch. 54, § 9.

# **ARTICLE 20**

## **School Construction**

### **22-20-1. School construction; lease-purchase agreements; lease payment grant applications; approval of the public school facilities authority; compliance with statewide adequacy standards; state construction and fire standards applicable.**

A. Except as provided in Subsection F of this section, each local school board or governing body of a charter school shall secure the approval of the director of the public school facilities authority or the director's designee prior to:

- (1) the construction or letting of contracts for construction of any school building or related school structure;
- (2) entering into a lease-purchase agreement for a building to be used as a school building or a related school structure; or
- (3) reopening an existing structure that was not used as a school building during the previous year.

B. A written application shall be submitted to the director requesting approval of the construction, lease-purchase agreement or reopening, and, upon receipt, the director shall forward a copy of the application to the secretary. The director shall prescribe the form of the application, which shall include the following:

- (1) a statement of need;
- (2) the anticipated number of students affected;
- (3) the estimated cost;
- (4) for approval of construction, a description of the proposed construction project;
- (5) for approval of a lease-purchase agreement or a reopening of an existing structure, a description of the structure to be leased or reopened, including its location, square footage, interior layout and facilities, such as bathrooms, kitchens and handicap access, a description of the prior use of the structure and a description of how the facility and supplemental shared facilities and resources will fulfill the functions necessary to support the educational programs of the school district or charter school;
- (6) a map of the area showing existing school attendance centers within a five-mile radius and any obstructions to attending the attendance centers, such as railroad tracks, rivers and limited-access highways; and
- (7) other information as may be required by the director.

C. With respect to an application for the approval of construction, the director or the director's designee shall give approval to an application if the director or designee reasonably determines that:

- (1) the construction will not cause an unnecessary proliferation of school construction;
- (2) the construction is needed in the school district or by the charter school;
- (3) the construction is feasible;
- (4) the cost of the construction is reasonable;
- (5) the school district or charter school has submitted a five-year facilities plan that includes:
  - (a) enrollment projections;
  - (b) a current preventive maintenance plan;
  - (c) the capital needs of charter schools chartered by the school district, if applicable, or the capital needs of the charter school if it is state-chartered; and



(d) projections for the facilities needed in order to maintain a full-day kindergarten program;

(6) the construction project:

(a) is in compliance with the statewide adequacy standards adopted pursuant to the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978]; and

(b) is appropriately integrated into the school district or charter school five-year facilities plan;

(7) the school district or charter school is financially able to pay for the construction; and

(8) the secretary has certified that the construction will support the educational program of the school district or charter school.

D. With respect to an application for the approval of a lease-purchase agreement or for the reopening of an existing structure, the director or the director's designee shall give approval to an application if the director or designee reasonably determines that:

(1) the buildings to be reopened or leased for purchase meet the applicable statewide adequacy standards adopted pursuant to the Public School Capital Outlay Act or the buildings can be brought into compliance with those standards within a reasonable time and at a reasonable cost and that money or other resources will be available to the school district or charter school to bring the buildings up to those standards; and

(2) the buildings to be reopened or leased for purchase have, as measured by the New Mexico condition index, a condition rating equal to or better than the average condition for all New Mexico public schools for that year.

E. Within thirty days after the receipt of an application filed pursuant to this section, the director or the director's designee shall in writing notify the local school board or governing body of a charter school making the application and the department of approval or disapproval of the application.

F. By rule, the public school capital outlay council may:

(1) exempt classes or types of construction from the application and approval requirements of this section; or

(2) exempt classes or types of construction from the requirement of approval but, if the council determines that information concerning the construction is necessary for the maintenance of the facilities assessment database, require a description of the

proposed construction project and related information to be submitted to the public school facilities authority.

G. A charter school shall not apply for a lease payment grant pursuant to Subsection I of Section 22-24-4 NMSA 1978 unless the lease-purchase agreement has been approved pursuant to this section.

H. A local school board or governing body of a charter school shall not enter into a contract for the construction of a public school facility, including contracts funded with insurance proceeds, unless the contract contains provisions requiring the construction to be in compliance with the statewide adequacy standards adopted pursuant to the Public School Capital Outlay Act, provided that, for a contract funded in whole or in part with insurance proceeds:

(1) the cost of settlement of any insurance claim shall not be increased by inclusion of the insurance proceeds in the construction contract; and

(2) insurance claims settlements shall continue to be governed by insurance policies, memoranda of coverage and rules related to them.

I. Public school facilities shall be constructed pursuant to state standards or codes promulgated pursuant to the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978] and rules adopted pursuant to Section 59A-52-15 NMSA 1978 for the prevention and control of fires in public occupancies. Building standards or codes adopted by a municipality or county do not apply to the construction of public school facilities, except those structures constructed as a part of an educational program of a school district or charter school.

J. The provisions of Subsection I of this section relating to fire protection shall not be effective until the public regulation commission has adopted the International Fire Code and all standards related to that code.

K. As used in this section, "construction" means any project for which the construction industries division of the regulation and licensing department requires permitting and for which the estimated total cost exceeds two hundred thousand dollars (\$200,000).

**History:** 1953 Comp., § 77-18-1, enacted by Laws 1967, ch. 16, § 270; 1988, ch. 64, § 41; 2003, ch. 147, § 2; 2005, ch. 274, § 4; 2006, ch. 94, § 54; 2006, ch. 95, § 1; 2007, ch. 366, § 1; 2011, ch. 69, § 4.

## **22-20-2. School building construction; distance from highways.**

A. No local school board or governing body of a charter school shall construct or cause the construction of any public school building within four hundred feet of any main artery of travel without the prior written approval of the department.

B. The district court may enforce the provisions of this section by any appropriate civil remedy in an action brought by an interested party.

C. As used in this section, "main artery of travel" means any designated state or federal-aid highway used primarily to accommodate transient motor traffic through a municipality and any type of public highway used primarily to accommodate transient motor traffic through a rural community or area.

**History:** 1953 Comp., § 77-18-2, enacted by Laws 1967, ch. 16, § 271; 2006, ch. 94, § 55.

### **22-20-3. Repealed.**

### **22-20-4. Applicability.**

The provisions of Chapter 22, Article 20 NMSA 1978 do not apply to public school capital outlay projects subject to the oversight of the public school capital outlay council pursuant to the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978].

**History:** 1978 Comp., § 22-20-4, enacted by Laws 2001, ch. 338, § 4.

## **ARTICLE 21**

### **Prohibited Sales by Personnel**

#### **22-21-1. Prohibiting sales to the department, to school districts and to school personnel; exception; penalty.**

A. A member of the commission, a member of a local school board, a member of the governing body of a charter school, the secretary, an employee of the department or a school employee shall not, directly or indirectly, sell or be a party to any transaction to sell any instructional material, furniture, equipment, insurance, school supplies or work under contract to the department, school district or public school with which such person is associated or employed. No such person shall receive any commission or profit from the sale or any transaction to sell any instructional material, furniture, equipment, insurance, school supplies or work under contract to the department, school district or public school with which the person is associated or employed.

B. The provisions of this section shall not apply to a person making a sale in the regular course of business who complies with the provisions of Sections 13-1-21, 13-1-21.2 [repealed] and 13-1-22 NMSA 1978. The provisions of this section shall not apply in cases in which school employees contract to perform special services with the department, school district or public school with which they are associated or employed during time periods wherein service is not required under a contract for instruction, administration or other employment.

C. No member of the commission, member of a local school board, member of the governing body of a charter school, the secretary, employee of the department or school employee shall solicit or sell or be a party to a transaction to solicit or sell insurance or investment securities to any employee of the department or any employee of the school district whom such person supervises. Nothing in this subsection shall prohibit a financial institution from requiring the purchase of insurance in connection with a loan or offering and selling such insurance in accordance with the provisions of the New Mexico Insurance Code [Chapter 59A [except for Articles 30A and 42A] NMSA 1978].

D. No state employee who supervises or exercises control over school districts or charter schools, which supervision or control includes but is not limited to school programs, capital outlay and operating budgets, shall enter into any business relationship with an employee of a local school district or charter school over which the state employee exercises supervision or control.

E. Any person violating any provision of this section is guilty of a fourth degree felony under the Criminal Code [Chapter 30 NMSA 1978]. The department may suspend or revoke the licensure of a licensed school employee for violation of this section.

**History:** 1953 Comp., § 77-19-1, enacted by Laws 1967, ch. 16, § 282; 1971, ch. 74, § 1; 1985, ch. 141, § 1; 2006, ch. 94, § 56.

## **22-21-2. Prohibition on the sale or use of student, faculty and staff lists in direct marketing; remedies.**

A. No person shall sell or use student, faculty or staff lists with personal identifying information obtained from a public school or a local school district for the purpose of marketing goods or services directly to students, faculty or staff or their families by means of telephone or mail. The provisions of this section shall not apply:

(1) to legitimate educational purposes, which shall be determined by rules and regulations developed by the department of education [public education department]; or

(2) when a parent of a student authorizes the release of the student's personal identifying information in writing to the public school or local school district. For the purposes of this subsection, "personal identifying information" means the names, addresses, telephone numbers, social security numbers and other similar identifying information about students maintained by a public school or local school district.

B. Any person receiving a solicitation may bring an action against any person who violates Subsection A of this section.

C. If a person is found to have violated Subsection A of this section in an action brought under Subsection B of this section, then the person shall be required to pay actual damages or the sum of five hundred dollars (\$500), whichever is greater, and reasonable attorneys' fees to the person receiving the solicitation.

**History:** Laws 1993, ch. 166, § 1; 1978 Comp., § 22-1-8, recompiled as § 22-21-2 by Laws 2003, ch. 153, § 72.

## **ARTICLE 22**

### **Variable School Calendars**

#### **22-22-1. Short title.**

This act [22-22-1 to 22-22-6 NMSA 1978] may be cited as the "Variable School Calendar Act".

**History:** 1953 Comp., § 77-22-1, enacted by Laws 1972, ch. 16, § 1.

#### **22-22-2. Definition.**

As used in the Variable School Calendar Act, "variable school calendar" means a calendar for school or school district operations extending over a ten, eleven or twelve-month period or portions thereof in excess of nine months, which permits pupil attendance on a staggered schedule.

**History:** 1953 Comp., § 77-22-2, enacted by Laws 1972, ch. 16, § 2.

#### **22-22-3. Purpose of act.**

The purpose of the Variable School Calendar Act is to create an opportunity for public schools or school districts to operate beyond a nine-month period in any one calendar year in order to achieve optimum and maximum use of school facilities and personnel.

**History:** 1953 Comp., § 77-22-3, enacted by Laws 1972, ch. 16, § 3.

#### **22-22-4. Variable school calendar.**

The local school board may operate a public school or the school district under a variable school calendar. The state board [department] shall develop criteria for the establishment of a variable school calendar in a school district. Those criteria shall include a requirement that the local school board demonstrate substantial community support for implementation of the variable school calendar.

**History:** 1953 Comp., § 77-22-4, enacted by Laws 1972, ch. 16, § 4; 1993, ch. 24, § 1; 2003, ch. 153, § 61.

## **22-22-5. Variable school calendar; action by state board [department].**

The state board [department] may suspend or modify existing rules pertaining to school district operations upon recommendation of the state superintendent [secretary] when those rules prevent or impede the implementation of the Variable School Calendar Act.

**History:** 1953 Comp., § 77-22-5, enacted by Laws 1972, ch. 16, § 5; 1993, ch. 24, § 2; 1993, ch. 226, § 49; 2003, ch. 153, § 62.

## **22-22-6. Variable school calendar; effect.**

The variable school calendar for a public school or school district shall be in lieu of any other school calendar provided by law, and all requirements for reporting or operating under existing school calendars shall be suspended for the public school or school district upon the initiation of operations under a variable school calendar. The public school or school district shall continue to operate under the approved variable school calendar until the local school board discontinues the variable school calendar.

**History:** 1953 Comp., § 77-22-6, enacted by Laws 1972, ch. 16, § 6; 1993, ch. 24, § 3; 2003, ch. 153, § 63.

# **ARTICLE 23**

## **Bilingual Multicultural Education**

### **22-23-1. Short title.**

Chapter 22, Article 23 NMSA 1978 may be cited as the "Bilingual Multicultural Education Act".

**History:** 1953 Comp., § 77-23-1, enacted by Laws 1973, ch. 285, § 1; 2004, ch. 32, § 1.

#### **22-23-1.1. Legislative findings.**

The legislature finds that:

A. while state and federal combined funding for New Mexico's bilingual multicultural education programs was forty-one million dollars (\$41,000,000) in 2003, the funds do not directly support bilingual multicultural education program instruction;

B. the state's bilingual multicultural education program goals are for all students, including English language learners, to:

(1) become bilingual and biliterate in English and a second language, including Spanish, a Native American language, where a written form exists and there is tribal approval, or another language; and

(2) meet state academic content standards and benchmarks in all subject areas;

C. districts do not fully understand how to properly assess, place and monitor students in bilingual multicultural education programs so that the students may become academically successful;

D. because inaccurate reporting on student participation in bilingual multicultural education programs has a direct impact on state and federal funding, accountability measures are necessary to track bilingual multicultural education program funds;

E. the federal No Child Left Behind Act of 2001 does not preclude using state funds for bilingual multicultural education programs;

F. Article 12, Section 8 of the constitution of New Mexico recognizes the value of bilingualism as an educational tool;

G. professional development is needed for district employees, including teachers, teacher assistants, principals, bilingual directors or coordinators, associate superintendents, superintendents and financial officers in the areas of:

(1) research-based bilingual multicultural education programs and implications for instruction;

(2) best practices of English as a second language, English language development and bilingual multicultural education programs; and

(3) classroom assessments that support academic and language development;

H. parents in conjunction with teachers and other district employees shall be empowered to decide what type of bilingual multicultural education program works best for their children and their community. Districts shall also provide parents with appropriate training in English or in the home or heritage language to help their children succeed in school;

I. because research has shown that it takes five to seven years to acquire academic proficiency in a second language, priority should be given to programs that adequately support a child's linguistic development. The state shall, therefore, fund

bilingual multicultural education programs for students in grades kindergarten through three before funding bilingual multicultural education programs at higher grade levels;

J. a standardized curriculum, including instructional materials with scope and sequence, is necessary to ensure that the bilingual multicultural education program is consistent and building on the language skills the students have previously learned. The instructional materials for Native American bilingual multicultural education programs shall be written, when permitted by the Indian nation, tribe or pueblo, and if written materials are not available, an oral standardized curriculum shall be implemented;

K. equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for all students participating in the program. For Native American students enrolled in public schools, equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials are required to satisfy a goal of the Indian Education Act [Chapter 22, Article 23A NMSA 1978]; and

L. the Bilingual Multicultural Education Act will ensure equal education opportunities for students in New Mexico. Cognitive and affective development of the students is encouraged by:

(1) using the cultural and linguistic backgrounds of the students in a bilingual multicultural education program;

(2) providing students with opportunities to expand their conceptual and linguistic abilities and potentials in a successful and positive manner; and

(3) teaching students to appreciate the value and beauty of different languages and cultures.

**History:** Laws 2004, ch. 32, § 2.

## **22-23-2. Definitions.**

As used in the Bilingual Multicultural Education Act:

A. "bilingual learner" means a student whose bilingualism is emerging through the development of English and a language other than English;

B. "bilingual multicultural education program" means a program using two languages, including English and the home or heritage language, as a medium of instruction in the teaching and learning process;

C. "culturally and linguistically different" means students who are of a different cultural background than mainstream United States culture and whose home or heritage



language, inherited from the student's family, tribe or country of origin, is a language other than English;

D. "district" means a public school or any combination of public schools in a district;

E. "English language learner" means a student whose first or heritage language is not English and who is unable to read, write, speak or understand English at a level comparable to grade level English proficient peers and native English speakers;

F. "heritage language" means a language other than English that is inherited from a family, tribe, community or country of origin;

G. "home language" means a language other than English that is the primary or heritage language spoken at home or in the community; and

H. "standardized curriculum" means a district curriculum that is aligned with the state academic content standards, benchmarks and performance standards.

**History:** 1953 Comp., § 77-23-2, enacted by Laws 1973, ch. 285, § 2; 2004, ch. 32, § 3; 2006, ch. 94, § 57; 2015, ch. 108, § 14; 2021, ch. 12, § 2.

### **22-23-3. Repealed.**

**History:** 1953 Comp., § 77-23-3, enacted by Laws 1973, ch. 285, § 3; repealed by Laws 2004, ch. 31, § 7.

### **22-23-4. Department; powers; duties.**

A. The department shall issue rules for the development and implementation of bilingual multicultural education programs.

B. The department shall administer and enforce the provisions of the Bilingual Multicultural Education Act.

C. The department shall assist school boards in developing and evaluating bilingual multicultural education programs.

D. In the development, implementation and administration of the bilingual multicultural education programs, the department shall give preference to New Mexico residents who have received specialized training in bilingual education when hiring personnel.

**History:** 1953 Comp., § 77-23-4, enacted by Laws 1973, ch. 285, § 4; 2004, ch. 32, § 4.

### **22-23-5. Bilingual multicultural education program plan; evaluation.**

A. A school board or, for charter schools, a governing body of a charter school may prepare and submit to the department a bilingual multicultural education program plan in accordance with rules issued by the department.

B. At regular intervals, the school board or governing body of a charter school and a parent advisory committee from the district or charter school shall review the goals and priorities of the plan and make appropriate recommendations to the department.

C. Bilingual multicultural education programs shall be delivered as part of the regular academic program. Involvement of students in a bilingual multicultural education program shall not have the effect of segregating students by ethnic group, color or national origin.

D. Each district or charter school shall maintain academic achievement and language proficiency data and update the data annually to evaluate bilingual multicultural education program effectiveness and use of funds. The department shall annually compile and report these data to the appropriate interim legislative committee.

E. Districts and charter schools shall provide professional development to employees, including teachers, teacher assistants, principals, bilingual directors or coordinators, associate superintendents, superintendents and financial officers in the areas of:

(1) research-based bilingual multicultural education programs and implications for instruction;

(2) best practices of English as a second language, English language development and bilingual multicultural education programs; and

(3) classroom assessments that support academic and language development.

F. Bilingual multicultural education programs shall be part of the district's or charter school's professional development plan. Bilingual educators, including teachers, teacher assistants, instructional support personnel, principals and program administrators, shall participate in professional development and training.

**History:** 1953 Comp., § 77-23-5, enacted by Laws 1973, ch. 285, § 5; 1988, ch. 64, § 42; 2004, ch. 32, § 5; 2015, ch. 108, § 15.

## **22-23-6. Bilingual multicultural education programs; eligibility for state financial support.**

A. To be eligible for state financial support, each bilingual multicultural education program shall:

(1) provide for the educational needs of linguistically and culturally different students, including Native American children and other students who may wish to participate, in grades kindergarten through twelve, with priority to be given to programs in grades kindergarten through three, in a district;

(2) fund programs for culturally and linguistically different students in the state in grades kindergarten through three for which there is an identifiable need to improve the language capabilities of both English and the home language of these students before funding programs at higher grade levels;

(3) use two languages as mediums of instruction for any part or all of the curriculum of the grade levels within the program;

(4) use teachers who have specialized in elementary or secondary education and who have received specialized training in bilingual education conducted through the use of two languages. These teachers or other trained personnel shall administer language proficiency assessments in both English and in the home language until proficiency in each language is achieved;

(5) emphasize the history and cultures associated with the students' home or heritage language;

(6) establish a parent advisory committee, representative of the language and culture of the students, to assist and advise in the development, implementation and evaluation of the bilingual multicultural education program; and

(7) provide procedures to ensure that parental notification is given annually prior to bilingual multicultural education program placement.

B. Each bilingual multicultural education program shall meet each requirement of Subsection A of this section and be approved by the department to be eligible for state financial support.

**History:** 1953 Comp., § 77-23-6, enacted by Laws 1973, ch. 285, § 6; 1987, ch. 211, § 1; 2004, ch. 32, § 6.

## **22-23-7. Bilingual multicultural education advisory council; created; membership; duties.**

A. The "bilingual multicultural education advisory council" is created and shall advise the secretary and department staff on the effective implementation of the Bilingual Multicultural Education Act and the support of all bilingual multicultural education students, including bilingual learners and English language learners, to have equitable access to instruction and learning as required by state and federal education and civil rights laws. The secretary and department staff shall provide biannual reports to the council regarding progress on yearly advisements.

B. The bilingual multicultural education advisory council consists of fifteen members who have technical knowledge of and expertise in bilingual multicultural education and teaching English to English language learners as follows:

(1) five members appointed or designated by the Indian nations, tribes and pueblos to include one member each from the Navajo Nation, the Mescalero Apache Tribe, the Jicarilla Apache Nation, the southern pueblos and the northern pueblos;

(2) eight members who represent pre-kindergarten through twelfth grade teachers, principals, superintendents, other education administrators and higher education faculty who are from different geographical areas of the state and at least one of whom has a special education background; and

(3) two parents whose students are enrolled in bilingual multicultural education programs.

C. The department shall appoint the council members noted in Paragraphs (2) and (3) of Subsection B of this section from a list generated and approved by both the department and the existing ad hoc bilingual multicultural education advisory council co-chairs that is representative of various stakeholder groups.

D. The bilingual multicultural education advisory council shall elect two members to serve as co-chairs of the council. The co-chairs shall assist with the selection of new members for the council.

E. New members of the council shall begin to serve their appointments on July 1, 2021 for a term of three years. Members who are currently serving their appointments prior to the effective date of this 2021 act shall continue to serve through the remainder of their appointed term. All council members may serve two consecutive terms, and co-chairs may serve one additional year to assist with transition.

F. The council shall:

(1) study issues of bilingual multicultural education for all students, including the needs of bilingual learners and English language learners; and

(2) provide advice to the department in the areas of curriculum, instruction, assessment, teacher preparation, teacher evaluation, professional development, licensure and student and family services to:

(a) strengthen the quality and effectiveness of bilingual multicultural education programs;

(b) promote rigorous culturally and linguistically responsive instruction in bilingual multicultural education programs;

(c) support effective classroom teaching for participating bilingual multicultural education program students, including bilingual learners and English language learners who may or may not be part of standalone federal language acquisition programs;

(d) recruit, develop and train effective bilingual multicultural education teachers and teachers of bilingual learners and English language learners;

(e) identify professional development best suited and appropriate for the languages being taught to support teachers, educational assistants and other licensed employees to work effectively with bilingual multicultural education program students, including bilingual learners and English language learners;

(f) promote professional development opportunities to build the capacity of public education administrators to effectively lead bilingual multicultural education programs and become knowledgeable regarding second language acquisition research, theory and pedagogy, including culturally and linguistically responsive teaching practices, biliteracy and assessments in English and the home or heritage language;

(g) develop solutions for streamlining and strengthening program management, implementation and monitoring of bilingual multicultural education programs at the state, district and school site levels;

(h) develop family and community partnerships representative of the languages and cultures of all students in the bilingual multicultural education program, to assist and advise in the development, implementation and evaluation of the program; and

(i) support bilingual learners and English language learners to achieve programmatic goals, including academic achievement in two languages and bilingual biliteracy growth as demonstrated and measured by language and literacy assessments in English and the home or heritage language, and with regard to tribal languages, language-appropriate programmatic goals with progress determined in accordance with tribal priorities and sovereignty.

G. Members of the council may receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** Laws 2021, ch. 12, § 1.

## **ARTICLE 23A**

### **Indian Education**

#### **22-23A-1. Short title.**

Chapter 22, Article 23A NMSA 1978 may be cited as the "Indian Education Act".

**History:** Laws 2003, ch. 151, § 1; 2005, ch. 299, § 1.

## **22-23A-2. Purpose of act.**

The purpose of the Indian Education Act is to:

A. ensure equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for American Indian students enrolled in public schools;

B. ensure maintenance of native languages;

C. provide for the study, development and implementation of educational systems that positively affect the educational success of American Indian students;

D. ensure that the department of education [public education department] partners with tribes to increase tribal involvement and control over schools and the education of students located in tribal communities;

E. encourage cooperation among the educational leadership of Arizona, Utah, New Mexico and the Navajo Nation to address the unique issues of educating students in Navajo communities that arise due to the location of the Navajo Nation in those states;

F. provide the means for a formal government-to-government relationship between the state and New Mexico tribes and the development of relationships with the education division of the bureau of Indian affairs and other entities that serve American Indian students;

G. provide the means for a relationship between the state and urban American Indian community members to participate in initiatives and educational decisions related to American Indian students residing in urban areas;

H. ensure that parents; tribal departments of education; community-based organizations; the department of education [public education department]; universities; and tribal, state and local policymakers work together to find ways to improve educational opportunities for American Indian students;

I. ensure that tribes are notified of all curricula development for their approval and support;

J. encourage an agreement regarding the alignment of the bureau of Indian affairs and state assessment programs so that comparable information is provided to parents and tribes; and

K. encourage and foster parental involvement in the education of Indian students.

**History:** Laws 2003, ch. 151, § 2.

### **22-23A-3. Definitions.**

As used in the Indian Education Act:

A. "assistant secretary" means the assistant secretary for Indian education;

B. "government-to-government" means the relationship between a New Mexico tribe and a state government;

C. "indigenous" means native or tribal groups of the Americas that maintain a cultural identity separate from the surrounding dominant cultures;

D. "tribal" means pertaining to urban Indians who are residents of New Mexico or to an Indian nation, tribe or pueblo located within New Mexico;

E. "New Mexico tribe" means an Indian nation, tribe or pueblo located within New Mexico; and

F. "urban Indian" means a member of a federally recognized tribe or an Alaskan native who lives in an off-reservation urban area and is a New Mexico resident.

**History:** Laws 2003, ch. 151, § 3; 2007, ch. 295, § 2; 2007, ch. 296, § 2.

### **22-23A-4. Rulemaking.**

A. The secretary shall ensure that the duties prescribed in the Indian Education Act are carried out and that each division within the department is collaborating to fulfill its responsibilities to tribal students.

B. The secretary shall consult on proposed rules implementing the Indian Education Act with the Indian education advisory council and shall present rules for review and comment at the next semiannual government-to-government meeting pursuant to Section 22-23A-5 NMSA 1978.

**History:** Laws 2003, ch. 151, § 4; 2007, ch. 295, § 3; 2007, ch. 296, § 3.

#### **22-23A-4.1. Post-secondary education.**

The department shall collaborate and coordinate efforts with the higher education department and institutions of higher education, including tribal colleges and teacher education institutions and tribal education departments, to facilitate the successful and

seamless transition of American Indian students into post-secondary education and training.

**History:** Laws 2007, ch. 295, § 1; 2007, ch. 296, § 1.

## **22-23A-5. Indian education division; created; assistant secretary; duties.**

A. The "Indian education division" is created within the department. The secretary shall appoint an assistant secretary for Indian education, who shall direct the activities of the division and advise the secretary on development of policy regarding the education of tribal students. The assistant secretary shall also coordinate transition efforts for tribal students in public schools with the higher education department and work to expand appropriate Indian education for tribal students in preschool through grade twenty.

B. The assistant secretary shall coordinate with appropriate administrators and divisions to ensure that department administrators make implementation of the Indian Education Act a priority.

C. The secretary and the assistant secretary, in cooperation with the Indian education advisory council, shall collaborate with state and federal departments and agencies and tribal governments to identify ways such entities can assist the department in the implementation of the Indian Education Act.

D. The secretary and assistant secretary shall convene semiannual government-to-government meetings for the express purpose of receiving input on education of tribal students.

E. In accordance with the rules of the department and after consulting with the Indian education advisory council and determining the resources available within the department, the assistant secretary shall:

(1) provide assistance, including advice on allocation of resources, to school districts and tribes to improve services to meet the educational needs of tribal students based on current published indigenous best practices in education;

(2) provide assistance to school districts and New Mexico tribes in the planning, development, implementation and evaluation of curricula in native languages, culture and history designed for tribal and nontribal students as approved by New Mexico tribes;

(3) develop or select for implementation a challenging, sequential, culturally relevant curriculum to provide instruction to tribal students in pre-kindergarten through sixth grade to prepare them for pre-advanced placement and advanced placement coursework in grades seven through twelve;



(4) provide assistance to school districts, public post-secondary schools and New Mexico tribes to develop curricula and instructional materials in native languages, culture and history in conjunction and by contract with native language practitioners and tribal elders, unless the use of written language is expressly prohibited by the tribe;

(5) conduct indigenous research and evaluation for effective curricula for tribal students;

(6) collaborate with the department to provide distance learning for tribal students in public schools to the maximum limits of the department's abilities;

(7) establish, support and maintain an Indian education advisory council;

(8) enter into agreements with each New Mexico tribe or its authorized educational entity to share programmatic information and to coordinate technical assistance for public schools that serve tribal students;

(9) seek funds to establish and maintain an Indian education office in the northwest corner of the state or other geographical location to implement agreements with each New Mexico tribe or its authorized educational entity, monitor the progress of tribal students and coordinate technical assistance at the public pre-kindergarten to post-secondary schools that serve tribal students;

(10) require school districts to obtain a signature of approval by the New Mexico tribal governments or their government designees residing within school district boundaries, verifying that the New Mexico tribes agree to Indian education policies and procedures pursuant to federal requirements;

(11) seek funds to establish, develop and implement culturally relevant support services for the purposes of increasing the number of tribal teachers, administrators and principals and providing continued professional development for educational assistants, teachers and principals serving tribal students, in conjunction with the Indian education advisory council:

(a) recruitment and retention of highly qualified teachers and administrators;

(b) academic transition programs;

(c) academic financial support;

(d) teacher preparation;

(e) teacher induction; and

(f) professional development;

(12) develop curricula to provide instruction in tribal history and government and develop plans to implement these subjects into history and government courses in school districts throughout the state;

(13) ensure that native language bilingual programs are part of a school district's professional development plan, as provided in Section 22-10A-19.1 NMSA 1978; and

(14) develop a plan to establish a post-secondary investment system for tribal students to which parents, tribes and the state may contribute.

**History:** Laws 2003, ch. 151, § 5; 2005, ch. 299, § 2; 2007, ch. 295, § 4; 2007, ch. 296, § 4.

## **22-23A-6. Advisory council.**

A. The "Indian education advisory council" is created and shall advise the secretaries of early childhood education and care and public education and the assistant secretaries for Native American early childhood education and care and for Indian education on implementation of the provisions of the Indian Education Act. The council consists of sixteen members as follows:

- (1) four representatives from the Navajo Nation;
- (2) two representatives, one from the Mescalero Apache Tribe and one from the Jicarilla Apache Nation;
- (3) four representatives, two from the southern pueblos and two from the northern pueblos;
- (4) three urban Indians representing urban areas, including Albuquerque, Gallup and Farmington; and
- (5) three at-large representatives, one from the federal bureau of Indian affairs, one from a head start organization and one from the general public, at least one of whom shall be nontribal, but all of whom shall have knowledge of and involvement in the education of tribal students.

B. Members shall be appointed by the secretary with input from New Mexico tribes and organizations involved in the education of tribal students for staggered terms so that the terms of the at-large members and of one-half of each of the tribal representatives end on December 31, 2009 and the terms of the remaining members end on December 31, 2011. Thereafter, appointments shall be for terms of four years. The terms of existing members shall expire on June 15, 2007.

C. A majority of the members of the Indian education advisory council constitutes a quorum. The advisory council shall elect a chair from its membership.

D. On a semiannual basis, representatives from all New Mexico tribes, members of the commission, the office of the governor, the Indian affairs department, the legislature, the secretary, the assistant secretary and the Indian education advisory council shall meet to assist in evaluating, consolidating and coordinating all activities relating to the education of tribal students.

E. Members of the Indian education advisory council may receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** Laws 2003, ch. 151, § 6; 2007, ch. 295, § 5; 2007, ch. 296, § 5; 2019, ch. 48, § 15.

## **22-23A-7. Report.**

A. The Indian education division in collaboration with the education division of the federal bureau of Indian affairs and other entities that serve tribal students shall submit an annual statewide tribal education status report no later than November 15 to all New Mexico tribes. The division shall submit the report whether or not entities outside state government collaborate as requested.

B. A school district with tribal lands located within its boundaries shall provide a districtwide tribal education status report to all New Mexico tribes represented within the school district boundaries.

C. The status reports shall be written in a brief format and shall include the following information, through which public school performance is measured and reported to the tribes and disseminated at the semiannual government-to-government meetings held pursuant to Section 22-23A-5 NMSA 1978:

(1) student achievement as measured by a statewide test approved by the department, with results disaggregated by ethnicity;

(2) school safety;

(3) the graduation rate;

(4) attendance;

(5) parent and community involvement;

(6) educational programs targeting tribal students;

- (7) financial reports;
- (8) current status of federal Indian education policies and procedures;
- (9) school district initiatives to decrease the number of student dropouts and increase attendance;
- (10) public school use of variable school calendars;
- (11) school district consultations with district Indian education committees, school-site parent advisory councils and tribal, municipal and Indian organizations; and
- (12) indigenous research and evaluation measures and results for effective curricula for tribal students.

**History:** Laws 2003, ch. 151, § 7; 2007, ch. 295, § 6; 2007, ch. 296, § 6.

## **22-23A-8. Fund created.**

A. The "Indian education fund" is created in the state treasury. The fund consists of appropriations, gifts, grants and donations and income from investment of the fund. Money in the fund shall not revert. The fund shall be administered by the department, and money in the fund is appropriated to the department to distribute awards to support the Indian Education Act.

B. The department shall ensure that funds appropriated from the Indian education fund shall be used for the purposes stated in the Indian Education Act and shall not be used to correct for previous reductions of program services.

C. The department shall develop procedures and rules for the award of money from the fund. Disbursement of the fund shall be made by warrant of the department of finance and administration pursuant to vouchers signed by the secretary of public education.

**History:** Laws 2003, ch. 151, § 8; 2007, ch. 295, § 7; 2007, ch. 296, § 7.

## **22-23A-9. Indian education; school district responsibilities; needs assessments; use of data; prioritizing budgets; reports.**

A. As used in Sections 1 through 3 [22-23A-9 to 22-23A-11 NMSA 1978] of this 2019 act, "school district" includes charter schools.

B. Historically defined Indian impacted school districts are required to conduct a needs assessment to determine what supports are needed in public school, at home and in the community to help Indian students succeed in school, graduate with a

diploma of excellence and be prepared to enter post-secondary education or the workplace.

C. After the needs assessment, the school district shall meet with the local tribes to prioritize the needs to be addressed. The school district shall make meeting the needs of Indian students and closing the achievement gap between Indian students and all other student groups a priority in the school district budget, including applying state and federal funding for Indian students, disadvantaged students, at-risk students, students in poverty and other categories of state and federal funding to help disadvantaged students.

D. The school district shall apply for appropriate state, federal and private grants to help it carry out the provisions of Sections 1 through 3 of this 2019 act. When approving budgets, the department shall consider whether a school district's budget accomplishes the prioritized needs from the Indian students needs assessment.

E. The school district shall develop an accountability tool that measures public school efforts pursuant to the systemic framework provided for in Sections 2 and 3 of this 2019 act and the success or failure of those efforts.

F. The school district shall hold a public meeting with members of the Indian students' tribal leaders, parents and the Indian education division at least twice in the school year to report on the needs assessment and the school district's evaluation of progress.

**History:** Laws 2019, ch. 16, § 1.

## **22-23A-10. Systemic framework for improving educational outcomes for Indian students.**

Historically defined Indian impacted school districts shall develop and publish a systemic framework for improving educational outcomes for Indian students. The school district shall develop the framework in collaboration with school employees, tribal leaders, Indian students and families, social service providers and community and civic organizations. The Indian education division shall assist the school district as required during the development and implementation of the framework. The school district may request assistance from schools of education at state educational institutions to identify best practices in collecting and using student-centered data to inform teaching strategies and schoolwide efforts to close the achievement gap between Indian students and all other student demographic groups.

**History:** Laws 2019, ch. 16, § 2.

## **22-23A-11. Systemic framework elements.**

A. The systemic framework shall include programs, services, culturally relevant activities and professional development that need to be provided to improve Indian education in the state. Based on the priorities developed through the needs assessment and the priorities set in the budget for the school year, the systemic framework may include some or all of the elements provided in this section.

B. Academic and other programs may include, within the context of the Indian education division's development or selection of culturally relevant curricula and instructional materials as provided in Subsection E of Section 22-23A-5 NMSA 1978:

- (1) innovative programs designed to meet the educational needs of educationally disadvantaged Indian students;
- (2) high-quality professional development for teaching professionals and paraprofessionals;
- (3) the identification of early childhood, pre-kindergarten and family programs in the school district that emphasize school readiness and that are effective in preparing young children to make sufficient academic growth by the end of grade three, including family-based early childhood programs that provide screening and referral and provide services to Indian children with developmental delays or disabilities;
- (4) educational programs that are not usually available in sufficient quantity or quality, including remedial instruction, to raise the achievement of Indian students in one or more of the subjects of English, mathematics, science, foreign languages, art, history and geography;
- (5) bilingual and bicultural programs and projects;
- (6) enrichment programs that focus on problem solving and cognitive skills development and directly support the attainment of challenging state academic standards;
- (7) programs designed to encourage and assist Indian students to work toward, and gain entrance into, institutions of higher education;
- (8) special compensatory and other programs and projects that are designed to assist and encourage Indian students to enter, remain in or reenter school and to increase the rate of high school graduation for Indian students;
- (9) career preparation activities that enable Indian students to participate in programs such as the programs supported by the federal Carl D. Perkins Career and Technical Education Act of 2006, including programs for technology preparatory education, mentoring and apprenticeship;

(10) partnership projects between public schools and local businesses for career preparation programs designed to provide Indian students with the knowledge and skills needed to make an effective transition from school to a high-skill career; and

(11) rigorous and meaningful curricula and educational opportunities that will lead to lifelong success for all students.

C. Culturally related activities may include:

(1) culturally related activities that support the academic program of the public school;

(2) activities that support Indian language programs and Indian language restoration programs that may be taught by traditional leaders and that qualify for the state seal of bilingualism-biliteracy on a student's diploma of excellence as provided in Section 22-1-9.1 NMSA 1978;

(3) activities that promote the incorporation of culturally responsive teaching and learning strategies into the public school's educational program; and

(4) activities to educate students about the prevention of violence, suicide and substance abuse.

D. Services to be provided may include:

(1) early interventions to help struggling students, such as after-school programs, tutoring and mentoring and school and community interventions to prevent truancy and reduce dropout rates;

(2) comprehensive guidance and counseling services;

(3) integrated educational services in combination with other programs that meet the needs of Indian students and their families, including programs that promote parental involvement in school activities and increase student achievement;

(4) special health- and nutrition-related services and other related activities that address the special health, social and psychological problems of Indian students and their families; and

(5) family literacy services, including New Mexico even start and adult basic education programs.

**History:** Laws 2019, ch. 16, § 3.

# **ARTICLE 23B**

## **Hispanic Education**

### **22-23B-1. Short title.**

This act [Chapter 22, Article 23B NMSA 1978] may be cited as the "Hispanic Education Act".

**History:** Laws 2010, ch. 108, § 1 and Laws 2010, ch. 114, § 1.

### **22-23B-2. Purpose.**

The purpose of the Hispanic Education Act is to:

- A. provide for the study, development and implementation of educational systems that affect the educational success of Hispanic students to close the achievement gap and increase graduation rates;
- B. encourage and foster parental involvement in the education of their children; and
- C. provide mechanisms for parents, community and business organizations, public schools, school districts, charter schools, public post-secondary educational institutions, the department and state and local policymakers to work together to improve educational opportunities for Hispanic students for the purpose of closing the achievement gap, increasing graduation rates and increasing post-secondary enrollment, retention and completion.

**History:** Laws 2010, ch. 108, § 2 and Laws 2010, ch. 114, § 2.

### **22-23B-3. Definition.**

As used in the Hispanic Education Act, "liaison" means the Hispanic education liaison."

**History:** Laws 2010, ch. 108, § 3 and Laws 2010, ch. 114, § 3.

### **22-23B-4. Hispanic education liaison; created; duties.**

- A. The "Hispanic education liaison" is created in the department.
- B. The liaison shall:



(1) focus on issues related to Hispanic education and advise the secretary on the development and implementation of policy regarding the education of Hispanic students;

(2) advise the department and the commission on the development and implementation of the five-year strategic plan for public elementary and secondary education in the state as the plan relates to Hispanic student education;

(3) assist and be assisted by other staff in the department to improve elementary, secondary and post-secondary educational outcomes for Hispanic students;

(4) serve as a resource to enable school districts and charter schools to provide equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for Hispanic students enrolled in public schools;

(5) support and consult with the Hispanic education advisory council; and

(6) support school districts and charter schools to recruit parents on site-based and school district committees that represent the ethnic diversity of the community.

**History:** Laws 2010, ch. 108, § 4 and Laws 2010, ch. 114, § 4.

## **22-23B-5. Hispanic education advisory council.**

A. The "Hispanic education advisory council" is created as an advisory council to the secretary. The council shall advise the secretary on matters related to improving public school education for Hispanic students, increasing parent involvement and community engagement in the education of Hispanic students and increasing the number of Hispanic high school graduates who succeed in post-secondary academic, professional or vocational education.

B. The secretary shall appoint no more than twenty-three members to the council who are knowledgeable about and interested in the education of Hispanic students, including representatives of public schools; post-secondary education and teacher preparation programs; parents; Hispanic cultural, community and business organizations; other community and business organizations; and other interested persons. The secretary shall give due regard to geographic representation. Members shall serve at the pleasure of the secretary.

C. The council shall elect a chairperson and such other officers as it deems necessary.

D. The council shall meet as necessary, but at least twice each year.

E. The council shall advise the secretary on matters related to Hispanic education in New Mexico.

F. Members of the council shall not receive per diem and mileage or other compensation for their services.

**History:** Laws 2010, ch. 108, § 5 and Laws 2010, ch. 114, § 5.

## **22-23B-6. Statewide status report.**

A. The department, in collaboration with the higher education department, shall submit an annual preschool through post-secondary statewide Hispanic education status report no later than November 15 to the governor and the legislature through the legislative education study committee. A copy shall be provided to the legislative library in the legislative council service.

B. The status report shall include the following information, by school district, by charter school and statewide, which may be compiled from data otherwise required to be submitted to the department:

- (1) Hispanic student achievement at all grades;
- (2) attendance for all grades;
- (3) the graduation rates for Hispanic students; and
- (4) the number and type of bilingual and multicultural programs in each school district and charter school.

C. The status report shall include the following information, by post-secondary educational institution, which may be compiled from data otherwise required to be submitted to the higher education department:

- (1) Hispanic student enrollment;
- (2) Hispanic student retention; and
- (3) Hispanic student completion rates.

**History:** Laws 2010, ch. 108, § 6; 2010, ch. 114, § 6; 2015, ch. 58, § 14.

## **ARTICLE 23C**

### **Black Education**

#### **22-23C-1. Short title.**

Sections 1 through 7 [22-23C-1 to 22-23C-7 NMSA 1978] of this act may be cited as the "Black Education Act".

**History:** Laws 2021, ch. 51, § 1.

## **22-23C-2. Definitions.**

As used in the Black Education Act:

A. "council" means the Black education advisory council; and

B. "liaison" means the Black education liaison.

**History:** Laws 2021, ch. 51, § 2.

## **22-23C-3. Black education advisory council appointed.**

A. The "Black education advisory council" is created as an advisory council to the secretary. The secretary shall appoint no more than twenty-three members to the council who are knowledgeable about and interested in the education of Black students, including:

- (1) three current teachers or school administrators of public schools;
- (2) three current teachers or school administrators of charter schools;
- (3) two representatives of post-secondary education, including one representative of teacher preparation programs, appointed in collaboration with the higher education department;
- (4) three parents of currently enrolled students in public schools, appointed in collaboration with the office on African American affairs;
- (5) three students currently attending a public secondary school, appointed in collaboration with the office on African American affairs;
- (6) one representative of the higher education department;
- (7) one representative of the office on African American affairs;
- (8) one representative of the developmental disabilities planning council; and
- (9) representatives of Black cultural, community and business organizations, other community and business organizations and other interested persons.

B. The secretary shall give due regard to geographic representation. Members shall serve at the pleasure of the secretary.

C. The council shall elect a chair and such other officers as it deems necessary.

D. The council shall meet as necessary, but at least twice each year.

E. Members of the council who are not paid with public money are entitled to receive per diem and mileage but shall receive no other compensation, perquisite or allowance for their service on the council.

**History:** Laws 2021, ch. 51, § 3.

#### **22-23C-4. Council duties.**

The council shall advise the secretary, school districts and charter schools on matters related to improving public school education for Black students, increasing parent involvement and community engagement in the education of Black students and increasing the number of Black high school graduates who succeed in post-secondary academic, professional or vocational education.

**History:** Laws 2021, ch. 51, § 4.

#### **22-23C-5. Black education liaison created; duties.**

A. The "Black education liaison" is created in the department.

B. The liaison shall:

(1) focus on issues related to Black education and advise the secretary and the council on the development and implementation of public policy regarding the education of Black students;

(2) advise the department and the council on the development and implementation of the five-year strategic plan for public elementary and secondary education in the state as the plan relates to Black student education;

(3) assist and be assisted by other staff in the department and in the higher education department to improve elementary, secondary and post-secondary educational outcomes for Black students;

(4) maintain and update information on the department's website or a separate website that includes:

(a) subject to funding, links to a statewide hotline for reporting racially charged incidents;

(b) links to the department's Black education white papers as well as other pertinent research; and

(c) information on and links to historically Black colleges and universities;

(5) serve as a resource to enable school districts and charter schools to provide equitable and culturally relevant learning environments, educational opportunities and culturally relevant instructional materials for Black students enrolled in public schools;

(6) support and consult with the council;

(7) support school districts and charter schools to recruit parents on site-based and school district committees that represent the ethnic diversity of the community; and

(8) implement activities that are recommended and prioritized by the council within available funding."

**History:** Laws 2021, ch. 51, § 5.

## **22-23C-6. Additional duties of liaison and council; report to secretary and others.**

A. As part of their duties pursuant to the Black Education Act, the liaison and the council shall study and prepare white papers on current research on methods and practices that will improve educational outcomes and school experiences for Black students by:

(1) identifying best practices for strengthening educational outcomes for Black students;

(2) addressing the Black student achievement gap in a holistic and systemic manner that includes clearly articulated measures to improve public education for Black students that result in substantially improved graduation rates, college or career readiness and higher education completion rates at the undergraduate and graduate levels;

(3) combating discrimination and racism in the public school system, including creating and sustaining equitable and culturally responsive learning environments;

(4) recommending curricula and instructional materials that include the history and culture of Black people in New Mexico, America and the world; and

(5) providing mechanisms for parents, community and business organizations, public schools, public post-secondary educational institutions and state

and local policymakers to work together to improve educational opportunities for Black students.

B. The liaison and advisory council shall develop or recommend anti-racism and cultural sensitivity training and professional development programs for all school personnel.

C. The department, through the liaison and advisory council, shall establish a formal cooperative relationship with the higher education department and public post-secondary educational institutions in the state to help:

(1) improve the education of Black students in the kindergarten through sixteen educational system in New Mexico, including the recruitment and retention of Black teachers, educational support providers, faculty and educational and administrative leaders in the system; and

(2) improve teacher preparation programs by recruiting Black students and including curricula that demonstrate cultural awareness and sensitivity to matters of race and promote anti-racism.

D. White papers shall be submitted to the secretary, the council, the governor, the legislature, school districts, charter schools, the higher education department, public post-secondary educational institutions and interested persons.

**History:** Laws 2021, ch. 51, § 6.

## **22-23C-7. Black education statewide status report.**

A. The department, in collaboration with the higher education department, shall submit an annual preschool through post-secondary statewide Black education status report no later than November 15 to the governor and the legislature through the legislative education study committee. A copy shall be provided to the legislative library in the legislative council service.

B. In addition to the data required pursuant to Section 22-2C-11 NMSA 1978, the status report for public schools shall highlight Black student data and include:

(1) ethnicity by grade by school;

(2) the number and type of bilingual and multicultural programs in each school district and charter school;

(3) student achievement by ethnicity at all grades measured by a statewide test or other measure of proficiency approved by the department;

(4) attendance and truancy for all grades by ethnicity;

- (5) diploma seals and distinctions earned by ethnicity; and
- (6) licensed school employees by ethnicity by school.

C. The status report shall include the following information, by public post-secondary educational institution, which may be compiled from data otherwise required to be submitted to the higher education department, and which is disaggregated by ethnicity and highlights Black student or faculty data:

- (1) enrollment by institution and by main or branch campus, if applicable;
- (2) student retention by class;
- (3) student completion rates;
- (4) degrees or certificates earned by ethnicity;
- (5) faculty hired in tenure-track positions by ethnicity;
- (6) adjunct faculty hired by ethnicity;
- (7) number of tenured faculty by ethnicity; and
- (8) faculty or administration leadership positions by ethnicity.

**History:** Laws 2021, ch. 51, § 7.

## **ARTICLE 24**

### **Public School Capital Outlay**

#### **22-24-1. Short title.**

Chapter 22, Article 24 NMSA 1978 may be cited as the "Public School Capital Outlay Act".

**History:** 1953 Comp., § 77-24-9, enacted by Laws 1975, ch. 235, § 1; 1978, ch. 152, § 1; 2000 (2nd S.S.), ch. 19, § 1.

#### **22-24-2. Purpose of act.**

The purpose of the Public School Capital Outlay Act is to ensure that, through a standards-based process for all school districts, the physical condition and capacity, educational suitability and technology infrastructure of all public school facilities in New Mexico meet an adequate level statewide and the design, construction and maintenance of school sites and facilities encourage, promote and maximize safe,

functional and durable learning environments in order for the state to meet its educational responsibilities and for New Mexico's students to have the opportunity to achieve success.

**History:** 1953 Comp., § 77-24-10, enacted by Laws 1975, ch. 235, § 2; 1978, ch. 152, § 2; 1994, ch. 88, § 1; 2004, ch. 125, § 6.

## **22-24-3. Definitions.**

As used in the Public School Capital Outlay Act:

- A. "authority" means the public school facilities authority;
- B. "building system" means a set of interacting parts that makes up a single, nonportable or fixed component of a facility and that, together with other building systems, makes up an entire integrated facility or property, including roofing, electrical distribution, electronic communication, plumbing, lighting, mechanical, fire prevention, facility shell, interior finishes, heating, ventilation and air conditioning systems and school security systems, as defined by the council;
- C. "constitutional special schools" means the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf;
- D. "constitutional special schools support spaces" means all facilities necessary to support the constitutional special schools' educational mission that are not included in the constitutional special schools' educational adequacy standards, including performing arts centers, facilities for athletic competition, school district administration and facility and vehicle maintenance;
- E. "council" means the public school capital outlay council;
- F. "education technology infrastructure" means the physical hardware and services used to interconnect students, teachers, school districts and school buildings necessary to support broadband connectivity and remote learning as determined by the council;
- G. "fund" means the public school capital outlay fund;
- H. "maximum allowable gross square foot per student" means a determination made by applying the established maximum allowable square foot guidelines for educational facilities based on type of school and number of students in the current published New Mexico public school adequacy planning guide to the department's current year certified first reporting date membership;
- I. "replacement cost per square foot" means the statewide cost per square foot as established by the council;



J. "school district" includes state-chartered charter schools and the constitutional special schools;

K. "school district population density" means the population density on a per square mile basis of a school district as estimated by the authority based on the most current tract level population estimates published by the United States census bureau; and

L. "school district population density factor" means zero when the school district population density is greater than fifty people per square mile, six-hundredths when the school district population density is greater than fifteen but less than fifty-one persons per square mile and twelve-hundredths when the school district population density is less than sixteen persons per square mile.

**History:** 1953 Comp., § 77-24-11, enacted by Laws 1975, ch. 235, § 3; 1978, ch. 152, § 3; 2006, ch. 94, § 58; 2012, ch. 53, § 1; 2014, ch. 28, § 1; 2015, ch. 93, § 1; 2018, ch. 66, § 1; 2018, ch. 71, § 2; 2021, ch. 49, § 1.

#### **22-24-4. Public school capital outlay fund created; use.**

A. The "public school capital outlay fund" is created. Balances remaining in the fund at the end of each fiscal year shall not revert.

B. Except as provided in Subsections G and I through O of this section, money in the fund may be used only for capital expenditures deemed necessary by the council for an adequate educational program.

C. The council may authorize the purchase by the authority of portable classrooms to be loaned to school districts to meet a temporary requirement. Payment for these purchases shall be made from the fund. Title to and custody of the portable classrooms shall rest in the authority. The council shall authorize the lending of the portable classrooms to school districts upon request and upon finding that sufficient need exists. Application for use or return of state-owned portable classroom buildings shall be submitted by school districts to the council. Expenses of maintenance of the portable classrooms while in the custody of the authority shall be paid from the fund; expenses of maintenance and insurance of the portable classrooms while in the custody of a school district shall be the responsibility of the school district. The council may authorize the permanent disposition of the portable classrooms by the authority with prior approval of the state board of finance.

D. Applications for assistance from the fund shall be made by school districts to the council in accordance with requirements of the council. Except as provided in Subsection K of this section, the council shall require as a condition of application that a school district have a current five-year facilities plan that shall include a current preventive maintenance plan to which the school adheres for each public school in the school district.

E. The council shall review all requests for assistance from the fund and shall allocate funds only for those capital outlay projects that meet the criteria of the Public School Capital Outlay Act.

F. Money in the fund shall be disbursed by warrant of the department of finance and administration on vouchers signed by the secretary of finance and administration following certification by the council that an application has been approved or an expenditure has been ordered by a court pursuant to Section 22-24-5.4 NMSA 1978. At the discretion of the council, money for a project shall be distributed as follows:

(1) up to ten percent of the portion of the project cost funded with distributions from the fund or five percent of the total project cost, whichever is greater, may be paid to the school district before work commences with the balance of the grant award made on a cost-reimbursement basis; or

(2) the council may authorize payments directly to the contractor.

G. Balances in the fund may be annually appropriated for the core administrative functions of the authority pursuant to the Public School Capital Outlay Act, and, in addition, balances in the fund may be expended by the authority, upon approval of the council, for project management expenses; provided that:

(1) the total annual expenditures from the fund for the core administrative functions pursuant to this subsection shall not exceed five percent of the average annual grant assistance authorized from the fund during the five previous fiscal years; and

(2) any unexpended or unencumbered balance remaining at the end of a fiscal year from the expenditures authorized in this subsection shall revert to the fund.

H. The fund may be expended by the council for building system repair, renovation or replacement initiatives with projects to be identified by the council pursuant to Section 22-24-4.6 NMSA 1978; provided that money allocated pursuant to this subsection shall be expended within three years of the allocation.

I. The fund shall be expended annually by the council for grants to school districts for the purpose of making lease payments for facilities, including facilities leased by charter schools. The grants shall be made upon application by the school districts and pursuant to rules adopted by the council; provided that an application on behalf of a charter school shall be made by the school district, but, if the school district fails to make an application on behalf of a charter school, the charter school may submit its own application. The following criteria shall apply to the grants:

(1) the amount of a grant to a school district or charter school shall not exceed:

(a) the actual annual lease payments owed for leasing a facility; or

(b) seven hundred dollars (\$700) multiplied by the MEM using the leased facilities; provided that in fiscal year 2009 and in each subsequent fiscal year, this amount shall be adjusted by the percentage change between the penultimate calendar year and the immediately preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor;

(2) a grant received for the lease payments of a charter school may be used by that charter school as a state match necessary to obtain federal grants pursuant to the federal Every Student Succeeds Act;

(3) at the end of each fiscal year, any unexpended or unencumbered balance of the grant shall revert to the fund;

(4) no grant shall be made for lease payments due pursuant to a financing agreement under which the facilities may be purchased for a price that is reduced according to the lease payments made unless:

(a) the agreement has been approved pursuant to the provisions of the Public School Lease Purchase Act [Chapter 22, Article 26A NMSA 1978]; and

(b) the facilities are leased by a charter school;

(5) if the lease payments are made pursuant to a financing agreement under which the facilities may be purchased for a price that is reduced according to the lease payments made, neither a grant nor any provision of the Public School Capital Outlay Act creates a legal obligation for the school district or charter school to continue the lease from year to year or to purchase the facilities nor does it create a legal obligation for the state to make subsequent grants pursuant to the provisions of this subsection; and

(6) as used in this subsection:

(a) "MEM" means: 1) the average full-time-equivalent enrollment using leased facilities on the second and third reporting dates of the prior school year; or 2) in the case of an approved charter school that has not commenced classroom instruction, the estimated full-time-equivalent enrollment that will use leased facilities in the first year of instruction, as shown in the approved charter school application; provided that, after the second reporting date of the current school year, the MEM shall be adjusted to reflect the full-time-equivalent enrollment on that date; and

(b) "facilities" includes the space needed for school activities.

J. In addition to other authorized expenditures from the fund, up to one percent of the average grant assistance authorized from the fund during the three previous fiscal

years may be expended in each fiscal year by the authority to pay the state fire marshal, the construction industries division of the regulation and licensing department and local jurisdictions having authority from the state to permit and inspect projects for expenditures made to permit and inspect projects funded in whole or in part under the Public School Capital Outlay Act. The authority may enter into contracts with the state fire marshal, the construction industries division or the appropriate local authorities to carry out the provisions of this subsection. Such a contract may provide for initial estimated payments from the fund prior to the expenditures if the contract also provides for additional payments from the fund if the actual expenditures exceed the initial payments and for repayments back to the fund if the initial payments exceed the actual expenditures. Money distributed from the fund to the state fire marshal or the construction industries division pursuant to this subsection shall be used to supplement, rather than supplant, appropriations to those entities.

K. Pursuant to guidelines established by the council, allocations from the fund may be made to assist school districts in developing and updating five-year facilities plans required by the Public School Capital Outlay Act; provided that:

(1) no allocation shall be made unless the council determines that the school district is willing and able to pay the portion of the total cost of developing or updating the plan that is not funded with the allocation from the fund. Except as provided in Paragraph (2) of this subsection, the portion of the total cost to be paid with the allocation from the fund shall be determined pursuant to the methodology in Subsection B of Section 22-24-5 NMSA 1978; or

(2) the allocation from the fund may be used to pay the total cost of developing or updating the plan if:

(a) the school district has fewer than an average of six hundred full-time-equivalent students on the second and third reporting dates of the prior school year; or

(b) the school district meets all of the following requirements: 1) the school district has fewer than an average of one thousand full-time-equivalent students on the second and third reporting dates of the prior school year; 2) the school district has at least seventy percent of its students eligible for free or reduced-fee lunch; 3) the state share of the total cost, if calculated pursuant to the methodology in Subsection B of Section 22-24-5 NMSA 1978, would be less than fifty percent; and 4) for all educational purposes, the school district has a residential property tax rate of at least seven dollars (\$7.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds.

L. Upon application by a school district, allocations from the fund may be made by the council for the purpose of demolishing abandoned school district facilities; provided that:

(1) the costs of continuing to insure an abandoned facility outweigh any potential benefit when and if a new facility is needed by the school district;

(2) there is no practical use for the abandoned facility without the expenditure of substantial renovation costs; and

(3) the council may enter into an agreement with the school district to fully fund the demolition of the abandoned school district facility if Paragraphs (1) and (2) of this subsection are satisfied.

M. Up to ten million dollars (\$10,000,000) of the fund may be expended each year for an education technology infrastructure deficiency corrections initiative pursuant to Section 22-24-4.5 NMSA 1978; provided that funding allocated pursuant to this section shall be expended within three years of its allocation.

N. The fund may be expended in each of fiscal years 2020 through 2024 for a pre-kindergarten classroom facilities initiative project in accordance with Section 22-24-12 NMSA 1978.

O. The council may fund pre-kindergarten classrooms with a qualifying, awarded standards-based project; provided that pre-kindergarten classroom space shall not be included in the project prioritization calculation adopted by the council pursuant to Section 22-24-5 NMSA 1978. The council shall develop pre-kindergarten classroom standards to use when funding pre-kindergarten space.

**History:** 1953 Comp., § 77-24-12, enacted by Laws 1975, ch. 235, § 4; 1978, ch. 152, § 4; 1983, ch. 301, § 70; 1993, ch. 226, § 50; 1994, ch. 88, § 2; 2001, ch. 338, § 5; 2001, ch. 339, § 1; 2002, ch. 65, § 1; 2003, ch. 147, § 3; 2004, ch. 125, § 7; 2005, ch. 274, § 5; 2006, ch. 95, § 4; 2007, ch. 366, § 3; 2008, ch. 90, § 1; 2009, ch. 258, § 2; 2010, ch. 104, § 1; 2014, ch. 28, § 2; 2015, ch. 93, § 2; 2016 (2nd S.S.), ch. 2, § 2; 2017, ch. 142, § 1; 2018, ch. 71, § 3; 2019, ch. 179, § 2; 2019, ch. 180, § 1; 2021, ch. 27, § 1; 2022, ch. 19, § 3; 2023, ch. 98, § 1; 2024, ch. 37, § 1.

#### **22-24-4.1. Outstanding deficiencies; assessment; correction.**

A. No later than September 1, 2001, the council shall define and develop guidelines, consistent with the codes adopted by the construction industries commission pursuant to the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978 NMSA 1978], for school districts to use to identify outstanding serious deficiencies in public school buildings and grounds, including buildings and grounds of charter schools, that may adversely affect the health or safety of students and school personnel.

B. A school district shall use these guidelines to complete a self-assessment of the outstanding health or safety deficiencies within the school district and provide cost projections to correct the outstanding deficiencies.

C. The council shall develop a methodology for prioritizing projects that will correct the deficiencies.

D. After a public hearing and to the extent that money is available in the fund for such purposes, the council shall approve allocations from the fund on the established priority basis and, working with the school district and pursuant to the Procurement Code [13-1-28 through 13-1-199 NMSA 1978], enter into construction contracts with contractors to correct the deficiencies.

E. In entering into construction contracts to correct deficiencies pursuant to this section, the council shall include such terms and conditions as necessary to ensure that the state money is expended in the most prudent manner possible and consistent with the original purpose.

F. Any deficiency that may adversely affect the health or safety of students or school personnel may be corrected pursuant to this section, regardless of the local effort or percentage of indebtedness of the school district.

G. It is the intent of the legislature that all outstanding deficiencies in public schools and grounds that may adversely affect the health or safety of students and school personnel be identified and awards made pursuant to this section no later than June 30, 2005, and that funds be expended no later than June 30, 2007, provided that the council may extend the expenditure period upon a determination that a project requires the additional time because existing buildings need to be demolished or because of other extenuating circumstances.

**History:** 1978 Comp., § 22-24-4.1, enacted by Laws 2001, ch. 338, § 6; 2003, ch. 147, § 4; 2004, ch. 125, § 8; 2007, ch. 366, § 4.

## **22-24-4.2. Repealed.**

## **22-24-4.3. Roof repair and replacement initiative.**

A. The council shall develop guidelines for a roof repair and replacement initiative pursuant to the provisions of this section.

B. A school district, desiring a grant award pursuant to this section, shall submit an application to the council. The application shall include an assessment of the roofs on district school buildings that, in the opinion of the school district, create a threat of significant property damage.

C. The public school facilities authority shall verify the assessment made by the school district and rank the application with similar applications pursuant to a methodology adopted by the council.

D. After a public hearing and to the extent that money is available in the fund for such purposes, the council shall approve roof repair or replacement projects on the established priority basis; provided that no project shall be approved unless the council determines that the school district is willing and able to pay the portion of the total cost of the project that is not funded with grant assistance from the fund. In order to pay its portion of the total project cost, a school district may use state distributions made to the school district pursuant to the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978] or, if within the scope of the authorizing resolution, proceeds of the property tax imposed pursuant to that act.

E. The state share of the cost of an approved roof repair or replacement project shall be calculated pursuant to the methodology in Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978.

F. A grant made pursuant to this section shall be expended by the school district within two years of the grant allocation.

**History:** Laws 2005, ch. 274, § 6; 2009, ch. 258, § 3.

#### **22-24-4.4. Repealed.**

**History:** Laws 2005, ch. 274, § 7; 2007, ch. 366, § 5; repealed by Laws 2022, ch. 22, § 4.

#### **22-24-4.5. Education technology infrastructure deficiency corrections.**

A. No later than September 1, 2014, the council, with the advice of the department and the department of information technology, shall define and develop:

(1) minimum adequacy standards for an education technology infrastructure deficiency corrections initiative to identify and determine reasonable costs for correcting education technology infrastructure deficiencies in or affecting school districts;

(2) a methodology for prioritizing projects to correct education technology infrastructure deficiencies in or affecting school districts; and

(3) a methodology for determining a school district's share of the project costs.

B. The council shall develop guidelines for a statewide education technology infrastructure network that integrates regional hub locations for network services and the installation and maintenance of equipment. The council may fund education technology infrastructure projects or items that the council determines are in accord with the guidelines and necessary to education for:

- (1) students;
- (2) school buses;
- (3) internet connectivity within a school district;
- (4) a multi-district regional education network; and
- (5) a statewide education network.

C. The council may approve allocations from the fund pursuant to Subsection M of Section 22-24-4 NMSA 1978 and this section for projects in or affecting a school district committing to pay its share of the project costs. The council may adjust the school district's share of the project costs in accordance with Paragraph (9) of Subsection B of Section 22-24-5 NMSA 1978 or the methodology for determining the school district's share of the project costs.

**History:** Laws 2014, ch. 28, § 4; 2019, ch. 180, § 2; 2021, ch. 49, § 2; 2023, ch. 98, § 2.

#### **22-24-4.6. Building system repair, renovation or replacement.**

A. The council shall develop guidelines for a building system repair, renovation or replacement initiative pursuant to the provisions of this section.

B. A school district desiring a grant award pursuant to this section shall submit an application to the council. The application shall include an assessment of the building system that, in the opinion of the school district, the repair, renovation or replacement of which would extend the useful life of the building itself.

C. The authority shall verify the assessment made by the school district and rank the application with similar applications pursuant to a methodology adopted by the council.

D. After a public hearing and to the extent that money is available in the fund for such purposes, the council shall approve building system repair, renovation or replacement projects on the established priority basis; provided that no project shall be approved unless the council determines that the school district is willing and able to pay the portion of the total cost of the project that is not funded with grant assistance from the fund.

E. The state share of the cost of an approved building system repair, renovation or replacement project shall be calculated pursuant to the methodology in Subsection B of Section 22-24-5 NMSA 1978.

F. A grant made pursuant to this section shall be expended by the school district within three years of the grant allocation.



**History:** Laws 2015, ch. 93, § 3; 2019, ch. 180, § 3.

### **22-24-4.7. School security system projects.**

A. The council shall develop guidelines for a school security system project grant initiative in accordance with this section.

B. A school district seeking a grant for a school security system project shall apply to the council on a form that includes an assessment of a school's security system and a statement of opinion by the school district that the project would improve the security of the school's buildings, property and occupants.

C. The authority shall verify the assessment made by the school district and rank all applications it receives for school security system project grants according to the methodology adopted by the council for that purpose.

D. After a public hearing, and to the extent that money is available in the fund for the purpose, the council shall make school security system project grants to school districts that the council determines are willing and able to pay for the portion of the total project cost not funded with grant assistance from the fund and according to those applicants' ranking.

E. The state share of the cost of an approved school security system project shall be calculated according to the methodology outlined in Subsection B of Section 22-24-5 NMSA 1978.

F. A school district that receives a grant in accordance with this section shall expend the grant money within three years after the grant allocation. Money not spent in that time shall revert to the fund.

**History:** 1978 Comp., § 22-24-4.7, enacted by Laws 2018, ch. 71, § 1; 2019, ch. 180, § 4.

### **22-24-5. Public school capital outlay projects; application; grant assistance.**

A. Applications for grant assistance, approval of applications, prioritization of projects and grant awards shall be conducted pursuant to the provisions of this section.

B. Except as provided in Sections 22-24-4.3, 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions govern grant assistance from the fund for a public school capital outlay project not wholly funded pursuant to Section 22-24-4.1 NMSA 1978:

(1) all school districts are eligible to apply for funding from the fund, regardless of percentage of indebtedness;

(2) priorities for funding shall be determined by using the statewide adequacy standards developed pursuant to Subsection C of this section; provided that:

(a) the council shall apply the standards to charter schools to the same extent that they are applied to other public schools;

(b) the council may award grants annually to school districts for the purpose of repairing, renovating or replacing public school building systems in existing buildings as identified in Section 22-24-4.6 NMSA 1978;

(c) the council shall adopt and apply adequacy standards appropriate to the unique needs of the constitutional special schools; and

(d) in an emergency in which the health or safety of students or school personnel is at immediate risk or in which there is a threat of significant property damage, the council may award grant assistance for a project using criteria other than the statewide adequacy standards;

(3) the council shall establish criteria to be used in public school capital outlay projects that receive grant assistance pursuant to the Public School Capital Outlay Act. In establishing the criteria, the council shall consider:

(a) the feasibility of using design, build and finance arrangements for public school capital outlay projects;

(b) the potential use of more durable construction materials that may reduce long-term operating costs;

(c) concepts that promote efficient but flexible utilization of space; and

(d) any other financing or construction concept that may maximize the dollar effect of the state grant assistance;

(4) no more than ten percent of the combined total of grants in a funding cycle shall be used for retrofitting existing facilities for technology infrastructure;

(5) no later than May 1 of each calendar year, the phase two formula value shall be calculated for each school district in accordance with the following procedure:

(a) the sum of the final prior five years net taxable value for a school district multiplied by nine ten-thousandths for that school district is calculated for each school district;

(b) the maximum allowable gross square foot per student multiplied by the replacement cost per square foot divided by forty-five is calculated for each school district;

(c) the value calculated pursuant to Subparagraph (a) of this paragraph divided by the value calculated pursuant to Subparagraph (b) of this paragraph is calculated for each school district;

(d) in those instances in which the calculation pursuant to Subparagraph (c) of this paragraph yields a value equal to or greater than one, the phase two formula value shall be zero for the subject school district;

(e) in those instances in which the calculation pursuant to Subparagraph (c) of this paragraph yields a value of ninety-hundredths or more but less than one, the phase two formula value shall be one minus the value calculated in Subparagraph (c) of this paragraph; and

(f) in those instances in which the calculation pursuant to Subparagraph (c) of this paragraph yields a value less than ninety-hundredths, the phase two formula value shall be one minus the value calculated in Subparagraph (c) of this paragraph plus the school district population density factor;

(6) the state share of a project approved by the council shall be funded within available resources pursuant to the provisions of this paragraph. Except as provided in Section 22-24-5.7 NMSA 1978 and except as adjusted pursuant to Paragraph (8), (9) or (10) of this subsection, the amount to be distributed from the fund for an approved project shall equal the total project cost multiplied by the following percentage, except that in no case shall the state share be less than six percent:

(a) for fiscal year 2024 through fiscal year 2026, the percentage shall be the phase two formula value plus a percentage equal to one-third of the difference between one and the phase two formula value; provided that, for school districts with fewer than 200 MEM, the percentage shall be the phase two formula value plus a percentage equal to one-half of the difference between one and the phase two formula; and

(b) for fiscal year 2027 and thereafter, the percentage shall be the phase two formula value;

(7) as used in this subsection:

(a) "governmental entity" includes an Indian nation, tribe or pueblo;

(b) "phase two formula value" for a state-chartered charter school means the phase two formula value calculated pursuant to Paragraph (5) of this subsection for the school district in which the state-chartered charter school is physically located;

(c) "subject school district" means the school district that has submitted the application for funding and in which the approved public school capital outlay project will be located; and

(d) "total project cost" means the total amount necessary to complete the public school capital outlay project less any insurance reimbursement received by the school district for the project;

(8) the amount calculated pursuant to Paragraph (6) of this subsection may be increased by an additional five percent if the council finds that the subject school district has been exemplary in implementing and maintaining a preventive maintenance program. The council shall adopt such rules as are necessary to implement the provisions of this paragraph;

(9) the council may adjust the amount of local share otherwise required if it determines that a school district has made a good-faith effort to use all of its local resources. Before making any adjustment to the local share, the council shall consider whether:

(a) the school district has insufficient bonding capacity over the next four years to provide the local match necessary to complete the project and, for all educational purposes, has a residential property tax rate of at least ten dollars (\$10.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds;

(b) the school district: 1) has fewer than an average of eight hundred full-time-equivalent students on the second and third reporting dates of the prior school year; 2) has at least seventy percent of its students eligible for free or reduced-fee lunch; 3) has a phase two formula value calculated pursuant to Paragraph (5) of this subsection that would be greater than fifty percent; and 4) for all educational purposes, has a residential property tax rate of at least seven dollars (\$7.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds; or

(c) the school district: 1) has an enrollment growth rate over the previous school year of at least two and one-half percent; 2) pursuant to its five-year facilities plan, will be building a new school within the next two years; and 3) for all educational purposes, has a residential property tax rate of at least ten dollars (\$10.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds;

(10) the local match for the constitutional special schools shall be set at fifty percent for projects that qualify under the educational adequacy category and one hundred percent for projects that qualify in the support spaces category; provided that the council may adjust or waive the amount of any direct appropriation offset to or local share required for the constitutional special schools if an applicant constitutional special school has insufficient or no local resources available; and

(11) no application for grant assistance from the fund shall be approved unless the council determines that:

(a) the public school capital outlay project is needed and included in the school district's five-year facilities plan among its top priorities;

(b) the school district has used its capital resources in a prudent manner;

(c) the school district has provided insurance for buildings of the school district in accordance with the provisions of Section 13-5-3 NMSA 1978;

(d) the school district has submitted a five-year facilities plan that includes: 1) enrollment projections; 2) a current preventive maintenance plan that has been approved by the council pursuant to Section 22-24-5.3 NMSA 1978 and that is followed by each public school in the district; 3) the capital needs of charter schools located in the school district; and 4) projections for the facilities needed in order to maintain a full-day kindergarten program;

(e) the school district is willing and able to pay any portion of the total cost of the public school capital outlay project that, according to Paragraph (6), (8) or (9) of this subsection, is not funded with grant assistance from the fund;

(f) the application includes the capital needs of any charter school located in the school district or the school district has shown that the facilities of the charter school have a smaller deviation from the statewide adequacy standards than other district facilities included in the application; and

(g) the school district has agreed, in writing, to comply with any reporting requirements or conditions imposed by the council pursuant to Section 22-24-5.1 NMSA 1978.

C. After consulting with the public school capital outlay oversight task force and other experts, the council shall regularly review and update statewide adequacy standards applicable to all school districts. The standards shall establish the acceptable level for the physical condition and capacity of buildings, the educational suitability of facilities, the need for career-technical education facilities or classrooms and the need for education technology infrastructure. Except as otherwise provided in the Public School Capital Outlay Act, the amount of outstanding deviation from the standards shall be used by the council in evaluating and prioritizing public school capital outlay projects.

D. The acquisition of a facility by a school district or charter school pursuant to a financing agreement that provides for lease payments with an option to purchase for a price that is reduced according to lease payments made may be considered a public school capital outlay project and eligible for grant assistance under this section pursuant to the following criteria:

(1) no grant shall be awarded unless the council determines that, at the time of exercising the option to purchase the facility by the school district or charter school, the facility will equal or exceed the statewide adequacy standards and the building standards for public school facilities;

(2) no grant shall be awarded unless the school district and the need for the facility meet all of the requirements for grant assistance pursuant to the Public School Capital Outlay Act;

(3) the total project cost shall equal the total payments that would be due under the agreement if the school district or charter school would eventually acquire title to the facility;

(4) the portion of the total project cost to be paid from the fund may be awarded as one grant, but disbursements from the fund shall be made from time to time as lease payments become due;

(5) the portion of the total project cost to be paid by the school district or charter school may be paid from time to time as lease payments become due; and

(6) neither a grant award nor any provision of the Public School Capital Outlay Act creates a legal obligation for the school district or charter school to continue the lease from year to year or to purchase the facility.

E. In order to encourage private capital investment in the construction of public school facilities, the purchase of a privately owned school facility that is, at the time of application, in use by a school district may be considered a public school capital outlay project and eligible for grant assistance pursuant to this section if the council finds that:

(1) at the time of the initial use by the school district, the facility to be purchased equaled or exceeded the statewide adequacy standards and the building standards for public school facilities;

(2) at the time of application, attendance at the facility to be purchased is at seventy-five percent or greater of design capacity and the attendance at other schools in the school district that the students at the facility would otherwise attend is at eighty-five percent or greater of design capacity; and

(3) the school district and the capital outlay project meet all of the requirements for grant assistance pursuant to the Public School Capital Outlay Act; provided that, when determining the deviation from the statewide adequacy standards for the purposes of evaluating and prioritizing the project, the students using the facility shall be deemed to be attending other schools in the school district.

F. It is the intent of the legislature that grant assistance made pursuant to this section allows every school district to meet the standards developed pursuant to

Subsection C of this section; provided, however, that nothing in the Public School Capital Outlay Act or the development of standards pursuant to that act prohibits a school district from using other funds available to the district to exceed the statewide adequacy standards.

G. Upon request, the council shall work with, and provide assistance and information to, the public school capital outlay oversight task force.

H. The council may establish committees or task forces, not necessarily consisting of council members, and may use the committees or task forces, as well as existing agencies or organizations, to conduct studies, conduct surveys, submit recommendations or otherwise contribute expertise from the public schools, programs, interest groups and segments of society most concerned with a particular aspect of the council's work.

I. Upon the recommendation of the authority, the council shall develop building standards for public school facilities and shall promulgate other such rules as are necessary to carry out the provisions of the Public School Capital Outlay Act.

J. No later than December 15 of each year, the council shall prepare a report summarizing its activities during the previous fiscal year. The report shall describe in detail all projects funded, the progress of projects previously funded but not completed, the criteria used to prioritize and fund projects and all other council actions. The report shall be submitted to the public education commission, the governor, the legislative finance committee, the legislative education study committee and the legislature.

K. For any school district that received a standards- or systems-based award from the council in fiscal year 2023, the state share for any future phase of the project for which funding has not yet been awarded shall be the amount calculated pursuant to Subsection B of this section for fiscal year 2024, regardless of the state share at the time of the initial award.

L. As used in this section:

(1) "MEM" means membership; and

(2) "membership" means the total enrollment of qualified students on the current roll of a class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawals of students, in addition to students formally withdrawn from the public school, include students absent from the public school for as many as ten consecutive school days; provided that withdrawals do not include students in need of early intervention and habitual truants the school district is required to intervene with and keep in an educational setting.

**History:** 1953 Comp., § 77-24-13, enacted by Laws 1975, ch. 235, § 5; 1977, ch. 247, § 205; 1978, ch. 152, § 5; 1987, ch. 326, § 1; 1994, ch. 88, § 3; 2000 (2nd S.S.), ch. 19,

§ 2; 2001, ch. 338, § 8; 2003, ch. 147, § 10; 2004, ch. 125, § 9; 2005, ch. 274, § 8; 2006, ch. 95, § 5; 2007, ch. 366, § 6; 2008, ch. 90, § 2; 2009, ch. 258, § 5; 2010, ch. 104, § 2; 2012, ch. 53, § 2; 2014, ch. 28, § 3; 2015, ch. 93, § 4.; 2018, ch. 66, § 2; 2019, ch. 180, § 5; 2021, ch. 52, § 8; 2023, ch. 98, § 3; 2024, ch. 22, § 1.

### **22-24-5.1. Council assistance and oversight.**

In providing grant assistance pursuant to Section 22-24-5 NMSA 1978, the council shall:

A. assist school districts in identifying critical capital outlay needs and in preparing grant applications;

B. take such actions as are necessary to assist school districts in implementing the projects for which grants are made, including assistance with the preparation of requests for bids or proposals, contract negotiations and contract implementation;

C. take such actions as are necessary to ensure cost savings and efficiencies for those school districts that are not large enough to maintain their own construction management staff; and

D. include such reporting requirements and conditions and take such actions as are necessary to ensure that the grants are expended in the most prudent manner possible and consistent with the original purpose for which they were made. In order to ensure compliance with the intent of this subsection, the council may:

(1) access the premises of a project and review any documentation relating to a project;

(2) withhold all or part of the amount of grant assistance available for a project for grounds established by rule of the council; and

(3) if it determines that a project is repeatedly in substantial noncompliance with any reporting requirement or condition, take over the direct administration of the project until the project is completed.

**History:** 1978 Comp., § 22-24-5.1, enacted by Laws 2001, ch. 338, § 9.

### **22-24-5.2. Repealed.**

**History:** Laws 2001, ch. 328, § 3; repealed by Laws 2004, ch. 125, § 20.

### **22-24-5.3. Preventive maintenance plans; guidelines; approval.**

A. The council shall adopt guidelines that will assist school districts in the development and implementation of preventive maintenance plans. In developing the



guidelines, the council shall ensure that they are not overly complex, that they are user-friendly and that they take into account the geographic and size variations of the districts throughout the state. The guidelines shall include the major requirements for:

- (1) establishing and implementing a preventive maintenance plan;
- (2) necessary budgets, personnel and staff support;
- (3) staff training; and
- (4) evaluation and auditing.

B. The council shall develop, implement and maintain a uniform web-based facility information management system. Within available appropriations, the council shall develop a schedule and procedure for phasing all school districts into the system, including those school districts not applying for grant assistance pursuant to the Public School Capital Outlay Act. The facility information management system shall:

- (1) provide a centralized database of maintenance activities to allow for monitoring, supporting and evaluating school-level and districtwide maintenance efforts;
- (2) provide comprehensive maintenance request and expenditure information to the school districts and the council; and
- (3) facilitate training of facilities maintenance and management personnel.

C. To the extent resources are available, the council shall provide assistance to districts in developing and implementing a preventive maintenance plan.

D. For project allocation cycles beginning after September 1, 2003, a school district shall not be eligible for funding pursuant to Section 22-24-5 NMSA 1978 unless:

- (1) the school district has a preventive maintenance plan that has been approved by the council; and
- (2) if applicable, the school district is participating in the implementation of the facility information management system.

E. As used in this section, "preventive maintenance" means the regularly scheduled repair and maintenance needed to keep a building component operating at peak efficiency and to extend its useful life. "Preventive maintenance" includes scheduled activities intended to prevent breakdowns and premature failures, including periodic inspections, lubrication, calibrations and replacement of expendable components of equipment.

**History:** 1978 Comp., § 22-24-5.3, enacted by Laws 2003, ch. 147, § 5; 2005, ch. 274, § 9.

#### **22-24-5.4. Recalcitrant school districts; court action to enforce constitutional compliance; imposition of property tax.**

A. The council may bring an action against a school district pursuant to the provisions of this section if, based upon information submitted to the council by the authority, the council determines that:

(1) the physical condition of a public school facility in the school district is so inadequate that the facility or the education received by students attending the facility is below the minimum required by the constitution of New Mexico;

(2) the school district is not taking the necessary steps to bring the facility up to the constitutionally required minimum; and

(3) either:

(a) the school district has not applied for the grant assistance necessary to bring the facility up to minimum constitutional standards; or

(b) the school district is unwilling to meet all of the requirements for the approval of an application for grant assistance pursuant to Paragraph (11) of Subsection B of Section 22-24-5 NMSA 1978.

B. An action brought pursuant to this section shall be brought by the council in the name of the state against the school district in the district court for Santa Fe county.

C. After a hearing and consideration of the evidence, if the court finds that the council's determination pursuant to Subsection A of this section was correct, the court shall:

(1) order the council to expend sufficient resources necessary to bring the facility up to the minimum level required by the constitution of New Mexico;

(2) order the school district to comply with Paragraph (11) of Subsection B of Section 22-24-5 NMSA 1978 and to take all other actions necessary to facilitate the completion of the project ordered pursuant to Paragraph (1) of this subsection; and

(3) enter a judgment against the school district for court costs and attorney fees and the necessary amount to satisfy the school district share, as determined by the formula prescribed by Subsection B of Section 22-24-5 NMSA 1978, for the project ordered pursuant to Paragraph (1) of this subsection.

D. The amount of a judgment entered against a school district pursuant to Paragraph (3) of Subsection C of this section is a public debt of the school district. If the court finds that the debt cannot be satisfied with available school district funds, other than funds needed for the operation of the public schools and other existing obligations, the court shall order the imposition of a property tax on all taxable property allocated to the school district at a rate sufficient to pay the judgment, with accrued interest, within a reasonable time as determined by the court. After paying court costs and attorney fees, amounts received pursuant to this subsection shall be deposited by the council into the fund.

**History:** Laws 2004, ch. 125, § 10; 2008, ch. 90, § 3; 2019, ch. 180, § 6; 2023, ch. 98, § 4.

### **22-24-5.5. Preventive maintenance plans; participation in facility information management system.**

Each school district shall:

A. develop and implement a preventive maintenance plan following guidelines adopted by the public school capital outlay council pursuant to Section 22-24-5.3 NMSA 1978; and

B. participate in the facility information management system pursuant to the schedule adopted by the public school capital outlay council.

**History:** Laws 2005, ch. 274, § 16.

### **22-24-5.6. Outstanding deficiencies at certain state educational institutions.**

A. In consultation with the higher education department and the applicable board of regents, and after reviewing the existing five-year facilities plan and the facilities condition assessment, the public school facilities authority shall verify the assessed outstanding health, safety or infrastructure deficiencies at the constitutional special schools and shall develop a plan to correct the deficiencies.

B. The council may approve allocations from the fund and, working with the higher education department and the applicable board of regents, enter into construction contracts to correct the deficiencies.

C. The council shall establish oversight functions for the public school facilities authority and such other guidelines and conditions as it deems necessary to ensure that the allocations from the fund pursuant to this section are expended in the most prudent manner possible and consistent with the original purpose.

D. As used in the Public School Capital Outlay Act, "public school capital outlay project", "capital outlay project" or "project" includes a program for the correction of deficiencies at the constitutional special schools pursuant to this section.

**History:** Laws 2006, ch. 95, § 6; 2009, ch. 37, § 1; 2012, ch. 53, § 3.

### **22-24-5.7. Local match provisions for qualified high priority projects.**

A. For a qualified high priority project, if money has been specifically appropriated for the purposes of this section, and if the school district so requests, the money may be used to pay both the state share, as calculated by Subsection B of Section 22-24-5 NMSA 1978 and all or a portion of the district share, subject to the following criteria:

(1) the amount paid as the district's share plus any amount added pursuant to Paragraph (3) of this subsection shall be recouped by offsetting future allocations that otherwise would be made from the fund for the state share of projects qualifying for a grant award pursuant to Subsections B and C of Section 22-24-5 NMSA 1978;

(2) except as provided in Paragraph (6) of this subsection, once a project within a district has been funded pursuant to the provisions of this section, then, until the amount paid as the district's share plus any amount added pursuant to Paragraph (3) of this subsection is fully recouped, no standard-based grant awards from the fund shall be made to the district and the district shall be solely responsible for using its local resources to bring those facilities, that would otherwise be eligible for allocations from the fund pursuant to Section 22-24-5 NMSA 1978, up to the statewide adequacy standards;

(3) in determining the amount to be recouped pursuant to Paragraphs (1) and (2) of this subsection, any legislative appropriations for nonoperating purposes made either directly to the school district or to another governmental entity for the purpose of passing the money directly to the school district and not rejected by the school district shall be added to the amount advanced from the fund as the district's share for a project;

(4) the amount to be recouped pursuant to Paragraph (1) of this subsection may be reduced by payments from the school district with cash balances and other available district resources that may legally be used for such payments;

(5) allocations from the fund for the district share shall only be made if the council finds that the school district is likely to complete the project within thirty-six months after the allocation for the district share is made available to the district; and

(6) notwithstanding the requirements of Paragraph (2) of this section, two projects within a school district may be funded pursuant to this section before the recoupment process under that paragraph commences, if:

(a) both projects qualify pursuant to the provisions of Paragraph (2) of Subsection B of this section; or

(b) both projects qualify during the same awards cycle, beginning on or after July 1, 2006.

B. As used in this section, "qualified high priority project" means a project:

(1) that is approved for a grant award pursuant to Section 22-24-5 NMSA 1978 during an awards cycle occurring in 2006 and subsequent award cycles and is located in a high-growth area, as designated by the council; or

(2) that was approved for a grant award pursuant to Section 22-24-5 NMSA 1978 during the 2004-2005 or 2005-2006 awards cycle but for which the school district, as of July 1, 2006, has not obtained funding for the district share and is located in a high-growth area, as designated by the council.

C. The council may designate an area that equals a contiguous attendance area of one or more existing schools as a "high-growth area" if the council determines that:

(1) within five years of the grant allocation decision, the estimated occupancy rate of the proposed new school would be seventy percent or more of the design capacity;

(2) at the time of the application, the attendance at the existing schools in the high-growth area from which students at the new school will be drawn is above design capacity; and

(3) for the period of five years after the grant allocation decision the attendance at those existing schools will be maintained at ninety-five percent or greater of design capacity.

**History:** Laws 2006, ch. 95, § 7; 2019, ch. 180, § 7.

### **22-24-5.8. Adequacy standards; constitutional special schools.**

Until July 1, 2018, the council may apply the adequacy standards to the constitutional special schools on a building-by-building basis rather than the entire campus. After that time, the adequacy standards rankings shall be based on the facilities condition of the entire campus.

**History:** Laws 2012, ch. 53, § 4.

### **22-24-6. Council created; organization; duties.**

A. There is created the "public school capital outlay council", consisting of the:

- (1) secretary of finance and administration or his designee;
- (2) state superintendent [secretary] or his designee;
- (3) the governor or his designee;
- (4) president of the New Mexico school boards association or his designee;
- (5) the director of the construction industries division of the regulation and licensing department or his designee;
- (6) the president of the state board or his designee;
- (7) the director of the legislative education study committee or his designee;
- (8) the director of the legislative finance committee or his designee; and
- (9) the director of the legislative council service or his designee.

B. The council shall investigate all applications for assistance from the fund and shall certify the approved applications to the secretary of finance and administration for distribution of funds.

C. The council shall elect a chairman from among the members. The council shall meet at the call of the chairman.

D. The department of education [public education department] shall account for all distributions and shall make annual reports to the legislative education study committee and to the legislative finance committee.

**History:** 1953 Comp., § 77-24-14, enacted by Laws 1975, ch. 235, § 6; 1977, ch. 247, § 206; 1978, ch. 152, § 6; 1980, ch. 151, § 51; 1988, ch. 64, § 43; 1993, ch. 226, § 51; 1994, ch. 88, § 4.

### **22-24-6.1. Procedures for a state-chartered charter school.**

All of the provisions of the Public School Capital Outlay Act apply to an application by a state-chartered charter school for grant assistance for a capital project except the portion of the cost of the project to be paid from the fund shall be calculated pursuant to Subsection B of Section 22-24-5 NMSA 1978 using data from the school district in which the state-chartered charter school is located.

**History:** Laws 2007, ch. 214, § 1; 2009, ch. 258, § 6; 2019, ch. 180, § 8; 2023, ch. 98, § 5.

### **22-24-6.2. Repealed.**

**History:** Laws 2007, ch. 214, § 2; repealed by Laws 2007, ch. 214, § 4.

## **22-24-7. Public school capital outlay oversight task force; creation; staff.**

A. The "public school capital outlay oversight task force" is created. The task force consists of twenty-five members as follows:

- (1) the secretary of finance and administration or the secretary's designee;
- (2) the secretary of public education or the secretary's designee;
- (3) the speaker of the house of representatives or the speaker's designee;
- (4) the president pro tempore of the senate or the president pro tempore's designee;
- (5) the chairs of the house appropriations and finance committee, the senate finance committee, the senate education committee and the house education committee or their designees;
- (6) two minority party members of the house of representatives, appointed by the New Mexico legislative council;
- (7) two minority party members of the senate, appointed by the New Mexico legislative council;
- (8) a member of the interim legislative committee charged with the oversight of Indian affairs, appointed by the New Mexico legislative council, provided that the member shall rotate annually between a senate member and a member of the house of representatives;
- (9) a member of the house of representatives and a member of the senate who represent districts with school districts receiving federal funds commonly known as "PL 874" funds or "impact aid", appointed by the New Mexico legislative council;
- (10) two public members who have expertise in education and finance appointed by the speaker of the house of representatives;
- (11) two public members who have expertise in education and finance appointed by the president pro tempore of the senate;
- (12) three public members, two of whom are residents of school districts that receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, appointed by the governor; and

(13) three superintendents of school districts or their designees, two of whom are from school districts that receive grants from the federal government as assistance to areas affected by federal activity authorized in accordance with Title 20 of the United States Code, appointed by the New Mexico legislative council in consultation with the governor.

B. The chair of the public school capital outlay oversight task force shall be elected by the task force. The task force shall meet at the call of the chair, but no more than four times per calendar year.

C. Non-ex-officio members of the task force shall serve at the pleasure of their appointing authorities.

D. The public members of the public school capital outlay oversight task force shall receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

E. The legislative council service, with assistance from the public school facilities authority, the department of finance and administration, the public education department, the legislative education study committee and the legislative finance committee, shall provide staff for the public school capital outlay oversight task force.

**History:** Laws 2001, ch. 338, § 12; 2004, ch. 125, § 16; 2005, ch. 274, § 10; 2007, ch. 366, § 11; 2008, ch. 90, § 5.

## **22-24-8. Public school capital outlay oversight task force; duties.**

The public school capital outlay oversight task force shall:

A. monitor the overall progress of bringing all public schools up to the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act;

B. monitor the progress and effectiveness of programs administered pursuant to the Public School Capital Outlay Act and the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978];

C. monitor the existing permanent revenue streams to ensure that they remain adequate long-term funding sources for public school capital outlay projects;

D. oversee the work of the public school capital outlay council and the public school facilities authority as they perform functions pursuant to the Public School Capital Outlay Act, particularly as they implement the statewide-based process for making grant awards;



E. appoint an advisory committee to study the feasibility of implementing a long-range planning process that will facilitate the interaction between charter schools and their school districts on issues relating to facility needs; and

F. before the beginning of each regular session of the legislature, report the results of its analyses and oversight and any recommendations to the governor and the legislature.

**History:** Laws 2001, ch. 338, § 13; 2004, ch. 125, § 17; 2005, ch. 274, § 11.

## **22-24-9. Public school facilities authority; creation; powers and duties.**

A. The "public school facilities authority" is created under the council. The authority shall be headed by a director, selected by the council, who shall be versed in construction, architecture or project management. The director may hire no more than two deputies with the approval of the council, and, subject to budgetary constraints set out in Subsection G of Section 22-24-4 NMSA 1978, shall employ or contract with such technical and administrative personnel as are necessary to carry out the provisions of this section. The director, deputies and all other employees of the authority shall be exempt from the provisions of the Personnel Act [Chapter 10, Article 9 NMSA 1978].

B. The authority shall:

- (1) serve as staff to the council;
- (2) as directed by the council, provide those assistance and oversight functions required of the council by Section 22-24-5.1 NMSA 1978;
- (3) assist school districts with:
  - (a) the development and implementation of five-year facilities plans and preventive maintenance plans;
  - (b) procurement of architectural and engineering services;
  - (c) management and oversight of construction activities; and
  - (d) training programs;
- (4) conduct ongoing reviews of five-year facilities plans, preventive maintenance plans and performance pursuant to those plans;
- (5) as directed by the council, assist school districts in analyzing and assessing their space utilization options;

(6) ensure that public school capital outlay projects are in compliance with applicable building codes;

(7) conduct on-site inspections as necessary to ensure that the construction specifications are being met and periodically inspect all of the documents related to projects;

(8) require the use of standardized construction documents and the use of a standardized process for change orders;

(9) have access to the premises of a project and any documentation relating to the project;

(10) after consulting with the department, recommend building standards for public school facilities to the council and ensure compliance with building standards adopted by the council;

(11) notwithstanding the provisions of Subsection D of Section 22-24-6 NMSA 1978, account for all distributions of grant assistance from the fund for which the initial award was made after July 1, 2004, and make annual reports to the department, the governor, the legislative education study committee, the legislative finance committee and the legislature;

(12) maintain a database of the condition of school facilities and maintenance schedules;

(13) as a central purchasing office pursuant to the Procurement Code [13-1-28 to 13-1-199 NMSA 1978] and as directed by the council, select contractors and enter into and administer contracts for certain emergency projects funded pursuant to Subparagraph (b) of Paragraph (2) of Subsection B of Section 22-24-5 NMSA 1978; and

(14) ensure that outstanding deficiencies are corrected pursuant to Section 22-24-4.1 NMSA 1978. In the performance of this duty, the authority:

(a) shall work with school districts to validate the assessment of the outstanding deficiencies and the projected costs to correct the deficiencies;

(b) shall work with school districts to provide direct oversight of the management and construction of the projects that will correct the outstanding deficiencies;

(c) shall oversee all aspects of the contracts entered into by the council to correct the outstanding deficiencies;

(d) may conduct on-site inspections while the deficiencies correction work is being done to ensure that the construction specifications are being met and may periodically inspect all of the documents relating to the projects;

(e) may require the use of standardized construction documents and the use of a standardized process for change orders;

(f) may access the premises of a project and any documentation relating to the project; and

(g) shall maintain, track and account for deficiency correction projects separately from other capital outlay projects funded pursuant to the Public School Capital Outlay Act.

C. All actions taken by the authority shall be consistent with educational programs conducted pursuant to the Public School Code [Chapter 22 [except Article 5A] NMSA 1978]. In the event of any potential or perceived conflict between a proposed action of the authority and an educational program, the authority shall consult with the secretary.

D. A school district, aggrieved by a decision or recommendation of the authority, may appeal the matter to the council by filing a notice of appeal with the council within thirty days of the authority's decision or recommendation. Upon filing of the notice:

(1) the decision or recommendation of the authority shall be suspended until the matter is decided by the council;

(2) the council shall hear the matter at its next regularly scheduled hearing or at a special hearing called by the chair for that purpose;

(3) at the hearing, the school district, the authority and other interested parties may make informal presentations to the council; and

(4) the council shall finally decide the matter within ten days after the hearing.

**History:** Laws 2003, ch. 147, § 1; 2004, ch. 125, § 11; 2005, ch. 274, § 12; 2006, ch. 95, § 8; 2010, ch. 104, § 4.

## **22-24-10. Public facilities to be used by charter schools; assessment.**

A. Prior to the occupancy of a public facility by a charter school, the charter school shall notify the council of the intended use, together with such other information as required by rule of the council.

B. Within sixty days of the notification to the council, the public school facilities authority shall assess the public facility in order to determine the extent of compliance

with the statewide adequacy standards and the amount of outstanding deviation from those standards. The results of the assessment shall be submitted to the charter school, the school district in which the charter school is located and the council.

C. Once assessed pursuant to Subsection B of this section, the public facility shall be prioritized and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state.

D. As used in this section, "public facility" means a building owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or a tribal government.

**History:** Laws 2005, ch. 274, § 13.

## **22-24-11. Recompiled.**

**History:** Laws 2006, ch. 95, § 3; recompiled as § 22-8-48 by Laws 2007, ch. 366, § 25.

## **22-24-12. Pre-kindergarten classroom facilities initiative.**

A. The council shall develop guidelines for a pre-kindergarten classroom facilities initiative in accordance with this section, including establishing and adopting pre-kindergarten classroom standards.

B. The authority shall rank all applications it receives for the pre-kindergarten classroom facilities initiative according to the methodology adopted by the council for that purpose.

C. After a public hearing, and to the extent that money is available in the fund for that purpose, the council may make pre-kindergarten classroom facilities initiative grants to school districts that the council determines are willing and able to pay for the portion of the total cost not funded with grant assistance from the fund according to those applicants' rankings.

D. The state share of the cost of an approved pre-kindergarten classroom facilities initiative project shall be calculated according to the methodology outlined in Subsection B of Section 22-24-5 NMSA 1978; provided that, for fiscal years 2024 through 2026, the state share of an approved pre-kindergarten classroom facilities initiative project shall be the phase two formula value plus a percentage equal to one-half of the difference between one and the phase two formula value.

E. A school district that receives a grant in accordance with this section shall expend the money within three years after the grant allocation, or the money shall revert to the fund.

**History:** Laws 2019, ch. 179, § 1; 2023, ch. 98, § 6.

# **ARTICLE 25**

## **Public School Capital Improvements**

### **22-25-1. Short title.**

Chapter 22, Article 25 NMSA 1978 may be cited as the "Public School Capital Improvements Act".

**History:** 1953 Comp., § 77-25-1, enacted by Laws 1975 (S.S.), ch. 5, § 1; 2007, ch. 366, § 12.

### **22-25-2. Definitions.**

As used in the Public School Capital Improvements Act, "capital improvements" means expenditures, including payments made with respect to lease-purchase arrangements as defined in the Education Technology Equipment Act [Chapter 6, Article 15A NMSA 1978] or the Public School Lease Purchase Act [Chapter 22, Article 26A NMSA 1978] but excluding any other debt service expenses, for:

A. erecting, remodeling, making additions to, providing equipment for or furnishing public school buildings, including teacher housing and pre-kindergarten classroom facilities;

B. purchasing or improving public school or pre-kindergarten grounds;

C. maintenance of public school buildings, including teacher housing, or public school or pre-kindergarten grounds, including the purchasing or repairing of maintenance equipment and participating in the facility information management system as required by the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978] and including payments under contracts with regional education cooperatives for maintenance support services and expenditures for technical training and certification for maintenance and facilities management personnel, but excluding salary expenses of school district employees;

D. purchasing activity vehicles for transporting students to extracurricular school activities;

E. purchasing computer software and hardware for student use in public school classrooms; and

F. purchasing and installing education technology improvements, excluding salary expenses of school district employees, but including tools used in the educational process that constitute learning and administrative resources, and that may also include:

(1) satellite, copper and fiber-optic transmission; computer and network connection devices; digital communication equipment, including voice, video and data equipment; servers; switches; portable media devices, such as discs and drives to contain data for electronic storage and playback; and the purchase or lease of software licenses or other technologies and services, maintenance, equipment and computer infrastructure information, techniques and tools used to implement technology in schools and related facilities; and

(2) improvements, alterations and modifications to, or expansions of, existing buildings or tangible personal property necessary or advisable to house or otherwise accommodate any of the tools listed in this subsection.

**History:** 1953 Comp., § 77-25-2, enacted by Laws 1975 (S.S.), ch. 5, § 2; 1981, ch. 314, § 1; 1989, ch. 159, § 1; 1996, ch. 67, § 2; 1999, ch. 89, § 2; 2004, ch. 125, § 12; 2006, ch. 95, § 9; 2007, ch. 366, § 13; 2009, ch. 258, § 8; 2017, ch. 73, § 1; 2019, ch. 179, § 3; 2021, ch. 52, § 9; 2022, ch. 22, § 1.

### **22-25-3. Authorization for local school board to submit question of capital improvements tax imposition.**

A. A local school board may adopt a resolution to submit to the qualified electors of the school district the question of whether a property tax should be imposed upon the net taxable value of property allocated to the school district under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978] at a rate not to exceed that specified in the resolution for the purpose of capital improvements in the school district. The resolution shall:

(1) identify the capital improvements for which the revenue proposed to be produced will be used;

(2) specify the rate of the proposed tax, which shall not exceed two dollars (\$2.00) on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code;

(3) limit the imposition of the proposed tax to no more than six property tax years; and

(4) indicate the regular election on which the ballot question shall appear or specify the date a special election will be held to submit the question of imposition of the tax to the qualified electors of the district.

B. A school district that has one or more charter schools located within the school district boundaries shall collaborate with the charter schools to establish a process through which the charter schools submit necessary information to the school district for inclusion in the resolution. This process shall include:

(1) identification of the capital improvements of the charter school for which the revenue proposed to be produced will be used;

(2) a requirement that necessary information be submitted to the school district no later than June 1 of the calendar year in which the local school board will consider the resolution; and

(3) the point of contact in the school district to which the charter school is to submit the information.

C. A resolution submitted to the qualified electors pursuant to Subsection A of this section shall include capital improvements funding for a locally chartered or state-chartered charter school located within the school district if the charter school has complied with the process outlined in Subsection B of this section.

**History:** 1953 Comp., § 77-25-3, enacted by Laws 1975 (S.S.), ch. 5, § 3; 1986, ch. 32, § 21; 1997, ch. 138, § 1; 2003, ch. 147, § 6; 2009, ch. 258, § 9; 2019, ch. 212, § 222; 2022, ch. 19, § 4.

#### **22-25-4. Authorizing resolution; time limitation.**

The resolution authorized under Section 22-25-3 NMSA 1978 shall be adopted within the time frames required by the Election Code [Chapter 1 NMSA 1978] and pursuant to the requirements of the property tax division of the taxation and revenue department.

**History:** 1953 Comp., § 77-25-4, enacted by Laws 1975 (S.S.), ch. 5, § 4; 2019, ch. 212, § 223.

#### **22-25-5. Conduct of election; notice; ballot.**

A. An election on the question of imposing a tax under the Public School Capital Improvements Act shall be conducted as prescribed in the Local Election Act [Chapter 1, Article 22 NMSA 1978].

B. The proclamation authorizing the ballot question or calling for a special election shall include as the question to be submitted to the voters whether a property tax at a rate not to exceed the rate specified in the authorizing resolution should be imposed for the specified number of property tax years not exceeding six years upon the net taxable value of all property allocated to the school district for the capital improvements specified in the authorizing resolution.

C. The ballot shall include the information specified in Subsection B of this section and shall present the voter the choice of voting "for the public school capital improvements tax" or "against the public school capital improvements tax".

**History:** 1953 Comp., § 77-25-5, enacted by Laws 1975 (S.S.), ch. 5, § 5; 1986, ch. 32, § 22; 1997, ch. 138, § 2; 2003, ch. 147, § 7; 2018, ch. 79, § 94; 2019, ch. 212, § 224.

## **22-25-6. Election results; canvass; certification.**

The canvass and certification of the results of an election held on the question of imposition of a public school capital improvements tax shall be as prescribed in the Local Election Act [Chapter 1, Article 22 NMSA 1978] and in addition to the reporting of results as required by the Election Code [Chapter 1, NMSA 1978], and a copy of the certificate of results shall be delivered immediately to the director.

**History:** 1953 Comp., § 77-25-6, enacted by Laws 1975 (S.S.), ch. 5, § 6; 1977, ch. 246, § 66; 2019, ch. 212, § 225.

## **22-25-7. Imposition of tax; limitation on expenditures.**

A. If as a result of an election held in accordance with the Public School Capital Improvements Act a majority of the qualified electors voting on the question votes in favor of the imposition of the tax, the tax rate shall be certified, unless the local school board requests by resolution that a rate be discontinued, by the department of finance and administration at the rate specified in the resolution authorized under Section 22-25-3 NMSA 1978 or at any lower rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the rate specified in the resolution and be imposed at the rate certified in accordance with the provisions of the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978].

B. The revenue produced by the tax and, except as provided in Subsections D and F of Section 22-25-9 NMSA 1978, any state distribution resulting to the district under the Public School Capital Improvements Act shall be expended only for the capital improvements specified in the authorizing resolution.

C. The amount of tax revenue to be distributed to each charter school that was included in the resolution shall be determined each year and shall be in the same proportion as the average full-time-equivalent enrollment of the charter school on the first reporting date of the prior school year is to the total such enrollment in the school district; provided that, in determining the school district's total enrollment, charter school students located within the school district shall be included; and provided further that no distribution shall be made to an approved charter school that had not commenced classroom instruction in the prior school year. Each year, the department shall certify to the county treasurer of the county in which the eligible charter schools in the school district are located the percentage of the revenue to be distributed to each charter school. The county treasurer shall distribute the charter school's share of the property tax revenue directly to the charter school.

**History:** 1953 Comp., § 77-25-7, enacted by Laws 1975 (S.S.), ch. 5, § 7; 1986, ch. 32, § 23; 2004, ch. 125, § 13; 2009, ch. 258, § 10; 2019, ch. 212, § 226; 2022, ch. 22, § 2.



## **22-25-8. Tax to be imposed for a maximum of six years.**

A tax imposed in a school district as a result of an election under the Public School Capital Improvements Act shall be imposed for a specified number of property tax years not exceeding six years. The local school board may discontinue, by resolution, the Public School Capital Improvements Act tax levy at the end of any property tax year. The local school board shall direct that the Public School Capital Improvements Act tax levy be decreased by the amount required for any year in which the decrease is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

**History:** 1953 Comp., § 77-25-8, enacted by Laws 1975 (S.S.), ch. 5, § 8; 1976 (S.S.), ch. 31, § 1; 1986, ch. 32, § 24; 1997, ch. 138, § 3; 2003, ch. 147, § 8; 2019, ch. 212, § 227.

## **22-25-9. State distribution to school district imposing tax under certain circumstances.**

A. Except as provided in Subsection E of this section, for each year that a capital improvements tax is imposed by a school district, the secretary shall distribute from the public school capital improvements fund to the school district an amount equal to the greater of:

(1) the difference between:

(a) the product of: 1) the school district's program units; 2) multiplied by the tax rate imposed by the school district; and 3) multiplied further by the sum calculated pursuant to Subsection B of this section; and

(b) the school district's estimated tax revenue; or

(2) the product of:

(a) five dollars (\$5.00) for fiscal year 2023; and in each subsequent fiscal year, the amount for the previous fiscal year adjusted by the percentage increase between the next preceding calendar year and the preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor;

(b) multiplied by the school district's program units; and

(c) multiplied further by the tax rate imposed by the school district.

B. The amount in Item 3) of Subparagraph (a) of Paragraph (1) of Subsection A of this section shall be equal to the sum of:

(1) for fiscal year 2023, eighty-nine dollars twenty-five cents (\$89.25); and in each subsequent fiscal year, the amount for the previous fiscal year adjusted by the percentage increase between the next preceding calendar year and the preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor; plus

(2) an additional amount certified to the secretary by the public school capital outlay council. No later than June 1 of each year, the council shall determine the amount needed in the next fiscal year for public school capital outlay projects pursuant to the Public School Capital Outlay Act and the amount of revenue, from all sources, available for the projects. If, in the sole discretion of the council, the amount available exceeds the amount needed, the council may certify an additional amount pursuant to this paragraph; provided that the sum of the amount calculated pursuant to this paragraph plus the amount in Paragraph (1) of this subsection shall not result in a total statewide distribution that, in the opinion of the council, exceeds one-half of the total revenue estimated to be received from taxes imposed pursuant to the Public School Capital Improvements Act.

C. If a distribution is made to a school district pursuant to Subsection A of this section, the secretary shall make an additional distribution from the public school capital improvements fund to the school district in an amount equal to the product of:

- (1) fifty-three dollars (\$53.00);
- (2) multiplied by the sum of the school district's program units;
- (3) multiplied further by the greater of six percent or the percentage calculated pursuant to Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; and
- (4) multiplied further by the tax rate imposed by the school district.

D. In expending distributions made pursuant to this section, school districts and charter schools shall give priority to maintenance projects, including payments under contracts with regional education cooperatives for maintenance support services. In addition, distributions made pursuant to this section may be expended by school districts and charter schools as follows, but no distribution from the public school capital improvements fund may be used for capital improvements to any administration building of a school district:

- (1) for the school district portion of the total project cost for roof repair or replacement required by Section 22-24-4.3 NMSA 1978; or
- (2) for the school district portion of payments made under a financing agreement entered into by a school district or a charter school for the leasing of a building or other real property with an option to purchase for a price that is reduced

according to the payments made, if the school district has received a grant for the state share of the payments pursuant to Subsection D of Section 22-24-5 NMSA 1978.

E. In the event that sufficient funds are not available in the public school capital improvements fund to make the distributions pursuant to this section, the dollar per program unit figure shall be reduced as necessary.

F. A portion of each distribution made by the state pursuant to this section shall be further distributed by the school district to each locally chartered or state-chartered charter school located within the school district. The amount to be distributed to each charter school shall be in the same proportion as the average full-time-equivalent enrollment of the charter school on the second and third reporting dates of the prior school year is to the total such enrollment in the school district; provided that, in determining the school district's total enrollment, charter school students located within the school district shall be included; and provided further that no distribution shall be made to an approved charter school that had not commenced classroom instruction in the prior school year. Each year, the department shall certify to the school district the amount to be distributed to each charter school. Distributions received by a charter school pursuant to this subsection shall be expended pursuant to the provisions of the Public School Capital Improvements Act; except that if capital improvements for the charter school were not identified in a resolution approved by the electors, the charter school may expend the distribution for any capital improvements, including those specified in Subsection D of this section.

G. In making distributions pursuant to this section, the secretary shall include such reporting requirements and conditions as are required by rule of the public school capital outlay council. The council shall adopt such requirements and conditions as are necessary to ensure that the distributions are expended in the most prudent manner possible and are consistent with the original purpose as specified in the authorizing resolution. Copies of reports or other information received by the secretary in response to the requirements and conditions shall be forwarded to the council.

H. As used in this section:

(1) "capital improvements tax" means the tax authorized pursuant to the Public School Capital Improvements Act;

(2) "estimated tax revenue" means the revenue estimated to be received by a school district from the capital improvements tax, using prior year valuations and assuming a one hundred percent collection rate;

(3) "program units" means a school district's final program units determined pursuant to Sections 22-8-19, 22-8-20 through 22-8-23.1 and 22-8-23.3 NMSA 1978 generated in the previous fiscal year, including such program units generated by a charter school located within the school district; and

(4) "tax rate" means the rate approved by the qualified electors in the most recent election on the question of imposing a tax pursuant to the Public School Capital Improvements Act.

**History:** 1953 Comp., § 77-25-9, enacted by Laws 1975 (S.S.), ch. 5, § 9; 1976 (S.S.), ch. 31, § 2; 1977, ch. 246, § 67; 1981, ch. 314, § 2; 1986, ch. 32, § 25; 1988, ch. 64, § 44; 1988, ch. 66, § 2; 2001, ch. 338, § 10; 2003, ch. 147, § 9; 2004, ch. 125, § 14; 2005, ch. 274, § 15; 2006, ch. 95, § 10; 2007, ch. 366, § 14; 2009, ch. 258, § 11; 2018, ch. 38, § 1; 2022, ch. 22, § 3; 2023, ch. 98, § 7.

## **22-25-10. Public school capital improvements fund created.**

There is created a "public school capital improvements fund." Balances in the fund remaining at the end of a fiscal year shall not revert.

**History:** 1953 Comp., § 77-25-10, enacted by Laws 1975 (S.S.), ch. 5, § 10; 1976 (S.S.), ch. 31, § 3.

## **22-25-11. Expenditures by charter schools; reports to department.**

A. No later than December 1 of each year, each locally chartered or state-chartered charter school that expects a state distribution or a distribution of property taxes pursuant to the Public School Capital Improvements Act during the next calendar year shall submit a report to the department and its chartering authority showing the purposes for which the expected distribution will be expended. The department shall review the report and, no later than twenty days after receiving the report, shall advise the charter school if, in its opinion, the proposed expenditures are consistent with law and shall provide a copy of the advice to the local district.

B. No later than January 31 of each year, each locally chartered or state-chartered charter school that received a state distribution or a distribution of property taxes pursuant to the Public School Capital Improvements Act during the preceding calendar year shall submit a report to the department and its chartering authority showing the purposes for which the distribution was expended and the amount expended for each purpose.

**History:** Laws 2011, ch. 11, § 1.

# **ARTICLE 26**

## **Public School Buildings**

### **22-26-1. Short title.**

Chapter 22, Article 26 NMSA 1978 may be cited as the "Public School Buildings Act".

**History:** Laws 1983, ch. 163, § 1; 2007, ch. 366, § 18.

## **22-26-2. Definition.**

As used in the Public School Buildings Act, "capital improvements" means expenditures, including payments made with respect to lease-purchase arrangements as defined in the Education Technology Equipment Act [Chapter 6, Article 15A NMSA 1978] but excluding any other debt service expenses, for:

A. erecting, remodeling, making additions to, providing equipment for or furnishing public school buildings, including teacher housing and pre-kindergarten classrooms belonging to the school district or charter school located in the school district;

B. payments made pursuant to a financing agreement entered into by a school district or a charter school for the leasing of a building or other real property with an option to purchase for a price that is reduced according to payments made;

C. purchasing or improving public school grounds;

D. purchasing activity vehicles for transporting students to and from extracurricular school activities; provided that this authorization for expenditure does not apply to school districts with a student MEM greater than sixty thousand;

E. administering the projects undertaken pursuant to Subsections A and C of this section, including expenditures for facility maintenance software, project management software, project oversight and district personnel specifically related to administration of projects funded by the Public School Buildings Act; provided that expenditures pursuant to this subsection shall not exceed five percent of the total project costs; and

F. purchasing and installing education technology improvements, excluding salary expenses of school district employees, but including tools used in the educational process that constitute learning and administrative resources, and that may also include:

(1) satellite, copper and fiber-optic transmission; computer and network connection devices; digital communication equipment, including voice, video and data equipment; servers; switches; portable media devices, such as discs and drives to contain data for electronic storage and playback; and purchase or lease of software licenses or other technologies and services, maintenance, equipment and computer infrastructure information, techniques and tools used to implement technology in schools and related facilities; and

(2) improvements, alterations and modifications to, or expansions of, existing buildings or tangible personal property necessary or advisable to house or otherwise accommodate any of the tools listed in this subsection.

**History:** Laws 1983, ch. 163, § 2; 1999, ch. 89, § 3; 2007, ch. 366, § 19; 2009, ch. 25, § 1; 2017, ch. 73, § 2; 2019, ch. 179, § 4; 2021, ch. 52, § 10.

### **22-26-3. Authorization for local school board to submit question of capital improvements tax imposition.**

A. A local school board may adopt a resolution to submit to the qualified electors of the school district the question of whether a property tax at a rate not to exceed the rate specified in the resolution should be imposed upon the net taxable value of property allocated to the school district under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978] for the purpose of capital improvements to public schools in the school district. The resolution shall:

- (1) identify the capital improvements for which the revenue proposed to be produced will be used;
- (2) specify the rate of the proposed tax, which shall not exceed ten dollars (\$10.00) on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code;
- (3) limit the imposition of the proposed tax to no more than six property tax years; and
- (4) indicate the regular election on which the ballot question shall appear or specify the date a special election will be held to submit the question of imposition of the tax to the qualified electors of the district.

B. A school district that has one or more charter schools located within the school district boundaries shall collaborate with the charter schools to establish a process through which the charter schools submit necessary information to the school district for inclusion in the resolution. This process shall include:

- (1) identification of the capital improvements of the charter school for which the revenue proposed to be produced will be used;
- (2) a requirement that necessary information be submitted to the school district no later than June 1 of the calendar year in which the local school board will consider the resolution; and
- (3) the point of contact in the school district to which the charter school is to submit the information.

C. A resolution submitted to the qualified electors pursuant to Subsection A of this section shall include capital improvements funding for a locally chartered or state-chartered charter school located within the school district if:

(1) the charter school has complied with the process outlined in Subsection B of this section; and

(2) the capital improvements are included in the five-year facilities plan:

(a) of the school district, if the charter school is a locally chartered charter school; or

(b) of the charter school, if the charter school is a state-chartered charter school.

**History:** Laws 1983, ch. 163, § 3; 1986, ch. 32, § 26; 2007, ch. 366, § 20; 2019, ch. 212, § 228; 2022, ch. 19, § 5.

#### **22-26-4. Authorizing resolution; time limitation.**

The resolution authorized under Section 22-26-3 NMSA 1978 shall be adopted within the time frames required by the Election Code [Chapter 1 NMSA 1978] and pursuant to the requirements of the property tax division of the taxation and revenue department.

**History:** Laws 1983, ch. 163, § 4; 2019, ch. 212, § 229.

#### **22-26-5. Conduct of election; notice; ballot.**

A. An election on the question of imposing a tax under the Public School Buildings Act shall be held as prescribed in the Local Election Act [Chapter 1, Article 22 NMSA 1978].

B. The resolution authorizing the ballot question or calling for a special election shall include as the question to be submitted to the voters whether a property tax at a rate not to exceed the rate specified in the authorizing resolution should be imposed for the specified number of property tax years not exceeding six years upon the net taxable value of all property allocated to the school district for capital improvements.

C. The ballot shall include the information specified in Subsection B of this section and shall present the voter the choice of voting "for the public school buildings tax" or "against the public school buildings tax".

**History:** Laws 1983, ch. 163, § 5; 1986, ch. 32, § 27; 2007, ch. 366, §21; 2018, ch. 79, § 95; 2019, ch. 212, § 230.

#### **22-26-6. Election results; certification.**

The certification of the results of an election held on the question of imposition of a public school buildings tax shall be as prescribed in the Local Election Act [Chapter 1,

Article 22 NMSA 1978], and in addition to the reporting of results required by the Election Code [Chapter 1 NMSA 1978], a copy of the certificate of results shall be delivered immediately to the secretary.

**History:** Laws 1983, ch. 163, § 6; 1993, ch. 226, § 52; 2019, ch. 212, § 231.

### **22-26-7. Imposition of tax; limitations.**

If as a result of an election held in accordance with the Public School Buildings Act a majority of the qualified electors voting on the question votes in favor of the imposition of the tax, the tax rate shall be certified, unless the local school board directs that the tax levy not be made for the year, by the department of finance and administration at the rate specified in the authorizing resolution or at any lower rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the rate specified in the authorizing resolution or at any rate lower than the rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 if directed by the local school board pursuant to Section 22-26-8 NMSA 1978, and the tax shall be imposed at the rate certified in accordance with the provisions of the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978]. If in any tax year the authorized tax rate under the Public School Buildings Act, when added to the tax rates for servicing debt of the school district and for capital improvements pursuant to the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978], exceeds fifteen dollars (\$15.00), or a lower amount that would be required by applying the rate limitation provisions of Section 7-37-7.1 NMSA 1978 to the amount of fifteen dollars (\$15.00), on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code, the tax rate under the Public School Buildings Act shall be reduced to an amount that, when added to such additional rates, will equal fifteen dollars (\$15.00), or the lower amount that would be required by applying the rate limitation provisions of Section 7-37-7.1 NMSA 1978 to the amount of fifteen dollars (\$15.00), on each one thousand dollars (\$1,000) of net taxable value of property so allocated to the school district. The revenue produced by the tax and any state distribution resulting to the district under the Public School Buildings Act shall be expended only for capital improvements.

**History:** Laws 1983, ch. 163, § 7; 1986, ch. 32, § 28; 1996, ch. 63, § 1.

### **22-26-8. Tax to be imposed for a maximum of six years.**

A tax imposed in a school district as a result of an election under the Public School Buildings Act shall be imposed for one, two, three, four, five or six years. The local school board may direct that such levy be decreased or not made for any year if, in its judgment, the total levy is not necessary for such year and shall direct that the levy be decreased by the amount required if a decrease is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.



**History:** Laws 1983, ch. 163, § 8; 1986, ch. 32, § 29; 2007, ch. 366, § 22; 2019, ch. 212, § 232.

## **22-26-9. Charter schools; receipt of local property tax revenue.**

If the qualified electors of a school district have voted in favor of the imposition of a property tax as provided in Section 22-26-3 NMSA 1978, the amount of tax revenue to be distributed to each charter school that was included in the resolution shall be determined each year and shall be in the same proportion as the average full-time-equivalent enrollment of the charter school on the first reporting date of the prior school year is to the total such enrollment in the district; provided that, in the case of an approved charter school that had not commenced classroom instruction in the prior school year, the estimated full-time-equivalent enrollment in the first year of instruction, as shown in the approved charter school application, shall be used, subject to adjustment after the first reporting date. Each year, the department shall certify to the county treasurer of the county in which the eligible charter schools in the school district are located the percentage of the revenue to be distributed to each charter school. The county treasurer shall distribute the charter school's share of the property tax revenue directly to the charter school.

**History:** Laws 2007, ch. 366, § 23; 2010, ch. 116, § 8; 2019, ch. 212, § 233.

## **22-26-10. Expenditures by charter schools; reports to department.**

A. No later than December 1 of each year, each locally chartered or state-chartered charter school that expects a distribution of property taxes pursuant to the Public School Buildings Act during the next calendar year shall submit a report to the department and its chartering authority showing the purposes for which the expected distribution will be expended. The department shall review the report and, no later than twenty days after receiving the report, shall advise the charter school if, in its opinion, the proposed expenditures are consistent with law and shall provide a copy of the advice to the local district.

B. No later than January 31 of each year, each locally chartered or state-chartered charter school that received a distribution of property taxes pursuant to the Public School Buildings Act during the preceding calendar year shall submit a report to the department and its chartering authority showing the purposes for which the distribution was expended and the amount expended for each purpose.

**History:** Laws 2011, ch. 11, § 2.

# **ARTICLE 26A**

## **Public School Lease Purchase Act**

### **22-26A-1. Short title.**

Chapter 22, Article 26A NMSA 1978 may be cited as the "Public School Lease Purchase Act".

**History:** Laws 2007, ch. 173, § 1; 2009, ch. 132, § 2.

## **22-26A-2. Purpose.**

The purpose of the Public School Lease Purchase Act is to implement the provision of Article 9, Section 11 of the constitution of New Mexico, as approved by the voters of the state of New Mexico at the general election held in November 2006, which declares that a financing agreement entered into by a school district or a charter school for leasing of a building or other real property with an option to purchase for a price that is reduced according to the payments made by the school district or charter school pursuant to the financing agreement is not a debt if:

A. there is no legal obligation for the school district or charter school to continue the lease from year to year or to purchase the real property; and

B. the agreement provides that the lease shall be terminated if sufficient money is not available to meet the current lease payments.

**History:** Laws 2007, ch. 173, § 2.

## **22-26A-3. Definitions.**

As used in the Public School Lease Purchase Act:

A. "financing agreement" or "lease purchase arrangement" means an agreement for the leasing of a building or other real property with an option to purchase for a price that is reduced according to the payments made, which periodic lease payments composed of principal and interest components are to be paid to the holder of the agreement and pursuant to which the owner of the building or other real property may retain title to or a security interest in the building or other real property and may agree to release the security interest or transfer title to the building or other real property to the school district for nominal consideration after payment of the final periodic lease payment; and

B. "governing body" means:

(1) the governing structure of a charter school, as set forth in its approved charter; or

(2) a local school board as the governing structure of a school district.

**History:** Laws 2007, ch. 173, § 3; 2015, ch. 106, § 1.

#### **22-26A-4. Notice of proposed lease purchase arrangement; approval of department.**

A. When a governing body determines, pursuant to Subsection B of Section 22-26A-6 NMSA 1978, that a lease purchase arrangement is in the best interest of the school district or the charter school, the governing body shall forward to the department a copy of the proposed lease purchase arrangement and the source of funds that the governing body has identified to make payments due under the lease purchase arrangement.

B. A governing body shall not enter into a lease purchase arrangement without the approval of the department.

**History:** Laws 2007, ch. 173, § 4; 2009, ch. 132, § 3; 2015, ch. 106, § 2.

#### **22-26A-5. Lease purchase arrangements; terms.**

Lease purchase arrangements:

A. may have payments payable annually or more frequently as determined by the governing body;

B. may be subject to prepayment at the option of the governing body at such time or times and upon such terms and conditions with or without the payment of such premium or premiums as determined by the governing body;

C. may have a final payment date not exceeding thirty years after the date of execution;

D. may be acquired or executed at a public or negotiated sale;

E. may be entered into between the governing body and the owner of the building or other real property who may be a trustee or other person that issues or sells certificates of participation or other interests in the payments to be made under the lease purchase arrangement, the proceeds of which may be used to acquire the building or other real property;

F. shall specify the principal and interest component of each payment made under the lease purchase arrangement; provided that the net effective interest rate shall not exceed the maximum permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978];

G. shall provide that, if the school district or charter school makes capital improvements to the building or other real property, there shall be no change in the lease payments or final payment without a written amendment approved by the department;

H. shall provide that, if state, school district or charter school funds, above those required for lease payments, are used to construct or acquire improvements, the cost of the improvements shall constitute a lien on the real estate in favor of the school district or charter school and then, if the lease purchase arrangement is terminated prior to the final payment and the release of the security interest or the transfer of title at the option of the school district or charter school:

(1) the school district or charter school may foreclose on the real estate lien;  
or

(2) the current market value of the building or other real property at the time of termination, as determined by an independent appraisal certified by the taxation and revenue department, in excess of the outstanding principal due under the lease purchase arrangement shall be paid to the school district or charter school;

I. shall provide that there is no legal obligation for the school district or charter school to continue the lease purchase arrangement from year to year or to purchase the building or other real property;

J. shall provide that the lease purchase arrangement shall be terminated if sufficient money is not available to meet any current lease payment;

K. shall provide that, with the prior approval of the lessor, which shall not be unreasonably withheld, the lease purchase arrangement is assignable, without cost to the school district, or charter school and with all of the rights and benefits of its predecessor in interest being transferred to the assignee, to:

(1) a school district or charter school; or

(2) the state or one of its institutions, instrumentalities or other political subdivisions; and

L. shall provide that amendments to the lease purchase arrangement, except amendments that would improve the building or other real property without additional financial obligations to the school district or charter school, shall be approved by the department.

**History:** Laws 2007, ch. 173, § 5; 2009, ch. 132, § 4; 2015, ch. 106, § 3.

## **22-26A-5.1. Transfer or assignment of lease purchase arrangement; designation as public property.**

A. A holder of a lease purchase arrangement, including any public entity holding a lease purchase arrangement, may secure financing by issuing certificates of participation or otherwise assigning or transferring all or a portion of the lease purchase arrangement.

B. A building or other real property subject to a lease purchase arrangement that has been entered into and approved pursuant to the Public School Lease Purchase Act shall be considered to be a public property.

**History:** 1978 Comp., § 22-26A-5.1, as enacted by Laws 2009, ch. 132, § 5.

## **22-26A-6. Authorizing lease purchase arrangements; resolution.**

A. If a governing body proposes to acquire a building or other real property through a lease purchase arrangement, it shall comply with the requirements of this section and the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

B. At a regular meeting or at a special meeting called for the purpose of considering the acquisition of a building or other real property through a lease purchase arrangement, a governing body shall:

(1) make a determination of the necessity for acquiring the building or other real property through a lease purchase arrangement;

(2) determine the estimated cost of the buildings or other real property needed;

(3) review a summary of the terms of the proposed lease purchase arrangement;

(4) identify the source of funds for the lease purchase payments;

(5) if obtaining all or part of the funds needed requires or anticipates the imposition of a property tax, determine the estimated rate of the tax and what, if any, the percentage increase in property taxes will be for real property owners in the school district; and

(6) if the governing body determines that the lease purchase arrangement is in the best interest of the school district or charter school, forward a copy of the arrangement to the department pursuant to Section 22-26A-4 NMSA 1978.

C. After receiving department approval of the lease purchase arrangement, the governing body may adopt a final resolution approving the lease purchase of the building or other real property.

D. If a local school board finds that obtaining all or part of the funds needed for a lease purchase arrangement requires the imposition of a property tax, the board may adopt a resolution to be presented to the voters pursuant to Section 22-26A-8 NMSA 1978.

E. If the governing body of a charter school finds that obtaining all or part of the necessary funds requires the imposition of a property tax, the local school board of the school district in which the charter school is located may adopt a resolution to be presented to the voters, pursuant to Section 22-26A-8 NMSA 1978; provided that the governing body of the charter school has notified the local school board that the charter school has been approved to enter into a lease purchase arrangement and has identified revenue from the proposed tax as a necessary source of funds. The local school board:

(1) shall include the tax revenue needed by the charter school in the resolution if the school's charter has been renewed at least once; and

(2) may include the tax revenue needed by the charter school in the resolution if the charter school is a locally chartered charter school prior to its first renewal term.

F. If a local school board adopts a resolution that includes tax revenue for a charter school, and, if the tax is approved in an election pursuant to Sections 22-26A-8 through 22-26A-12 NMSA 1978, the local school board shall distribute an amount of the tax revenue, as established in its resolution, to the charter school to be used in the lease purchase arrangement.

G. The local school board shall not adopt a resolution for or approve a lease purchase arrangement for a term that exceeds thirty years.

**History:** Laws 2007, ch. 173, § 6; 2009, ch. 132, § 6; 2015, ch. 106, § 4.

## **22-26A-7. Payments under lease purchase arrangements.**

A school district or charter school may apply any legally available funds to acquire or improve buildings or other real property subject to a lease purchase arrangement or to the payments due under a lease purchase arrangement, including any combination of:

A. money from the school district's or charter school's general fund;

B. investment income actually received from investments;

C. proceeds from taxes imposed pursuant to the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978] or the Public School Buildings Act [Chapter 22, Article 26 NMSA 1978];

D. loans, grants or lease payments received from the public school capital outlay council pursuant to the Public School Capital Outlay Act [Chapter 22, Article 24 NMSA 1978];

E. state distributions to the school district or charter school pursuant to the Public School Capital Improvements Act;

F. fees or assessments received by the school district;

G. proceeds from the sale of real property and rental income received from the rental or leasing of school district or charter school property;

H. grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Title 20 of the United States Code, commonly known as "PL 874 funds" or "impact aid";

I. revenues from the tax authorized pursuant to Sections 22-26A-8 through 22-26A-12 NMSA 1978, if proposed by the local school board and approved by the voters; and

J. legislative appropriations.

**History:** Laws 2007, ch. 173, § 7; 2009, ch. 132, § 7; 2015, ch. 106, § 5.

### **22-26A-8. Authorization for local school board to submit question of lease purchase tax.**

A local school board may adopt a resolution to submit to the qualified electors of the school district the question of whether a property tax at a rate not to exceed the rate specified in the resolution should be imposed upon the net taxable value of property allocated to the school district under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978] for the purpose of making payments under lease purchase arrangements. The resolution shall:

A. specify the maximum rate of the proposed tax, which shall not exceed ten dollars (\$10.00) on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code;

B. specify the date an election will be held to submit the question of imposition of the tax to the qualified electors of the district; and

C. limit the imposition of the proposed tax to no more than thirty property tax years.

**History:** Laws 2007, ch. 173, § 8; 2009, ch. 132, § 8.

### **22-26A-9. Authorizing resolution; time limitation.**

The resolution authorized under Section 8 [22-26A-8 NMSA 1978] of the Public School Lease Purchase Act shall be adopted no later than May 15 in the year in which the tax is proposed to be imposed.

**History:** Laws 2007, ch. 173, § 9.

## **22-26A-10. Conduct of election; notice; ballot.**

A. An election on the question of imposing a tax under Sections 22-26A-8 through 22-26A-12 NMSA 1978 shall be held as prescribed in the Local Election Act [Chapter 1, Article 22 NMSA 1978].

B. The resolution required to be published as notice of the election under Section 1-22-11 NMSA 1978 [repealed] shall include as the question to be submitted to the voters whether a property tax at a rate not to exceed the rate specified in the authorizing resolution should be imposed for the specified number of property tax years not exceeding thirty years upon the net taxable value of all property allocated to the school district for payments due under lease purchase arrangements.

C. The ballot shall include the information specified in Subsection B of this section and shall present the voter the choice of voting "for the lease purchase tax" or "against the lease purchase tax".

**History:** Laws 2007, ch. 173, § 10; 2009, ch. 132, § 9; 2018, ch. 79, § 96.

## **22-26A-11. Election results; certification.**

The certification of the results of an election held on the question of imposition of a lease purchase tax shall be made in accordance with the Local Election Act [Chapter 1, Article 22 NMSA 1978], and a copy of the certificate of results shall be mailed immediately to the secretary.

**History:** Laws 2007, ch. 173, § 11; 2018, ch. 79, § 97.

## **22-26A-12. Imposition of tax; limitations.**

If as a result of an election held in accordance with Sections 22-26A-8 through 22-26A-11 NMSA 1978 a majority of the qualified electors voting on the question votes in favor of the imposition of the tax, the tax rate shall be certified, unless the local school board directs that the tax levy not be made for the year, by the department of finance and administration at the rate specified in the authorizing resolution or at a lower rate directed by the local school board and the tax shall be imposed at the rate certified in accordance with the provisions of the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978]. The revenue produced by the tax shall be expended only for payments due under lease purchase arrangements, as specified in the authorizing resolution.

**History:** Laws 2007, ch. 173, § 12; 2009, ch. 132, § 10.

## **22-26A-13. Publication of notice; validation.**



A. After adoption of a resolution approving a lease purchase arrangement, the governing body shall publish notice of the adoption of the resolution once in a newspaper of general circulation in the school district in which the governing body's school is located.

B. After the passage of thirty days from the publication required by Subsection A of this section, any action attacking the validity of the proceedings taken by the governing body preliminary to and in the authorization of and entering into the lease purchase arrangement described in the notice is perpetually barred.

**History:** Laws 2007, ch. 173, § 13; 2015, ch. 106, § 6.

## **22-26A-14. Refunding or refinancing lease purchase arrangements.**

School districts and charter schools may enter into lease purchase arrangements for the purpose of refunding or refinancing any lease purchase arrangements then outstanding, including the payment of any prepayment premiums thereon and any interest accrued or to accrue to the date of prepayment maturity of the outstanding lease purchase arrangements. Until the proceeds of the lease purchase arrangements issued for the purpose of refunding or refinancing outstanding lease purchase arrangements are applied to the prepayment or retirement of the outstanding lease purchase arrangements, the proceeds may be placed in escrow and invested and reinvested. The interest, income and profits, if any, earned or realized on any such investment may, in the discretion of the governing body, also be applied to the payment of the outstanding lease purchase arrangements to be refunded or refinanced by prepayment or retirement, as the case may be. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, if any, earned or realized on the investments thereof may be returned to the governing body to be used for payment of the refunding or refinancing lease purchase arrangement. If the proceeds from a tax imposed pursuant to Sections 22-26A-8 through 22-26A-12 NMSA 1978 were used as a source of payments for the refunded lease purchase arrangement, the proceeds may continue to be used for the refunding or refinancing lease purchase arrangements without the requirement of an additional election on the issue.

**History:** Laws 2007, ch. 173, § 14; 2015, ch. 106, § 7.

## **22-26A-15. Agreement of the state.**

The state does hereby pledge to and agree with the holders of any lease purchase arrangement, certificates of participation or other partial interest in a lease purchase arrangement entered into under the Public School Lease Purchase Act that the state will not limit or alter the rights vested in school districts or charter schools to fulfill the terms of any lease purchase arrangement or related sublease arrangement or in any way impair the rights and remedies of the holders of lease purchase arrangements, certificates of participation or other partial interests in lease purchase arrangements until the payments due thereon, and all costs and expenses in connection with any

action or proceedings by or on behalf of those holders, are fully met and discharged. School districts and charter schools are authorized to include this pledge and agreement of the state in any lease purchase arrangement or related sublease arrangement.

**History:** Laws 2007, ch. 173, § 15; 2009, ch. 132, § 11; 2015, ch. 106, § 8.

## **22-26A-16. Legal investments for public officers and fiduciaries.**

Lease purchase arrangements entered into under the authority of the Public School Lease Purchase Act, including certificates of participation and other partial interests in such lease purchase arrangements, shall be legal investments in which all insurance companies, banks and savings and loan associations organized under the laws of the state, public officers and public bodies and all administrators, guardians, executors, trustees and other fiduciaries may properly and legally invest funds.

**History:** Laws 2007, ch. 173, § 16; 2009, ch. 132, § 12.

## **22-26A-17. Tax exemption.**

The state covenants with the original holder and all subsequent holders and transferees of lease purchase arrangements entered into by governing bodies, in consideration of the acceptance of and payment for the lease purchase arrangements entered into pursuant to the Public School Lease Purchase Act, that lease purchase arrangements, certificates of participation and other partial interests in lease purchase arrangements and the interest income from the lease purchase arrangements, certificates of participation and other partial interests shall at all times be free from taxation by the state, except for estate or gift taxes and taxes on transfers.

**History:** Laws 2007, ch. 173, § 17; 2009, ch. 132, § 13; 2015, ch. 106, § 9.

## **22-26A-18. Cumulative and complete authority.**

The Public School Lease Purchase Act shall be deemed to provide an additional and alternative method for acquiring buildings and other real property authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as a derogation of any powers now existing. The Public School Lease Purchase Act shall be deemed to provide complete authority for acquiring buildings and other real property and entering into lease purchase arrangements contemplated thereby, and no other approval of any state agency or officer, except as provided therein, shall be required with respect to any lease purchase arrangements, and the governing body acting thereunder need not comply with the requirements of any other law applicable to the issuance of debt by school districts.

**History:** Laws 2007, ch. 173, § 18; 2015, ch. 106, § 10.

## **22-26A-19. Repealed.**

**History:** Laws 2007, ch. 173, § 19; 2009, ch. 132, § 14; repealed by Laws 2015, ch. 106, § 11.

## **22-26A-20. Liberal interpretation.**

The Public School Lease Purchase Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect its purposes.

**History:** Laws 2007, ch. 173, § 20.

# **ARTICLE 27**

## **Meditation in Public School**

### **22-27-1. Short title.**

This act [22-27-1 to 22-27-3 NMSA 1978] may be cited as the "Meditation in Public School Act".

**History:** Laws 1995, ch. 72, § 1.

### **22-27-2. Findings; purpose.**

A. The legislature finds that:

(1) the first amendment of the United States constitution protects religious freedom and freedom of speech;

(2) the constitution of New Mexico protects each citizen's rights to worship God according to the dictates of the citizen's conscience; and

(3) the constitution of New Mexico prohibits public schools from requiring attendance or participation by students or teachers in any religious service.

B. The purpose of the Meditation in Public School Act is to foster respect for the educational process and environment and to provide for the right of every public school student to exercise his freedom of conscience on public school grounds without pressure from the state, any public school, teacher, school personnel or other student.

**History:** Laws 1995, ch. 72, § 2.

### **22-27-3. Moment of silent meditation.**

Students in the public schools may voluntarily engage in student-initiated moments of silent meditation.

**History:** Laws 1995, ch. 72, § 3.

## **ARTICLE 28**

### **School Bus Advertisements**

#### **22-28-1. Bus advertisements authorized; limitations and restrictions.**

A. The state transportation division of the department of education [public education department] shall authorize local school boards to sell advertising space on the interior and exterior of school buses. The local school board shall develop guidelines for the type of advertisements that will be permitted. There shall be no advertisements that involve:

(1) obscenity, sexual material, gambling, tobacco, alcohol, political campaigns or causes, religion or promoting the use of drugs; or

(2) general content that is harmful or inappropriate for school buses as determined by the state board [department].

B. All school bus advertisements shall be painted or affixed by decal on the bus in a manner that does not interfere with national and state requirements for school bus markings, lights and signs. The commercial advertiser that contracts with the school district for the use of the space for advertisements shall be required to pay the cost of placing the advertisements on the bus and shall pay for its removal after the term of the contract has expired.

C. The right to sell advertising space on school buses shall be within the sole discretion of the local school board, except as required by Section 3 [22-28-1 NMSA 1978] of this act.

D. An officer or employee of a school district or of the department of education [public education department] who fails to comply with the obligations or restrictions created by this act shall be subject to discipline, including the possibility of being terminated from employment. A school bus private owner that fails to comply with the obligations or restrictions created by this act is in breach of contract and the contract is subject to cancellation after notice and hearing before the director of the state transportation division.

**History:** Laws 1997, ch. 233, § 3.

#### **22-28-2. School bus title; leasing space.**

A. All school bus private owners that have legal title to school buses used and operated pursuant to an existing bus service contract with a school district may lease space on their buses to the school district for the purpose of selling commercial advertisements. In exchange for leasing the space, the school bus private owners shall receive ten percent of the total value of the amount of the contract between the school district and the commercial advertiser.

B. The amount of space that will be available for commercial advertisements on school buses shall be established by regulations of the department of education [public education department] consistent with national and state requirements for school bus markings, lights and signs.

C. Space for advertising on school buses owned by the department of education [public education department] shall be provided to school districts without cost for the purpose of selling advertising space to commercial advertisers.

**History:** Laws 1997, ch. 233, § 4.

### **22-28-3. Solicitation; lease; rent payment.**

A. A school district shall be permitted to solicit offers from commercial advertisers for the use of space on the school buses that service their school district. The school district may enter into a lease agreement with a commercial advertiser for the use of any designated advertising space on a school bus that services the school district.

B. In a lease agreement with a commercial advertiser, the school district shall establish the rental amount, schedule and term. The term of any lease agreement shall not be for a period longer than the time remaining on the school district's bus service contract with a school bus private owner who owns the bus that is the subject of the lease agreement.

C. A school district shall not enter into a lease agreement with a commercial advertiser that seeks to display an advertisement that is prohibited by local school board guidelines.

**History:** Laws 1997, ch. 233, § 5.

### **22-28-4. School bus advertising fund.**

The "school bus advertising fund" is created in the state treasury and shall be administered by the department of education [public education department]. The fund shall consist of money raised pursuant to this act. Balances in the fund at the end of any fiscal year shall not revert to the general fund. Income from investment of the fund shall be credited to the fund.

**History:** Laws 1997, ch. 233, § 6.

## **22-28-5. Distribution.**

A. Funds raised from commercial advertisement shall be distributed from the school bus advertising fund after the required payment is made to school bus private owners.

B. Sixty percent of the proceeds raised shall be distributed to each school district to use in accordance with the school district's technology plan in amounts proportionate to the amount that each school district contributed to the school bus advertising fund.

C. Forty percent of the proceeds raised shall be distributed on a per membership basis of middle and junior high schools by the state superintendent [secretary] to school districts for extracurricular activities. If a school district does not expend money from the school bus advertising fund for extracurricular activities, it shall revert back to the fund.

D. School districts shall report to the department of education [public education department] on how the funds were used in the technology plans and for extracurricular activities.

**History:** Laws 1997, ch. 233, § 7.

## **22-28-6. Accountability.**

Funds raised by a school district from lease agreements relating to the use of advertising space on school buses by commercial advertisers shall be fully accounted for and subject to review and examination by the department of education [public education department].

**History:** Laws 1997, ch. 233, § 8.

# **ARTICLE 29**

## **Public School Insurance Authority**

### **22-29-1. Short title.**

Chapter 22, Article 29 NMSA 1978 may be cited as the "Public School Insurance Authority Act".

**History:** 1978 Comp., § 22-2-6.1, enacted by Laws 1986, ch. 94, § 1; 1978 Comp., § 22-2-6.1, recompiled as § 22-29-1, by Laws 2003, ch. 153, § 72; 2005, ch. 274, § 17.

### **22-29-2. Purpose of act.**

The purpose of the Public School Insurance Authority Act is to provide comprehensive core insurance programs, including reimbursement coverage for the

costs of providing due process to students with disabilities, for all participating public schools, school board members, school board retirees and public school employees and retirees by expanding the pool of subscribers to maximize cost containment opportunities for required insurance coverage.

**History:** 1978 Comp., § 22-2-6.2, enacted by Laws 1986, ch. 94, § 2; 1978 Comp., § 22-2-6.2, recompiled as § 22-29-2 by Laws 2003, ch. 153, § 72; 2008, ch. 56, § 1.

### **22-29-3. Definitions.**

As used in the Public School Insurance Authority Act:

- A. "authority" means the public school insurance authority;
- B. "board" means the board of directors of the authority;
- C. "charter school" means a school organized as a charter school pursuant to the provisions of the Charter Schools Act [Chapter 22, Article 8B NMSA 1978];
- D. "director" means the director of the authority;
- E. "due process reimbursement" means the reimbursement of a school district's or charter school's expenses for attorney fees, hearing officer fees and other reasonable expenses incurred as a result of a due process hearing conducted pursuant to the federal Individuals with Disabilities Education Improvement Act;
- F. "educational entities" means state educational institutions as enumerated in Article 12, Section 11 of the constitution of New Mexico and other state diploma, degree-granting and certificate-granting post-secondary educational institutions, regional education cooperatives and nonprofit organizations dedicated to the improvement of public education and whose membership is composed exclusively of public school employees, public schools or school districts;
- G. "fund" means the public school insurance fund;
- H. "group health insurance" means coverage that includes life insurance, accidental death and dismemberment, medical care and treatment, dental care, eye care and other coverages as determined by the authority;
- I. "risk-related coverage" means coverage that includes property and casualty, general liability, auto and fleet, workers' compensation and other casualty insurance; and
- J. "school district" means a school district as defined in Subsection R of Section 22-1-2 NMSA 1978, excluding any school district with a student enrollment in excess of sixty thousand students.

**History:** 1978 Comp., § 22-2-6.3, enacted by Laws 1986, ch. 94, § 3; 1991, ch. 142, § 1; 1999, ch. 281, § 17; 2001, ch. 293, § 2; 1978 Comp., § 22-2-6.3, recompiled as § 22-29-3 by Laws 2003, ch. 153, § 72; 2007, ch. 41, § 1; 2007, ch. 236, § 1.

#### **22-29-4. Authority created.**

There is created the "public school insurance authority", which is established to provide for group health insurance, other risk-related coverage and due process reimbursement with the exception of the mandatory coverage provided by the risk management division on the effective date of the Public School Insurance Authority Act.

**History:** 1978 Comp., § 22-2-6.4, enacted by Laws 1986, ch. 94, § 4; 1978 Comp., § 22-2-6.4, recompiled as § 22-29-4, by Laws 2003, ch. 153, § 72; 2007, ch. 236, § 2.

#### **22-29-5. Board created; membership; duties.**

A. There is created the "board of directors of the public school insurance authority". The board shall be composed of nine members, consisting of the following:

- (1) one member to be selected by the state board [department] of education;
- (2) one school business official to be selected by the New Mexico school administrators;
- (3) one board member of the New Mexico school boards association to be selected by the association;
- (4) one superintendent to be selected by the New Mexico superintendents' association;
- (5) three members to be selected by the New Mexico national education association and the New Mexico federation of teachers with the intent that representation be proportional to their respective membership, provided that each of these three members be currently employed as public school teachers employed by participating entities;
- (6) one member to be selected by the board from lists submitted by the participating educational entities; and three members to be appointed by and serve at the pleasure of the governor; such members shall not be employed by or on behalf of or be contracting with an employer participating in or eligible to participate in the public school insurance authority.

B. Each member of the board shall serve at the pleasure of the party by which he has been appointed for a term not to exceed three years. Any board member who has been appointed and who misses four meetings of the board during a fiscal year shall be replaced and shall forfeit his position on the board, and his replacement shall be made



by the organization affected. The board shall set minimum terms of appointment and shall elect from its membership a president, vice president and secretary.

C. The board has the authority to hire a director and appoint such other officers and employees as it may deem necessary and has the authority to contract with consultants or other professional persons or firms as may be necessary to carry out the provisions of the Public School Insurance Authority Act. The board has the authority to provide for its full- and part-time employees, as it deems necessary, employee benefits insurance on the same basis as a member public school district may provide such employee benefits. In addition, the board has the authority to provide to members of the board and the employees risk coverages of the same scope and limitations as are allowed its member school districts to be provided to their local school boards. The board has the authority to provide employees an irrevocable option of qualifying for coverage under either the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] or the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978].

D. The members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

**History:** 1978 Comp., § 22-2-6.5, enacted by Laws 1986, ch. 94, § 5; 1988, ch. 64, § 11; 1989, ch. 373, § 1; 1991, ch. 142, § 2; 1978 Comp., 22-2-6.5, recompiled as § 22-29-5, by Laws 2003, ch. 153, § 72.

## **22-29-6. Fund created; budget review; premiums.**

A. There is created the "public school insurance fund". All income earned on the fund shall be credited to the fund. The fund is appropriated to the authority to carry out the provisions of the Public School Insurance Authority Act. Any money remaining in the fund at the end of each fiscal year shall not revert to the general fund.

B. The board shall determine which money in the fund constitutes the long-term reserves of the authority. The state investment officer shall invest the long-term reserves of the authority in accordance with the provisions of Sections 6-8-1 through 6-8-16 NMSA 1978. The state treasurer shall invest the money in the fund that does not constitute the long-term reserves of the fund in accordance with the applicable provisions of Chapter 6, Article 10 NMSA 1978.

C. All appropriations shall be subject to budget review through the department of education [public education department], the state budget division of the department of finance and administration and the legislative finance committee.

D. The authority shall provide that premiums are collected from school districts and charter schools participating in the authority sufficient to provide the required insurance coverage and to pay the expenses of the authority. All premiums shall be credited to the fund.

E. Any reserves remaining at the termination of an insurance contract shall be disbursed to the individual school districts, charter schools and other participating entities on a pro rata basis.

F. Disbursements from the fund for purposes other than procuring and paying for insurance or insurance-related services, including but not limited to third-party administration, premiums, claims and cost containment activities, shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director or his designee; provided that the chairman of the board may sign vouchers if the position of director is vacant.

**History:** 1978 Comp., § 22-2-6.6, enacted by Laws 1986, ch. 94, § 6; 1989, ch. 373, § 2; 1991, ch. 142, § 3; 1999, ch. 281, § 18; 1978 Comp., § 22-2-6.6, recompiled as § 22-29-6, by Laws 2003, ch. 153, § 72.

## **22-29-7. Authority; duties.**

In order to effectuate the purposes of the Public School Insurance Authority Act, the authority has the power to:

A. enter into professional services and consulting contracts or agreements as necessary;

B. collect money and provide for the investment of the fund;

C. collect all current and historical claims and financial information necessary for effective procurement of lines of insurance coverage;

D. promulgate necessary rules, regulations and procedures for implementation of the Public School Insurance Authority Act;

E. by rule, establish a policy to be followed by participating members relating to the use of volunteers. The policy shall be distributed to participating members and posted upon the authority's web site;

F. by rule, establish a policy to be followed by participating members relating to the use of school facilities by private persons; provided that the policy shall relate only to liability and risk issues and shall not affect the rights and responsibilities of local school boards to determine how, when and by whom school district facilities are used. The policy shall be distributed to participating members and posted upon the authority's web site;

G. provide public liability coverage for health care liability of health care student interns currently enrolled in health care instructional programs provided by any member;

H. insure, by negotiated policy, self-insurance or any combination thereof, participating members against claims of bodily injury, personal injury or property damage related to the use of school facilities by private persons; provided that the coverage shall be subject to the following conditions:

(1) no more than one million dollars (\$1,000,000) shall be paid for each occurrence; and

(2) the coverage shall only apply if the participating member was following the policy adopted by the authority pursuant to Subsection F of this section;

I. negotiate new insurance policies covering additional or lesser benefits as determined appropriate by the authority, but the authority shall maintain all coverage levels required by federal and state law for each participating member. In the event it is practical to self-insure wholly a particular line of coverage, the authority may do so;

J. procure lines of insurance coverage in compliance with the provisions of the Health Care Purchasing Act [Chapter 13, Article 7 NMSA 1978] and the competitive sealed proposal process of the Procurement Code [13-1-28 to 13-1-199 NMSA 1978]; provided that any group medical insurance plan offered pursuant to this section shall include effective cost-containment measures to control the growth of health care costs. The board shall report annually by September 1 to appropriate interim legislative committees on the effectiveness of the cost-containment measures required by this subsection; and

K. purchase, renovate, equip and furnish a building for the board.

**History:** 1978 Comp., § 22-2-6.7, enacted by Laws 1986, ch. 94, § 7; 1989, ch. 373, § 3; 1990, ch. 6, § 21; 1991, ch. 142, § 4; 1994, ch. 62, § 21; 1997, ch. 74, § 7; recompiled as § 22-29-7 by Laws 2003, ch. 153, § 72; 2003, ch. 273, § 22; 2009, ch. 198, § 1; 2011, ch. 120, § 1.

## **22-29-8. Receipts and disbursements; issuance of warrants, purchase orders and contracts; deposit of funds.**

A. All premiums and other money collected by the authority shall be deposited in the fund. Except as provided in Subsection F of Section 22-2-6.6 NMSA 1978 [22-29-6 NMSA 1978], funds shall be disbursed directly by the authority, but receipts and disbursements are subject to audit by the state auditor. Except as provided in that subsection, the authority is not required to submit proposed vouchers, purchase orders or contracts to the department of finance and administration as otherwise provided by law. The department of finance and administration shall not require the authority to rebid or to disapprove any contractual arrangements determined by the board to be in the best interests of the authority.

B. Except as provided in Subsection F of Section 22-2-6.6 NMSA 1978 [22-29-6 NMSA 1978], the board shall issue warrants in the name of the authority against funds of the authority in payment of its lawful obligations, issue purchase orders and contract for goods or services in the name of the authority. The authority shall provide its own warrant, purchase order and contract forms as well as other supplies and equipment.

**History:** 1978 Comp., § 22-2-6.8, enacted by Laws 1986, ch. 94, § 8; 1991, ch. 142, § 5; 1978 Comp., § 22-2-6.8, recompiled as § 22-29-8, by Laws 2003, ch. 153, § 72.

## **22-29-9. Participation; waivers.**

A. School districts and charter schools shall participate in the authority, unless the school district or charter school is granted a waiver by the board.

B. In determining whether a waiver should be granted, the board shall establish minimum benefit and financial standards for the desired line of coverage. These minimum benefit and financial standards and the proposed time schedule for responsive offers shall be sent to all school districts and charter schools at the time the request for proposals for the desired line of coverage is issued. Any school district or charter school seeking a waiver of coverage shall match the minimum benefit and financial standards set forth in the request for proposals for the desired line of coverage. School districts and charter schools shall submit documentation of their proposals matching the board's minimum benefit and financial requirements prior to the deadline established by the board. The authority has the power to approve or disapprove a waiver of participation based on the documentation submitted by the school district or charter school regarding the benefit and financial standards established by the board. The board shall grant a waiver to a school district or charter school that requests a waiver and that has met the minimum benefit and financial standards within the time schedule established by the board. Once the board awards the insurance contract, no school district or charter school shall be granted a waiver for the entire term of the contract.

C. Any school district or charter school granted a waiver of participation for health insurance shall be required to petition for participation in other kinds of group insurance coverage and shall be required to meet the requirements established by the authority prior to participation in other kinds of group insurance coverage. A school district or charter school which has been granted a waiver shall be prohibited from participating in the coverage for which a waiver was granted for the entire term of the authority's insurance contract. Provided, however, that if the authority contracts for a line or lines of coverage for a period of eight years, the board may establish procedures and preconditions for authorizing a school district or charter school which has been granted a waiver to again participate in the coverage after the expiration of the first four years of coverage.

D. Any school district or charter school granted a waiver of participation for workers' compensation shall be required to petition for participation in other risk-related coverages and shall be required to meet the requirements established by the authority

prior to participation in other kinds of risk-related coverages. A school district or charter school which has been granted a waiver shall be prohibited from participating in the coverage for which a waiver was granted for the entire term of the authority's insurance contract.

E. Educational entities may petition the authority for permission to participate in the insurance coverage provided by the authority. To protect the stability of the fund, the authority shall establish reasonable terms and conditions for participation by educational entities.

F. A participating school district or charter school may separately provide for coverage additional to that offered by the authority.

G. The local school districts, charter schools or the authority, as appropriate, may provide for marketing and servicing to be done by licensed insurance agents or brokers who should receive reasonable compensation for their services.

**History:** 1978 Comp., § 22-2-6.9, enacted by Laws 1986, ch. 94, § 9; 1989, ch. 373, § 4; 1999, ch. 281, § 19; 1978 Comp., § 22-2-6.9, recompiled as § 22-29-9, by Laws 2003, ch. 153, § 72.

## **22-29-10. Group insurance contributions.**

A. Group insurance contributions for school districts, charter schools and participating entities in the authority shall be made as follows:

(1) at least eighty percent of the cost of the insurance of an employee whose annual salary is less than fifty thousand dollars (\$50,000);

(2) at least seventy percent of the cost of the insurance of an employee whose annual salary is fifty thousand dollars (\$50,000) or more but less than sixty thousand dollars (\$60,000); and

(3) at least sixty percent of the cost of the insurance of an employee whose annual salary is sixty thousand dollars (\$60,000) or more.

B. Within available revenue, school districts, charter schools and participating entities in the authority may contribute up to one hundred percent of the cost of the insurance of all employees.

C. Whenever a school district, charter school or participating entity in the authority offers to its employees alternative health plan benefit options, including health maintenance organizations, preferred provider organizations or panel doctor plans, the school district, charter school or participating entity may pay an amount on behalf of the employee and family member for the indemnity health insurance plan sufficient to result in equal employee monthly costs to the cost of the health maintenance organization

plans, preferred provider organization plans or panel doctor plans, regardless of the percentage limitations in the Public School Insurance Authority Act. School districts, charter schools and participating entities in the authority may pay up to one hundred percent of the first fifty thousand dollars (\$50,000) of term life insurance.

**History:** 1978 Comp., § 22-2-6.10, enacted by Laws 1989, ch. 373, § 5; 1999, ch. 281, § 20; 1978 Comp., 22-2-6.10, recompiled as § 22-29-10, by Laws 2003, ch. 153, § 72; 2004, ch. 82, § 2; 2023, ch. 83, § 2.

## **22-29-11. Expenditure of insurance proceeds for public schools.**

Payment for a claim under property insurance coverage for property damage to public school facilities may be paid directly to the school district, or, pursuant to the Procurement Code [13-1-28 to 13-1-199 NMSA 1978], the insurance proceeds may be expended by the insurer to repair the damage. If the payment is made directly to the school district, without further approval of the authority or any insurance carrier, the proceeds of the insurance payment may be expended by the school district to repair or replace the damaged facility if:

A. the school district complies with the Procurement Code; and

B. contracts for the repair or replacement are approved by the public school facilities authority pursuant to Section 22-20-1 NMSA 1978, provided that:

(1) the cost of settlement of the insurance claim shall not be increased by inclusion of the insurance proceeds in the construction contracts; and

(2) insurance claims settlements shall continue to be governed by insurance policies, memoranda of coverage and rules related to them.

**History:** Laws 2005, ch. 274, § 18.

## **22-29-12. Due process reimbursement.**

The authority shall include due process reimbursement in its self-insured retention risk pool. Each year, the legislature shall authorize the board to collect the due process reimbursement premium from member districts and charter schools to cover the cost of due process reimbursement. From the authorization, the board shall allocate due process reimbursement premiums based on a school district's or charter school's claims experience and other criteria determined by the board. A single due process reimbursement shall not exceed one hundred thousand dollars (\$100,000).

Prior to the beginning of each fiscal year, the authority shall determine the amount of money available in the fund for special education due process reimbursements. The authority shall set forth in its general liability memorandum of coverage the provisions

for distribution of that amount for due process reimbursements to school districts and charter schools, including:

A. the process by which school districts and charter schools submit claims for reimbursement by the end of the fiscal year; and

B. the method for distributing the money available to school districts and charter schools on a pro rata basis if the available money is not sufficient to cover all claims.

**History:** Laws 2007, ch. 236, § 3; 2008, ch. 56, § 2.

## **ARTICLE 30**

### **Statewide Cyber Academy Act**

#### **22-30-1. Short title.**

Sections 1 through 7 [and 11] of this act [Chapter 22, Article 30 NMSA 1978] may be cited as the "Statewide Cyber Academy Act".

**History:** Laws 2007, ch. 292, § 1 and Laws 2007, ch. 293, § 1.

#### **22-30-2. Definitions.**

As used in the Statewide Cyber Academy Act:

A. "course provider" means a person that supplies educational course content for distance learning courses;

B. "distance learning course" means an educational course that is taught where the student and primary instructor are separated by time or space and linked by technology;

C. "distance learning student" means a qualified student as defined in Section 22-8-2 NMSA 1978 who is enrolled in one or more distance learning courses for credit;

D. "learning management system" means a software application that facilitates online instruction and interaction between teachers and distance learning students;

E. "local distance learning site" means a school district or charter school that offers and grants credit for distance learning courses to distance learning students enrolled in the school district or charter school;

F. "primary enrolling district" means the school district or charter school in which the distance learning student is enrolled;

G. "regional host" means an educational institution, school district or other entity selected by the statewide cyber academy to coordinate the delivery of distance learning courses within a broad geographic region of the state;

H. "service center" means the single central facility where administrative and management functions of the statewide cyber academy are physically located in New Mexico; and

I. "statewide cyber academy" means the department's collaborative program that offers distance learning courses to all local distance learning sites.

**History:** Laws 2007, ch. 292, § 2 and Laws 2007, ch. 293, § 2.

### **22-30-3. Statewide cyber academy created.**

The "statewide cyber academy" program is created in the department. The statewide cyber academy is a collaborative program among the department, the higher education department, telecommunications networks and representatives of other state agencies engaged in providing distance education. The statewide cyber academy shall provide distance learning courses for grades six through twelve and professional development for teachers, instructional support providers and school administrators.

**History:** Laws 2007, ch. 292, § 3 and Laws 2007, ch. 293, § 3.

### **22-30-4. Department rules.**

The department shall promulgate rules to carry out the provisions of the Statewide Cyber Academy Act.

**History:** Laws 2007, ch. 292, § 4 and Laws 2007, ch. 293, § 4.

### **22-30-5. Statewide cyber academy; duties.**

The statewide cyber academy shall:

A. establish a distance learning course delivery system that is efficient and cost-effective and that uses a statewide service center and regional hosts to provide approved distance learning courses;

B. select regional hosts based on pre-existing experience and capacity to facilitate the delivery of distance educational programs, including public post-secondary educational institutions, regional education cooperatives and school districts;

C. provide technical and program support to regional hosts and local distance learning sites;



D. ensure that all distance learning courses offered by course providers are taught by highly qualified teachers or members of the faculty of accredited post-secondary educational institutions and meet state academic content and performance standards;

E. provide for reasonable and equitable means to allocate the costs of distance learning courses among the statewide cyber academy, the course providers and the school districts whose students are enrolled in a distance learning course;

F. give first priority to the delivery of distance learning courses for credit to distance learning students who have the greatest need because of geographic location or circumstances in which a school district may have difficulty delivering essential course instruction due to financial restraints or lack of highly qualified teachers; provided that in fiscal year 2008 the statewide cyber academy shall include, among those distance learning students who are determined to have the greatest need, distance learning students served by school districts that are members of regional education cooperatives three, eight and nine;

G. ensure that the statewide cyber academy's learning management system is compatible with school district and department data collection, analysis and reporting systems;

H. ensure that all deficiencies in the infrastructure, hardware and software in the statewide cyber academy are corrected in accordance with educational technology adequacy standards pursuant to Section 22-15A-11 NMSA 1978;

I. comply with all rules governing privacy and confidentiality of student records for secure record storage;

J. offer distance learning courses to distance learning students;

K. offer professional development via distance learning, using a learning management system;

L. assist the council on technology in education in its development of the statewide plan required by Section 22-15A-7 NMSA 1978, including a statewide cyber academy plan that addresses short- and long-range goals;

M. define and coordinate the roles and responsibilities of the collaborating agencies to establish a distance learning governance and accountability framework; and

N. conduct an annual evaluation and provide an annual report to the department and the legislature that includes a detailed report of expenditures; a description of services provided, including the number and location of local distance learning sites, public schools and distance learning students served; the courses offered; the credits generated by local distance learning sites; and student and teacher accountability reporting data.

**History:** Laws 2007, ch. 292, § 5 and Laws 2007, ch. 293, § 5.

### **22-30-6. Distance learning students.**

A. A student must be enrolled in a public school or a state-supported school and must have the permission of the student's local distance education learning site to enroll in a distance learning course. A distance learning student shall only be counted in the student's primary enrolling district for the purpose of determining the membership used to calculate a school district's state equalization guarantee. A student shall have only one primary enrolling district.

B. A home school student may participate in the statewide cyber academy by enrolling for one-half or more of the minimum course requirements approved by the department for public school students in the school district in which the student resides; or, if the student is enrolled for less than one-half of the minimum course requirements, the student may participate in the statewide cyber academy by paying not more than thirty-five percent of the current unit value per curricular unit.

C. A student enrolled in a nonpublic school may participate in the statewide cyber academy if the school in which the student is enrolled enters into a contract with the school district in which the nonpublic school is located.

D. A student who is detained in or committed to a juvenile detention facility or a facility for the long-term care and rehabilitation of delinquent children may participate in the statewide cyber academy if the facility in which the student is enrolled enters into a contract with the school district in which the facility is located.

**History:** Laws 2007, ch. 292, § 6 and Laws 2007, ch. 293, § 6.

### **22-30-7. Distance learning and computer-based courses.**

Public schools that offer distance learning and computer-based courses of study shall provide accompanying electronic formats that are usable by a person with a disability using assistive technology, and those formats shall be based on the American standard code for information interchange, hypertext markup language and extensible markup language.

**History:** Laws 2003, ch. 162, § 2; recompiled by Laws 2007, ch. 292, § 11 and Laws 2007, ch. 293, § 11.

### **22-30-8. Evaluation of regional education cooperative distance learning networks.**

A network developed by regional education cooperatives three, eight and nine shall serve as a regional host in fiscal year 2008. The statewide cyber academy shall provide

a preliminary report to the governor and the legislature by January 1, 2008 on the quality and cost-effectiveness of the provision of distance learning courses by the regional education cooperatives. At the end of fiscal year 2008, the statewide cyber academy shall prepare a final report on the quality and cost-effectiveness of services provided, including whether the services increased the rigor of school district and charter school curricula, and make recommendations for the expansion to other regional education cooperatives.

**History:** Laws 2007, ch. 292, § 7 and Laws 2007, ch. 293, § 7.

## **ARTICLE 31**

### **School Athletics Equity**

#### **22-31-1. Short title.**

This act [22-31-1 to 22-31-6 NMSA 1978] may be cited as the "School Athletics Equity Act".

**History:** Laws 2009, ch. 178 , § 1.

#### **22-31-2. Applicability; nondiscrimination.**

Except as provided in Subsections C, D and E of Section 22-31-3 NMSA 1978, the School Athletics Equity Act applies to each public school that has an athletics program for grades seven through twelve. Each public school shall operate its program in a manner that does not discriminate against students or staff on the basis of gender.

**History:** Laws 2009, ch. 178, § 2; 2012, ch. 24, § 1.

#### **22-31-3. Data reporting.**

The department shall collect annual data from public schools on their athletics programs. Each public school shall collect and submit the prior-year data required in this section in a format required by the department. The data submitted shall include:

A. by August 31, 2011, the following information pertaining to enrollment:

- (1) the total enrollment in each public school as an average of enrollment at the second and third reporting dates;
- (2) student enrollment by gender;
- (3) total number of students participating in athletics;
- (4) athletics participation by gender; and

(5) the number of boys' teams and girls' teams by sport and by competition level;

B. by August 31, 2011, the following information pertaining to athletic directors and coaches:

(1) the names and genders of each public school's athletic director and other athletic program staff;

(2) the names of each team's coaches, with their gender, job title and employment status, such as full-time, part-time, contract or volunteer, specified;

(3) the coach-to-athlete ratio for each team; and

(4) the stipend or other compensation for coaching paid to coaches of boys' teams and to coaches of girls' teams for each public school;

C. by August 31, 2012, an accounting of the funding sources that are used to support the school's athletics programs in grades nine through twelve and to which programs those funds are allocated; funding sources include state funding, federal funding, fundraising or booster clubs, game and concession receipts, gate receipts, cash or in-kind donations, grants and any other source;

D. by August 31, 2012, the following information regarding expenses for athletics programs in grades nine through twelve, including:

(1) any capital outlay expenditures for each public school's athletics programs; and

(2) the expenditures for each public school's athletics programs, including travel expenses such as transportation, meal allowances and overnight accommodations; equipment; uniforms; facilities; facilities improvements; publicity expenses; awards; banquets; insurance; and any other expenses incurred by each athletic program; and

E. by August 31, 2012, a statement of benefits and services to each athletic program in grades nine through twelve, including:

(1) replacement schedules for uniforms;

(2) practice and game schedules; and

(3) locker rooms, weight rooms and practice, competitive and training facilities.

**History:** Laws 2009, ch. 178, § 3; 2012, ch. 24, § 2.

#### **22-31-4. Disclosure to students and public.**

A. Each public school shall make its data available to the public, including all materials relied upon to compile the data. Each public school shall inform all students at the public school of their right to review the data.

B. The department shall publish the following information:

- (1) each public school's data; and
- (2) a list of public schools that did not submit fully completed data.

C. Each public school shall maintain its data and all materials relied upon to complete the data for at least three years. Each public school shall publish its data in a newspaper of general circulation in the state or make the data available on a publicly accessible web site.

**History:** Laws 2009, ch. 178, § 4.

#### **22-31-5. Assurance of compliance.**

A. Each public school shall submit an assurance of compliance with Title 9 to its local school board or governing body and provide a copy to the department no later than August 31 of each year. The assurance shall be signed by the superintendent of the district or the head administrator of the charter school. The department shall publish, in a newspaper of general circulation in the state or on a publicly accessible web site, a list of public schools that fail to submit the assurance of compliance with Title 9.

B. As used in this section, "Title 9" means federal Public Law 92-318, Title 9, of the Education Amendments of 1972, which is codified at 20 U.S.C. 1681, et seq., and the regulations promulgated pursuant to that act.

**History:** Laws 2009, ch. 178, § 5.

#### **22-31-6. Report to governor and legislature.**

Beginning December 1, 2011, the department shall submit annually a report on the School Athletics Equity Act to the governor and the legislature, including a summary of the data received from the public schools. The report shall include recommendations on how to increase gender equity in athletics in public schools. The department shall post the report on its web site.

**History:** Laws 2009, ch. 178, § 6.

# **ARTICLE 32**

## **Community Schools**

### **22-32-1. Short title.**

Chapter 22, Article 32 NMSA 1978 may be cited as the "Community Schools Act".

**History:** Laws 2013, ch. 16, § 1; 2017, ch. 66, § 1.

### **22-32-2. Purpose.**

The Community Schools Act is enacted to provide a strategy to organize the resources of a community to ensure student success while addressing the needs, including cultural and linguistic needs, of the whole student from early childhood programs and voluntary public pre-kindergarten through high school graduation; to partner federal, state and local and tribal governments with community-based organizations to improve the coordination, delivery, effectiveness and efficiency of services provided to students and families; and to coordinate resources, in order to align and leverage community resources and integrate funding streams.

**History:** Laws 2013, ch. 16, § 2; 2019, ch. 198, § 1.

### **22-32-3. Community schools initiatives; school improvement functions; requirements.**

A. A community schools initiative may be created in any public school in the state and may be created as a consortium of public schools.

B. A community schools initiative shall include the following:

(1) a lead partner agency, including a public or private agency or community-based organization, to help coordinate programs and services;

(2) an annual assessment that is a meaningful and collaborative inquiry process to develop a comprehensive understanding of local needs and assets and of community resources that is conducted by the community school coordinator and informed by the site-based leadership team and that relates to the effective alignment and delivery of programs and services within the community school; and

(3) the community school framework.

C. A lead partner agency for more than three public schools shall provide a full-time position that supports the community school coordinators at those public schools.

D. Where early childhood services and supports are indicated as a need, a community school site-based leadership team shall prioritize strong partnerships and integration with early childhood providers located both on and off the public school campus, including transportation to meet community needs.

**History:** Laws 2013, ch. 16, § 3; 2017, ch. 66, § 2; 2019, ch. 198, § 4.

#### **22-32-4. Community schools initiatives; indirect costs; grants; school district, group of public schools or public school duties; requirements.**

A. A school district shall bear any indirect costs associated with the establishment and implementation of a community school within the school district.

B. Subject to the availability of funding, grants for community schools initiatives are available to a school district, a group of public schools or a single public school that has demonstrated partnerships with the local community to establish, operate and sustain the community school framework and that meets department eligibility requirements.

C. The department shall promulgate rules and procedures to distribute funds through a competitive grant program developed and designed in partnership with the coalition for community schools.

D. Applications for grants for community schools initiatives shall be in the form prescribed by the department to support a continuum of community school development.

E. A school district, a group of public schools or a single public school that uses funds under this section to transform a public school into an evidence-based community schools initiative shall:

(1) use rigorous, transparent, equitable and evidence-based evaluation systems to assess the effectiveness of the implementation of the community schools initiative;

(2) provide ongoing, high-quality professional development that:

(a) aligns with the community school's instructional program;

(b) facilitates effective teaching and learning; and

(c) supports the implementation of school reform strategies; and

(3) give the community school sufficient operational flexibility in programming, curriculum, staffing, budgeting and scheduling so that the community school can fully implement a comprehensive community school framework designed to focus on

improving the community school climate, student academic achievement, attendance, behavior, family engagement and, for high schools, graduation rates and readiness for college or a career.

F. If a grantee receives funding to implement the community schools initiative at three or more public school sites, the school district shall employ a community schools director or manager to oversee and coordinate implementation across all of the covered school sites and ensure the employment of a community school coordinator by the lead partner agency at each school site.

G. A school district or public school may use Title 1 funds for its community schools initiative and the department may use Title 1 funds to invest in community schools statewide.

H. The department is authorized to provide planning, implementation and renewal grants to eligible applicants as follows:

(1) a one-year, one-time planning grant of up to fifty thousand dollars (\$50,000) for each eligible public school to conduct an initial school and community needs assessment, identify community supports and services through asset mapping and establish a site-based leadership team; and

(2) annual implementation grants of one hundred fifty thousand dollars (\$150,000) each year for a period of three years for each eligible school; and

(3) at the conclusion of the initial three-year grant period, applicants may apply for a renewal grant for one year in an amount determined by the department.

I. Eligible applicants shall provide satisfactory documentation required by the department that the applicant intends to apply for an implementation grant within six months of receiving a planning grant.

J. Eligible applicants shall submit an application for an implementation or renewal grant to the department for each eligible community school through the grant authorization process.

**History:** Laws 2013, ch. 16, § 4; 2017, ch. 66, § 3; 2019, ch. 198, § 5.

## **22-32-5. Definitions.**

As used in the Community Schools Act:

A. "community school" means a public school that partners with families and the community, including tribal partners, nonprofit community-based organizations and local businesses, to provide well-rounded educational opportunities and supports for student success through the implementation of a community school framework;



B. "community school coordinator" means a full-time person employed by the lead partner agency who works within a community school as part of the site-based leadership team;

C. "community school framework" means a set of strategies implemented in a community school that include culturally and linguistically responsive instruction, programs and services and restorative practices that focus on building and maintaining relationships;

D. "community schools initiative" means the implementation of the community school framework to provide comprehensive or targeted support and improvement activities pursuant to the federal Every Student Succeeds Act;

E. "elementary school" may include early childhood services and pre-kindergarten;

F. "lead partner agency" means the agency that employs the community school coordinator and works collaboratively with the community school coordinator, the school principal and the site-based leadership team to assess, plan and carry out the community school framework;

G. "site-based leadership team" means an interdisciplinary, school-based leadership team that includes the school principal, the community school coordinator, teachers, other school employees, families, community partners, tribal partners, nonprofit organizations, unions and neighboring community residents that guides collaborative planning, implementation and oversight; and

H. "statewide coalition" means a group of community schools, members of their site-based leadership teams, foundations, businesses and other organizations, including unions, cultural and linguistic experts and tribal leaders, who have joined together to advocate for and support the development of community schools across New Mexico in alignment with an evidence-based community school framework.

**History:** Laws 2019, ch. 198, § 2.

## **22-32-6. Community school framework; community school coordinator.**

A. The community school framework shall ensure the use of research- and evidence-based strategies and best practices that support students, families and communities in ensuring student success and shall include:

(1) integrated student supports that address non-academic and out-of-school barriers to learning through partnerships with social and health service agencies and providers that may include school-based or school-linked health care, case management services and family stability supports coordinated by a community school

coordinator and that are culturally and linguistically responsive to the needs of students and their families;

(2) expanded and enriched learning time and opportunities, including before-school, after-school, weekend, summer and year-round programs, that provide additional academic support, enrichment activities and other programs that may be offered in partnership with community-based organizations to enhance academic learning, social skills, emotional skills and life skills and are aligned with the school's curriculum;

(3) active family and community engagement that:

(a) values the experiences of people from diverse backgrounds as empowered partners in decision making and encourages partnerships with parents or caregivers to develop and promote a vision for student success;

(b) offers courses, activities and services for parents or caregivers and community members; and

(c) creates structures and opportunities for shared leadership; and

(4) collaborative leadership and practices that build a culture of professional learning, collective trust and shared responsibility using strategies that at a minimum include a site-based leadership team and a community school coordinator.

B. The community school framework may include:

(1) broader use of public school facilities in which school buildings become hubs for neighborhood events, activities, advocacy and civic life;

(2) community-based curriculum in which the content of instruction is centered on local knowledge, service learning and problem-solving around community issues; and

(3) public pre-kindergarten and other state and federally funded early childhood services that:

(a) support working families and help ensure that children come to kindergarten ready to learn;

(b) provide students and working parents or caregivers with full-day and after-school child care;

(c) provide high-quality pre-kindergarten programs that are aligned to early childhood professional and curricular early learning standards;

(d) provide health, vision, dental and other supports and services to children before school age; and

(e) include strong partnerships and alignment with early learning centers and child care providers that may include transportation or coordination to meet the broader early childhood community needs.

C. The lead partner agency shall employ a community school coordinator to:

- (1) implement the community school framework;
- (2) lead the needs and assets assessment;
- (3) facilitate communication between partners as a stakeholder- and community-driven approach to problem-solving;
- (4) guide data-informed continuous improvement;
- (5) manage data collection; and
- (6) align, leverage and coordinate resources for student and family success.

**History:** Laws 2019, ch. 198, § 3.

## **22-32-7. Coalition for community schools.**

The department shall appoint a "coalition for community schools" that is a statewide coalition of community school participants, which shall include local community school content experts, culturally responsive content experts and tribal leaders. The coalition shall provide advocacy, capacity building and technical assistance to ensure equitable distribution of resources to all school districts in New Mexico. The coalition shall assist the department in reviewing applications for grants and making recommendations for awards.

**History:** Laws 2019, ch. 198, § 6.

## **22-32-8. Community schools fund; created; accountability.**

A. The "community schools fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants and donations. The department shall administer the fund, and money in the fund is appropriated to the department to distribute grant awards to support the development and implementation of community schools initiatives.

B. The department shall ensure that the money expended from the community schools fund is used for the purposes stated in the Community Schools Act and shall not be used to correct for previous reductions in program services.

**History:** Laws 2019, ch. 198, § 7.

## **ARTICLE 33**

### **Emergency Medication In Schools**

#### **22-33-1. Short title.**

Sections 1 through 4 [22-33-1 to 22-33-4 NMSA 1978] of this act may be cited as the "Emergency Medication in Schools Act".

**History:** Laws 2014, ch. 50, § 1.

#### **22-33-2. Definitions.**

As used in the Emergency Medication in Schools Act:

A. "albuterol" includes albuterol or another inhaled bronchodilator, as recommended by the department of health, for the treatment of respiratory distress;

B. "albuterol aerosol canister" means a portable drug delivery device packaged with multiple premeasured doses of albuterol;

C. "anaphylaxis" or "anaphylactic reaction" means a sudden, severe and potentially life-threatening whole-body allergic reaction;

D. "emergency medication" means albuterol or epinephrine;

E. "epinephrine" includes epinephrine or another medication, as recommended by the department of health, used to treat anaphylaxis until the immediate arrival of emergency medical system responders;

F. "epinephrine auto-injector" means a portable, disposable drug delivery device that contains a premeasured single dose of epinephrine;

G. "governing body" includes a governing body of a private school;

H. "health care practitioner" means a person authorized by the state to prescribe emergency medication;

I. "respiratory distress" includes impaired oxygenation of the blood or impaired ventilation of the respiratory system;

J. "school" means a public school, charter school or private school;

K. "spacer" means a holding chamber that is used to optimize the delivery of albuterol to a person's lungs;

L. "stock supply" means an appropriate quantity of emergency medication, as recommended by the department of health; and

M. "trained personnel" means a school employee, agent or volunteer who has completed epinephrine administration training documented by the school nurse, school principal or school leader and approved by the department of health and who has been designated by the school principal or school leader to administer epinephrine on a voluntary basis outside of the scope of employment.

**History:** Laws 2014, ch. 50, § 2.

### **22-33-3. Emergency medication; albuterol; epinephrine; stock supply; storage.**

A. Each local school board or governing body may obtain a standing order for and may provide to schools within its jurisdiction a stock supply of albuterol aerosol canisters and spacers prescribed in the name of the school or school district by a health care practitioner employed or authorized by the department of health. Each school that receives a stock supply of albuterol aerosol canisters and spacers pursuant to this subsection shall store them:

- (1) in a secure location that is unlocked and readily accessible to a school nurse to administer albuterol;
- (2) pursuant to board of pharmacy regulations; and
- (3) within the manufacturer-recommended temperature range.

B. Each local school board or governing body may obtain a standing order for and may provide to schools within its jurisdiction a stock supply of standard-dose and pediatric-dose epinephrine auto-injectors prescribed in the name of each school by a health care practitioner employed or authorized by the department of health. Each school that receives a stock supply of standard-dose and pediatric-dose epinephrine auto-injectors pursuant to this subsection shall store them:

- (1) in a secure location that is unlocked and readily accessible to trained personnel;
- (2) pursuant to board of pharmacy regulations; and
- (3) within the manufacturer-recommended temperature range.

C. Each local school board or governing body shall dispose of expired emergency medication pursuant to board of pharmacy regulations or department of health rules.

D. A local school board or governing body or a school within its jurisdiction may accept gifts, grants, bequests and donations from any source to carry out the provisions of the Emergency Medication in Schools Act, including the acceptance of albuterol aerosol canisters and spacers and epinephrine auto-injectors from a manufacturer or wholesaler.

**History:** Laws 2014, ch. 50, § 3.

#### **22-33-4. Local school board or governing body; emergency medication; protocols and policies; training.**

A. Each local school board or governing body that provides to schools within its jurisdiction a stock supply of albuterol aerosol canisters and spacers shall develop policies, based on department of health rules and recommendations, for a school nurse to administer albuterol to a student who is perceived to be in respiratory distress, regardless of whether the student has been identified or documented as having asthma, has a prescription for albuterol or has supplied the school with albuterol. Such policies shall include procedures to:

- (1) recognize the symptoms of respiratory distress;
- (2) administer albuterol using a spacer;
- (3) call 911 to initiate an emergency medical system;
- (4) continue to monitor the student's condition and deliver any additional treatment indicated until an emergency medical system responder arrives;
- (5) notify the parent, guardian or legal custodian of the student having respiratory distress; and
- (6) take any other necessary actions based on training completed pursuant to the Emergency Medication in Schools Act.

B. Each local school board or governing body that provides to schools within its jurisdiction a stock supply of standard-dose and pediatric-dose epinephrine auto-injectors shall develop policies based on the protocols in this section and department of health rules and recommendations, publish the policies on its web site and receive documentation that trained personnel have received training to:

- (1) administer epinephrine to a student who is reasonably believed to be having an anaphylactic reaction, regardless of whether the student has been identified

or documented as having a severe allergy, has a prescription for epinephrine or has supplied the school with epinephrine auto-injectors; and

(2) follow an anaphylaxis action protocol to:

(a) recognize symptoms of anaphylaxis;

(b) administer an epinephrine auto-injector to a student reasonably believed to be having an anaphylactic reaction;

(c) call 911 to initiate an emergency medical system;

(d) continue to monitor the student's condition and deliver any additional treatment indicated until an emergency medical system responder arrives;

(e) notify the parent, guardian or legal custodian of the student having an anaphylactic reaction; and

(f) take any other necessary actions based on training completed pursuant to the Emergency Medication in Schools Act.

C. Each school that receives a stock supply of standard-dose and pediatric-dose epinephrine auto-injectors shall:

(1) develop and implement a plan to have one or more trained personnel on the school premises during operating hours; and

(2) follow an anaphylactic reaction prevention protocol, as recommended by the department of health, to minimize an allergic student's exposure to food allergies.

**History:** Laws 2014, ch. 50, § 4.

## **22-33-5. Medical cannabis; possession; storage; administration; restriction; exemptions.**

A. Except as provided pursuant to Subsection C of this section, local school boards and the governing bodies of charter schools shall adopt policies and procedures to authorize the possession, storage and administration of medical cannabis by parents and legal guardians, or by designated school personnel, to qualified students for use in school settings; provided that:

(1) a student shall not possess, store or self-administer medical cannabis in a school setting;

(2) a parent, legal guardian or designated school personnel shall not administer medical cannabis in a manner that creates disruption to the educational environment or causes other students to be exposed to medical cannabis;

(3) a written treatment plan for the administration of the medical cannabis is agreed to and signed by the principal or the principal's designee of the qualified student's school and the qualified student's parent or legal guardian; and

(4) before the first administration of medical cannabis in a school setting, the qualified student's parent or legal guardian completes and submits documentation as required by local school board or charter school rules that includes a:

(a) copy of the qualified student's written certification for use of medical cannabis pursuant to the Lynn and Erin Compassionate Use Act [26-2B-1 to 26-2B-7 NMSA 1978]; and

(b) written statement from the qualified student's parent or legal guardian releasing the school and school personnel from liability, except in cases of willful or wanton misconduct or disregard of the qualified student's treatment plan.

B. A school board or the governing body of a charter school may adopt policies that:

(1) restrict the types of designated school personnel who may administer medical cannabis to qualified students;

(2) establish reasonable parameters regarding the administration and use of medical cannabis and the school settings in which administration and use are authorized; and

(3) ban student possession, use, distribution, sale or being under the influence of a cannabis product in a manner that is inconsistent with the provisions of this subsection.

C. The provisions of Subsection A of this section shall not apply to a charter school or school district if:

(1) the charter school or school district reasonably determines that it would lose, or has lost, federal funding as a result of implementing the provisions of Subsection A of this section; and

(2) the determination is appealable by any parent to the secretary, based on rules established by the department.

D. A public school, charter school or school district shall not:



(1) discipline a student who is a qualified student on the basis that the student requires medical cannabis as a reasonable accommodation necessary for the student to attend school;

(2) deny eligibility to attend school to a qualified student on the basis that the qualified student requires medical cannabis as a reasonable accommodation necessary for the student to attend school or a school-sponsored activity; or

(3) discipline a school employee who refuses to administer medical cannabis.

E. As used in this section:

(1) "certifying practitioner" means a health care practitioner who issues a written certification to a qualified student;

(2) "designated school personnel" means a school employee whom a public school, charter school or school district authorizes to possess, store and administer medical cannabis to a qualified student in accordance with the provisions of this section;

(3) "medical cannabis" means cannabis that is:

(a) authorized for use by qualified patients in accordance with the provisions of the Lynn and Erin Compassionate Use Act; and

(b) in a form that is not an aerosol and cannot be smoked or inhaled in particulate form as a vapor or by burning;

(4) "qualified student" means a student who demonstrates evidence to the school district that the student is authorized as a qualified patient pursuant to the Lynn and Erin Compassionate Use Act to carry and use medical cannabis in accordance with the provisions of that act;

(5) "school" means a public school or a charter school;

(6) "school setting" means any of the following locations during a school day:

(a) a school building;

(b) a school bus used within the state during, in transit to or in transit from a school-sponsored activity;

(c) a public vehicle used within the state during, in transit to or in transit from a school-sponsored activity in the state; or

(d) a public site in the state where a school-sponsored activity takes place;  
and

(7) "written certification" means a statement in a qualified student's medical records or a statement signed by a qualified student's certifying practitioner that, in the certifying practitioner's professional opinion, the qualified student has a debilitating medical condition and the certifying practitioner believes that the potential health benefits of the medical use of cannabis would likely outweigh the health risks for the qualified student. A written certification is not valid for more than one year from the date of issuance.

**History:** Laws 2019, ch. 247, § 1; 2019, ch. 261, § 1.

## **ARTICLE 34**

### **Student Diabetes Management**

#### **22-34-1. Short title.**

This act [22-34-1 to 22-34-9 NMSA 1978] may be cited as the "Student Diabetes Management Act".

**History:** Laws 2019, ch. 22, § 1.

#### **22-34-2. Definitions.**

As used in the Student Diabetes Management Act:

A. "diabetes" means type one or type two diabetes mellitus; complications related to diabetes mellitus; or prediabetes;

B. "diabetes care personnel" means a school employee who volunteers to be trained and is trained in accordance with Section 3 of the Student Diabetes Management Act;

C. "diabetes medical management plan" means a document that a student's personal health care practitioner and parent or guardian develops that sets out the health services that the student needs at school and that is signed by the student's health care practitioner and parent or guardian;

D. "governing body" means:

- (1) the school board of a school district;
- (2) the entity that governs a state-chartered or locally chartered charter school; or
- (3) the entity that governs a private school;

E. "health care practitioner" means a person licensed to provide health care in the ordinary course of business;

F. "school" means an elementary, secondary, middle, junior high or high school or any combination of those, including a public school, state-chartered or locally chartered charter school or private school that students attend in person;

G. "school employee" means a person employed by a school, a person employed by the department of health or a local health department or by the public education department who is assigned to a school or a contractor designated to provide diabetes management services at a school pursuant to the Student Diabetes Management Act; and

H. "school nurse" means a person who:

(1) is a nurse who is authorized pursuant to the Nursing Practice Act to practice as a professional registered nurse;

(2) is licensed by the public education department and the board of nursing as a school nurse; and

(3) provides services as a school nurse at a school.

**History:** Laws 2019, ch. 22, § 2.

### **22-34-3. Diabetes care; diabetes care personnel; training; immunity.**

A. By December 31, 2019 and in consultation with the American diabetes association, the department of health, the New Mexico school nurse's association and the juvenile diabetes research foundation, the secretary of public education shall adopt and promulgate rules for the training of school employees for the care of students with diabetes. These rules shall require each governing body to ensure that annual diabetes training programs are provided for all school nurses and diabetes care personnel. At a minimum, the training guidelines shall address:

(1) recognition and treatment of hypoglycemia and hyperglycemia;

(2) understanding the appropriate actions to take when blood glucose levels are outside of the target ranges indicated by a student's diabetes medical management plan;

(3) understanding health care practitioner instructions regarding diabetes medication drug dosage, frequency and manner of administration;

(4) performance of finger stick blood glucose testing and ketone testing and recording of results;

- (5) the administration of glucagon and insulin and the recording of results;
- (6) understanding how to administer glucagon and insulin through the insulin delivery system;
- (7) recognizing diabetes-related complications that require emergency assistance; and
- (8) as relates to students with diabetes, understanding recommended schedules and food intake for meals and snacks, the effect of physical activity upon blood glucose levels and actions to be implemented in the case of schedule disruption.

B. A governing body shall not require that diabetes care personnel be health care practitioners.

C. Each governing body shall ensure that the training established pursuant to Subsection A of this section is provided to a minimum of two school employees at each school attended by a student with diabetes. If at any time fewer than two school employees are available to be trained at a school, the principal or other school administrator shall distribute to all staff a written notice stating that the school is seeking volunteers to serve as diabetes care personnel. The notice shall inform staff of the following:

- (1) the school is required to provide diabetes care to one or more students with diabetes and is seeking personnel willing to be trained to provide that care;
- (2) the tasks to be performed by diabetes care personnel;
- (3) that participation is voluntary and no school, school district or governing body will take action against any staff member who does not volunteer to be designated;
- (4) that training will be provided to employees who volunteer to provide care; and
- (5) the identity of the person whom staff should contact in order to volunteer to be diabetes care personnel.

D. The training required pursuant to Subsection A of this section shall be provided by:

- (1) a school nurse if the school has a school nurse; or
- (2) a health care practitioner with expertise in diabetes.

E. Each governing body shall ensure that the following training is provided on an annual basis to all school personnel who have primary responsibility for supervising a student with diabetes during some portion of the school day and to bus drivers responsible for the transportation of a student with diabetes:

- (1) recognition of hypoglycemia;
- (2) recognition of hyperglycemia; and
- (3) actions to take in response to diabetes related emergency situations.

**History:** Laws 2019, ch. 22, § 3.

#### **22-34-4. Diabetes medical management plan.**

A. The parent or guardian of each student with diabetes who seeks diabetes care while at school shall submit to the school a diabetes medical management plan.

B. Each school that receives a diabetes medical management plan shall review and implement the diabetes medical management plan.

**History:** Laws 2019, ch. 22, § 4.

#### **22-34-5. School diabetes care.**

A. A governing body shall ensure that all students with diabetes receive appropriate and needed diabetes care as specified in students' diabetes medical management plans. In accordance with the request of a parent or guardian of a student with diabetes and the student's diabetes medical management plan, a school nurse or, in the absence of a school nurse, diabetes care personnel shall perform diabetes care functions that shall include, at a minimum:

- (1) checking and recording the student's blood glucose levels and ketone levels or assisting the student with checking and recording these levels;
- (2) responding to blood glucose levels that are outside of the student's target range;
- (3) administering glucagon and other emergency treatments as prescribed;
- (4) administering insulin or assisting a student in administering insulin through the insulin delivery system that the student uses;
- (5) providing oral diabetes medications; and
- (6) following instructions regarding meals, snacks and physical activity.

B. A school nurse or at least one diabetes care personnel shall be at each school where a student with diabetes is attending and shall be available to provide care to each student with diabetes as provided pursuant to Subsection A of this section during regular school hours and during all school-sponsored activities, trips, extended offsite excursions and extracurricular activities in which a student with diabetes is a participant and on buses where the bus driver has not been trained in diabetes care and a student with diabetes is a passenger.

**History:** Laws 2019, ch. 22, § 5.

## **22-34-6. Application of other laws.**

A. The provisions of Subsection A of Section 5 [22-34-5 NMSA 1978] of the Student Diabetes Management Act shall not constitute the practice of nursing and shall be exempted from all applicable statutory or regulatory provisions that restrict what activities can be delegated to or performed by a person who is not a health care practitioner.

B. Nothing in the Student Diabetes Management Act shall diminish the rights of eligible students or the obligations of school districts under the federal Individuals with Disabilities Education Act, Section 504 of the federal Rehabilitation Act or the federal Americans with Disabilities Act of 1990.

**History:** Laws 2019, ch. 22, § 6.

## **22-34-7. School assignment; diabetes care provision.**

A. Students with diabetes shall attend the school they would otherwise attend if they did not have diabetes, and the diabetes care specified in Subsection A of Section 5 [22-34-5 NMSA 1978] of the Student Diabetes Management Act shall be provided at the student's school. A governing body shall not restrict a student who has diabetes from attending any school on the basis that the student has diabetes, that the school does not have a full-time school nurse or that the school does not have trained diabetes care personnel.

B. A school shall not require or pressure parents or guardians to provide diabetes care for a student with diabetes at school or school-related activities.

**History:** Laws 2019, ch. 22, § 7.

## **22-34-8. Diabetes self-management.**

Upon the written request of a parent or guardian of a student with diabetes and authorization by the student's diabetes medical management plan, a student with diabetes shall be permitted to perform blood glucose checks, administer insulin through the insulin delivery system that the student uses, treat hypoglycemia and hyperglycemia

and otherwise attend to the care and management of the student's diabetes in the classroom, in any area of the school or school grounds and at any school-related activity. A student with diabetes shall be permitted to possess on the student's person at all times all necessary supplies and equipment to perform these monitoring and treatment functions. If the student's parent or guardian or the student requests, the student shall have access to a private area for performing diabetes care tasks.

**History:** Laws 2019, ch. 22, § 8.

## **22-34-9. Enforcement.**

A. Governing bodies shall provide a report to the public education department by October 15, 2020 and by each October 15 thereafter. The report shall:

- (1) state how many students with diabetes are attending schools in each school district; and
- (2) provide documentation regarding the compliance of the school district with the provisions of the Student Diabetes Management Act.

B. By December 31, 2019, the secretary of public education shall establish by rule the format of the report required pursuant to Subsection A of this section and the criteria for documentation.

C. The public education department shall publish each report required pursuant to Subsection A of this section on its website by November 15, 2020 and by each November 15 thereafter.

D. Students with diabetes and their parents or guardians may bring an administrative complaint with the public education department against any school or governing body that fails to meet its obligations to train school personnel to provide diabetes care as provided in Section 3 [22-34-3 NMSA 1978] of the Student Diabetes Management Act, to provide the diabetes care described in Section 5 [22-34-5 NMSA 1978] of the Student Diabetes Management Act or to permit self-management of diabetes as outlined in Section 8 [22-34-8 NMSA 1978] of the Student Diabetes Management Act. This right of action shall not alter or limit the remedies available under any other state or federal law, including Section 504 of the federal Rehabilitation Act, the federal Americans with Disabilities Act of 1990 and the federal Individuals with Disabilities Education Act.

**History:** Laws 2019, ch. 22, § 9.

## **ARTICLE 35**

### **Safe Schools for All Students**

## **22-35-1. Short title.**

This act [22-35-1 to 22-35-5 NMSA 1978] may be cited as the "Safe Schools for All Students Act".

**History:** Laws 2019, ch. 181, § 1.

## **22-35-2. Definitions.**

As used in the Safe Schools for All Students Act:

A. "bullying" means any severe, pervasive or persistent act or conduct that targets a student, whether physically, electronically or verbally, and that:

(1) may be based on a student's actual or perceived race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, physical or cognitive disability or any other distinguishing characteristic; or on an association with a person, or group with any person, with one or more of the actual or perceived distinguishing characteristics; and

(2) can be reasonably predicted to:

(a) place a student in reasonable fear of physical harm to the student's person or property;

(b) cause a substantial detrimental effect on a student's physical or mental health;

(c) substantially interfere with a student's academic performance or attendance; or

(d) substantially interfere with a student's ability to participate in or benefit from the services, activities or privileges provided by an agency, educational institution or grantee;

B. "cyberbullying" means any bullying that takes place through electronic communication;

C. "electronic communication" means a communication transmitted by means of an electronic device, including a telephone, cellular phone, computer, electronic tablet, pager or video or audio recording;

D. "gender identity" means a student's self-perception, or perception of that student by another, of the student's identity as a male or female based upon the student's appearance, behavior or physical characteristics that are in accord with or opposed to the student's physical anatomy, chromosomal sex or sex at birth;



E. "local school board" includes the governing body of a charter school;

F. "physical or cognitive disability" means a physical or cognitive impairment that substantially limits one or more of a student's major life activities;

G. "progressive discipline" means disciplinary action other than suspension or expulsion from school that is designed to correct and address the basic causes of a student's specific misbehavior while retaining the student in class or in school, or restorative school practices to repair the harm done to relationships and other students from the student's misbehavior, and may include:

- (1) meeting with the student and the student's parents;
- (2) reflective activities, such as requiring the student to write an essay about the student's misbehavior;
- (3) counseling;
- (4) anger management;
- (5) health counseling or intervention;
- (6) mental health counseling;
- (7) participation in skill-building and resolution activities, such as social-emotional cognitive skills building, resolution circles and restorative conferencing;
- (8) community service; and
- (9) in-school detention or suspension, which may take place during lunchtime, after school or during weekends; and

H. "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

**History:** Laws 2019, ch. 181, § 2.

### **22-35-3. Bullying prevention policies; adoption and enforcement.**

A. By January 1, 2020, each local school board shall adopt and enforce policies to:

- (1) prevent bullying:
  - (a) on its property, including electronic communication on or with the use of its property;

(b) at sponsored functions; and

(c) on its to-and-from-school transportation or any school-sponsored transportation; and

(2) prohibit electronic communication directed at a student, that is published with the intent that it be seen by or disclosed to that student and that substantially interferes with the student's ability to participate in or benefit from the services, activities or privileges provided by the public school.

B. Each local school board shall control the content of its policy; provided that the policy includes:

(1) the definitions as set forth in the Safe Schools for All Students Act;

(2) a statement prohibiting bullying;

(3) a statement prohibiting retaliation against persons who report or witness incidents of bullying;

(4) a list of consequences, including progressive discipline approaches that can result from an identified incident of bullying that are designed to:

(a) appropriately correct the bullying behavior;

(b) prevent another occurrence of bullying or retaliation;

(c) protect the target of the bullying;

(d) be flexible so that, in application, the consequences can be unique to the individual incident and varied in method and severity based on: 1) the nature of the incident; 2) the developmental age of the student who is bullying; and 3) any history of problem behavior from the student who is bullying; and

(e) for cyberbullying incidents, use the least restrictive means necessary to address the interference with the student's ability to participate in or benefit from the services, activities or privileges provided by the school;

(5) a procedure for reporting bullying or retaliation for reporting an act of bullying, including:

(a) a flexible reporting system that allows for reporting orally and in the student's preferred language;

(b) a method for reporting bullying anonymously; provided that no formal disciplinary measures shall be taken solely on the basis of an anonymous report; and

(c) a method for parents to file written reports of suspected bullying; and

(6) a procedure for prompt investigation of reports of violations of the policy and of complaints of bullying or retaliation, including:

(a) designation of a school administrator to investigate or supervise the investigation of all reports of bullying and to ensure that such investigation is completed promptly after the receipt of any report made under the Safe Schools for All Students Act;

(b) a procedure for notification of the parents of the student alleged to have committed an act of bullying and the parents of the students targeted by the alleged act; provided that if the administrator believes, in the administrator's professional capacity, that notifying the parents would endanger the health or well-being of a student, the administrator may delay such notification as appropriate;

(c) a benchmark that school employees who witness acts of bullying or receive reports of bullying notify the designated administrator not later than two days after the school employee witnesses or receives a report of bullying;

(d) an appeal process for a student accused of bullying or a student who is the target of bullying who is not satisfied with the outcome of the initial investigation; and

(e) development of a student safety support plan for students who are targets of bullying that addresses safety measures the school will take to protect targeted students against further acts of bullying.

C. Each local school board shall include bullying prevention policies and procedures for reporting bullying in student handbooks using developmentally and culturally appropriate language. Policies shall be produced and disseminated in appropriate languages for any school district in which a substantial portion of the student population speaks a language other than English at home.

D. Each public school shall document reports and investigations of bullying and shall maintain those records for no less than four years.

E. Each local school board shall establish procedures for public schools to report aggregate incidents of bullying and incidents of harassment under any applicable federal or state law, along with responses to these incidents, and report this information annually to the department.

**History:** Laws 2019, ch. 181, § 3.

## **22-35-4. Bullying prevention programs establishment.**

A. Following adoption of a bullying prevention policy, each public school shall:

(1) establish an annual bullying prevention program for students included in New Mexico's health education content standards with benchmarks and performance standards;

(2) provide annual training on bullying prevention to all employees and volunteers who have significant contact with students; and

(3) incorporate information on the bullying prevention policy into new employee training.

B. Each school district and public school shall develop a plan for the way in which the policy is to be publicized, including:

(1) making each school district's anti-bullying policy, and developmentally, culturally and linguistically appropriate variants of the policy, available on public websites;

(2) identifying a point of contact for bullying-related concerns; and

(3) informing parents and students about the policy at least annually through student handbooks and other resources.

**History:** Laws 2019, ch. 181, § 4.

## **22-35-5. Department duties; school district and charter school report cards.**

A. The department shall:

(1) issue guidance for bullying prevention programs and policies in accordance with the Safe Schools for All Students Act; and

(2) within one hundred twenty days of the effective date of the Safe Schools for All Students Act:

(a) promulgate rules for a model policy for local school boards on bullying prevention in accordance with that act, as well as any developmentally, culturally or linguistically appropriate variants of the policy;

(b) provide guidance to local school boards relating to effective forms of progressive discipline to reduce bullying and school violence; and

(c) provide guidance to local school boards on effective bullying prevention programs to reduce bullying and school violence.

B. At the same time as or as part of the annual accountability report, each school district and charter school shall report on the status of its implementation of the provisions of the Safe Schools for All Students Act, including the aggregate number of incidents of bullying in the state, the aggregate number of incidents of harassment under any applicable federal or state laws, the aggregate number of responsive actions taken by public schools by type of action, a tabulation of the number of incidents associated with each distinguishing characteristic defined in the Safe Schools for All Students Act, the department's evaluation of the sufficiency of funding for bullying prevention programs and any recommendations for policy or programmatic change to improve the addressing of bullying issues in the state.

**History:** Laws 2019, ch. 181, § 5.