# 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.

**ANNOTATIONS**

**Cross references.** — For constitutional provisions relating to education, *see* N.M. Const., art. XII, § 1 et seq.

For legislative school study committee, *see* 2-10-1 NMSA 1978 et seq.

**Compiler's notes.** — Laws 2003, ch. 143, § 3 would have repealed Article 1 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of this article of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution, which was approved at a special election held September 23, 2003. However, the repeal of Article 1 did not take effect, as prior to the July 1, 2004 effective date of the repeal of this article, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**The 2003 amendment,** effective April 4, 2003, substituted "22 NMSA 1978" for "77 NMSA 1953" following "Chapter" at the beginning of the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 68 Am. Jur. 2d Schools §§ 1 to 294.

Use of public school premises for religious purposes during nonschool time, 79 A.L.R.2d 1148.

Public payment of tuition, scholarship, or the like, as respects sectarian school, 81 A.L.R.2d 1309.

Use of school property for other than public school or religious purposes. 94 A.L.R.2d 1274.

De facto segregation of races in public schools, 11 A.L.R.3d 780.

Liability of school or school personnel in connection with suicide of student, 17 A.L.R.5th 179.

Circumstances warranting judicial determination or declaration of unitary status with regard to schools operating under court-ordered or court-supervised desegregation plans and the effects of such declarations, 94 A.L.R. Fed. 667.

Constitutionality of regulation or policy governing prayer, meditation, or "moment of silence" in public schools, 110 A.L.R. Fed. 211.

78 C.J.S. Schools and School Districts § 3 et seq.; 78A C.J.S. Schools and School Districts § 478 et seq.

## 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.

**ANNOTATIONS**

## 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.

**ANNOTATIONS**

**The 2015 amendment,** effective June 19, 2015, removed references to adequate yearly progress; and in Subsection D, Paragraph (4), after "make", deleted "adequately yearly".

**The 2007 amendment,** added Paragraph (5) of Subsection B and Paragraph (2) of Subsection D. Laws 2007, ch. 307, § 1 enacted identical amendments to this section.

## 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 and who has not received a high school diploma or its equivalent. A maximum age of twenty-one shall be used for a person who is classified as special education membership as defined in Section 22-8-21 NMSA 1978 or as a resident of a state institution;

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 teacher or instructional support provider; 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.

## ANNOTATIONS

**Repeals.** — Laws 2004, ch. 27, § 29 repealed Laws 2003, ch. 143, § 2, which would have repealed this section.

**Cross references.** — For the public education commission and public education department, *see* 9-24-1 NMSA 1978.

**2015 Multiple Amendments.** — Laws 2015, ch. 58, § 2 and Laws 2015, ch. 108, § 1 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2015, ch. 108, § 1, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2015, ch. 58, § 2 and Laws 2015, ch. 108, § 1 are described below. To view the session laws in their entirety, *see* the 2015 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2015, ch. 58, § 2 removed the definition of "adequate yearly progress" and Laws 2015, ch. 108, § 1, added the definition for "charter school" and included a charter school head administrator within the definition of "school administrator".

Laws 2015, ch. 108, § 1, effective July 1, 2015, added a new Subsection B, which defined "charter school"; and in Subsection N, after "principals", deleted "and", and after "district administrators", added "and charter school head administrators".

Laws 2015, ch. 58, § 2, effective June 19, 2015, deleted Subsection B, relating to "adequate yearly progress", and redesignated the succeeding subsections accordingly.

**The 2010 amendment,** effective May 19, 2010, deleted former Subsection E, which defined "forty-day report" to mean the report of qualified student membership and students eligible to be qualified students that are enrolled in private school or home school for the first forty days of school.

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day

report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

**The 2009 amendment,** effective June 19, 2009, in Subsection G, after "recreational therapist", added "marriage and family therapist".

**The 2007 amendment,** effective June 15, 2007, added Subsection A.

**The 2005 amendment,** effective April 7, 2005, changed the statutory reference in Subsection O from Section 22-8-2 NMSA 1978 to Section 22-8-21 NMSA 1978; changed the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired in Subsection W; and provided in Subsection Z that a teacher is a person whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers.

**The 2004 amendment,** effective May 19, 2004, amended Subsection A to change state board to department; deleted the definition of "commercial advertiser" in Subsection B and substituted in its place a definition of "commission, amended Subsection C to change state department of public education to public education department, deleted "librarian" from the definition of "instructional support provider" in Subsection F, inserted new Subsection V for the definition of "secretary" and redesignated Subsections V to CC as Subsections W to BB.

## 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.

**ANNOTATIONS**

**The 2014 amendment,** effective July 1, 2014, required that home school registration forms be submitted on or before August 1; and in Subsection A, deleted "within thirty days of its establishment" and added "submit a home school registration form made available by the department and posted on the department's web site to", after "web site to notify the", deleted "state superintendent" and added "department within thirty days", after "establishment of the home school", deleted "within thirty days of its establishment", after "home school and", added "to", after "and to notify the", deleted "state superintendent in writing" and added "department", after "on or before", deleted "April 1" and added "August 1", after "year of operation of the", added "home", and after "operation of the home school", deleted "district from which the home school is drawing students".

**The 2001 amendment,** effective June 15, 2001, in Subsection A, inserted "within thirty days of its establishment" at the beginning of the section, inserted "state" preceding both instances of "superintendent", deleted "of schools of the school district in which the person is a resident" preceding "of the establishment of a home school", inserted "in writing" following the second instance of "superintendent", inserted "of the school district from which the home school is drawing students" at the end of the subsection; in Subsection B, deleted the requirement to maintain records of student attendance, deleted the requirement that records be given to the superintendent, and inserted "or a waiver of that requirement"; and deleted Subsection D, concerning achievement test requirements.

**The 1993 amendment,** rewrote Subsection C.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

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

A. Except as provided by Section 24-5-2 NMSA 1978, 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. Any 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 Compulsory School Attendance Law [Chapter 22, Article 12 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 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 enrolled in a school rated as "F" for two of the prior four years pursuant to the A-B-C-D-F Schools Rating Act [22-2E-1 through 22-2E-4 NMSA 1978];

(c) third, students who previously attended the public school; and

(d) fourth, 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 third and fourth priorities of enrollment set forth in Subparagraphs (c) and (d) 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 through fourth priority, 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.

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.

## ANNOTATIONS

**Cross references.** — For constitutional provision relating to uniform system of free public schools, *see* N.M. Const., art. XII, § 1.

For compulsory school attendance, *see* N.M. Const., art. XII, § 5 and 22-12-1 NMSA 1978 et seq.

**The 2015 amendment,** effective June 19, 2015, provided a letter rating for a reference to a school that needs improvement or a school subject to corrective action; in Subsection E, Paragraph (3)(b), after "enrolled in a school", deleted "ranked as a school that needs improvement or a school subject to corrective action" and added "rated as ‘F’ for two of the prior four years pursuant to the A-B-C-D-F Schools Rating Act".

**The 2011 amendment,** effective June 17 2011, required local school boards to adopt rules that assign first enrollment priority to students who lived in the attendance area before a parent on active military duty was deployed and who was required to move outside the attendance area for custodial care because of the deployment.

**The 2003 amendment,** effective April 4, 2003, substituted "assessment and accountability system" for "and local school district testing programs as determined by the state superintendent or both" at the end of Subsection D; substituted "students" for

"persons" following "first," near the beginning of Subsection E(3)(a); rewrote former Subsections E(3)(b) and E(3)(c) to create present Subsections E(3)(b), E(3)(c) and E(3)(d); in Subsection F deleted "second and" preceding "third" near the middle, inserted "and fourth" following "third" near the middle, deleted "(b) and" following "Subparagraphs" near the end and inserted "and (d)" following "(c)" near the end; and in Subsection G substituted "first- and second-priority" for "first-priority" near the beginning and substituted "through fourth" for "or third" following "in the second" near the middle.

**The 2001 amendment,** effective June 15, 2001, inserted "school" preceding "district" throughout the section; added Paragraph E(5) and Subsection F, renumbering the remaining Subsections accordingly; in Subsection G, substituted "Subsections E and F" for "Subsection E" and inserted "public" preceding "school" in the second sentence.

**The 2000 amendment,** effective March 7, 2000, made the provisions of this act applicable to only non-charter, public schools.

**The 1998 amendment,** effective May 20, 1998, added "open enrollment" to the end of the section heading; substituted "pursuant to provisions of" for "under" preceding "Subsection A" in Subsections B and C; in Subsection D, substituted "In adopting and promulgating regulations" for "Local school boards shall promulgate regulations concerning the enrollment and re-enrollment of all persons in adopting and promulgating discriminatory regulations"; and added Subsection E.

**The 1997 amendment,** effective June 20, 1997, added the second sentence in Subsection D.

## 22-1-5. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1986, ch. 33, § 10 recompiled 22-1-5 NMSA 1978, relating to school employees, reporting drug and alcohol use, and release from liability, as 22-5-4.4 NMSA 1978, effective May 21, 1986.

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-1-6 NMSA 1978, as enacted by Laws 1989, ch. 308, § 1, relating to requirements of annual school district accountability report, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

## 22-1-6.1. Repealed.

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

**ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 27, § 29 repealed Section 22-1-6.1 NMSA 1978, as enacted by Laws 2003, ch. 18, § 1, relating to high school graduation rates, effective May 19, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com*.

## 22-1-7. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 54 recompiled and amended 22-1-7 NMSA 1978 as 22-10A-33 NMSA 1978, effective April 4, 2003.

Laws 2017, ch. 65, § 4 repealed 22-10A-33 NMSA 1978, effective June 16, 2017. For provisions of former section, *see* the 2016 NMSA 1978 on *NMOneSource.com*.

## 22-1-8. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-1-8 NMSA 1978, as 22-21-2 NMSA 1978, effective April 4, 2003.

## 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.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, replaced the term "general education development certificate" with "high school equivalency credential" in the provision relating to high school diplomas for resident military dependents; and in Paragraph (4) of Subsection A, after "received a diploma", deleted "general educational development certificate" and added "high school equivalency credential".

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2014, ch. 46 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 21, 2014, 90 days after the adjournment of the legislature.

**Cross references.** — For the Indian education advisory council, *see* 22-23A-6 NMSA 1978.

For the Hispanic education advisory council, *see* 22-23B-5 NMSA 1978.

## 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.

**ANNOTATIONS**

**The 2016 amendment,** effective May 18, 2016, allowed the secretary of the public education department to waive certain requirements of the Public School Code for the 2016-2017 through 2018-2019 school year to meet funding constraints; in the first sentence, after "flexibility to meet", deleted "increased" and added "decreased", after "state", deleted "educational requirements" and added "support"; in the second sentence, after "For the", deleted "2013-2014" and added "2016-2017 through 2018-2019", and after "school", deleted "year" and added "years".

**2013 Multiple Amendments.** — Laws 2013, ch. 203, § 1, effective June 14, 2013, provided flexibility to school districts to meet state fiscal solvency requirements; in the second sentence, after "2012-2013", added "2013-2014".

Laws 2013, ch. 187, § 1, effective June 14, 2013, in the first sentence, after "legislature finds that", added "funding constraints require", after "school districts", deleted "need" and added "to have financial", before "state", added "increased" and after "state",

deleted "fiscal solvency" added "educational"; and in the second sentence, changed "2012-2013" to "2013-2014 and 2014-2015".

**The 2012 amendment,** effective May 16, 2012, permitted the secretary to waive statutory and regulatory requirements for the school year 2012-2013; and in the second sentence, after "For the", deleted "2009-2010 through 2011-2012" and added "2012-2013"; and after "school", deleted "years" and added "year".

## 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.

**ANNOTATIONS**

**Cross references.** — For the public education department, *see* 9-24-4 NMSA 1978.

For the higher education department, *see* 9-25-4 NMSA 1978.

For the secretary of public education, *see* 9-24-5 NMSA 1978.

For the secretary of higher education, *see* 9-25-5 NMSA 1978.

For the secretary of children youth and families, *see* 9-2A-6 NMSA 1978.

For the secretary of workforce solutions, *see* 9-26-5 NMSA 1978.

For the secretary of economic development, *see* 9-15-5 NMSA 1978.

For the secretary of information technology, *see* 9-27-5 NMSA 1978.

For the secretary of human services, *see* 9-8-5 NMSA 1978.

For the secretary of health, *see* 9-7-5 NMSA 1978.

For the office of education accountability, *see* 9-6-15 NMSA 1978.

For the public school facilities authority, *see* 22-24-9 NMSA 1978.

For the legislative education study committee, *see* 2-10-1 NMSA 1978.

For the legislative finance committee, *see* 2-5-1 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, replaced the term "general education development certificate" with "high school equivalency credential" in the provision relating to the content of the educational data system data report; in Subsection J, after "Subsection K", added "of this section"; and in Paragraph (11) of Subsection K, deleted "general educational development certificate" and added "high school equivalency credential".

# 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.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1990 (1st S.S.), ch. 9, § 10 repealed former 22-2-1 NMSA 1978, as amended by Laws 1990, ch. 52, § 1, and enacted a new section, effective June 18, 1990.

**Cross references.** — For constitutional provision relating to state board of education, *see* N.M. Const., art. XII, § 6.

For the public education department and commission, *see* 9-24-5, 9-24-10 and 9-24-15 NMSA 1978.

**The 2004 amendment,** effective May 19, 2004, amended Subsection A to change "state board" to "secretary", amended Subsection B to change "state board" to "department", added a new Subparagraph (2) providing for the power of the department to enter into contracts and redesignated former Subsections C and D as Paragraphs (3) and (4) of Subsection B.

**The 1993 amendment,** effective July 1, 1993, deleted former Subsection D, pertaining to approval by the state board of a local school board's request to waive provisions of the Public School Code relating to length of school day, staffing patterns, subject areas or the purchase of instructional materials; redesignated former Subsection E as Subsection D; and rewrote present Subsection D, which formerly authorized the state board to waive provisions of the Public School Code relating to staffing patterns, class and teaching leads, subject areas, curriculum, testing, instructional time or the purchase of instructional materials.

**The 1992 amendment,** effective May 20, 1992, inserted "or the purchase of instructional materials" in the first sentence of Subsection D and near the middle of Subsection E; and made minor stylistic changes throughout the section.

**Authority of secretary of public education to revoke teachers' licenses.** — Article XII, Section 6 of the New Mexico Constitution, the Uniform Licensing Act, Sections 61-1-1 et seq. NMSA 1978, the Public Education Department Act, Chapter 9, Article 24 NMSA 1978, the Public School Code, Chapter 22 NMSA 1978, and the School Personnel Act, Chapter 22, Article 10A NMSA 1978, do not preclude the secretary of public education from having exclusive authority to make the final decision to revoke a teacher's license. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

**Secretary's authority to disregard hearing officer's credibility determination.** — Where plaintiff was charged with engaging in inappropriate and improper sexual behavior with a fourteen-year-old victim at a charter school; a hearing officer found that the charges against plaintiff had not been proven by a preponderance of the evidence and recommended that the disciplinary action against plaintiff be dismissed; the secretary of public education reviewed the record before the hearing officer, adopted some of the hearing officer's recommendations and rejected others, and concluded that a preponderance of the evidence warranted revocation and revoked plaintiff's license to teach; the essential difference between the hearing officer's view of the case and that of the secretary was how they viewed the credibility of plaintiff and the victim and the believability of their testimony; the regulations of the public education department provided that the hearing officer had the duty to make proposed findings and conclusions; the secretary was not an appellate reviewer of the hearing officer's findings and conclusions, the secretary had the authority, after reviewing the record, to modify the hearing officer's findings and conclusions; and the secretary was ultimately responsible for issuing a final decision; and after reviewing the record, the secretary made independent findings of fact that were supported by references to the hearing transcript, the secretary did not exceed the secretary's authority by making the secretary's own credibility or fact-based determinations. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

**Revocation of teacher's license did not violate due process.** — Where plaintiff was charged with engaging in inappropriate and improper sexual behavior with a fourteen-year-old victim at a charter school; a hearing officer found that the charges against plaintiff had not been proven by a preponderance of the evidence, based in part on the credibility of the witnesses, and recommended that the disciplinary action against plaintiff be dismissed; the secretary of public education reviewed the record and concluded that a preponderance of the evidence warranted revocation; the secretary's conclusions were supported by the record and were based on the secretary's analysis of the facts presented by the witnesses, the contradictions in the facts, and the victim's written statement, plaintiff was not denied due process by the fact that the secretary failed to observe the witnesses' demeanor or by the secretary's failure to defer to the

hearing officer's proposed findings of fact. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

**Revocation of teacher's license was supported by substantial evidence.** — Where plaintiff was charged with engaging in inappropriate and improper sexual behavior with a fourteen-year-old victim; the victim was considering attending the charter school; the owners and operators of the school, who were the godparents of the victim, hosted an event in their home; the victim and plaintiff stayed overnight and slept in the living room where the alleged contact occurred when the victim and plaintiff were alone, the decision of the secretary of public education to revoke plaintiff's teacher's license was supported by substantial evidence. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

**State board has powers implied from statute.** — The authority of the state board in the rule- or regulation-making context is not limited to those powers expressly granted by statute, but includes all powers that may be fairly implied therefrom. *Redman v. Board of Regents*, 1984-NMCA-117, 102 N.M. 234, 693 P.2d 1266, cert. denied, 102 N.M. 225, 693 P.2d 591 (1985).

**Board may determine action not "good cause" for firing.** — It is within the province of the state board to decide that a private affair between consenting adults, an assistant principal and a school secretary, is not "good and just cause" to fire an employee. *Board of Educ. v. Jennings*, 1982-NMCA-135, 98 N.M. 602, 651 P.2d 1037.

**Legislative power as to duties of state board.** — The authority granted the state board for the "control, management and direction of all public schools" under N.M. Const., art. XII, § 6 must be specifically defined by the legislature and the legislature may divest the state board of duties previously defined. N.M. Const., art. XII, § 6 does not, in itself, vest the state board with any particular duties and the legislature is empowered to determine the scope of the board's authority. 1977 Op. Att'y Gen. No. 77-06.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of local or state denial of public school courses or activities to private or parochial school students, 43 A.L.R.4th 776.

## 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.

## ANNOTATIONS

**Cross references.** — For power to create and consolidate school districts, *see* 22-4-2 and 22-4-3 NMSA 1978.

For duty to administer federal grants in aid of education, *see* 22-9-7 to 22-9-16 NMSA 1978.

For power to prescribe subjects taught in public schools generally, *see* 22-13-1 NMSA 1978.

For duties with respect to Instructional Material Law, *see* 22-15-1 NMSA 1978 et seq.

For approval of buildings erected near highways, *see* 22-20-2 NMSA 1978.

For duties pertaining to Variable School Calendar Act, *see* 22-22-1 NMSA 1978 et seq.

For duties pertaining to education and testing with respect to sickle cell trait and sickle cell anemia, *see* 24-3-1 NMSA 1978.

**Repeals and reenactments.** — Laws 2004, ch. 27, § 15 repealed former 22-2-2 NMSA 1978 and enacted the section above, effective May 19, 2004.

Laws 2004, ch. 27, § 29 repealed Laws 2003, ch. 143, § 3, effective May 19, 2004.

**The 2003 amendment,** in Subsection G, deleted "a certificate to any person teaching, assisting teachers, supervising an instructional program, counseling, providing special instructional services or administering in public schools" and inserted new language; in Subsection H, added "deny", deleted "certificate held by a certified school instructor or certified school administrator" and inserted "licenses to teachers, instructional support providers and school administrators" and changed "immorality" to "moral turpitude"; deleted Subsection M and redesignated the succeeding subsections accordingly; split former Subsection X into two subsections and deleted "provided, however, that no plan shall require mandatory attendance by any member of a local school board"; in former Subsection AA (now Subsection Z), deleted "public school educators" and inserted "school employees"; in Paragraph (2), deleted "including an evaluation component that will be used by the department of education in approving local school district professional development plans; and" and inserted new subparagraphs (a) through (e); and in former Subsection CC (now Subsection BB), added "scientifically based reading".

**The 2001 amendment,** effective June 15, 2001, added Subsections BB and CC.

**The 2000 amendment,** effective July 1, 2000, added "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" at the end of Subsection B.

**The 1999 amendment,** effective June 18, 1999, substituted references to "rule" or "rules" for "regulation" or "regulations" throughout the section, and added Subsection AA.

**The 1997 amendment,** effective June 20, 1997, substituted "adopt and promulgate regulations" for "promulgate and publish regulations" in Subsection M and added the second sentence in Subsection R.

**The 1996 amendment,** effective May 15, 1996, added "other than New Mexico military institute" at the end of Subsection J.

**The 1993 amendment,** effective July 1, 1993, added the language beginning "and adopt regulations" at the end of Subsection D; inserted "all state institutions and" in Subsection F; deleted "under the authority of the secretary of health and environment" at the end of Subsection J; inserted "or disapprove" near the beginning and inserted the present second sentence of Subsection R; deleted "public" following "department of" in Subsection V; and made minor stylistic changes throughout the section.

**School boards are immune from suit in federal court.** — Local school boards are arms of the state system of education as provided in the New Mexico constitution and local school boards and school board members in their individual and official capacities are immune under the Eleventh Amendment from suit in federal courts. *Martinez v. Board of Educ. of the Taos Municipal Sch. Dist.*, 748 F.2d 1393 (10th Cir. 1984), *overruled by Duke v. Grady Mun. Sch.*, 127 F.3d 972 (10th Cir. 1997).

**Authority of secretary of public education to revoke teachers' licenses.** — Article XII, Section 6 of the New Mexico Constitution, the Uniform Licensing Act, Sections 61-1-1 et seq. NMSA 1978, the Public Education Department Act, Chapter 9, Article 24 NMSA 1978, the Public School Code, Chapter 22 NMSA 1978, and the School Personnel Act, Chapter 22, Article 10A NMSA 1978, do not preclude the secretary of public education from having exclusive authority to make the final decision to revoke a teacher's license. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

**Board may determine action not "good cause" for firing.** — It is within the province of the state board to decide that a private affair between consenting adults, an assistant principal and a school secretary, is not "good and just cause" to fire an employee. *Board of Educ. v. Jennings*, 1982-NMCA-135, 98 N.M. 602, 651 P.2d 1037.

**Board decision will be upheld unless unreasonable.** — Deciding whether or not an administrator is fit to perform his duties is a question of policy, and the appellate court

will not alter the state board's decision unless the court is convinced it is unreasonable, not supported by substantial evidence or not in accordance with law. *Board of Educ. v. Jennings*, 1982-NMCA-135, 98 N.M. 602, 651 P.2d 1037.

**Law reviews.** — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

For comment, "Compulsory School Attendance - Who Directs the Education of a Child? State v. Edgington," see 14 N.M.L. Rev. 453 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Validity of statute or other regulations as to the use, or teaching, of foreign languages in schools, 7 A.L.R. 1695, 29 A.L.R. 1452.

Extent of legislative power with respect to curriculum, 39 A.L.R. 477, 53 A.L.R. 832.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Tort liability of public schools and institutions of higher learning for educational malpractice, 1 A.L.R.4th 1139.

Validity of state regulation of curriculum and instruction in private and parochial schools, 18 A.L.R.4th 649.

Validity of local or state denial of public school courses or activities to private or parochial school students, 43 A.L.R.4th 776.

AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.

Validity, construction, and effect of provision releasing school from liability for injuries to students caused by interscholastic and other extracurricular activities, 85 A.L.R.4th 344.

78 C.J.S. Schools and School Districts § 81 et seq.

## 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.

**ANNOTATIONS**

**Cross references.** — For the federal No Child Left Behind Act of 2001, *see* Title 20 of the U.S.C., P.L. 107-110.

**The 2004 amendment,** effective May 19, 2004, in Subsection A, changed "state board" to "department"; in Paragraphs (3) and (4) of Subsection A, changed statutory references; in Paragraph (5) of Subsection A, changed "state-board-approved" to "department-approved"; in Paragraph (1) of Subsection B, changed the statutory reference; and in Subsection D, changed state board to department.

## 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.

## 22-2-3. Repealed.

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

**ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 27, § 29 repealed 22-2-3 NMSA 1978, as enacted by Laws 1967, ch. 16, § 6, relating to compensation, effective May 19, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 27, § 29 repealed 22-2-4 NMSA 1978, as enacted by Laws 1967, ch. 16, § 7, relating to officers and meetings, effective May 19, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com*.

## 22-2-5. Repealed.

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

**ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 27, § 29 repealed 22-2-5 NMSA 1978, as enacted by Laws 1967, ch. 16, § 8, relating to delegation of administrative functions, effective May 19, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 27, § 29 repealed 22-2-6 NMSA 1978, as enacted by Laws 1967, ch. 16, § 9, relating to department duties, effective May 19, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com*.

## 22-2-6.1. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.1 NMSA 1978 as 22-29-1 NMSA 1978, effective April 4, 2003.

## 22-2-6.2. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.2 NMSA 1978 as 22-29-2 NMSA 1978, effective April 4, 2003.

## 22-2-6.3. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.3 NMSA 1978 as 22-29-3 NMSA 1978, effective April 4, 2003.

## 22-2-6.4. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.4 NMSA 1978 as 22-29-4 NMSA 1978, effective April 4, 2003.

## 22-2-6.5. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.5 NMSA 1978 as 22-29-5 NMSA 1978, effective April 4, 2003.

## 22-2-6.6. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.6 NMSA 1978 as 22-29-6 NMSA 1978, effective April 4, 2003.

## 22-2-6.7. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-2-6.7 NMSA 1978, as 22-29-7 NMSA 1978, effective April 4, 2003.

## 22-2-6.8. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.8 NMSA 1978 as 22-29-8 NMSA 1978, effective April 4, 2003.

## 22-2-6.9. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.9 NMSA 1978 as 22-29-9 NMSA 1978, effective April 4, 2003.

## 22-2-6.10. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled 22-2-6.10 NMSA 1978 as 22-29-10 NMSA 1978, effective April 4, 2003.

## 22-2-6.11. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 60 recompiled and amended 22-2-6.11 NMSA 1978 as 22-13-1.3 NMSA 1978, effective April 4, 2003.

## 22-2-6.12. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 30 recompiled and amended 22-2-6.12 NMSA 1978 as 22-8-43 NMSA 1978, effective April 4, 2003.

## 22-2-7. Repealed.

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

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-2-7 NMSA 1978, as enacted by Laws 1967, ch. 16, § 10, relating to surety bonds for state superintendent and designated employees of the department of education, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3, which would have repealed this section.

**Cross references.** — For student achievement, *see* 22-2C-1 NMSA 1978.

For references to the former board of public education, *see* 9-24-15 NMSA 1978.

**The 2003 amendment,** effective April 4, 2003, substituted "School" for "Educational" at the beginning of the section heading; inserted "local superintendent and school principal" following "local school board" near the middle of the first paragraph; added "including academic content and performance standards" at the end of Subsection A; and in Subsection C substituted "including" for "other than" near the middle and substituted "department" for "chief" at the end.

**School board may allocate attendance within district.** — So long as the statutory and constitutional minimum educational standards are satisfied, the local school board may allocate attendance within the district. 1979 Op. Att'y Gen. No. 79-36.

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

A. Except as otherwise provided in this section, regular students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

(1) kindergarten, for half-day programs, two and one-half hours per day or four hundred fifty hours per year or, for full-day programs, five and one-half hours per day or nine hundred ninety hours per year;

(2) grades one through six, five and one-half hours per day or nine hundred ninety hours per year; and

(3) grades seven through twelve, six hours per day or one thousand eighty hours per year.

B. Up to thirty-three hours of the full-day kindergarten program may be used for home visits by the teacher or for parent-teacher conferences. Up to twenty-two hours of grades one through six programs may be used for home visits by the teacher or for parent-teacher conferences. Up to twelve hours of grades seven through twelve programs may be used to consult with parents to develop next step plans for students and for parent-teacher conferences.

C. 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.

D. 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.

E. 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.

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.

## ANNOTATIONS

**Repeals.** — Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3, which would have repealed this section.

**Cross references.** — For student achievement, *see* 22-2C-1 NMSA 1978 et seq.

For full-time kindergarten, *see* 22-13-3.2 NMSA 1978.

**2011 Multiple Amendments.** — Laws 2011, ch. 35, § 1 and Laws 2011, ch. 154, § 1 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2011, ch. 154, § 1, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2011, ch. 35, § 1 and Laws 2011, ch. 154, § 1 are described below. To view the session laws in their entirety, *see* the 2011 session laws on *NMOneSource.com*.

Laws 2011, ch. 154, § 1, effective June 17, 2011, changed the measure of a school year from days to hours.

Laws 2011, ch. 35, § 1, effective June 17, 2011, permitted school breakfast service during instructional time.

**The 2009 amendment,** effective June 19, 2009, added Subsection A; in Paragraph (1) of Subsection B, after the first occurrence of "hours per day", deleted "or four hundred fifty hours per year" and after second occurrence, deleted "or nine hundred ninety hours per year"; in Paragraph (2) of Subsection B, after "hours per day", deleted "or nine hundred ninety hours per year"; in Paragraph (3) of Subsection B, after "hours per day", deleted "or one thousand eighty hours per year"; added Subsection C, in Subsection D, at the beginning of the first and second sentences, added "Up to" in the second sentence, before "programs", changed "five" to the word "six"; and added the last sentence; in Subsection E, after "school board from setting", added "a school year or the" and added the reference to Subsection B; and in Subsection F, after "minimum

length", added "or number" and after "hardships as defined by the", deleted "state board" and added the remainder of the sentence.

**Applicability.** — Laws 2009, ch. 276, § 3 provided that the provisions of Laws 2009, ch. 276, §§ 1 and 2 apply to the 2010-2011 and subsequent school years.

**The 2003 amendment,** effective June 20, 2003, added "Except as otherwise provided in this section," at the beginning of Subsection A; and added present Subsection B and redesignated the subsequent subsections accordingly.

**The 2000 amendment,** effective May 17, 2000, rewrote Subsection A(1) which read "Kindergarten, two and one-half hours per day or four hundred and fifty hours per year."

**The 1993 amendment,** effective July 1, 1993, deleted former Subsection D, which read "The provisions of this section shall be effective with the 1987-88 school year" and made minor stylistic changes in Subsection A.

## 22-2-8.2. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 51 recompiled and amended 22-2-8.2 NMSA 1978 as 22-10A-20 NMSA 1978, effective April 4, 2003.

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-2-8.3 NMSA 1978, as enacted by Laws 1986, ch. 33, § 4, relating to subject and minimum instructional areas requirements and accreditation, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 22-13-1 NMSA 1978.

## 22-2-8.4. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 58 recompiled and amended 22-2-8.4 NMSA 1978 as 22-13-1.1 NMSA 1978, effective April 4, 2003.

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-2-8.5 NMSA 1978, as enacted by Laws 1986, ch. 33, § 6, relating to additional statewide testing, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

## 22-2-8.6. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 15 recompiled and amended 22-2-8.6 NMSA 1978 as 22-2C-6 NMSA 1978, effective April 4, 2003.

## 22-2-8.7. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 37 recompiled and amended 22-2-8.7 NMSA 1978 as 22-10A-6 NMSA 1978, effective April 4, 2003.

## 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.

**ANNOTATIONS**

**Cross references.** — For student achievement, *see* 22-2C-1 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, changed "high school equivalency tests" to "high school equivalency credential tests".

**The 2014 amendment,** effective March 7, 2014, replaced "general educational development certificate" with "high school equivalency credential"; in the catchline, changed "general educational development certificates" to "high school equivalency credential"; after "The department", deleted "of education", after "shall issue a", deleted "general educational development certificate" and added "high school equivalency credential", and after "successfully completed the", deleted "general educational development" and added "high school equivalency".

**Temporary provisions.** — Laws 2014, ch. 31, § 2, effective March 7, 2014, provided:

A. All references in law to a "general education diploma", a "general equivalency diploma", a "general education development certificate", a "certificate of general equivalency", a "graduate equivalent diploma", a "GED certificate", a "high school equivalency diploma", a "certificate of equivalency" and an "equivalency diploma" shall be deemed to be references to a "high school equivalency credential".

B. All references in law to a "high school diploma or equivalent" shall be deemed to be references to a "high school diploma or high school equivalency credential".

C. All references in law to a "high school equivalency education" shall be deemed to be references to a "high school equivalency credential education".

D. All references in law to a "general educational development test" shall be deemed to be references to a "high school equivalency credential test".

## 22-2-8.9. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-2-8.9 NMSA 1978, as enacted by Laws 2001, ch. 165, § 1, relating to reading enhancement for public school students not reading at grade level, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

## 22-2-8.10. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-2-8.10 NMSA 1978, as enacted by Laws 2001, ch. 287, § 1, relating to the statewide mentorship program for certain beginning teachers, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references. —** For student achievement, *see* 22-2C-1 NMSA 1978.

**Compiler's notes. —** Laws 2003 ch. 37, § 1, and Laws 2003, ch. 71, § 1 enacted identical new sections, effective on June 20, 2003. Both were compiled as 22-2-8.11 NMSA 1978.

## 22-2-8.12. Repealed.

**ANNOTATIONS**

**Repeals. —** Laws 2004, ch. 27, § 29 repealed 22-2-8.12 NMSA 1978, as enacted by Laws 2003, ch. 159, § 1 effective July 1, 2004. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**The 2011 amendment,** effective June 17, 2011, added public school grades three and four and charter school grades three through twelve to the required standardized alphabetic or numeric grading system.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2014, ch. 31, § 2, effective March 7, 2014, provided that all references in law to a "general education diploma", a "general equivalency diploma", a "general education development certificate", a "certificate of general equivalency", a "graduate equivalent diploma", a "GED certificate", a "high school equivalency diploma", a "certificate of equivalency" and an "equivalency diploma" shall be deemed to be references to a "high school equivalency credential".

**Effective dates.** — Laws 2009, ch. 205 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 1989 amendment,** effective June 16, 1989, inserted "and the flag of the State of New Mexico" and substituted "in each classroom and on or within all" for "on or within".

**Law reviews.** — For comment, "Official Symbols: Use and Abuse," see 1 N.M. L. Rev. 352 (1971).

## 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.

**ANNOTATIONS**

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 151, § 9 repealeds 22-2-11 NMSA 1978, as enacted by Laws 1975 (1st S.S.), ch. 8, § 1, relating to the creation of the Indian education division, effective June 20, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 151, § 9 repealed 22-2-12 NMSA 1978, as enacted by Laws 1975 (1st S.S.), ch. 8, § 2, relating to the appointment of a division head for Indian education, effective June 20, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

## 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.

## ANNOTATIONS

**Repeals.** — Laws 2003, ch. 151, § 9 repealed 22-2-13 NMSA 1978, as enacted by Laws 1975 (1st S.S.), ch. 8, § 3, relating to the duties and responsibilities of the Indian education division, effective June 20, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

# 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.

## ANNOTATIONS

**Cross references.** — For courses of instruction generally, *see* 22-13-1 NMSA 1978 et seq.

**The 2004 amendment,** effective May 19, 2004, amended Subsections B, C, D, E and F to change "state superintendent" and "state board" to "department" and added a new Subsection H.

**The 2003 amendment,** effective April 4, 2003, substituted "Local school boards; public schools; suspension" for "Education requirements; enforcement" at the beginning of the catchline; in Subsection A substituted "rules" for "regulations" following "standards and" near the beginning and inserted "local superintendent and school principal, as applicable" following "local school board" near the middle; inserted "local superintendent and school principal, as applicable" following "local school board" near the end of Subsection B; in Subsection C inserted "local superintendent or school principal" following "local school board" near the middle and inserted "local superintendent or school principal" following "local school board," near the end; in Subsection D inserted "local superintendent or school principal" following "local school board" near the beginning and near the middle, and substituted "the suspension should not be put into effect" for "it should not be suspended" following "show cause why" near the end; in

Subsection E inserted "local superintendent or school principal" following "local school board" once near the beginning and once near the middle, and inserted "or public school" following "school district" near the middle; in Subsection F inserted "local superintendent or school principal" following "local school board" near the beginning and near the middle and at the end, and substituted "the local school" for "that" following "responsibilities of" near the end; and in Subsection G inserted "or public school" following "school district" near the middle and substituted "rules" for "regulations" at the end.

**The 1988 amendment,** effective May 18, 1988, deleted former Subsection C which read "A copy of all disapproval notices shall be sent to the director" and redesignated succeeding subsections accordingly; deleted "and director" following "state superintendent" in the second sentence in present Subsection C and in Subsection F; inserted "school" preceding "district" in present Subsection E; substituted "local school board" for "local board of education" in present Subsection F; and made minor stylistic changes throughout the section.

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 27, § 29, repealed 22-2-15 NMSA 1978, as enacted by Laws 1969, ch. 180, § 8, relating to hearings, suspension continuance and discontinuance and appeals, effective May 19, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1979, ch. 267, § 1 changed the name of the "legislative school study committee" to the "legislative education study committee".

**Compiler's notes.** — Laws 2004, ch. 27, § 29 repealed 22-2-25 NMSA 1978 effective May 19, 2004.

**Cross references.** — For references to former state superintendent to the secretary of education, *see* 9-24-15 NMSA 1978.

## 22-2-17. Repealed.

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

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-2-17 NMSA 1978, as enacted by Laws 1993, ch. 168, § 1, relating to legislative findings that a high percentage of students continue to drop out of school prior to earning a high school diploma, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

## 22-2-18. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-2-18 NMSA 1978, as enacted by Laws 1993, ch. 168, § 2, relating to development of a program to provide alternative opportunities to at-risk students, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

## 22-2-19. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiles former 22-2-19 NMSA 1978, as 22-13-3.2 NMSA 1978, effective April 4, 2003.

## 22-2-20. Repealed.

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

**ANNOTATIONS**

**Repeals.** — Laws 2017, ch. 19, § 2 repealed 22-2-20 NMSA 1978, as enacted by Laws 2003, ch. 130, § 1, relating to kindergarten plus, pilot project, eligibility, application, reporting and evaluation, fund creation, effective March 17, 2017. For provisions of former section, *see* the 2016 NMSA 1978 on *NMOneSource.com*.

## 22-2-21. Bullying and cyberbullying prevention programs.

A. The department shall establish guidelines for bullying prevention policies to be promulgated by local school boards. Every local school board and governing body of a charter school shall promulgate a bullying prevention policy by August 2011. Every public school shall implement a bullying prevention program by August 2012.

B. Every local school board and governing body of a charter school shall promulgate a specific cyberbullying prevention policy by August 2013. Cyberbullying prevention policies shall require that:

(1) all licensed school employees complete training on how to recognize signs that a person is being cyberbullied;

(2) any licensed school employee who has information about or a reasonable suspicion that a person is being cyberbullied report the matter immediately to the school principal or the local superintendent or both;

(3) any school administrator or local superintendent who receives a report of cyberbullying take immediate steps to ensure prompt investigation of the report; and

(4) school administrators take prompt disciplinary action in response to cyberbullying confirmed through investigation. Disciplinary action taken pursuant to this subsection must be by the least restrictive means necessary to address a hostile environment on the school campus resulting from the confirmed cyberbullying and may include counseling, mediation and appropriate disciplinary action that is consistent with the legal rights of the involved students.

C. Each local school board and governing body of a charter school shall make any necessary revisions to its disciplinary policies to ensure compliance with the provisions of this section.

D. As used in this section, "cyberbullying" means electronic communication that:

(1) targets a specific student;

(2) is published with the intention that the communication be seen by or disclosed to the targeted student;

(3) is in fact seen by or disclosed to the targeted student; and

(4) creates or is certain to create a hostile environment on the school campus that is so severe or pervasive as to substantially interfere with the targeted student's educational benefits, opportunities or performance.

History: Laws 2011, ch. 50, § 1; 2013, ch. 178, § 1; 2015, ch. 108, § 2.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, required the governing body of a charter school to promulgate a bullying prevention policy and a specific cyberbullying prevention policy and to make necessary revisions to its disciplinary policies to ensure compliance with the new policies; in Subsection A, after "local school board", added "and governing body of a charter school"; in Subsection B, after "local school board", added "and governing body of a charter school"; and in Subsection C, after "local school board", added "and governing body of a charter school".

**The 2013 amendment,** effective June 14, 2013, required local school boards to promulgate cyberbullying prevention policies; in the title, after "bullying", added "and cyberbullying"; and added Subsection B.

## 22-2-22. Recompiled.

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

**ANNOTATIONS**

**Compiler's notes.** — Laws 2014, ch. 74, § 1 was erroneously compiled as 22-2-22 NMSA 1978 and has been recompiled as 22-16-12 NMSA 1978 by the compiler.

# ARTICLE 2A
# Tutor-Scholars Program

(Repealed by Laws 1991, ch. 126, § 9.)

## 22-2A-1. Repealed.

**History:** Laws 1991, ch. 126, § 1.

**ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 126, § 9 repealed 22-2A-1 NMSA 1978, as enacted by Laws 1991, ch. 126, § 1, relating to tutors-scholars program, effective June 30, 1994. For provisions of former sections, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-2A-2. Repealed.

**History:** Laws 1991, ch. 126, § 2.

**ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 126, § 9 repealed 22-2A-2 NMSA 1978, as enacted by Laws 1991, ch. 126, § 2, relating to tutors-scholars program, effective June 30, 1994. For provisions of former sections, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-2A-3. Repealed.

**History:** Laws 1991, ch. 126, § 3.

**ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 126, § 9 repealed 22-2A-3 NMSA 1978, as enacted by Laws 1991, ch. 126, § 3, relating to tutors-scholars program, effective June 30, 1994. For provisions of former sections, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-2A-4. Repealed.

**History:** Laws 1991, ch. 126, § 4.

**ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 126, § 9 repealed 22-2A-4 NMSA 1978, as enacted by Laws 1991, ch. 126, § 4, relating to tutors-scholars program, effective June 30, 1994. For provisions of former sections, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-2A-5. Repealed.

**History:** Laws 1991, ch. 126, § 5.

**ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 126, § 9 repealed 22-2A-5 NMSA 1978, as enacted by Laws 1991, ch. 126, § 5, relating to tutors-scholars program, effective June 30, 1994. For provisions of former sections, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-2A-6. Repealed.

**History:** Laws 1991, ch. 126, § 6.

**ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 126, § 9 repealed 22-2A-6 NMSA 1978, as enacted by Laws 1991, ch. 126, § 6, relating to tutors-scholars program, effective June 30, 1994. For provisions of former sections, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-2A-7. Repealed.

**History:** Laws 1991, ch. 126, § 7.

**ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 126, § 9 repealed 22-2A-7 NMSA 1978, as enacted by Laws 1991, ch. 126, § 7, relating to tutors-scholars program, effective June 30, 1994. For provisions of former sections, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-2A-8. Repealed.

**History:** Laws 1991, ch. 126, § 8.

**ANNOTATIONS**

**Repeals.** — Laws 1991, ch. 126, § 9 repealed 22-2A-8 NMSA 1978, as enacted by Laws 1991, ch. 126, § 8, relating to tutors-scholars program, effective June 30, 1994. For provisions of former sections, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

# 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.

**ANNOTATIONS**

**The 2001 amendment,** effective June 15, 2001, substituted "Chapter 22, Article 2B NMSA 1978" for "Sections 1 through 6 of this act".

## 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.

**ANNOTATIONS**

**The 2001 amendment,** effective June 15, 2001, deleted Subsection C which formerly read "'fund' means an educational cooperative fund".

## 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.

**ANNOTATIONS**

**Cross references.** — For references to the former state board, *see* 9-24-15 NMSA 1978.

For the legislative finance committee, *see* 2-5-1 NMSA 1978.

For the legislative education study committee, *see* 2-10-1 NMSA 1978.

**The 2013 amendment,** effective June 14, 2013, changed the name of the property control division of the general services department to the facilities management division; and in Paragraph (1) of Subsection A, deleted "property control" and added "facilities management" before "division".

**The 2009 amendment,** effective July 1, 2009, in Subsections A and B, changed "state board" to "department"; in Paragraph (3) of Subsection A, changed "state superintendent" to "secretary"; deleted former Subsection C, which provided for the development of a statewide long-range plan for educational and technical assistance activities in public and charter schools served by cooperatives; and added Subsections C, D and E.

**The 2001 amendment,** effective June 15, 2001, in Subsection A, deleted "to qualified school-age residents of participating educational entities" from the end of the second sentence, added "provided that" at the end of the third sentence, and added Paragraphs (1) through (3); substituted "rule" for "regulation" twice in Subsection B; and added Subsection C.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For references to the former state board, *see* 9-24-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For references to the former state board, *see* 9-24-15 NMSA 1978.

**The 2009 amendment,** effective July 1, 2009, in Subsection A, changed "all entities participating in" to "members of"; added Paragraph (5) of Subsection A; and in Subsection B, changed "regulation" and added "rule", and changed "state board" to "department".

## 22-2B-6. Repealed.

**History:** Laws 1993, ch. 232, § 6.

**ANNOTATIONS**

**Repeals.** — Laws 2001, ch. 293, § 7 repealed 22-2B-6 NMSA 1978, as enacted by Laws 1993, ch. 232, § 6, relating to the creation of educational cooperative funds, effective June 15, 2001. For provisions of former section, *see* the 2000 NMSA 1978 on *NMOneSource.com*.

# 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 were enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but were relocated due to the existing Article 2A.

**The 2007 amendments,** effective June 15, 2007, changed the statutory reference to the act.

Laws 2007, ch. 307, § 2, Laws 2007, ch. 308, § 2 and Laws 2007, ch. 309, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 309, § 2. *See* 12-1-8 NMSA 1978.

## 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.

**ANNOTATIONS**

**Compiler's notes. —** Laws 2003, ch. 153, §§ 10 to 20 were enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but were relocated due to the existing Article 2A.

**Emergency clauses. —** Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 were enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but were relocated due to the existing Article 2A.

**The 2015 amendment,** effective June 19, 2015, removed references to adequate yearly progress and replaced references to the state board with the public education department; in the catchline, after "standards;", changed "state board" to "department"; in Subsections A and B, changed "state board" to "department"; in Subsection C, after "exceed", added "any applicable"; in Subsection D, after "New Mexico", deleted the remainder of the subsection relating to adequate yearly progress.

## 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.

## ANNOTATIONS

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 were enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but were relocated due to the existing Article 2A.

**The 2015 amendment,** effective June 19, 2015, removed references to adequate yearly progress and removed the requirement to test student achievement in social studies for certain grades; in Subsection A, after "content and performance standards", deleted the remainder of the subsection relating to adequate yearly progress; in Subsection B, after "assessment program", deleted "for adequate yearly progress"; and in Subsection B, Paragraph (1), after "language arts", deleted "and social studies".

**The 2007 amendment,** effective July 1, 2007, in Subsection B, changed "grades three through nine" to "grades three through eight"; in Subsections A, B, C and E, changed "standards-based academic performance tests" to "standards-based assessments"; and in Subsection D, changed "academic testing" to "standards based assessments".

**The 2005 amendment,** effective April 7, 2005, deleted former Subsection B(1) which provided that the assessment program shall test achievement for grades kindergarten through two by diagnostic and standards based tests on reading that include phonemic awareness, phonics and comprehension by the 2003-2004 school year.

**The 2004 amendment,** effective May 19, 2004, revised Paragraph (3) of Subsection B to change the grades from "four, six, eight and eleven" to grades "three to nine" and to add after "writing" and before "tests", "assessment with the writing assessment scoring criteria applied to the extended response writing portions of the language arts criterion-referenced".

## 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.

**ANNOTATIONS**

**The 2016 amendment,** effective May 18, 2016, eliminated higher education or career readiness assessment system requirements for students in grades nine and ten; in Subsection A, in the introductory paragraph, after "include," deleted "the following components:", deleted Paragraphs (1) and (2), the paragraph designation "(3)", and the word "in" and added "for", and redesignated former Subparagraphs (a) through (c) of

Paragraph (3) as new Paragraphs (1) through (3) of Subsection A; in Subsection B, deleted "All", and after "Students", deleted "at the specified grade level"; and in Subsection C, deleted "The department shall ensure that results of performance on readiness assessments administered in grades nine and ten are reported to students, parents and public schools no later than four weeks following the date on which the assessments are administered, in a form that is easily understandable and useful in the next-step planning process.".

**The 2008 amendment,** effective May 14, 2008, required a short-cycle diagnostic assessment in the ninth grade, a short-cycle diagnostic assessment in the tenth grade that serves as an early indicator of college readiness, and a college placement assessment, a workforce readiness assessment or a demonstration of competency in the eleventh grade.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 were enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but were relocated due to the existing Article 2A.

**The 2015 amendment,** effective June 19, 2015, removed references to adequate yearly progress; deleted the former catchline, "Student achievement ratings; calculations of adequate yearly progress" and added the current language; in the introductory paragraph, after "methodology for", deleted "calculating adequate yearly progress. The statewide standards-based assessments used to assess adequate yearly progress shall be valid and reliable and shall conform with nationally recognized professional and technical standards" and added "measuring students’ academic

performance", and after "performance shall be", deleted "measured" and added "categorized".

**The 2007 amendment,** effective June 15, 2007, changed "performance tests" to "assessments".

## 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.

## ANNOTATIONS

**Cross references.** — For student achievement, *see* 22-2C-1 NMSA 1978 et seq.

**Compiler's notes.** — This section was compiled as Section 22-2-8.6 NMSA 1978 at the time of the enactment of Laws 2003, ch. 143, § 2.

**The 2007 amendment,** effective June 15, 2007, amended Subsection B to change "fail to attain adequate yearly progress" to "do not demonstrate academic proficiency" and provided that students failing to become academically proficient as measured by grades, performance on school district assessments and other measures identified by the school district shall be retained in the same grade to provide additional time to achieve academic proficiency.

**The 2003 amendment,** effective April 4, 2003, recompiled former 22-2-8.6 NMSA 1978 as 22-2A-6 NMSA 1978 (relocated to 22-2C-6), and deleted "Educational content standards" at the beginning of the section heading; rewrote Subsection A to the extent

that a detailed comparison is impracticable; in Subsection B substituted "adequate yearly progress" for "a level of proficiency established by the content standards" near the middle and deleted "of education" at the end.

**The 2000 amendment,** effective May 17, 2000, in the section heading, substituted "Educational content" for "Essential competencies" and "restrictions" for "exception"; rewrote Subsections A through D; added Subsection E; redesignated former Subsection E as F and rewrote that section; added Subsection G; redesignated former Subsection G as H and rewrote that section; and added Subsections I and J.

**The 1993 amendment,** effective July 1, 1993, deleted "of education" following "state board" in Subsection C; deleted former Subsection H, which read "The provisions of Subsection A of this section shall take effect in the 1987-88 school year"; and deleted former Subsection I, which read "The provisions of Subsections B through G of this section shall take effect beginning in the 1989-90 school year."

**Constitutionality.** — Subsection C does not offend the "free school guaranty" of N.M. Const., art. XII, § 1, as that provision is construed by the New Mexico Supreme Court. 1990 Op. Att'y Gen. No. 90-06.

## 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.

**ANNOTATIONS**

**Repealed.** — Laws 2015, ch. 58, § 15 repealed 22-2C-7 NMSA 1978, as enacted by Laws 2003, ch. 153, § 16, relating to adequate yearly progress, school improvement plans, corrective action and restructuring, effective June 19, 2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com*.

## 22-2C-7.1. Repealed.

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

**ANNOTATIONS**

**Repealed.** — Laws 2015, ch. 58, § 15 repealed 22-2C-7.1 NMSA 1978, as enacted by Laws 2007, ch. 309, § 6, relating to failing school subject to reopening as state-chartered charter school, requirements, effective June 19, 2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 was enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but was relocated due to the existing Article 2A.

**The 2015 amendment,** effective June 19, 2015, removed references to adequate yearly progress and replaced references to the state board with the public education department; deleted the former catchline, "Adequate yearly progess; supplemental incentive funding; state program for other achievement" and added the current language; deleted Subsection A relating to the adequate yearly progress program; removed the subsection designation from Subsection B; in the undesignated section, after "The", deleted "state board" and added "department", after "public school improvement", deleted "by adequate yearly progress and other indicators, including" and added "through", after "community involvement and", deleted "if not used to determine adequate yearly progress", after "factors determined by the", deleted "state board" and added "department", after "greatest improvement", deleted "through the use of additional indicators", after "school improvement fund", added "pursuant to Section 22-2C-9 NMSA 1978", after "improving schools program", deleted "shall" and added "may", and after "federal funds", deleted "only if allowed by" and added "allowable under".

## 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 153, §§ 10 to 20 was enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but was relocated due to the existing Article 2A.

**The 2015 amendment,** effective June 19, 2015, removed references to adequate yearly progress and required distributions from the incentives for school improvement fund to be made pursuant to vouchers signed by the secretary of public education; in Subsection A, after "supplemental incentive funding for", deleted "the adequate yearly progress program and", after "vouchers signed by", deleted "state superintendent" and added "secretary of public education", and after "or", deleted "his" and added "the secretary's"; in Subsection B, deleted "state board" and added "department", and after "incentive funding from the fund.", deleted the next two sentences relating to adequate yearly progress.

## 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.

**ANNOTATIONS**

**Compiler's notes. —** Laws 2003, ch. 153, §§ 10 to 20 were enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but were relocated due to the existing Article 2A.

**The 2015 amendment,** effective June 19, 2015, made technical changes to the section; in Subsection A, after "public schools in need of improvement", deleted "and public schools subject to corrective action", after "vouchers signed by the", deleted "state superintendent or his" and added "secretary of public education or the secretary's"; and in Subsection B, after "department", deleted "based on a public school's approved improvement plan as provided in Section 22-2C-7 NMSA 1978".

## 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.

## ANNOTATIONS

**Compiler's notes.** — Laws 2003, ch. 153, § 20 was enacted as 22-2A-1 to 22-2A-11 NMSA 1978, but was recompiled as 22-2C-11 NMSA 1978 due to the existing Article 2A.

**Cross references.** — For the federal Family Educational Rights and Privacy Act of 1974, *see* 20 U.S.C. § 1232g.

**The 2017 amendment,** effective June 16, 2017, eliminated certain reporting requirements for school districts and state-chartered charter schools in their annual accountability reports, and required each school district's and state-chartered charter school's annual accountability report be published online; deleted Subsections D and E and redesignated former Subsections F through N as Subsections D through L, respectively; and in Subsection D, after "charter school is located", added "as well as online on the website of the school district or state-chartered charter school".

**2015 Multiple Amendments.** — Laws 2015, ch. 122, § 10, effective July 1, 2015, in Subparagraph A(4)(h), after "Family Educational Rights and Privacy Act", added "of 1974"; in Subparagraph A(5)(e), after "intent to pursue a", deleted "general educational development certificate" and added "high school equivalency credential"; and in Subsection C, Paragraph (3), after "intent to pursue a", deleted "general educational development certificate" and added "high school equivalency credential".

Laws 2015, ch. 58, § 11, effective June 19, 2015, in Subsection A, Paragraph (3), after "reporting annual", deleted "yearly"; in Subparagraph A(5)(e), after "intent to pursue a", deleted "general educational development certificate" and added "high school equivalency credential"; in Subsection B, after "performance", deleted "in areas other than adequate yearly progress"; and in Subsection C, Paragraph (3), after "pursue a", deleted "general educational development certificate" and added "high school equivalency credential".

**The 2013 amendment,** effective June 14, 2013, provided for public school accountability reports, including student achievement disaggregated by certain factors; in Paragraph (4) of Subsection A, in the introductory sentence, after "disaggregated by", added the remainder of the sentence; and added Subparagraphs (a) through (h) of Paragraph (4) of Subsection A.

**The 2010 amendment,** effective May 19, 2010, in Subsection A(3), in the first sentence, after "school districts", added "state-chartered charter schools" and added the second sentence; in Subsection A(4), after "school districts", added "state-chartered charter schools"; added Paragraphs (5), (6) and (7) of Subsection A; in Subsection B, after "Local school boards", added "and governing boards of charter schools" and after "school district's", added "or charter school's"; in Subsection C, in the first sentence, after "The school district's", added "or state-chartered charter school's"; after "include a report of" added "four- and five-year" and after "school district", added "or state-chartered charter school"; added the second sentence; and in the third sentence, after "the school district", added "or state-chartered charter school" and after "state-chartered charter school shall", deleted "indicate contributing factors to nongraduation such as transfer out of the school district, pregnancy, dropout and other factors as known" and added the remainder of the sentence; added Paragraphs (1), (2), (3), (4) and (5) of Subsection C; in Subsection D, in the first sentence, after "The school district's", added

"or state-chartered charter school's"; in Subsection E, in the second sentence, after "local school board", added "or governing body of a state-chartered charter school"; in Subsection F, in the first sentence, after "The school district's", added "or state-chartered charter school"; after "local school board", added "or governing body of the state-chartered charter school"; and after "school district", added "or state-chartered charter school"; and in the second sentence, after "'The School District Report Card'", added "or 'The Charter School Report Card'"; in Subsection G, after "the names of those", added "members of the" and after "local school board", deleted "members" and added "or the governing body of the charter school"; in Subsection H, after "school district", added "or charter school"; in Subsection I, in the first sentence, after "school district", added "or state-chartered charter school" and in the second sentence, after "school district", added "and charter school"; in Subsection J, after "school districts", added "and state-chartered charter schools"; and added Subsection N.

**The 2007 amendment,** effective June 15, 2007, added Paragraph (4) of Subsection A.

**The 2004 amendment,** effective May 19, 2004, combined Subsections A and B and inserted as a new Paragraph (1) of Subsection A, the requirement that the department "issue a state identification number for each public school student for use in the accountability data system", redesignated Subsection B as Paragraph (3) of Subsection A, redesignated Subsection C as Subsection B, added a new Subsection C, and changed "state board" to "department" in Subsections E and F.

## 22-2C-12. Repealed.

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

**ANNOTATIONS**

**Repealed.** — Laws 2015, ch. 58, § 15 repealed 22-2C-12 NMSA 1978, as enacted by Laws 2009, ch. 189, § 1, relating to alternative school accountability system pilot project, effective June 19, 2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 58 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

# 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

## 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 through 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.

**ANNOTATIONS**

**Cross references.** — For references to the former state superintendent, *see* 9-24-15 NMSA 1978.

**Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

## 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.

## ANNOTATIONS

**Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

**The 2009 amendment,** effective June 19, 2009, in Subsection A, at the beginning of the second sentence, added "Except as provided in Subsection D of this section"; and added Subsection D.

## 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

## 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

# ARTICLE 2E
# A-B-C-D-F Schools Rating

## 22-2E-1. Short title.

Sections 1 through 4 [22-2E-1 to 22-2E-4 NMSA 1978] of this act may be cited as the "A-B-C-D-F Schools Rating Act".

History: Laws 2011, ch. 10, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 10 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

**Severability.** — Laws 2011, ch. 10, § 7 provided that if any part of application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 22-2E-2. Definitions.

As used in the A-B-C-D-F Schools Rating Act:

A. "growth" means learning a year's worth of knowledge in one year's time, which is demonstrated by a student's performance on New Mexico standards-based assessments that shows the student:

(1) moving from one performance level to a higher performance level;

(2) maintaining a proficient or advanced proficient performance level as provided by department rule; or

(3) remaining in beginning step or nearing proficient performance level but improving a number of scale score points as specified by department rule; and

B. "school options" means a right to transfer to any public school not rated an F in the state or have children continue their schooling through distance learning offered through the statewide or a local cyber academy.

History: Laws 2011, ch. 10, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 10 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

**Severability.** — Laws 2011, ch. 10, § 7 provided that if any part of application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 22-2E-3. Rating certain schools.

Commencing with the 2011-2012 school year, public schools shall be subject to being rated annually by the department as provided in the A-B-C-D-F Schools Rating Act.

History: Laws 2011, ch. 10, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 10 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

**Severability.** — Laws 2011, ch. 10, § 7 provided that if any part of application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 22-2E-4. Annual ratings; letter grades; ratings based on standards-based assessments; right to school choice; distance learning; responsibility for cost; use of funds; additional remedy.

A. All public schools shall be graded annually by the department.

B. The department shall assign a letter grade of A, B, C, D or F to each public school pursuant to criteria established by department rules, after input from the secretary's superintendents' council, that include as a minimum a combination of the following factors in a public school's grade:

(1) for elementary and middle schools:

(a) student proficiency, including achievement on the New Mexico standards-based assessments;

(b) student growth in reading and mathematics; and

(c) growth of the lowest twenty-fifth percentile of students in the public school in reading and mathematics; and

(2) for high schools:

(a) student proficiency, including achievement on the New Mexico standards-based assessments;

(b) student growth in reading and mathematics;

(c) growth of the lowest twenty-fifth percentile of students in the high school in reading and mathematics; and

(d) additional academic indicators such as high school graduation rates, growth in high school graduation rates, advanced placement and international baccalaureate courses, dual enrollment courses and SAT and ACT scores.

C. The New Mexico standards-based assessments used for rating a school are those administered annually to students in grades three, four, five, six, seven, eight, nine and eleven pursuant to Section 22-2C-4 NMSA 1978.

D. In addition to any rights a parent may have pursuant to federal law, the parent of a student enrolled in a public school rated F for two of the last four years has the right to transfer the student in the same grade to any public school in the state not rated F or the right to have the student continue schooling by means of distance learning offered through the statewide or a local cyber academy. The school district or charter school in which the student is enrolled is responsible for the cost of distance learning.

E. The department shall ensure that a local school board or, for a charter school, the governing body of the charter school is prioritizing resources of a public school rated D or F toward proven programs and methods linked to improved student achievement until the public school earns a grade of C or better for two consecutive years.

F. The school options available pursuant to the A-B-C-D-F Schools Rating Act are in addition to any remedies provided for in the Assessment and Accountability Act [Chapter 22, Article 2C NMSA 1978] for students in schools in need of improvement or any other interventions prescribed by the federal No Child Left Behind Act of 2001.

G. When reporting a school's grade, the department shall include student 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:

(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.

History: Laws 2011, ch. 10, § 4; 2013, ch. 196, § 3; 2015, ch. 108, § 3.

**ANNOTATIONS**

**Cross references.** — For the federal Family Educational Rights and Privacy Act of 1974, *see* 20 U.S.C. § 1232g.

For the federal No Child Left Behind Act of 2001, *see* Title 20 of the U.S.C., P.L. 107-110.

**The 2015 amendment,** effective July 1, 2015, required the public education department to ensure that each governing body of a charter school with a D or F rating is prioritizing resources toward proven programs and methods linked to improved student achievement until the school earns a grade of C or better for two consecutive years; in Subsection E, after "local school board or", added "for a charter school, the", and after "governing body of", deleted "a" and added "the"; and in Paragraph (8) of Subsection G, after "Privacy Act", added "of 1974".

**The 2013 amendment,** effective June 14, 2013, provided for the content of school-grade reports; in the title, after "standards-based", deleted "tests" and added "assessments"; and added Subsection G.

# ARTICLE 3
# Educational Apportionment

## 22-3-1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-1 NMSA 1978, as enacted by Laws 1972, ch. 24, § 1, relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

## 22-3-2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-2 NMSA 1978, as enacted by Laws 1972, ch. 24, § 2, relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

## 22-3-3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-3 NMSA 1978, as enacted by Laws 1972, ch. 24, § 3, relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

## 22-3-4. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-4 NMSA 1978, as enacted by Laws 1972, ch. 24, § 4, relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

## 22-3-5. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-5 NMSA 1978, as enacted by Laws 1972, ch. 24, § 5, relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

## 22-3-6. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-6 NMSA 1978, as enacted by Laws 1972, ch. 24, § 6, relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

## 22-3-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-7 NMSA 1978, as enacted by Laws 1972, ch. 24, § 7, relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

## 22-3-8. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-8 NMSA 1978, as enacted by Laws 1972, ch. 24, § 8, relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

## 22-3-9. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-9 NMSA 1978, as enacted by Laws 1972, ch. 24, § 9, relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

## 22-3-10. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-10 NMSA 1978, as enacted by Laws 1972, ch. 24, § 10, relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

## 22-3-11. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-11 NMSA 1978, as enacted by Laws 1972, ch. 24, § 11, relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

## 22-3-12. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-12 NMSA 1978, as enacted by Laws 1972, ch. 24, § 12, relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

## 22-3-13. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-13 NMSA 1978, as enacted by Laws 1972, ch. 24, § 13, relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

## 22-3-14. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-14 NMSA 1978, as enacted by Laws 1972, ch. 24, § 14, relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

## 22-3-15. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-15 NMSA 1978, as enacted by Laws 1972, ch. 24, §15, relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

## 22-3-16. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 65, § 16, repealed 22-3-16 NMSA 1978, as enacted by Laws 1972, ch. 24, § 16, relating to educational apportionment, effective June 17, 1983. For present provisions, *see* 22-3-54.1 NMSA 1978.

## 22-3-17. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-17 NMSA 1978, as enacted by Laws 1983, ch. 65, § 1, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-18. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-18 NMSA 1978, as enacted by Laws 1983, ch. 65, § 2, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-19. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-19 NMSA 1978, as enacted by Laws 1983, ch. 65, § 3, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-20. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-20 NMSA 1978, as enacted by Laws 1983, ch. 65, § 4, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-21. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-21 NMSA 1978, as enacted by Laws 1983, ch. 65, § 5, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-22. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-22 NMSA 1978, as enacted by Laws 1983, ch. 65, § 6, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-23. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-23 NMSA 1978, as enacted by Laws 1983, ch. 65, § 7, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-24. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-24 NMSA 1978, as enacted by Laws 1983, ch. 65, § 8, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-25. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-25 NMSA 1978, as enacted by Laws 1983, ch. 65, § 9, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-26. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-26 NMSA 1978, as enacted by Laws 1983, ch. 65, § 10, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-27. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-27 NMSA 1978, as enacted by Laws 1983, ch. 65, § 11, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-28. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-28 NMSA 1978, as enacted by Laws 1983, ch. 65, § 12, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-29. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-29 NMSA 1978, as enacted by Laws 1983, ch. 65, § 13, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-30. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-30 NMSA 1978, as enacted by Laws 1983, ch. 65, § 14, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-31. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 99, § 9 repealed 22-3-31 NMSA 1978, as enacted by Laws 1983, ch. 65, § 15, effective April 7, 1987, relating to election and terms of board members.

## 22-3-32. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-32 NMSA 1978, as enacted by Laws 1987, ch. 99, §4, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-33. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-33 NMSA 1978, as enacted by Laws 1987, ch. 99, §5, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-34. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-34 NMSA 1978, as enacted by Laws 1987, ch. 99, §6, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-35. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-35 NMSA 1978, as enacted by Laws 1987, ch. 99, §7, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 22-3-36. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1991 (1st S.S.), ch. 4 § 19 repealed 22-3-36 NMSA 1978, as enacted by Laws 1987, ch. 99, §8, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2011 (1st S.S.), ch. 4, § 17 repealed 22-3-37 through 22-3-54 NMSA 1978, as enacted by Laws 1991 (1st S.S.), ch. 4, §§ 1 through 18, the 1991 Educational Redistricting Act, effective December 23, 2011. For provisions of former sections, *see* the 2000 NMSA 1978 on *NMOneSource.com*.

**Compiler's notes.** — The 1991 Educational Redistricting Act, as enacted by Laws 1991 (1st S.S.), Chapter 4, was declared malapportioned and, therefore, unconstitutional in Sanchez v. Vigil-Giron, D-0101-CV-2001-02250 (1st Dist. Ct., filed February 6, 2002).

## 22-3-54.1. Deleted.

**ANNOTATIONS**

**Compiler's notes.** — This section was copied from House Voters and Elections Substitute for House Bill 10, 45th Legislature, 1st Special Session, which was adopted by reference in the final judgment and order in Sanchez v. Vigil-Giron, D-0101-CV-2001-02250 (1st Dist. Ct., filed February 6, 2002), which declared 22-3-37 to 22-3-54 NMSA 1978 unconstitutional. The section number was assigned by the compiler.

N.M. Const., art. XII, § 6, approved September 23, 2003, abolished the state board of education and created a public education commission. The former state board of education members were continued in office until their terms expired. The state board of education districts were continued as the public education commission until changed by law. Section 9-24-9 NMSA 1978, effective May 19, 2004, provided that the members of

the commission be elected from districts provided in the "decennial educational redistricting act".

Laws 2011 (1st S.S.), ch. 4 enacted the 2011 Educational Redistricting Act [22-3A-1 to 22-3A-16 NMSA 1978], effective December 23, 2011.

# ARTICLE 3A
# 2011 Educational Redistricting

## 22-3A-1. Short title.

This act [22-3A-1 to 22-3A-16 NMSA 1978] may be cited as the "2011 Educational Redistricting Act".

History: Laws 2011 (1st S.S.), ch. 4, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2011 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective December 23, 2011, 90 days after the adjournment of the legislature.

## 22-3A-2. Commission members.

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

History: Laws 2011 (1st S.S.), ch. 4, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2011 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective December 23, 2011, 90 days after the adjournment of the legislature.

## 22-3A-3. Election for staggered terms; vacancies.

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 one, four, eight, nine and ten shall be elected from the districts described in Sections 6, 9, 13, 14 and 15 of the 2011 Educational Redistricting Act at the 2012 and subsequent general elections.

D. Members from districts two, three, five, six and seven shall be elected from the districts described in Sections 7, 8, 10, 11 and 12 of the 2011 Educational Redistricting Act at the 2014 and subsequent general elections.

E. The governor shall by appointment fill a vacancy in the office of a member of 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.

History: Laws 2011 (1st S.S.), ch. 4, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2011 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective December 23, 2011, 90 days after the adjournment of the legislature.

## 22-3A-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 3 of the 2011 Educational Redistricting Act.

History: Laws 2011 (1st S.S.), ch. 4, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2011 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective December 23, 2011, 90 days after the adjournment of the legislature.

## 22-3A-5. Precincts.

A. Precinct designations and boundaries used in the 2011 Educational Redistricting Act are those precinct designations and boundaries established pursuant to the Precinct Boundary Adjustment Act [1-3-10 through 1-3-14 NMSA 1978] as revised and approved pursuant to that act by the secretary of state as of August 31, 2011.

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 2011 (1st S.S.), ch. 4, § 5.

**ANNOTATIONS**

**Effective dates.** — Laws 2011 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective December 23, 2011, 90 days after the adjournment of the legislature.

## 22-3A-6. Public education commission district one.

Public education commission district one is composed of Bernalillo county precincts 20 through 30, 32 through 67, 70 through 77, 81 through 83, 88, 90 through 92, 94 through 99, 109 through 114, 119, 120, 134, 136 through 144, 257 and 258.

History: Laws 2011 (1st S.S.), ch. 4, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2011 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective December 23, 2011, 90 days after the adjournment of the legislature.

## 22-3A-7. Public education commission district two.

Public education commission district two is composed of Bernalillo county precincts 289 through 302, 304 through 308, 316 through 318, 321 through 324, 328 through 333, 406 through 410, 413 through 430, 440, 447 through 454, 456, 461 through 466, 471 through 478, 480 through 500, 502 through 550, 560 through 569 and 601 through 603.

History: Laws 2011 (1st S.S.), ch. 4, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2011 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective December 23, 2011, 90 days after the adjournment of the legislature.

## 22-3A-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 125, 131 through 133, 135, 150 through 154, 161 through 166, 171, 180 through 187, 191 through 197, 211, 212, 214 through 217, 221, 223 through 226, 241 through 246, 251 through 256, 271 through 275, 278, 281 through 287, 311 through 315, 326, 327, 341 through 347, 351 through 358, 371 through 375, 381 through 387, 400 through 405, 411, 412, 431 through 439, 441 through 446 and 455.

History: Laws 2011 (1st S.S.), ch. 4, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2011 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective December 23, 2011, 90 days after the adjournment of the legislature.

## 22-3A-9. Public education commission district four.

Public education commission district four is composed of Bernalillo county precincts 1, 80, 87, 115, 117, 118, 127 through 129, 170, 303, 553 through 559 and 570 through 573; Los Alamos county; Sandoval county precincts 1 through 23, 27 through 76 and 78 through 86; and Santa Fe county precincts 11, 12, 15 through 19, 63, 72, 73, 80, 82, 84 and 85.

History: Laws 2011 (1st S.S.), ch. 4, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2011 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective December 23, 2011, 90 days after the adjournment of the legislature.

## 22-3A-10. Public education commission district five.

Public education commission district five is composed of McKinley county; Rio Arriba county precincts 24 and 29; San Juan county; and Sandoval county precincts 24 through 26.

History: Laws 2011 (1st S.S.), ch. 4, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2011 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective December 23, 2011, 90 days after the adjournment of the legislature.

## 22-3A-11. Public education commission district six.

Public education commission district six is composed of Bernalillo county precincts 31 and 93; Catron county; Cibola county; Dona Ana county precincts 1 through 3, 60 and 95; Grant county; Hidalgo county; Luna county; Sierra county; Socorro county precincts 1 through 11 and 13 through 26; and Valencia county.

History: Laws 2011 (1st S.S.), ch. 4, § 11.

**ANNOTATIONS**

**Effective dates.** — Laws 2011 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective December 23, 2011, 90 days after the adjournment of the legislature.

## 22-3A-12. Public education commission district seven.

Public education commission district seven is composed of Dona Ana county precincts 4 through 59, 61 through 94 and 96 through 120; and Otero county precincts 1 and 41.

History: Laws 2011 (1st S.S.), ch. 4, § 12.

**ANNOTATIONS**

**Effective dates.** — Laws 2011 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective December 23, 2011, 90 days after the adjournment of the legislature.

## 22-3A-13. Public education commission district eight.

Public education commission district eight is composed of Bernalillo county precincts 551 and 552; Chaves county precincts 1 through 7, 9 through 16, 21 through 25, 31 through 36, 41 through 47, 51, 52, 61 through 63, 71 through 73, 81 through 85, 90 through 94 and 101 through 103; De Baca county; Guadalupe county; Lincoln county; Mora county; Otero county precincts 2 through 40; San Miguel county; Socorro county precinct 12; and Torrance county.

History: Laws 2011 (1st S.S.), ch. 4, § 13.

**ANNOTATIONS**

**Effective dates.** — Laws 2011 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective December 23, 2011, 90 days after the adjournment of the legislature.

## 22-3A-14. Public education commission district nine.

Public education commission district nine is composed of Chaves county precinct 104; Curry county; Eddy county; Harding county; Lea county; Quay county; Roosevelt county; and Union county.

History: Laws 2011 (1st S.S.), ch. 4, § 14.

**ANNOTATIONS**

**Effective dates.** — Laws 2011 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective December 23, 2011, 90 days after the adjournment of the legislature.

## 22-3A-15. Public education commission district ten.

Public education commission district ten is composed of Colfax county; Rio Arriba county precincts 1 through 23, 25 through 28 and 30 through 42; Santa Fe county precincts 1 through 10, 13, 14, 20 through 62, 64 through 71, 74 through 79, 81, 83 and 86 through 88; and Taos county.

History: Laws 2011 (1st S.S.), ch. 4, § 15.

**ANNOTATIONS**

**Effective dates.** — Laws 2011 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective December 23, 2011, 90 days after the adjournment of the legislature.

## 22-3A-16. Continuing terms; vacancies.

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

B. An appointment to fill a vacancy on the public education commission made before the general election of 2012 shall be made from the district as it existed on the effective date of this section. After the general election of 2012, a vacancy shall be filled by appointment from the district as set out in Sections 6 through 15 of the 2011 Educational Redistricting Act.

History: Laws 2011 (1st S.S.), ch. 4, § 16.

**ANNOTATIONS**

**Effective dates.** — Laws 2011 (1st S.S.), ch. 4 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective December 23, 2011, 90 days after the adjournment of the legislature.

# 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.

**ANNOTATIONS**

## 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.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For current powers and duties of the former state board of education, *see* 9-24-9 NMSA 1978.

For references to the former state board, *see* 9-24-15 NMSA 1978.

For contents and publication of order creating new school district, *see* 22-4-10 and 22-4-11 NMSA 1978.

For interim school board of newly created district, *see* 22-4-12 NMSA 1978.

For election of local school board for newly created district, *see* 22-4-13 and 22-4-14 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, added the subsection designation "A" at the beginning of the section; deleted "within an existing school district" at the end of the introductory paragraph of Subsection A; inserted the paragraph designations (1) and (2) and added Paragraph (3) in Subsection A; deleted "after a hearing to be held within ninety (90) days after filing of petition by the state board to determine that" at the end of Paragraph (2) of Subsection A; added the introductory paragraph of current Subsection B; redesignated former Subsections A to C as Paragraphs (1) to (3) of Subsection B; and made minor stylistic changes in Subsection A.

**Secretary of education may create a new school district.** — Under N.M. Const. art. XII, § 6, as amended in 2003, the secretary of education has legal authority to order the creation of a new school district and to order a school district to convey by deed all right, title and interest in school-owned realty located in the proposed boundary of the new school district to the new school district. If the transferred property is encumbered, the school district that incurred the indebtedness remains liable on the debt. 2010 Op. Att'y Gen. No. 10-01.

## 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.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For alternate method of consolidation, *see* 22-4-5 to 22-4-9 NMSA 1978.

For contents and publication of order consolidating school districts, *see* 22-4-10 and 22-4-11 NMSA 1978.

For interim school board of newly consolidated district, *see* 22-4-12 NMSA 1978.

For election of local school board for newly created district, *see* 22-4-13 and 22-4-14 NMSA 1978.

**Constitutionality of Subsection B.** — Subsection B has applicability to any and all school districts which come within the classification created by the statute. The bases, or reasons, for the classification of school districts affected by the provisions of this statute, as opposed to those school districts not affected thereby, are substantial, and the classification is clearly reasonable within the applicable rules of construction and interpretation. *State ex rel. Apodaca v. N.M. State Bd. of Educ.*, 1971-NMSC-058, 82 N.M. 558, 484 P.2d 1268.

**Where school consolidation was ordered pursuant to Subsection B, the provisions of Section 22-4-4 NMSA 1978 were controlling** as to the board which should govern the consolidated district, and the provisions of Sections 22-4-10 to 22-4-14 NMSA 1978 were inapplicable. *State ex rel. Apodaca v. N.M. State Bd. of Educ.*, 1971-NMSC-058, 82 N.M. 558, 484 P.2d 1268.

## 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.

**ANNOTATIONS**

**Where school consolidation was ordered pursuant to Subsection B of Section 22-4-3 NMSA 1978, the provisions of this section were controlling** as to the board which should govern the consolidated district, and the provisions of Sections 22-4-10 to 22-4-14 NMSA 1978 were inapplicable. *State ex rel. Apodaca v. N.M. State Bd. of Educ.*, 1971-NMSC-058, 82 N.M. 558, 484 P.2d 1268.

## 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.

**ANNOTATIONS**

**Cross references.** — For references to the former state board, *see* 9-24-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For references to the former state board, *see* 9-24-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all

references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references. —** For standards for consolidation generally, *see* 22-4-3 NMSA 1978.

For contents and publication of order consolidating school districts, *see* 22-4-10 and 22-4-11 NMSA 1978.

**Applicability of section to consolidation under Subsection B of Section 22-4-3 NMSA 1978. —** Where school consolidation was ordered pursuant to Subsection B of Section 22-4-3 NMSA 1978, the provisions of Section 22-4-4 NMSA 1978 were controlling as to the board which should govern the consolidated district, and the provisions of this section and Sections 22-4-10 to 22-4-14 NMSA 1978 were inapplicable. *State ex rel. Apodaca v. N.M. State Bd. of Educ.*, 1971-NMSC-058, 82 N.M. 558, 484 P.2d 1268.

## 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.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

The provisions relating to the state tax commission, referred to in this section, were repealed by Laws 1970, ch. 31, § 22. Laws 1970, ch. 31, created the property appraisal department. The provisions of Laws 1970, ch. 31, relating to the property appraisal department, were repealed by Laws 1973, ch. 258, § 156. Laws 1973, ch. 258, created the property tax department. The property tax department and the oil and gas accounting commission were abolished by Laws 1977, ch. 249, § 5. Laws 1977, ch. 249, § 4, established the taxation and revenue department, which now consists of, inter alia, the revenue division, the property tax division and the audit and compliance division.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references. —** For references to the former state board, *see* 9-24-15 NMSA 1978.

The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

*See* the Public Education Department Act, 9-24-1 NMSA 1978 and N.M. Const. art. XII, § 6 for current law governing the former powers of the chief of the public school finance division.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Applicability and application of § 2 of Voting Rights Act of 1965 (42 USCS § 1973) to members of school board, 105 A.L.R. Fed. 254.

## 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.

**ANNOTATIONS**

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

*See* the Public Education Department Act, 9-24-1 NMSA 1978 and N.M. Const. art. XII, § 6 for current law governing the former powers of the chief of the public school finance division.

## 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

## 22-4A-1. Short title.

This act [22-4A-1 to 22-4A-3 NMSA 1978] may be cited as the "Advisory Referendum Act".

**History:** Laws 1987, ch. 191, § 1.

## 22-4A-2. Purpose.

The purpose of the Advisory Referendum Act is to enable registered voters of an affected area, who may ultimately be called upon to vote on bond issues for capital projects for a new district, to express the extent of their support for the formation of that new public school district.

**History:** Laws 1987, ch. 191, § 2.

## 22-4A-3. Advisory referendum authorized; effect of referendum.

A. The governing body of any school district having a student membership in excess of seventy-six thousand and the governing body of any school district any part of which is proposed to be incorporated in a new school district shall conduct an advisory referendum in any municipality or in any precinct of a school district which is proposed to be included in a new school district.

B. An "advisory referendum" as used in the Advisory Referendum Act means an election at which the proposal of creating a new school district that includes the territory in which the municipality is located is submitted to the voters of the municipality as a question of supporting the proposal or opposing the proposal. The result of the vote shall be advisory only as a statement of public opinion on the proposed creation of a new school district and shall not constitute any election required by law pertaining to the creation of a district. The results of the referendum may be used by the voters of the existing and proposed district encompassed within the boundaries of the municipality or of another school district to better determine desirability and feasibility of forming the new public school district.

C. The election for the advisory referendum shall be conducted and canvassed substantially in the same manner as special school district elections are conducted and canvassed.

**History:** Laws 1987, ch. 191, § 3.

# 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.

**ANNOTATIONS**

**Cross references.** — For recall of local school board members, *see* 22-7-1 NMSA 1978 et seq.

For constitutional provision as to residence of public officers, *see* N.M. Const., art. V, § 13.

For school district elections, *see* 1-22-1 NMSA 1978 et seq.

## 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.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, deleted "Notwithstanding any other provision of the Public School Code" at the beginning of the first sentence.

## 22-5-2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 226, § 54 repealed 22-5-2 NMSA 1978, as enacted by Laws 1969, ch. 103, § 1, containing the purpose of the act, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Cross references.** — For school district elections generally, *see* 1-22-1 NMSA 1978 et seq.

**The 2015 amendment,** effective July 1, 2015, amended the required contents of a resolution providing for an election of school board members; in Subsection E, after

"additional school board members at", deleted "a special" and added "the next regular", after the first occurrence of "serve until the", deleted "second" and added "first", after "election following the", deleted "special school district" and added "member's" after the second occurrence of "serve until the", deleted "third" and added "second", and after "board election following", deleted "such special school district" and added "the member's".

**The 1993 amendment,** effective July 1, 1993, substituted "Section 1-22-5" for "Section 22-6-3" in the first sentence of Subsection E.

**Provisions of former Subsection B (now Subsection E) are constitutional and valid.** 1971 Op. Att'y Gen. No. 71-29.

## 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.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, amended terms for certain school board positions; in Subsection A, after "local", added "school", after "board of that", added "school", and after "reside within the", added "school"; in Paragraph (2) of Subsection B, after "all terms shall be", deleted "six-year" and added "four-year"; in Paragraph (3) of Subsection B, after "all terms shall be", deleted "six-year" and added "four-year"; in Subsection C, after "all voters in the", added "school", and after "membership in the local", added "school"; and in Subsection D, after "call a special", deleted "school", and after "school board in that", added "school".

## 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 through 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 through 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.

## ANNOTATIONS

**Cross references. —** For requirement of reports as to membership in schools, *see* 22-8-13 NMSA 1978.

For reemployment or termination of certified school instructors, *see* 22-10A-22 NMSA 1978 et seq.

For request for operation under variable school calendar, *see* 22-22-4 NMSA 1978.

For preparation and review of bilingual instruction programs, *see* 22-23-5 NMSA 1978.

For lease of state lands, *see* 19-7-55 NMSA 1978.

**The 2005 amendment,** effective April 7, 2005, provides in Subsection C that the local school board shall review and approve the annual school district budget.

**The 2004 amendment,** effective May 19, 2004, changed "state board" to "department" in Subsections A and M and added Subsection N.

**The 2003 amendment,** effective April 4, 2003, rewrote Subsection A to the extent that a detailed comparison is impracticable; in Subsection B, inserted "local" following "employ a" near the beginning and deleted "of schools" following "superintendent" near the beginning; deleted former Subsections C, D, E, F, and G; inserted present Subsection C and redesignated the subsequent paragraphs accordingly; inserted "provide for the" at the beginning of present Subsection H; substituted "rules" for "regulations" near the beginning of present Subsection K; and in present Subsection M substituted "rules" for "regulations that shall be" following "in accordance with" near the end and substituted "state board" for "department of education" at the end.

**The 1993 amendment,** effective July 1, 1993, added the proviso at the end of the first sentence of Subsection D.

**The 1992 amendment,** effective May 20, 1992, inserted "or the purchase of instructional materials" in Subsection E; substituted "department of education" for "director" in the second sentence of Subsection Q; and made minor stylistic changes throughout the section.

**The 1990 amendment,** effective May 16, 1990, added present Subsection E, redesignated former Subsections E to P as present Subsections F to Q, substituted "Procurement Code" for "Public Purchasers Act" at the end of present Subsection N, and, in present Subsection Q, deleted "local" preceding "school district property" at the end of the first sentence and "of the public school finance division" at the end of the second sentence.

**Violation of Open Meetings Act.** — Charges of multiple intentional violations of the Open Meetings Act, which permitted policy decisions concerning the respective roles of the superintendent and the school board without public participation, were a form of misconduct for which recall was provided. *Doña Ana Cnty. Clerk v. Martinez*, 2005-NMSC-037, 138 N.M. 575, 124 P.3d 210.

**Teaching positions.** — A local school board may add or abolish teaching positions in performing its fiscal responsibilities. *Aguilera v. Hatch Valley Pub. Schs. Bd. of Educ.*, 2005-NMCA-069, 137 N.M. 642, 114 P.3d 322, cert. granted, 2005-NMCERT-006, 137 N.M. 767, 115 P.3d 230.

**Section makes local board's supervision and control of public school in district "subject to the regulations of state board."** *Morgan v. N.M. State Bd. of Educ.*, 1971-NMCA-102, 83 N.M. 106, 488 P.2d 1210, cert. denied, 83 N.M. 105, 488 P.2d 1209.

**No Eleventh Amendment immunity.** — School districts and their governing boards in New Mexico are not arms of the state entitled to Eleventh Amendment immunity. *Duke v. Grady Mun. Schs.*, 127 F.3d 972 (10th Cir. 1997).

**Legislative intent.** — The New Mexico legislature intended school districts or boards to be political subdivisions or local public bodies, not arms of the state. *Duke v. Grady Mun. Schs.*, 127 F.3d 972 (10th Cir. 1997).

**Liability of state.** — State of New Mexico is not legally liable for judgment against a school district. *Duke v. Grady Mun. Schs.*, 127 F.3d 972 (10th Cir. 1997).

**Authority of local board over personnel.** — A local board is the only entity with power to terminate employees; the purpose of former Subsection D is to require input of a superintendent before a personnel decision is made, and not to render a board powerless to act except in accordance with the recommendation of its superintendent. *Daddow v. Carlsbad Mun. Sch. Dist.*, 1995-NMSC-032, 120 N.M. 97, 898 P.2d 1235 (decided under prior law).

**Procurement Code exemptions applicable to school boards.** — The provision of Subsection N(now Subsection J) requires school boards to contract according to all but two sections of the entire Procurement Code; this means that all bidding requirements of the Code, including the exemptions in Section 13-1-98 NMSA 1978, apply to school district contracts. *Morningstar Water Users Ass'n v. Farmington Mun. Sch. Dist. No. 5*, 1995-NMSC-052, 120 N.M. 307, 901 P.2d 725.

**Ultra vires acts by school boards.** — Any attempt by a local school board to enter into a contract or formulate a policy that violates the specific statutory provisions governing school boards is ultra vires and void. Thus, any attempt by a school board to enter into a contract or promulgate a termination policy through manuals which give an employee rights in conflict with the School Personnel Act is ultra vires and void. *Swinney v. Deming Bd. of Educ.*, 1994-NMSC-039, 117 N.M. 492, 873 P.2d 238.

**The local school board, as the policy maker of the public employer, is the proper party to engage in collective bargaining negotiations and to review employee grievances.** — Where the central consolidated school dstrict refused to review grievances appealed to the school board pursuant to a negotiated grievance procedure contained in a collective bargaining agreement (CBA) with the teachers' union, and where the school board asserted that changes made to the Public School Code in 2003 divested school boards of all authority to act on any personnel matters and vested exclusive authority to act on all personnel matters in the local school superintendent, the district court did not err in affirming the order of the public employee labor relations board that the school board is required to hear and decide appeals from decisions of the school superintendent under grievance procedures set forth in the CBA, because the school board, as the policy maker who negotiated and agreed to the CBA is the appropriate entity to determine whether its own policy, or specific provision in the CBA, has been violated, misinterpreted, or misapplied. *Alarcon v. Albuquerque Pub. Schs. Bd. of Educ.*, 2018-NMCA-021, cert. denied.

**School board's supervision and discharge of superintendent.** — Inherent in the power given to the school board to employ a superintendent is the ability for the board

to supervise and discharge a superintendent. *Stanley v. Raton Bd. of Educ.*, 1994-NMSC-059, 117 N.M. 717, 876 P.2d 232.

**Employment of administrators.** — The school board effectively terminated the plaintiffs' employment as school administrators by declaring the jobs vacant, and therefore met the obligations under this section. The plaintiffs could reasonably infer from the board's actions that they were not reemployed for the next year. *Naranjo v. Board of Educ.*, 1995-NMSC-015, 119 N.M. 401, 891 P.2d 542.

**School districts and their governing boards in New Mexico** are not arms of the state, and they are accordingly not shielded by the Eleventh Amendment from liability for a 42 U.S.C. § 1983 action in federal court. *Duke v. Grady Mun. Schs.*, 127 F.3d 972 (10th Cir. 1997).

**Liability of local board under federal civil rights law.** — In an action brought by a school employee against a school district local school board under 42 U.S.C. § 1983, the board was a "person" for purposes of the suit, and the action under such law was not barred by any statutory governmental immunity. *Daddow v. Carlsbad Mun. Sch. Dist.*, 1995-NMSC-032, 120 N.M. 97, 898 P.2d 1235.

**No power to create police department.** — A local school board does not have the authority to create and fund an independent police department without specific legislative authority. 2007 Op. Att'y Gen. No. 07-07.

**Use of public funds to defend actions involving misconduct.** — Public funding may be used to defend public school districts, boards and employees in legal actions involving misconduct if the charges arise from the discharge of an official duty in which the government has an interest; the public employee was acting in good faith when the alleged wrongful conduct occurred; the employing government entity has express or implied legal authority to pay the employee's legal expenses; the employee is exonerated of the charges; and the decision to pay the legal fees is made by an impartial official or official body. 2007 Op. Att'y Gen. No. 07-03.

**Conditions under which private group may use facilities.** — A local board of education may permit a particular religious denomination or private group to use public school buildings or facilities after school hours where such use, in the opinion of the school board, will not interfere with normal school activities, but the board may not in any respect sanction or give endorsement to such religious denominational programs. 1963-64 Op. Att'y Gen. No. 63-106.

**Include equal treatment of all groups.** — A local school board must, in exercising its discretion as to whether a particular religious denomination may use public school facilities after school hours, either make the use of school facilities available to all religious groups on an equal basis and without preference as to any particular group or not permit such use at all. 1963-64 Op. Att'y Gen. No. 63-106.

**And reimbursement of school's actual expenses.** — Since a school district may not in any manner lend its financial or other support to any private religious denominations, it is incumbent upon school authorities to obtain reimbursement for any actual expenses occasioned from a religious group's private use of public school facilities. 1963-64 Op. Att'y Gen. No. 63-106.

**Payment for time spent away from district by district employee.** — A local school district employee who serves on the state board of education may draw salary from the district and per diem and expenses from the state department of education; however, he may not be paid for time spent away from his duties with the district unless he takes authorized leave with pay. 1987 Op. Att'y Gen. No. 87-45.

**Character of private use determines whether state approval required.** — Where a local school board desires to enter into a lease of real property to any private party or religious group and proposes to give exclusive right of possession and occupancy to school lands or buildings, the state board of finance must give its approval pursuant to Section 13-6-2 NMSA 1978. Where, however, the use permitted is temporary or brief and limited to hours when the property is not needed for school purposes, the approval of the state board of finance is not necessary, and the local board of education may or may not authorize such usage according to its discretion. 1963-64 Op. Att'y Gen. No. 63-106.

**School board attendance allocation proper.** — So long as the statutory and constitutional minimum educational standards are satisfied, the local school board may allocate attendance within the district. 1979 Op. Att'y Gen. No. 79-36.

**School boards have authority to enact reasonable regulations** relating to the suspension or expulsion of students. 1959-60 Op. Att'y Gen. No. 59-214.

**Regulating married students.** — A rule or regulation prohibiting married students from participating in band, glee club, dramatic events, school newspapers, school clubs, school sponsored trips and school athletics is arbitrary and unreasonable and therefore void. 1967 Op. Att'y Gen. No. 67-117.

**Pregnant students.** — A rule which would require the withdrawal of a student when it is known that she is pregnant and when the school officials do not believe that such attendance is proper clearly violates the compulsory attendance law; therefore if the girl is physically capable of attending school, the local school board may not prohibit her attendance by rule or regulation merely because she is pregnant. 1967 Op. Att'y Gen. No. 67-117.

**School boards have authority to ban smoking.** — Because local school boards have authority to supervise and control all public schools within their district, they can use that authority to ban smoking by both adults and minors on all public school campuses within their district. 1994 Op. Att'y Gen. No. 94-03.

**School board president's authority.** — A local school board president has authority to deny citizens the right to address the local school board during a meeting of the board, if he is authorized to do so by rules promulgated by the board and he does not exercise that authority arbitrarily or capriciously. 1990 Op. Att'y Gen. No. 90-26.

**Health club memberships for employees.** — A school district may spend public funds to provide its full time employees with membership in a private health club if the membership is provided in return for services rendered to the district. 1989 Op. Att'y Gen. No. 89-20.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools § 15 et seq.

Releasing public school pupils from attendance for purpose of attending religious education classes, 2 A.L.R.2d 1371.

Trust for school children as charitable, or merely benevolent, 25 A.L.R.2d 1114.

Operation of garage for maintenance and repair of municipal vehicles as governmental function, 26 A.L.R.2d 944.

Rejection of public schoolteacher because of disloyalty, 27 A.L.R.2d 487.

Title to buildings when school lands revert for nonuse for school purposes, 28 A.L.R.2d 564.

Validity, as a charity, of trust to lend money to students, 33 A.L.R.2d 1183.

Hearing on charges before suspension or expulsion from educational institution, 58 A.L.R.2d 903.

Waiver of, or estoppel to assert, failure to give required notice of claim of injury to school district or authorities, 65 A.L.R.2d 1278.

Malicious prosecution, civil liability of school officials for, 66 A.L.R.2d 749.

Tax: rescission of vote authorizing school district expenditure or tax, 68 A.L.R.2d 1041.

Power of school district to employ counsel, 75 A.L.R.2d 1339.

Age: power of public school authorities to set minimum or maximum age requirements for pupils in absence of specific statutory authority, 78 A.L.R.2d 1021.

Use of public school premises for religious purposes during nonschool time, 79 A.L.R.2d 1148.

Attendance: determination of school attendance, enrollment, or pupil population for purpose of apportionment of funds, 80 A.L.R.2d 953.

What is "public place" within requirements as to posting of notices, 90 A.L.R.2d 1210.

Use of school property for other than public school or religious purposes, 94 A.L.R.2d 1274.

Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date, 98 A.L.R.2d 1331.

Regulations as to fraternities and similar associations connected with educational institution, 10 A.L.R.3d 389.

Marriage or pregnancy of public school student as ground for expulsion or exclusion, or of restriction of activities, 11 A.L.R.3d 996.

Validity of regulation by school authorities as to clothes or personal appearance of pupils, 14 A.L.R.3d 1201.

Local improvements: exemption of public school property from assessments for local improvements, 15 A.L.R.3d 847.

Participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college, 32 A.L.R.3d 864.

Public schools: modern status of doctrine of sovereign immunity as applied to public schools and institutions of higher learning, 33 A.L.R.3d 703.

Tax exemption: garage or parking lot as within tax exemption extended to property of educational, charitable, or hospital organizations, 33 A.L.R.3d 938.

Tort liability of public schools and institutions of higher learning from accidents due to condition of buildings or equipment, 34 A.L.R.3d 1166.

Athletic events: tort liability of public schools and institutions of higher learning for accident occurring during school athletic events, 35 A.L.R.3d 725.

Vocational training: liability of public schools and institutions of higher learning for accidents associated with chemistry experiments, shopwork and manual or vocational training, 35 A.L.R.3d 758.

Fellow students: tort liability of public schools and institutions of higher learning for injuries caused by acts of fellow students, 36 A.L.R.3d 330.

Physical education: tort liability of public schools and institutions of higher learning for accidents occurring during physical education classes, 36 A.L.R.3d 361.

Nonschool purposes: tort liability of public schools and institutions of higher learning for accidents occurring during use of premises and equipment for other than school purposes, 37 A.L.R.3d 712.

Playground: tort liability of public schools and institutions of higher learning for injuries due to condition of grounds, walks, and playgrounds, 37 A.L.R.3d 738.

Tort liability of public schools and institutions of higher learning for injuries resulting from lack or insufficiency of supervision, 38 A.L.R.3d 830.

Fees: validity of exaction of fees from children attending elementary or secondary public schools, 41 A.L.R.3d 752.

Property taxes: validity of basing public school financing system on local property taxes, 41 A.L.R.3d 1220.

Loitering or trespass: validity and construction of statute or ordinance forbidding unauthorized persons to enter upon or remain in school buildings or premises, 50 A.L.R.3d 340.

Tax exemption: charitable or educational organization from sales or use taxes, 53 A.L.R.3d 748.

Discipline of pupil for conduct away from school grounds, 53 A.L.R.3d 1124.

Residence for purpose of admission to public school, 56 A.L.R.3d 641.

What constitutes "school," "educational use," or the like within zoning ordinance, 64 A.L.R.3d 1087.

Zoning regulations as applied to colleges, universities, or similar institutions for higher education, 64 A.L.R.3d 1138.

Zoning regulations as applied to private and parochial schools below the college level, 74 A.L.R.3d 14.

Zoning regulations as applied to public elementary and high schools, 74 A.L.R.3d 136.

Sex education: validity of sex education programs in public schools, 82 A.L.R.3d 579.

Student's right to compel school officials to issue degree diploma, or the like, 11 A.L.R.4th 1182.

Personal liability of public school teacher in negligence action for personal injury or death of student, 34 A.L.R.4th 228.

Personal liability of public school executive or administrative officer in negligence action for personal injury or death of student, 35 A.L.R.4th 272.

Personal liability in negligence action of public school employee, other than teacher or executive or administrative officer, for personal injury or death of student, 35 A.L.R.4th 328.

AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher, 60 A.L.R.4th 260.

Validity, construction, and effect of municipal residency requirements for teachers, principals, and other school employees, 75 A.L.R.4th 272.

Tort liability of public schools and institutions of higher learning for accidents associated with transportation of students, 23 A.L.R.5th 1.

Search conducted by school official or teacher as violation of fourth amendment or equivalent state constitutional provision, 31 A.L.R.5th 229.

Tort liability of public schools and institutions of higher learning for accidents occurring in physical education classes, 66 A.L.R.5th 1.

Tort liability of schools and institutions of higher learning for personal injury suffered during school field trip, 68 A.L.R.5th 519.

Tort liability of public schools and institutions of higher learning for accidents occurring during school athletic events, 68 A.L.R.5th 663.

Tort liability of public schools and institutions of higher learning for injury to student walking to or from school, 72 A.L.R.5th 469.

Lunches and nutrition: construction and application of National School Lunch Act (42 U.S.C.S. §§ 1751 et seq.) and Child Nutrition Act of 1966 (42 U.S.C.S. §§ 1771 et seq.), 14 A.L.R. Fed. 634.

Freedom of press: validity, under federal Constitution, of public school or state college regulation of student newspapers, magazines, or other publications - federal cases, 16 A.L.R. Fed. 182.

Attorneys' fees: construction and application of § 718 of Education Amendments Act of 1972 (20 U.S.C.S. § 1617) authorizing court to allow prevailing party, other than United

States, reasonable attorneys' fee as part of costs in school desegregation case, 22 A.L.R. Fed. 688.

Tax exemption: construction and application of so-called "charitable and educational exemption" of Copyright Act (17 U.S.C.S. § 104), 23 A.L.R. Fed. 974.

78 C.J.S. Schools and School Districts § 100 et seq.

## 22-5-4.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 226, § 54 repealed 22-5-4.1 NMSA 1978, as enacted by Laws 1981, ch. 296, § 1, allowing local school boards to authorize a period of silence at the beginning of the school day, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 978 on *NMOneSource.com*.

## 22-5-4.2. Child abuse; report coordination; confirmation.

A. A local school board may adopt policies providing for the coordination and internal tracking of reports made by school district personnel pursuant to Section 32-1-15 NMSA 1978 [repealed]. Such policies, however, shall not require any notification to school district personnel before the report is made to one of the offices listed in Subsection A of that section. No policy shall purport to relieve any person having a duty to report under that section from that duty.

B. After a report is made to a county social services office of the human services department pursuant to Section 32-1-15 NMSA 1978 [repealed], by any school district personnel, that office 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Section 32-1-15 NMSA 1978 was repealed in 1993. For present comparable provisions, *see* 32A-4-3 NMSA 1978.

## 22-5-4.3. School discipline policies; 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.

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. 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.

E. 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.

F. 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.

G. 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.

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.

**ANNOTATIONS**

**The 2011 amendment,** effective June 17, 2011, prohibited corporal punishment as a disciplinary sanction.

**The 2005 amendment,** effective June 17, 2005, permits students to carry and self-administer asthma medication and emergency anaphylaxis medication prescribed by a license health care provider.

**The 1993 amendment,** effective July 1, 1993, deleted former Subsection E, pertaining to the effective date of policies adopted pursuant to this section and the time for review of existing school discipline policies, and made a minor stylistic change in Subsection A.

**Dress code.** — Wearing of sagging pants is not constitutionally protected speech under the First Amendment. *Bivens by & Through Green v. Albuquerque Pub. Sch.*, 899 F. Supp. 556 (D.N.M. 1995).

**Corporal punishment.** — In school discipline cases, the substantive due process inquiry is whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience. *Garcia by Garcia v. Miera*, 817 F.2d 650 (10th Cir. 1987), cert. denied, 485 U.S. 959, 108 S.Ct. 1220, 99 L.Ed.2d 421 (1988).

## 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 26 recompiled and amended former 22-5-4.6 NMSA 1978, relating to collaborative school improvement programs, as 22-5-15 NMSA 1978, effective April 4, 2003.

## 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 propellent 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.

**ANNOTATIONS**

**Cross references.** — For unlawful carrying of deadly weapon on school premises, *see* 30-7-2.1 NMSA 1978.

**Suspension constitutional.** — A school's decision to suspend a student who "should have known" he was bringing a weapon onto school property does not violate the student's substantive due process right to a public education, if any such right exists. *Butler v. Rio Rancho Pub. Sch. Bd. of Educ.*, 341 F.3d 1197 (10th Cir. 2003).

## 22-5-4.8. Area vocational high schools.

A. A local school board, alone or in cooperation with other boards, may develop a plan for the establishment of an area vocational high school on the campus of a post-secondary educational institution to facilitate sharing of facilities. The plan shall be submitted to the state board [department] of education and the commission on higher education [higher education department] for their approval.

B. The state board [department] of education and the commission on higher education 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 [21-2A-1 through 21-2A-10 NMSA 1978];

(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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For references to the former state board, *see* 9-24-15 NMSA 1978.

For references to the former commission on higher education, *see* 9-25-4.1 NMSA 1978.

## 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.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, replaced the term "state board" with the public education department" and "high school equivalency diploma" with "high school equivalency credential" in the provision relating to providing high school diplomas to World War II veterans; in Subsection B, after "equivalency", deleted "diploma" and added "credential"; and in Subsection C, after "The", deleted "state board" and added "department".

## 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.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, replaced the term "high school equivalency diploma" with "high school equivalency credential" in the provision relating to providing high school diplomas to veterans of the Korean conflict; and in Subsection B, after "equivalency", deleted "diploma" and added "credential".

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 51 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Effective dates. —** Laws 2017, ch. 33 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Member of local school board cannot resign from such office and thereafter be appointed superintendent** of schools or be otherwise employed by that school district during the term for which he or she was elected or appointed. 1974 Op. Att'y Gen. No. 74-17.

## 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.

**ANNOTATIONS**

**The 2009 amendment,** effective June 19, 2009, in Subsection A, after "daughter-in-law", added "brother, brother-in-law, sister or sister-in-law" and in Subsection B, changed March 1, 2003 to July 1, 2008.

**The 2003 amendment,** effective April 4, 2003, in Subsection A substituted "superintendent" for "school board" following "local" near the beginning and inserted "or the local superintendent. The local school board may waive the nepotism rule for family members of a local superintendent." at the end; and substituted "2003" for "1981" at the end of Subsection B.

**Object of section is to prevent nepotism in initial hiring** of school employees. The hiring of a teacher closely related to a member of the school board justifiably arouses public suspicion that the teacher was hired on the basis of relationship rather than merit. Such suspicions, however, relate only to the initial hiring of the teacher. There is no reason to suspect nepotism in the continued employment of a tenured teacher whose competency has been established by years of service, merely because a family member is elected to the school board at some time during the teacher's career. *N.M. State Bd. of Educ. v. Board of Educ.*, 1981-NMSC-031, 95 N.M. 588, 624 P.2d 530 (decided prior to 1981 amendment).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Validity, construction, and effect of state constitutional or statutory provision regarding nepotism in the public service, 11 A.L.R.4th 826.

## 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.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

**Cross references. —** For the Surety Board Act, *see* 10-2-13 NMSA 1978.

For references to the former state board, *see* 9-24-15 NMSA 1978.

For references to the former public school finance division, *see* 9-6-3.1 NMSA.

## 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.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, required local school board elections to be held pursuant to the Local Election Act, and made technical and conforming changes; and in Subsection A, after "four years", deleted "from March 1", after "regular", deleted "school district' and added "local", and after "election", added "held pursuant to the Local Election Act".

**The 1993 amendment,** effective July 1, 1993, deleted former Subsections B to D, pertaining to the term of office for a member elected prior to March 1, 1985 and the procedure for avoiding coinciding terms for members, and redesignated former Subsection E as Subsection B.

**Defeated incumbent who is still a member of an existing five-man board may vote** on the resolution to increase the board membership to seven. While he is what is commonly referred to as a lame duck, he still exercises the full powers of his office for his term of office. 1971 Op. Att'y Gen. No. 71-17.

## 22-5-8.1. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1993, ch. 226, § 54 repealed 22-5-8.1 NMSA 1978, as enacted by Laws 1983, ch. 237, § 1, concerning the term of office for board members of certain districts, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com*.

## 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.

### ANNOTATIONS

**The 2015 amendment,** effective July 1, 2015, substituted "qualified elector" for each reference to "qualified person" and substituted the "public education department" for each reference to the "state board"; in Subsections A and B, after "qualified", deleted "person" and added "elector"; in Subsection C, after "qualified", deleted "person" and added "elector" in two places, and after "occurred, the", deleted "state board" and added "department"; and in Subsection D, after "board, the", deleted "state board" and added "department", after "qualified", deleted "persons" and added "electors", and after "next regular", deleted "or special".

## 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.

**ANNOTATIONS**

**Cross references.** — For publication of notice generally, *see* 14-11-1 NMSA 1978 et seq.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 2003 amendment,** effective April 4, 2003, substituted "School district salary system" for "Local school boards salary schedule" in the section heading; substituted "superintendent" for "school board" throughout the section; in Subsection A substituted "the school" for "of education a" following "the department" near the middle, substituted "system" for "schedule" following "salary" twice near the middle and inserted "Salaries for teachers and school administrators shall be aligned with the licensure framework provided for in the School Personnel Act." at the end; in Subsection B substituted "system" for "schedule" following "salary" once near the beginning and once near the end and inserted "the legislative education study committee" following "legislative finance committee" near the middle.

**The 1993 amendment,** effective July 1, 1993, deleted the former first sentence, pertaining to filing 1985-86 and 1986-87 salary schedules; deleted "subsequent" preceding "school year" and substituted "department" for "office" in Subsection A; and substituted "state superintendent" for "director of the office of education" in two places in Subsection B.

## 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.

**ANNOTATIONS**

**Denial to citizen of right to address board.** — A local school board president has authority to deny citizens the right to address the local school board during a meeting of

the board, if he is authorized to do so by rules promulgated by the board and he does not exercise that authority arbitrarily or capriciously. 1990 Op. Att'y Gen. No. 90-26.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 67 C.J.S. Officers and Public Employees §§ 74 to 76.

## 22-5-13. Local school board training.

The department shall develop a mandatory training course for local school board members that explains state board [department] rules, department 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.

**History:** 1978 Comp., § 22-5-13, enacted by Laws 2003, ch. 153, § 24.

**ANNOTATIONS**

**Cross references.** — For references to the former state board, *see* 9-24-15 NMSA 1978.

**Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 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 1978 Comp., § 22-5-15 by Laws 2003, ch. 153, § 26.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 2003 amendment,** effective April 4, 2003, recompiled former 22-5-4.6 NMSA 1978 as present 22-5-15 NMSA 1978 and substituted "superintendent" for "school board" throughout the section; inserted "public" preceding "school" twice in Subsection A; substituted "employees" for "personnel" following "students, school" near the beginning of Subsection B; and substituted "school employees" for "personnel" following "number of" near the end of Subsection C.

**The 1993 amendment,** effective July 1, 1993, in Subsection C, substituted "subject areas or purchase of instructional material" for "or subject areas" at the end of the first sentence and added the second and third sentences.

## 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.

**ANNOTATIONS**

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 198, § 3 made Laws 2009, ch. 198, § 2 effective July 1, 2010.

# 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.

**ANNOTATIONS**

**Compiler's note.** — The School Alcohol-Free Zone Act is not part of the Public School Code. It has been compiled as part of the Public School Code for the convenience of the user.

**Effective dates.** — Laws 2005, ch. 249 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 249 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Cross references.** — For school employees reporting drug and alcohol abuse, *see* 22-5-4.4 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 249 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Cross references.** — For school employees reporting drug and alcohol abuse, *see* 22-5-4.4 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 249 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Cross references.** — For school employees reporting drug and alcohol abuse, *see* 22-5-4.4 NMSA 1978.

For penalty for possession of drugs in a posted drug-free zone, *see* 30-31-23 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 249 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

# ARTICLE 6
# School District Elections

(Repealed by Laws 1985, ch. 168, § 22 and Laws 1993, ch. 226, § 54.)

## 22-6-1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-1 NMSA 1978, relating to regular and special school district elections, precincts and polling places, effective June 14, 1985. For present comparable provisions, *see* 1-22-3 to 1-22-6 NMSA 1978.

## 22-6-2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-2 NMSA 1978, relating to regular and special school district elections, precincts and polling places, effective June 14, 1985. For present comparable provisions, *see* 1-22-3 to 1-22-6 NMSA 1978.

## 22-6-3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-3 NMSA 1978, relating to regular and special school district elections, precincts and polling places, effective June 14, 1985. For present comparable provisions, *see* 1-22-3 to 1-22-6 NMSA 1978.

## 22-6-4. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-4 NMSA 1978, relating to regular and special school district elections, precincts and polling places, effective June 14, 1985. For present comparable provisions, *see* 1-22-3 to 1-22-6 NMSA 1978.

## 22-6-5. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 226, § 54 repealed 22-6-5 NMSA 1978, relating to qualifications for a candidate for membership on a local school board, effective July 1,

1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com*.

## 22-6-6. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-6 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-7 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-8. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-8 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-9. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-9 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-10. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-10 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-11. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-11 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-12. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-12 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-13. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-13 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-14. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-14 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-15. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-15 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-16. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-16 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-17. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-17 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-18. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-18 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-19. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-19 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-20. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-20 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-21. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-21 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-22. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-22 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-23. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-23 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-24. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-24 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-25. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-25 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-26. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-26 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-27. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-27 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-28. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-28 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-29. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-29 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-30. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-30 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and

absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-31. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-31 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-32. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-32 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-33. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-33 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

## 22-6-34. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 168, § 22 repealed 22-6-34 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For present comparable sections, *see* 1-22-7 to 1-22-19 NMSA 1978.

# ARTICLE 7
# Local School Board Member Recall

## 22-7-1. Short title.

Chapter 22, Article 7 NMSA 1978 may be cited as the "Local School Board Member Recall Act".

**History:** 1953 Comp., § 77-4A-1, enacted by Laws 1977, ch. 308, § 1; 2018, ch. 79, § 89.

**ANNOTATIONS**

**Cross references.** — For constitutional provision authorizing recall of local school board members, *see* N.M. Const., art. XII, § 14.

**Compiler's notes.** — Laws 1993, ch. 152, § 1 provided for the repeal of 22-7-1 to 22-7-16 NMSA 1978 effective on the date that election results are canvassed and certified that a majority of people voting approved an amendment repealing N.M. Const., art. XII, § 14. That amendment, proposed by S.J.R. No. 15 (Laws 1993), was submitted to the people at the general election held on November 8, 1994, and was defeated by a vote of 115,411 for and 281,588 against. Thus, the repeal is not given effect.

**The 2018 amendment,** effective July 1, 2018, changed "This act" to "Chapter 22, Article 7 NMSA 1978".

## 22-7-2. Purpose of act.

The purpose of the Local School Board Member Recall Act is to establish the methods and procedures by which a local school board member may be recalled as provided in Article 12, Section 14 of the constitution of New Mexico.

**History:** 1953 Comp., § 77-4A-2, enacted by Laws 1977, ch. 308, § 2.

**ANNOTATIONS**

**Protections when exercising the right to petition.** — Where respondent, a Taos school board member, brought a malicious abuse of process claim against petitioners, eighteen members of an unincorporated citizens' association who sought to remove respondent from office, the district court properly granted petitioners' motion to dismiss, because petitioners who pursue the recall of a local school board member under the Local School Board Member Recall Act, 22-7-1 to 22-7-16 NMSA 1978, are entitled to the procedural protections of the New Mexico statute prohibiting strategic litigations against public participation (Anti-SLAPP statute, 38-2-9.1 NMSA 1978), and are entitled to immunity under the *Noerr-Pennington* doctrine when they exercise their first amendment right to petition. *Cordova v. Cline*, 2017-NMSC-020, *rev'g* 2013-NMCA-083, 308 P.3d 975.

## 22-7-3. Definitions.

As used in the Local School Board Member Recall Act:

A. "canvasser" means a registered voter who circulates a petition and collects signatures;

B. "date of closure" means the date on which the county clerk receives signed petitions for the recall of one or more named members;

C. "date of initiation" means the date on which the county clerk stamps the face sheet of the petition initiating the recall procedure;

D. "face sheet" means the first page of a petition containing the information as provided in Subsections D and E of Section 22-7-6 NMSA 1978;

E. "member" means any person elected to the local school board of a school district;

F. "named member" means a local school board member named on a petition and subject to recall;

G. "petition" means a document consisting of a completed face sheet or exact duplicate thereof and as many subsequent pages as are necessary for signatures;

H. "petitioner" means a person, group or organization initiating the petition;

I. "registered voter" means any qualified elector who is registered to vote as provided in the Election Code [Chapter 1 NMSA 1978];

J. "signature" means the name of a person as written by himself;

K. "subsequent page" means the pages in a petition after the face sheet arranged as provided in Subsection G of Section 22-7-6 NMSA 1978; and

L. "county clerk" means the clerk of the county in which the school district is situate or, in the case of a multi-county school district, the clerk of the county in which the administrative office of the school district is situate.

**History:** 1953 Comp., § 77-4A-6, enacted by Laws 1977, ch. 308, § 3; 1985, ch. 169, § 1.

## 22-7-4. Members subject to recall.

Any elected member of the local school board of any school district may be recalled as provided in the Local School Board Member Recall Act.

**History:** 1953 Comp., § 77-4A-4, enacted by Laws 1977, ch. 308, § 4.

## 22-7-5. Expenses.

The local school board shall ensure the payment of the cost of a special recall election and any costs incurred by the county clerk in carrying out his duties as provided in the Local School Board Member Recall Act.

**History:** 1953 Comp., § 77-4A-5, enacted by Laws 1977, ch. 308, § 5; 1985, ch. 169, § 2.

## 22-7-6. Petition.

A. A separate petition shall be initiated for each named member.

B. The petition shall be on eight and one-half inch by fourteen inch paper.

C. All information written on the petition form shall be in compliance with the federal Voting Rights Act of 1965, as amended.

D. Each face sheet of a petition shall contain the following:

(1) a space for the initiation date;

(2) a notice at the top of the sheet stating: "Recall is a local decision to be funded by local money. Additional state funds will not be advanced to support recall.";

(3) a space for the name of the named member;

(4) a space for the name of the person, group or organization initiating the petition;

(5) a space in which to list the specific charges in support of the recall of the named member that constitute malfeasance in office, misfeasance in office or violation of oath of office; and

(6) a notice stating "Signatures are valid for a maximum of one hundred ten days from date of initiation.".

E. The remaining portion of the face sheet shall be substantially in the following form:

"I, the undersigned, a registered voter in the county of _____, New Mexico, and a resident of the _____ school district, hereby petition for the recall of the local school board member named on the face sheet of this petition.

| | | | | | |
|---|---|---|---|---|---|
| 1. | _____ | _____ | _____ | _____ | _____ |
| | Usual signature | Name printed<br>As registered | Address as<br>Registered | City | Date |

2. _____ _____ _____ _____ _____".
Usual signature Name printed As registered Address as Registered City Date

F. One completed face sheet or duplicate thereof shall be the first page of all circulated petitions.

G. Each subsequent page of the petition shall have approximately twenty-five lines numbered one to twenty-five and shall be substantially in the form as provided in Subsection E of this section.

**History:** 1953 Comp., § 77-4A-6, enacted by Laws 1977, ch. 308, § 6; 1993, ch. 226, § 17.

**ANNOTATIONS**

**Cross references.** — For signatures on petition, *see* 22-7-10 NMSA 1978.

For challenges to petition, *see* 22-7-12 NMSA 1978.

For the federal Voting Rights Act of 1965, *see* 42 U.S.C. §§ 1973 to 1973bb-1.

**The 1993 amendment,** effective July 1, 1993, substituted "this section" for "section 6 of the Local School Board Member Recall Act" at the end of Subsection G and made stylistic changes.

**Protections when exercising the right to petition.** — Where respondent, a Taos school board member, brought a malicious abuse of process claim against petitioners, eighteen members of an unincorporated citizens' association who sought to remove respondent from office, the district court properly granted petitioners' motion to dismiss, because petitioners who pursue the recall of a local school board member under the Local School Board Member Recall Act, 22-7-1 to 22-7-16 NMSA 1978, are entitled to the procedural protections of the New Mexico statute prohibiting strategic litigations against public participation (Anti-SLAPP statute, 38-2-9.1 NMSA 1978), and are entitled to immunity under the *Noerr-Pennington* doctrine when they exercise their first amendment right to petition. *Cordova v. Cline*, 2017-NMSC-020, *rev'g* 2013-NMCA-083, 308 P.3d 975.

**Standing to file recall petition.** — Where defendants formed an unincorporated organization to file a petition to recall plaintiff who was a member and officer of a municipal school board; the organization registered with the county clerk pursuant to Section 53-10-1 NMSA 1978; and defendants were residents and voters of the county in which the school district was located, the organization had standing to file a recall petition. *Cordova v. Cline*, 2013-NMCA-083, cert. granted, 2013-NMCERT-007.

## 22-7-7. Affidavit with petition; penalty.

A. When submitted to the county clerk, each petition shall have a notarized affidavit attached. The affidavit shall state that the canvasser is a registered voter of the district and that the canvasser circulated that particular petition and witnessed each signer write his signature and any other information recorded on the petition.

B. According to the best information and belief of the canvasser, the canvasser shall insure the following:

(1) each signature is the signature of the person whose name it purports to be;

(2) each signer is a registered voter of the county and school district listed on the petition;

(3) each signature was obtained on or after the date of initiation; and

(4) each signer had an opportunity to read the information on the completed face sheet or an exact duplicate thereof.

C. Any knowingly false statement made in the affidavit constitutes a fourth degree felony.

**History:** 1953 Comp., § 77-4A-7, enacted by Laws 1977, ch. 308, § 7; 1985, ch. 169, § 3.

## 22-7-8. Responsibilities of petitioner.

A. The petitioner may obtain a face sheet form and a subsequent page form from the county clerk, or the petitioner may assemble both as provided in Section 22-7-6 NMSA 1978.

B. The petitioner shall complete the following portions of the face sheet:

(1) name of the named member; and

(2) name of the person, group or organization initiating the petition.

C. The petitioner shall cite the specific charges in support of the recall of the named member on the face sheet in compliance with the federal Voting Rights Act of 1965, as amended. The charges shall constitute misfeasance in office, malfeasance in office or violation of oath of office.

D. The petitioner shall submit the completed face sheet to the county clerk for affixing of the initiation date.

E. The petitioner shall duplicate the completed face sheet with the initiation date affixed.

F. The petitioner shall file all petitions collected to recall the named member with the county clerk on the same day within one hundred ten calendar days from the initiation date.

**History:** 1953 Comp., § 77-4A-8, enacted by Laws 1977, ch. 308, § 8; 1985, ch. 169, § 4.

**ANNOTATIONS**

**Cross references. —** For the federal Voting Rights Act of 1965, *see* 42 U.S.C. §§ 1973 to 1973bb-1.

**Premature signing of affidavit. —** Canvassers signed affidavits prior to obtaining signatures, in the mistaken belief that this was necessary before the circulation of the petitions could begin. These premature signatures of the affidavits did not invalidate the petitions or the results of the recall election. *Montoya v. Lopez*, 1983-NMSC-024, 99 N.M. 448, 659 P.2d 900.

**Improper motive as component of misfeasance. —** When a public officer has a right to perform an act which is discretionary, the manner in which the discretion is exercised does not rise to the level of misfeasance unless the discretion is exercised with an improper or corrupt motive; therefore where the school board engaged in a site selection process spanning approximately two years, including consideration of 15 sites and a myriad of relevant factors, and nothing in the record indicated that any of the challenged board members acted out of an improper or corrupt motive, there was no misfeasance. *CAPS v. Board Members*, 1992-NMSC-035, 113 N.M. 729, 832 P.2d 790.

## 22-7-9. Duties of county clerk.

A. The county clerk shall perform the following duties:

(1) provide standard face sheet forms to include a place for the mailing address of the petitioner, standard subsequent page forms and standard affidavit forms to the general public upon request;

(2) affix the initiation date to the completed face sheet only after the district court has issued an order permitting the continuation of the recall process after a hearing pursuant to Section 22-7-9.1 NMSA 1978 on the sufficiency of facts supporting the charges of malfeasance or misfeasance in office or violation of oath of office;

(3) send one copy of the completed face sheet to the named member by registered mail, return receipt requested; and

(4) keep one copy of the completed face sheet on file.

B. Upon receipt of completed petitions, the county clerk shall stamp the petitions with the date of closure. All completed petitions for the recall of one or more named members shall be filed with the county clerk on the same day within one hundred ten calendar days from the date of initiation.

C. The county clerk shall verify the signatures on the completed petitions within ten working days.

D. Within five working days of the validation by the county clerk, the county clerk shall determine whether the verified signatures meet the minimum number required by Section 22-7-10 NMSA 1978.

E. If the county clerk determines that sufficient signatures have not been submitted, he shall notify the petitioner at the mailing address listed on the face sheet and the named member by registered mail, return receipt requested, within three working days after the determination.

F. If the county clerk determines that sufficient signatures have been submitted, he shall do the following within three working days after the determination:

(1) notify the petitioner at the mailing address listed on the face sheet and the named member by registered mail, return receipt requested; and

(2) initiate procedures for a special recall election as provided in Section 22-7-13 NMSA 1978.

**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.

## ANNOTATIONS

**Cross references.** — For penalty for violating this section, *see* 22-7-16 NMSA 1978.

**Charges of multiple intentional violations of the Open Meetings Act**, which permitted policy decisions concerning the respective roles of the superintendent and the school board without public participation, were a form of misconduct for which recall was provided. *Doña Ana Cnty. Clerk v. Martinez*, 2005-NMSC-037, 138 N.M. 575, 124 P.3d 210.

**Exclusion of names on list by superintendent.** — Superintendent (now county clerk) may exclude those signatures not listing a date, but his exclusion of signatures with names not "printed as registered" or with "city" not listed, as required by Section 22-7-6 NMSA 1978, was inconsistent with the purpose of Section 22-7-10D NMSA 1978 and

was, therefore, improper. *State ex rel. Citizens for Quality Educ. v. Gallagher*, 1985-NMSC-030, 102 N.M. 516, 697 P.2d 935.

**Name withdrawal petitions valid before final action on petition.** — Where superintendent (now county clerk) received name withdrawal petitions after receiving clerk's certification of signatures, but before taking final action on petition, superintendent (now county clerk) properly refused to count names to those persons who submitted name withdrawal petitions. *State ex rel. Citizens for Quality Educ. v. Gallagher*, 1985-NMSC-030, 102 N.M. 516, 697 P.2d 935.

## 22-7-9.1. Court hearing.

A. Prior to affixing the date of initiation to the completed face sheet, the county clerk shall file an application with the district court within five days from the date the completed face sheet is presented to the county clerk, requesting a hearing for a determination by the court of whether sufficient facts exist to allow the petitioner to continue with the recall process.

B. Upon the filing of the application, the district court shall set a hearing date on the issue of sufficiency of the facts alleged, which hearing shall be held not more than ten days from the date the application is filed by the county clerk. The court shall notify the petitioner at the mailing address listed on the face sheet of the time and place of the hearing.

C. Upon review of the completed face sheet together with affidavits submitted by the petitioner setting forth specific facts in support of the charges specified on the face sheet, the district court shall make a determination whether sufficient facts exist to allow petitioners to continue with the recall process.

D. Upon entry of an order by the court that sufficient facts exist to allow the petitioner to continue the recall process, the county clerk shall affix the date of initiation to the completed face sheet.

E. The district court's decision is appealable by the petitioner only to the supreme court, and notice of appeal shall be filed within five days after the decision of the district court. The supreme court shall hear and render a decision on the appeal forthwith.

**History:** 1978, Comp., § 22-7-9.1, enacted by Laws 1987, ch. 142, § 2.

**ANNOTATIONS**

**Protections when exercising the right to petition.** — Where respondent, a Taos school board member, brought a malicious abuse of process claim against petitioners, eighteen members of an unincorporated citizens' association who sought to remove respondent from office, the district court properly granted petitioners' motion to dismiss, because petitioners who pursue the recall of a local school board member under the

Local School Board Member Recall Act, 22-7-1 to 22-7-16 NMSA 1978, are entitled to the procedural protections of the New Mexico statute prohibiting strategic litigations against public participation (Anti-SLAPP statute, 38-2-9.1 NMSA 1978), and are entitled to immunity under the *Noerr-Pennington* doctrine when they exercise their first amendment right to petition. *Cordova v. Cline*, 2017-NMSC-020, *rev'g* 2013-NMCA-083, 308 P.3d 975.

**Application to recall petitions.** — The anti-SLAPP statute [Section 38-2-9.1 NMSA 1978] does not apply to a sufficiency hearing before a district court to determine the sufficiency of the allegations in a recall petition pursuant to Section 22-7-9.1 NMSA 1978, because a sufficiency hearing before the district court is a judicial proceeding, not a public meeting or a quasi-judicial proceeding as defined in the anti-SLAPP statute. *Cordova v. Cline*, 2013-NMCA-083, cert. granted, 2013-NMCERT-007.

Where defendants filed a petition with the county clerk to recall plaintiff who was a member and officer of a municipal school board; the county clerk filed an application for a district court hearing on the sufficiency of the recall allegations pursuant to Section 22-7-9.1 NMSA 1978; at the hearing, before the district court determined the sufficiency of the petition, defendants dismissed the petition; plaintiff filed suit against defendants for damages; and the district court dismissed plaintiff's complaint under the anti-SLAPP statute [Section 38-2-9.1 NMSA 1978], the district court improperly dismissed plaintiff's suit because the anti-SLAPP statute did not apply to a judicial proceeding to determine the sufficiency of the recall petition. *Cordova v. Cline*, 2013-NMCA-083, cert. granted, 2013-NMCERT-007.

**Violation of Open Meetings Act.** — Charges of multiple intentional violations of the Open Meetings Act, which permitted policy decisions concerning the respective roles of the superintendent and the school board without public participation, were a form of misconduct for which recall was provided. *Doña Ana Cnty. Clerk v. Martinez*, 2005-NMSC-037, 138 N.M. 575, 124 P.3d 210.

**Standing.** — Sections 22-7-9.1 and 22-7-12 NMSA 1978 do not authorize local school board members facing a recall petition to challenge the form of the petition. *Doña Ana Cnty. Clerk v. Martinez*, 2005-NMSC-037, 138 N.M. 575, 124 P.3d 210.

## 22-7-10. Signatures.

A. No signature may be signed on the petition prior to the initiation date.

B. Signatures are valid for a maximum of one hundred ten calendar days from the date of initiation.

C. Each signer of a recall petition shall sign but one petition unless more than one member is a named member, and in that case not more than the number of recall petitions equal to the number of named members shall be signed.

D. The signature shall not be counted unless the entire line is filled in full and is upon the form prescribed by the Local School Board Member Recall Act.

E. A signature shall be counted on a recall petition unless there is evidence presented that the person signing:

(1) is not a registered voter of the county and of the school district listed on the face sheet of the petition;

(2) has signed more than one recall petition for one named member or has signed one petition more than once; or

(3) is not the person whose name appears on the recall petition.

F. The minimum number of verified signatures needed to validate a petition is thirty-three and one-third percent of the number of registered voters who voted for the school board position of the named member at the last preceding school board election.

**History:** 1953 Comp., § 77-4A-10, enacted by Laws 1977, ch. 308, § 10; 1985, ch. 169, § 6.

**ANNOTATIONS**

**Cross references.** — For petition generally, *see* 22-7-6 NMSA 1978.

**Subsection B is not intended to prevent withdrawal of signatures** but is intended to determine when signatures expire as a matter of law. *State ex rel. Citizens for Quality Educ. v. Gallagher*, 1985-NMSC-030, 102 N.M. 516, 697 P.2d 935.

**Signer of petition has right to withdraw his name** before the superintendent (now county clerk) has taken final action. *State ex rel. Citizens for Quality Educ. v. Gallagher*, 1985-NMSC-030, 102 N.M. 516, 697 P.2d 935.

**Effect of incomplete lines on petition.** — Superintendent (now county clerk) may exclude those signatures not listing a date, but his exclusion of signatures with names not "printed as registered" or with "city" not listed is inconsistent with the purpose of Subsection D and is, therefore, improper. *State ex rel. Citizens for Quality Educ. v. Gallagher*, 1985-NMSC-030, 102 N.M. 516, 697 P.2d 935.

## 22-7-11. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 277, § 4 repealed 22-7-11 NMSA 1978, relating to duties of the attorney general in relation to a petition for a recall of a local school board member.

## 22-7-12. Recall petition; limitation on appeals of validity of recall petition.

A. Any person filing any court action challenging a recall petition provided for in the Local School Board Member Recall Act shall do so within ten days after the determination of the county clerk as set forth in Section 22-7-9 NMSA 1978. Challenges to the recall petition shall be directed to:

(1) the validity of the signatures on the petitions;

(2) the determination of the county clerk as to the minimum number of signatures; or

(3) the sufficiency of the charge.

Within ten days after the filing of the action, the district court shall hear and render a decision on the matter. The decision shall be appealable only to the supreme court, and notice of appeal shall be filed within five days after the decision of the district court. The supreme court shall hear and render a decision on the appeal forthwith.

B. For the purpose of an action challenging a recall petition, each petitioner filing a recall petition under the Local School Board Member Recall Act appoints the proper filing officer as his agent to receive service of process. Immediately upon receipt of process served upon the proper filing officer, that officer shall, by certified mail, return receipt requested, mail the process to the person.

**History:** 1953 Comp., § 77-4A-12, enacted by Laws 1977, ch. 308, § 12; 1979, ch. 277, § 2; 1985, ch. 169, § 7.

**ANNOTATIONS**

**Standing.** — Sections 22-7-9.1 and 22-7-12 NMSA 1978 do not authorize local school board members facing a recall petition to challenge the form of the petition. *Doña Ana Cnty. Clerk v. Martinez*, 2005-NMSC-037, 138 N.M. 575, 124 P.3d 210.

## 22-7-13. Special recall election.

A. The date of the special recall election shall be set no later than one hundred twenty days after the date of the determination by the county clerk, but in no event shall the election be held within the period of time prohibited for local government elections pursuant to Section 1-12-71 NMSA 1978.

B. The question to be submitted to the voters at the special recall election shall be whether the named member shall be recalled.

C. A special recall election may be held in conjunction with a regular or local special election.

D. Except as otherwise provided in the Local School Board Member Recall Act, special recall elections in a school district shall be conducted pursuant to the provisions of the Local Election Act.

E. The ballot shall be in compliance with the federal Voting Rights Act of 1965, as amended, and shall present the voter the choice of voting "for the removal of the named member" or "against the removal of the named member".

**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.

**ANNOTATIONS**

**Cross references.** — For the federal Voting Rights Act of 1965, *see* 42 U.S.C. §§ 1973 to 1973bb-1.

**The 2018 amendment,** effective July 1, 2018, provided that a special recall election may be held in conjunction with a regular local election, and that special recall elections in a school district shall be conducted pursuant to the Local Election Act, except as otherwise provided in the Local School Board Member Recall Act, and made technical and conforming changes; in Subsection C, after "regular or", deleted "a" and added "local", and after "special", deleted "school district"; in Subsection D, completely rewrote the subsection, providing that special recall elections shall be conducted pursuant to the Local Election Act; and deleted former Subsections F and G, which related to conducting special recall elections.

**The 2015 amendment,** effective July 1, 2015, amended the period by when a special recall election may be called; in Subsection A, after "no later than", deleted "ninety" and added "one hundred twenty", and after "county clerk", added "but in no event shall the election be held within the period of time prohibited for local government elections pursuant to Section 1-12-71 NMSA 1978"; and in Subsection B, after "whether", deleted "or not".

## 22-7-14. Vacancy.

A. The vacancy created by a recalled member shall be filled as provided in Section 22-5-9 NMSA 1978.

B. Under no circumstances may a recalled member be appointed to fill any vacancy for the remainder of the term of office for which he was elected.

**History:** 1953 Comp., § 77-4A-14, enacted by Laws 1977, ch. 308, § 14.

## 22-7-15. Mandamus.

If the county clerk or local school board fails or refuses to do or perform any of the acts required in the Local School Board Member Recall Act, the petitioner may apply to any district court for writ of mandamus to compel the performance of the required act, and the court shall entertain that application.

**History:** 1953 Comp., § 77-4A-15, enacted by Laws 1977, ch. 308, § 15; 1985, ch. 169, § 9.

**ANNOTATIONS**

**Cross references.** — For failure, neglect or refusal of local public officer to perform duties of office as cause for removal, *see* 10-4-2 NMSA 1978.

## 22-7-16. Penalties.

Any person violating Section 9 [22-7-9 NMSA 1978] of the Local School Board Member Recall Act is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 77-4A-16, enacted by Laws 1977, ch. 308, § 16.

**ANNOTATIONS**

# 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.

**ANNOTATIONS**

**Cross references.** — For general obligation bonds of school districts, *see* 22-18-1 NMSA 1978 et seq.

For school revenue bonds, *see* 22-19-1 NMSA 1978 et seq.

For public school emergency capital outlay, *see* 22-24-1 NMSA 1978 et seq.

For public school capital improvements, *see* 22-25-1 NMSA 1978 et seq.

**The 2003 amendment,** effective April 4, 2003, substituted "Chapter 22, Article 8 NMSA 1978" for "Sections 22-8-1 through 22-8-42 NMSA 1978" at the beginning of the section.

**No contractual right to free public education.** — The right and privilege to a free public education does not give rise to a contractual relationship for which an individual may sue for breach of contract. *Rubio v. Carlsbad Mun. Sch. Dist.*, 1987-NMCA-127, 106 N.M. 446, 744 P.2d 919.

**Education of nonresidents without taking state allotment unconstitutional donation.** — To the extent that a local school district would undertake the total burden of educating nonresident students without benefit of state allotment as dispensed on the basis of average daily membership, the school district would still be making a donation in aid of those students in violation of N.M. Const., art. IX, § 14. 1978 Op. Att'y Gen. No. 78-14.

## 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;

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 required to be submitted by a local school board or governing body of a state-chartered charter school;

I. "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;

J. "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;

K. "program unit" is the product of the program element multiplied by the applicable cost differential factor;

L. "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;

M. "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:

(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; or

(c) has not reached the student's twenty-second birthday on the first day of the school year and is receiving special education services pursuant to rules of the department;

N. "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

O. "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.

## ANNOTATIONS

**Cross references.** — For the secretary of public education, *see* 9-24-5 NMSA 1978 and N.M. Const., art. XII, § 6.

**The 2018 amendment,** effective July 1, 2018, defined "staffing cost multiplier" as used in the Public School Finance Act to establish a phased-in teacher cost index; and added a new Subsection N and redesignated former Subsection N as Subsection O.

**The 2009 amendment,** effective June 19, 2009, in Subsection B, in the second sentence, after "withdrawals do not include", deleted "truants" and added "students in need of early intervention"; and in Paragraph (3) of Subsection M, added "in terms of age".

**The 2006 amendment,** effective July 1, 2007, included governing body of a state-chartered charter school in Subsection H; and in Subsection L, changed "local school board"to "school district" and added state-chartered charter school.

**The 2005 amendment,** effective June 17, 2005, provided in Subsection B that withdrawals do not include truants and habitual truants that the school district is required to intervene with and keep in an educational setting pursuant to Section 22-12-9 NMSA 1978.

**The 2004 amendment,** effective May 19, 2004, changed "state department" to "department".

**The 1997 amendment,** effective July 1, 1997, made a stylistic change in Subsection B.

**The 1995 amendment,** effective June 16, 1995, inserted "or 'MEM'" and deleted "MEM" from the end in Subsection A; rewrote Subsection C; inserted "or 'division'" in Subsection E; inserted "or 'early childhood education MEM'" and substituted "MEM" for "ADM" in Subsection F; inserted "or 'full-time equivalent MEM'", deleted "average daily" preceding "membership" and substituted "MEM" for "ADM" in Subsection G; substituted "MEM" for "ADM" in two places in Subsection J; deleted "provided the provisions of this paragraph shall be effective with the 1987 - 1988 school year" at the end of Paragraph (3) of Subsection M; deleted former Subsection N which defined "special education ADM"; added Paragraphs (4) and (5) in Subsection M; redesignated former Subsection O as Subsection N; and made minor stylistic changes throughout the section.

**The 1988 amendment,** effective May 18, 1988, substituted " 'ADM' means membership ('MEM')" for " 'ADM' means average daily membership" in Subsection A; in Subsection B, deleted "average daily" preceding "membership" in the first sentence, substituted "qualified students on the current roll of class or school on a specified day" for "students for each school day of the school year used, minus withdrawals of students, divided by the number of school days used", and added the next-to-last sentence; substituted present Subsection E for the provisions of the former subsection which defined "division"; added Subsection O and made related changes in Subsection N.

## 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.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Repeals and reenactments.** — Laws 1988, ch. 64, § 14 repealed former 22-8-3 NMSA 1978, relating to creation of the office of education, as amended by Laws 1983, ch. 301, § 69 and enacted the above section, effective May 18, 1988.

**Compiler's notes.** — The phrase "effective date of this act" means May 18, 1988, the effective date of Laws 1988, Chapter 64.

## 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.

**ANNOTATIONS**

**The 1988 amendment,** effective May 18, 1988, substituted "Department" for "Public school finance division" in the catchline; substituted "department" for "division" in the introductory paragraph; deleted Subsection C, regarding advising and consulting with the state superintendent in regard to financial matters, and made a related change.

**Discretionary substantive line item allocations.** — Supervision or control does not include grant of power to division or chief (now director) to make discretionary substantive line item allocations in estimated budgets. 1975 Op. Att'y Gen. No. 75-30.

## 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 only upon approval by the state board [department] and filing with the state records center 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. 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 timely furnish information and data obtained from public schools and school districts pursuant to Subsection B of this section.

**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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For filing with records center, *see* 14-4-4 NMSA 1978.

For state auditor, *see* 8-6-1 NMSA 1978.

For audit act, *see* 12-6-1 NMSA 1978.

For legislative education study committee, *see* 2-10-1 NMSA 1978.

**The 2003 amendment,** effective July 1, 2003, in Subsection A, inserted "in consultation with the state auditor" near the beginning and deleted "and the legislative finance committee" following "the state board".

**The 1999 amendment,** effective April 8, 1999, substituted references to rules and procedures for a uniform system of accounting and budgeting of funds for references to a manual of accounting and budgeting in the section heading and throughout the section, substituted "state board" for "state board of education" in Subsection A, deleted "but not limited to" after "grants-in-aid received, including" in Subsection B, and substituted "department" for "state department of public education" in Subsection C.

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "division" throughout the section; in Subsection A, inserted "state board of education and the" in the second sentence, substituted "state records center" for "supreme court law librarian", and added the last sentence; and added Subsection C.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 12 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

## 22-8-6. Budgets; submission; 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 charter schools in the district for the ensuing fiscal year. Upon written approval of the state superintendent [secretary], the date for the submission of the operating budget as required by this section may be extended to a later date fixed by the state superintendent [secretary].

B. 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.

C. 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.

D. If a local school board fails to submit a budget pursuant to this section, the department shall prepare the operating budget for the school district for the ensuing

fiscal year. A local school board shall be considered as failing to submit a budget pursuant to this section if the budget submitted exceeds the total projected resources of the school district or if the budget submitted does not comply with the law or with rules and procedures of the department.

**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.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For transfer of powers and duties of the former state superintendent, *see* 9-24-15 NMSA 1978.

**1999 Multiple Amendments.** — Laws 1999, ch. 281, § 21 and Laws 1999, ch. 291, § 2 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 1999, ch. 291, § 2, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 1999, ch. 281, § 21 and Laws 1999, ch. 291, § 2 are described below. To view the session laws in their entirety, *see* the 1999 session laws on *NMOneSource.com*.

Laws 1999, ch. 291, § 2, effective April 8, 1999, substituted "operating budget" for "estimated budget" throughout the section; deleted "local" before "school district" in Subsection C; and substituted "with rules and procedures" for "the manual of accounting and budgeting" at the end of Subsection D.

Laws 1999, ch. 281, § 21, effective June 18, 1999, inserted "and any charter schools in the district" in the first sentence of Subsection A; and rewrote Subsection C.

**1993 amendments.** — Laws 1993, ch. 227, § 9, effective June 18, 1993, added a new Subsection C and redesignated former Subsection C as Subsection D

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "division" and "state superintendent" for "chief" throughout the section.

**Legislative intent.** — The legislature obviously intended that a school board may purchase insurance policies not to exceed five years and, if prepayment of the entire premium in the initial policy year is necessary in order to obtain the insurance, then the school board may legally do so. 1975 Op. Att'y Gen. No. 75-03.

## 22-8-6.1. Charter school budgets.

A. Each state-chartered charter school shall submit to the charter schools division of the department a school-based budget. The 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 budget shall be submitted to the public education commission for review.

B. Each locally chartered charter school shall submit to the local school board a school-based budget for approval or amendment. The approval or amendment authority of the local school board relative to the charter school budget is limited to ensuring that sound fiscal practices are followed in the development of the budget and that the charter school 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 budget, but shall approve or disapprove the budget in its entirety. Upon final approval of the local budget by the local school board, the individual charter school 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 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 school is located, and the school's 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 budget shall be based on the number of program units generated by the 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 school is located and the 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.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, revised the formula for calculating charter school budgets; in Subsection A, after the first sentence, deleted "For the first year of operation, the budget of every state-chartered charter school shall be based on the projected number of program units generated by that charter school and its students, using the at-risk index and the instructional staff training and experience index of the school district in which it is geographically located. For second and subsequent fiscal years of operation, the budgets of state-chartered charter schools shall be based on the number of program units generated using the average of the MEM on the second and third reporting dates of the prior year and its own instructional staff training and experience index and the at-risk index of the school district in which the state-chartered charter school is geographically located."; in Subsection B, after "a school-based budget", deleted "For the first year of operation, the budget of every locally chartered

charter school shall be based on the projected number of program units generated by the charter school and its students, using the at-risk index and the instructional staff training and experience index of the school district in which it is geographically located. For second and subsequent fiscal years of operation, the budgets of locally chartered charter schools shall be based on the number of program units generated using the average of the MEM on the second and third reporting dates of the prior year and its own instructional staff training and experience index and the at-risk index of the school district in which the locally chartered charter school is geographically located. The budget shall be submitted to the local school board"; and in Subsection C, after "For", deleted "the" and added "its", and after "first year of operation", deleted "after a locally chartered charter school converts to a state-chartered charter school or a state-chartered charter school converts to a locally chartered charter school, the charter school's budget shall be based on the number of program units generated using the average of the MEM on the second and third reporting dates of the prior year and the instructional staff training and experience index and the at-risk index of the school district in which it is geographically located. For second and subsequent fiscal years of operation, the charter school shall follow the provisions of Subsection A or B of this section, as applicable" and added the remainder of the subsection.

**The 2015 amendment,** effective July 1, 2015, required each charter school to submit its school-based budget to the public education commission for review following its submission to the charter schools division of the public education department; in Subsection A, added the last sentence; and deleted Subsection D relating to a charter school's instructional staff training and experience index.

**The 2010 amendment,** effective May 19, 2010, in Subsection A, in the third sentence, after "using the average of the", deleted "eightieth and one hundred twentieth day" and after "MEM", added "on the second and third reporting dates"; in Subsection B, in the third sentence, after "using the average of the", deleted "eightieth and one hundred twentieth day" and after "MEM", added "on the second and third reporting dates"; and in Subsection C, in the first sentence, after "using the average of the", deleted "eightieth and one hundred twentieth day" and after "MEM", added "on the second and third reporting dates".

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting

dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

**The 2009 amendment,** effective June 19, 2009, in Subsection A, in the second sentence, after "For", deleted "fiscal year 2008, and for" and after "first year of operation", deleted "in any fiscal year thereafter"; in Subsection B, in the second sentence, after "For", deleted "fiscal year 2008, and for" and after "first year of operation", deleted "in any fiscal year thereafter" and after "program units generated", deleted "using the average of the eighteenth and one hundred twentieth day MEM of the prior year" and added "by the charter school and its students"; in the second sentence, after "shall be based on the" added "number of program units generated using the average of the eighteenth and one hundred twentieth day MEM, of the" and after "prior year" deleted "program units generated by that locally chartered charter school and its students"; and added Subsections C and D.

**The 2006 amendment,** effective July 1, 2007, in Subsection A, changed "charter school" to "state-chartered charter school"; changed "local school board" to "charter schools division of the department"; required budgets for every state-chartered charter school for fiscal year 2008 and the first year of operation in any fiscal year thereafter; provided for budgets for second and subsequent fiscal years and in Subsection B required locally chartered charter schools to submit budgets to local school boards and provided criteria for budgets for locally chartered charter school for fiscal year 2008 and for subsequent fiscal years.

**The 1999 amendment,** effective June 18, 1999, rewrote the section to the extent that a detailed comparison is impracticable.

## 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.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided that charter schools must submit budgets in a manner specified by the public education department; in the catchline, after the section number, deleted "Budgets; form" and added "Manner of budget submission"; and at the beginning of the section, after "submitted", deleted "to the department", after "school district,", added "locally chartered charter school", and after "shall be in a", deleted "form" and added "manner".

**The 2006 amendment,** effective July 1, 2007, added state-chartered charter schools.

**The 1999 amendment,** effective April 8, 1999, substituted "department" for "division" and for "manual of accounting and budgeting of the division".

## 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.

**ANNOTATIONS**

**Cross references.** — For the public education department, *see* 9-24-4 NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For transfer of powers and duties of the former state superintendent, *see* 9-24-15 NMSA 1978.

**The 1988 amendment,** effective May 18, 1988, substituted "state superintendent" for "chief".

## 22-8-9. Budgets; minimum requirements.

A. A budget for a school district shall not be approved by the department that does not provide for:

(1) a school year and school day 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.

## ANNOTATIONS

**Cross references.** — For the public education department, *see* 9-24-4 NMSA 1978.

**The 2009 amendment,** effective June 19, 2009, in Paragraph (1) of Subsection A, after "a school year", deleted "consisting of at least one hundred eighty full instructional days or the equivalent thereof; exclusive of any release time for in-service training"; and deleted "(2) a variable school year consisting of a minimum number of instructional hours established by the state board" and added the reminder of the sentence.

**Applicability.** — Laws 2009, ch. 276, § 3 provided that the provisions of Laws 2009, ch. 276, §§ 1 and 2 apply to the 2010-2011 and subsequent school years.

**The 2003 amendment,** effective April 4, 2003, deleted "of education" following "department" near the middle of Subsection A; substituted "22-10A-20" for "22-2-8.2" following "Section" near the end of Subsection A(3); in Subsection B substituted "rule" for "regulation" following "shall, by" near the beginning, substituted "an instructional" for "a teaching" following "requirements for" near the middle and substituted "teacher" for "certified school instructor" following "a full-time" near the end; and deleted Subsection C.

**The 2001 amendment,** effective June 15, 2001, inserted "of education" following "department" in Subsection A; substituted "school instructor" for "classroom instructor" in Subsection B; and deleted Subsection D, which read "The provisions of Subsection C and Paragraph (2) of Subsection A of this section shall apply to school districts with a MEM of one thousand or fewer."

**The 1997 amendment,** effective June 20, 1997, deleted former Subsection A(4), which read: "effective July 1, 1997, a full-time, department-certified nurse for each fifty-five teachers employed by a school district or the equivalent part-time, department-certified

nurse for less than fifty-five teachers" and in Subsection D, deleted "be construed to" following "shall" and deleted "only" following "apply".

**The 1996 amendment,** effective May 15, 1996, added Paragraph A(4) and made a stylistic change in Subsection D.

**The 1993 amendment,** effective July 1, 1993, deleted "effective with the 1987-88 school year" following "in-service training" in Paragraph (1) of Subsection A and substituted "a MEM" for "an ADM" in Subsection D.

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "division" near the beginning of Subsection A and "an ADM of 1,000 or fewer" for "an ADM of 500 or fewer" in Subsection D.

## 22-8-10. Budgets; fixing the operating budget.

A. Prior to June 20 of each year, each local school board shall, at a public hearing of which notice has been published by the local school board, fix the operating budget for the school district for the ensuing fiscal year. At the discretion of the state superintendent [secretary] or the local school board, the department may participate in the public hearing.

B. Prior to the public hearing held to fix the operating budget for the school district, the local school board 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.

**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.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 1999 amendment,** effective April 8, 1999, substituted "operating budget" for "estimated budget" throughout the section.

**The 1993 amendment,** effective March 17, 1993, designated the formerly undesignated provisions as Subsection A and added Subsection B.

**The 1989 amendment,** effective June 16, 1989, deleted "and the department" preceding "shall" in the first sentence, and added the second sentence.

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "chief".

## 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) 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 budgets to the requirements of law and to the department's rules and procedures; and

(3) ensure that a local school board or, for a charter school, the governing body of the charter school is prioritizing resources of a public school rated D or F toward proven programs and methods that are linked to improved student achievement until the public school earns a grade of C or better for two consecutive years.

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.

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.

**ANNOTATIONS**

**Cross references.** — For transfer of powers and duties of former state superintendent, *see* 9-24-15 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, required the public education department to ensure that each governing body of a charter school with a D or F rating is prioritizing resources toward proven programs and methods linked to improved student achievement until the school earns a grade of C or better for two consecutive years, and

removed "state-chartered" from each reference to "charter school"; in Paragraph (1) of Subsection A, after "governing body of a", deleted "state-chartered", and after "school district or", deleted "state-chartered"; in Paragraph (2) of Subsection A, after "governing bodies of", deleted "state-chartered"; in Paragraph (3) of Subsection A, after "school board or," added "for a charter school, the", and after "governing body of", deleted "a" and added "the"; in Subsection B, after "No school district or", deleted "state-chartered", and after "employee of a school district or", deleted "state-chartered"; in Subsection C, after "any school district or", deleted "state-chartered".

**The 2011 amendment,** effective June 17, 2011, required the department to ensure that public schools that are rated D or F prioritize resources to improve student achievement.

**The 2006 amendment,** effective July 1, 2007, Paragraphs (1) and (2) of Subsection A, added the governing body of a state-chartered charter school; in Paragraphs (1) and (2) of Subsection A and in Subsection B, changed "school board" to "school district"; and in Paragraphs (1) and (2) of Subsection A and in Subsections B and C, added state-chartered charter school.

**The 1999 amendment,** effective April 8, 1999, substituted "approval of operating budget" for "temporary; final" in the section heading; substituted "an operating budget" for "a temporary operating budget" in Subsections A(1) and C; deleted "pending approval by the department of a final budget" at the end of Subsection A(1); in Subsection A(2) substituted "operating budgets" for "estimated budgets" and "to the department's rules and procedures" for "to the manual of accounting and budgeting; and"; deleted Subsection A(3) which required that final budgets be approved and certified to local school boards and boards of county commissioners before the first Monday of September of each year; and in Subsection B, deleted "contractual" before "obligation is made" in the first sentence and substituted "pursuant to the department's rules and procedures" for "between line items within series of a budget" in the second sentence.

**The 1993 amendment,** effective March 17, 1993, added Subsection C.

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "division" and "state superintendent" for "director" throughout the section and made minor stylistic changes.

## 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.

## ANNOTATIONS

**Cross references.** — For transfer of powers and duties of former state superintendent, *see* 9-24-15 NMSA 1978.

**The 2006 amendment,** effective July 1, 2007, added governing body of a state-chartered charter school in Subsections A through D and provided in Subsection D that the charter schools division shall establish how a state-chartered charter school notifies parents of its students of proposed increases in a budget.

**The 1999 amendment,** effective April 8, 1999, substituted the present section heading for "Final budgets; alterations or amendments", substituted "Operating budgets" for "Final budgets" at the beginning of the first paragraph, and substituted "rules of the department" for "regulations of the department" in Subsection B.

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "division" in the introductory paragraph; substituted "state superintendent" for "chief" throughout the section; and deleted "of finance and administration and with the approval of its secretary" following "regulations of the department" in the first sentence in Subsection B.

## 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.

**ANNOTATIONS**

**Cross references.** — For transfer of powers and duties of former state board, *see* 9-24-15 NMSA 1978.

**The 2006 amendment,** effective July 1, 2007, added governing body of a state-chartered charter school in Subsection A and added state-chartered charter school in Paragraph (3) of Subsection A and Paragraph (1) of Subsection C.

**The 1999 amendment,** effective April 8, 1999, added "Membership projections and" to the beginning of the section heading, and substituted "department's rules and procedures" for "manual of accounting and budgeting published by the department" at the end of Subsection B.

**The 1993 amendment,** effective July 1, 1993, deleted "average daily" preceding "membership" in subparagraphs (a) to (c) of Paragraph (1) of Subsection A; deleted former Subsection B, pertaining to the budget request of the state board for pupil transportation and textbooks; redesignated former Subsections C and D as Subsections B and C; added Subparagraph (c) of Paragraph (2) of Subsection C; and made a minor stylistic change.

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "division" throughout the section; substituted "department" for "director of the public school finance division" in Subsection D; and in Subsection D(2), substituted "November 30" for "November 15" and "state board" for "public school finance division".

**Effect of actual costs exceeding program costs.** — A charter school has no right to additional funding if capital expenditures or any other expenditure becomes so great that its actual costs far exceed its "program costs". *Taos Mun. Schs. Charter Sch. v. Davis*, 2004-NMCA-129, 136 N.M. 543, 102 P.3d 102, cert. denied, 2004-NMCERT-010, 136 N.M. 542, 101 P.3d 808.

## 22-8-12.2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 291, § 8 repealed 22-8-12.2 NMSA 1978, as enacted by Laws 1978, ch. 149, § 1, relating to budgets, earnings from investments and operational funds for local school boards, effective April 8, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 115 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

## 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 through 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.

## ANNOTATIONS

**Cross references.** — For transfer of powers and duties of former state superintendent and former state board, *see* 9-24-15 NMSA 1978.

**The 2011 amendment,** effective June 17, 2011, designated December 1 or the first working day in December as the second reporting date and defined "working day".

**The 2010 amendment,** effective May 19, 2010, in Subsection A, after "Each public school", deleted "in a school district and each state-chartered charter school"; added Subsection B; in Subsection C, in the introductory sentence, after "reports for each", deleted "twenty-day"; in Subsection D, after "school shall furnish", added "all reports required by law or the department"; after "to the department", deleted "reports of the information required in Paragraph (1) through (5) of Subsection A of this section for the first forty days of the school year. The forty-day report and all other reports required by

law or by the department shall be furnished within five", and added "within ten"; after "days of the close of", deleted "the" and added "each"; and added the last sentence; in Subsection F, in the first sentence, after "The department", deleted "shall" and added "may"; after "may withhold", added "up to one hundred percent of"; and after "has failed to comply", added the remainder of the sentence; and at the beginning of the second sentence, added "Withholding may continue" and in Subsection G, in the second sentence, after "projecting school district" added "or charter school".

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

**The 2006 amendment,** effective July 1, 2007, added state-chartered charter school and the head administrator of a state-chartered charter school in Subsection A; added the head administrator of a state-chartered charter school in Subsection B; added state-chartered charter school and the head administrator in Subsection D; and added state-chartered charter school in Subsection E.

**The 1990 amendment,** effective May 16, 1990, substituted "MEM" for "ADM" throughout the section and, in Subsection B, deleted "the first eighty days of the school year and for the entire school year" at the end of the first sentence, substituted "The forty-day report and all other reports required by law or by the state board" for "The reports for the first forty days and the first eighty days" at the beginning of the second sentence and deleted a third sentence which read "The report for the entire school year shall be furnished not later than fifteen days following the end of each school year".

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "division" in Subsections B, D, and E; substituted "22-8-21 NMSA 1978" for "77-6-18.4 NMSA 1953" in Subsection A(3); added "as defined in Section 22-8-21 NMSA 1978" in Subsection A(4); deleted the last sentence of Subsection B regarding forty-day and eighty-day reports; and substituted "department" for "director" in Subsections D and E.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Validity of state or local government regulation requiring private school to report attendance and similar information to government - post-Yoder cases, 8 A.L.R.5th 875.

## 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 through 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 273, § 3 made Laws 2009, ch. 273, § 2 effective July 1, 2010.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 12 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

## 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.

## ANNOTATIONS

**Cross references.** — For state equalization guarantee distributions, *see* 22-8-25 NMSA 1978.

For transportation distributions, *see* 22-8-26 to 22-8-29 NMSA 1978.

For supplemental distributions, *see* 22-8-30 NMSA 1978.

For transfer of unencumbered balances in current school fund to public school fund, *see* 22-8-32 NMSA 1978.

For transfer of federal mineral leasing funds to public school fund, *see* 22-8-34 NMSA 1978.

**The 2006 amendment,** effective July 1, 2007, changed "this fund" to "the public school fund" and added state-chartered charter schools in Subsection B and added "to school districts" in Subparagraph (a) of Paragraph (3) of Subsection B.

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "chief" in the first sentence in Subsection C.

**Proper entity to receive funding.** — Local school district within which Los Lunas hospital and training school is located is appropriate entity to receive funding pursuant to the Public School Finance Act for special education of exceptional children. 1977 Op. Att'y Gen. No. 77-04.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 68 Am. Jur. 2d Schools § 99 et seq.

79 C.J.S. Schools and School Districts §§ 410 to 413.

## 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.

**ANNOTATIONS**

**Cross references.** — For public school fund, *see* 22-8-14 NMSA 1978.

**The 2006 amendment,** effective July 1, 2007, changed "charter schools" to "locally chartered charter schools".

**The 1999 amendment,** effective June 18, 1999, in Subsection B, deleted "local" preceding "school district" and deleted the last sentence, which read "The local school board may retain an amount not to exceed the school district's administrative cost relevant to that charter school", and rewrote Subsection C, which read "The local school board in each local school district with authorized charter schools shall establish an individual charter school account to receive public school fund disbursement for each charter school."

**The 1993 amendment,** effective June 18, 1993, designated the formerly undesignated provision as Subsection A and added Subsections B and C.

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "chief".

## 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.

**ANNOTATIONS**

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "chief" twice in the first sentence.

## 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.

**ANNOTATIONS**

**The 2006 amendment,** effective July 1, 2007, added "charter school" in Subsections A and B.

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "chief" once in each subsection.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Determination of school attendance, enrollment, or pupil population for purpose of apportionment of funds, 80 A.L.R.2d 953.

Property taxes: validity of basing public school financing system on local property taxes, 41 A.L.R.3d 1220.

## 22-8-18. Program cost calculation; local responsibility.

A. For fiscal year 2019, 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) through (6) in this subsection by the staffing cost multiplier and adding the program units itemized as Paragraphs (7) through (14) in this subsection. For fiscal year 2020 and subsequent fiscal years, 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 (14) 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 program;

(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 program unit;

(13) home school student activities; and

(14) charter school student activities.

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, for a charter school, the governing body of the 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 if a public school has been rated D or F for two consecutive years, the department shall ensure that the local school board or, for a

charter school, the governing body of the charter school is prioritizing resources for the public school toward proven programs and methods linked to improved student achievement until the public school earns a C or better for two consecutive years.

**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.

## ANNOTATIONS

**The 2018 amendment,** effective July 1, 2018, revised the formula for calculating program cost; and in Subsection A, in the introductory paragraph, added "For fiscal year 2019", after "in this subsection by the", deleted "instructional staff training and experience index" and added "staffing cost multiplier", and added "For fiscal years 2020 and subsequent fiscal years, 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 (14) in this subsection".

**Temporary provisions.** — Laws 2018, ch. 55, § 7 provided that:

A. Using funds appropriated by the legislature for fiscal years 2020 through 2022, the public education department shall supplement a school district's or charter school's calculated program cost in each of those fiscal years:

(1) if, for the fiscal year, the school district's or charter school's calculated program cost is less than its final program cost in the previous fiscal year, not considering any supplement the school district or charter school receives under this subsection; and

(2) as follows:

(a) for fiscal year 2020, in an amount equal to one hundred percent of the reduction attributable to the implementation of this act or the difference between the calculated program cost and the final program cost in the previous fiscal year, whichever is less;

(b) for fiscal year 2021, in an amount equal to seventy-five percent of the reduction attributable to the implementation of this act or the difference between the calculated program cost and the final program cost in the previous fiscal year, whichever is less; and

(c) for fiscal year 2022, in an amount equal to fifty percent of the reduction attributable to the implementation of this act or the difference between the calculated

program cost and the final program cost in the previous fiscal year, whichever is less; but

(3) if, in a fiscal year, the appropriation for the purpose of implementing this subsection is insufficient to supplement school districts and charter schools in accordance with Paragraphs (1) and (2) of this subsection, then in an amount equal to the school district's or charter school's prorated share of the total appropriation.

B. On or before February 1 of 2020 through 2022, the public education department shall submit a report to the legislative education study committee and the legislative finance committee that states, regarding the current fiscal year:

(1) the sum needed to supplement school districts and charter schools in accordance with this section;

(2) a list of the school districts and charter schools eligible to receive a supplement in accordance with this section; and

(3) the supplement amount of each of those school districts and charter schools.

**The 2015 amendment,** effective July 1, 2015, required each governing body of a charter school to determine its priorities in terms of the needs of the community served by the local school board and required the public education department to ensure that each governing body of a charter school with a D or F rating is prioritizing resources toward proven programs and methods linked to improved student achievement until the school earns a grade of C or better for two consecutive years; in Subsection B, after "responsibility of the local school board or,", added "for a charter school, the", and after "ensure that the local school board or,", added "for a charter school, the".

**The 2014 amendment,** effective May 21, 2014, incorporated the home school student program unit provision in the program cost calculation provisions of the Public School Finance Act; in Subsection A, added Paragraph (12); and in Subsection B, in the third sentence, after "enumerated in this section are met", added "and", and after "and provided", deleted "however" and added "further".

**The 2011 amendment,** effective June 17, 2011, required the department to ensure that public schools that are rated D or F prioritize resources to improve student achievement.

**The 2007 amendment,** effective June 15, 2007, added home school student activities into the program cost calculation.

**The 2006 amendment,** effective July 1, 2007, added the governing body of a charter school in Subsection B.

**The 2005 amendment,** effective June 17, 2005, added national board certification in the program cost calculation in Subsection A.

**The 2003 amendment,** effective June 20, 2003, in Subsection A, substituted "through (5) in this subsection by the instructional" for "through (4) in this subsection by the instruction" following "as Paragraphs (1)", substituted "Paragraphs (6) through (9)" for "Paragraphs (5) through (8)" following "units itemized as"; added Paragraph A(5) and redesignated former Paragraphs A(5) to (8) as present Paragraphs A(6) to (9); and added Paragraph A(10).

**The 1997 amendment,** effective July 1, 1997, in Subsection A, substituted "membership in class D special education programs" for "class D special education MEM" throughout the subsection, added Subparagraph (6) and redesignated the remaining subparagraphs accordingly, and made a stylistic change.

**The 1993 amendment,** effective June 18, 1993, added "or new district adjustment" at the end of Paragraph (6) of Subsection A.

**The 1990 (1st S.S.) amendment,** effective July 1, 1990, in Subsection A, substituted "Paragraphs (5) through (7)" for "Paragraphs (5) and (6)" in the first sentence, "special education MEM" for "special education ADM" in Paragraph (3), added present Paragraph (6), and redesignated former Paragraph (6) as present Paragraph (7), substituting therein "special education MEM" for "special education ADM".

## 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.

**ANNOTATIONS**

**The 2000 amendment,** effective May 17, 2000, changed how early childhood education students are counted for the early childhood education MEM from no more than 0.5 for all students to 0.5 for half-day kindergarten students and 1.0 for full-day students.

**The 1997 amendment,** effective July 1, 1997, added the Subsection A designation and added Subsection B.

**The 1990 (1st S.S.) amendment,** effective July 1, 1990, substituted "childhood education MEM" for "childhood education ADM" in both occurrences and "cost differential factor 1.44" for "cost differential factor 1.3".

## 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.

**ANNOTATIONS**

**Cross references.** — For transfer of powers and duties of former department of education, *see* 9-24-15 NMSA 1978.

**The 2012 amendment,** effective May 16, 2012, eliminated the office of child development and the child development board; assigned duties to the children, youth and families department; in Subsection A, in the second sentence, after "youth and families department", deleted "through the office of child development", and after "entities upon approval by", deleted "the children, youth and families" and added "that"; in Subsection B, changed "department of education" to "public education department"; and in Subsection C, in the first sentence, after "procedural process to enable the", deleted "office of child development" and added "children, youth and families department".

**The 1993 amendment,** effective June 18, 1993, deleted "Temporary provision" at the beginning of the catchline; substituted "children, youth and families department" for "state department of public education" in the first sentence of Subsection A; inserted "children, youth and families" in two places in the second sentence of Subsection A; designated the former third, fourth, and fifth sentences of Subsection A as current Subsection B; added "of education" at the end of the second sentence in current Subsection B; redesignated former Subsection B as current Subsection C; and added "in coordination with other resources for families" at the end of the final sentence of Subsection C.

## 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.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1991, ch. 85, § 3 repealed former 22-8-20 NMSA 1978, as amended by Laws 1991, ch. 85, § 2, and enacted a new section, effective July 1, 1992.

**1993 amendments.** — Laws 1993, ch. 2, § 1, effective June 18, 1993, substituted "1.26" for "1.42" as the Cost Differential Factor for Grade 1.

Identical amendments to this section were enacted by Laws 1993, ch. 226, § 21, effective July 1, 1993, and Laws 1993, ch. 228, § 2, effective June 18, 1993 until July 1,

1994, which, under the column "Cost Differential Factor" substituted "1.2" for "1.42" for grade 1 and "1.18" for "1.1" for grades 2 and 3.

Identical amendments to this section were enacted by Laws 1993, ch. 226, § 22 and Laws 1993, ch. 228, § 3, both effective July 1, 1994, substituting "1.045" for "1.0" under the column "Cost Differential Factor" for grades 4 through 6.

## 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.

**ANNOTATIONS**

**Cross references.** — For transfer of powers and duties of former state board, *see* 9-24-15 NMSA 1978.

**The 1997 amendment,** effective July 1, 1997, in Subsection C, rewrote Paragraph (1), substituted "MEM in approved class" for "special education in class" in Paragraphs (2) and (3), substituted "2.0" for "3.5; and" in Paragraph (3), in Paragraph (4), deleted "special education" preceding "MEM", deleted "Paragraph (5) of" preceding "Subsection A", substituted "2.0" for "3.5", and added "and" at the end of the paragraph and added Paragraph (5); and added Subsection D.

**The 1992 amendment,** effective May 20, 1992, deleted "of education" following "department" several times throughout the section; rewrote Subsections A(1) to A(4); deleted "to the division" following "certified" in Subsection C(1); and substituted "MEM" for "ADM" several times in Subsections C(2) to C(4).

## 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.

**ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, inserted "0.45, effective July 1, 1993"; substituted "1994" for "1993" at the end of the section; and made minor stylistic changes.

**The 1992 amendment,** effective May 20, 1992, substituted ".425" for "0.45" near the end of the section.

**The 1990 (1st S.S.) amendment,** effective July 1, 1990, substituted "full-time-equivalent MEM" for "full-time-equivalent ADM" and "differential factor 0.35" for "differential factor 0.3" and added at the end the language beginning "effective July 1, 1990".

## 22-8-23. Size adjustment program units.

A. An approved public school with a MEM of less than 400, 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, 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 is entitled under this subsection is the sum of elementary-junior high units and senior high units computed in the following manner:

Elementary-Junior High Units

$$\frac{200 - \text{MEM}}{200} \times 1.0 \times \text{MEM} = \text{Units}$$

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

200 - MEM

_____ x 2.0 x MEM = Units

200

or,

Senior High Units

400 - MEM

_____ x 1.6 x MEM = Units

400

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. A school district with total MEM of less than 4,000, 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:

District Units

4,000 - MEM

_____ x 0.15 x MEM = Units

4,000

where MEM is equal to the total district membership, including early childhood education full-time-equivalent membership.

C. A school district with over 10,000 MEM with a ratio of MEM to senior high schools less than 4,000:1 is eligible for additional program units based on the number of approved regular senior high schools that are not eligible for senior high units under Subsection A of this section. The number of additional program units to which an

eligible school district is entitled under this subsection is the number of units computed in the following manner:

4,000 - MEM

_____ x 0.50 = Units

Senior High Schools

where MEM is equal to the total district membership, including early childhood education full-time-equivalent membership, and where senior high schools are equal to the number of approved regular senior high schools in the school district.

D. A school district, as defined in Subsection R of Section 22-1-2 NMSA 1978, with a MEM of less than 200, including early childhood education full-time-equivalent MEM, is eligible for additional program units, provided that 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 [number] 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 - MEM = Units

where MEM is equal to the total district MEM, including early childhood education full-time-equivalent MEM.

**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.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**The 2014 amendment,** effective July 1, 2014, provided additional operational funding formula units for school districts with a membership of less than two hundred students; and added Subsection D.

**The 1997 amendment,** effective July 1, 1997, rewrote the computations throughout the section; substituted "membership in class C and class D programs and excluding full-time-equivalent membership in three- and four-year-old developmentally disabled programs" for "special education class C and class D membership" throughout Subsection A; deleted "and special education membership" following "full-time-

equivalent membership" throughout Subsection B; and deleted former Subsections D through F, relating to school districts with membership greater than ten thousand but less than fifteen thousand, school districts with membership greater than fifteen thousand but less than thirty-five thousand, and school districts with membership greater than thirty-five thousand, respectively.

**The 1993 amendment,** effective June 18, 1993, deleted "early childhood education" following "not limited to" in the first sentence of Subsection A and made a minor stylistic change.

**The 1991 amendment,** effective July 1, 1991, in Subsection D, substituted "fifteen thousand" for "thirty-five thousand" near the beginning and ".15" for ".2" in the formula; added Subsection E; designated former Subsection E as Subsection F; and substituted ".023" for ".008" in the formula in Subsection F.

**The 1989 amendment,** effective July 1, 1991, substituted "MEM" for "ADM" and deleted "average daily" preceding "membership" several times throughout the section, added Subsections D and E, and made minor stylistic changes throughout the section.

**School is only entitled to size adjustment program units if it meets the statutory criteria.** *Taos Mun. Schs. Charter Sch. v. Davis*, 2004-NMCA-129, 136 N.M. 543, 102 P.3d 102, cert. denied, 2004-NMCERT-010, 136 N.M. 542, 101 P.3d 808.

## 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)

Previous Year MEM x 100 = Percent Increase.

The number of additional program units shall be calculated as follows:

((Current Year MEM - Previous Year MEM) - (Current Year MEM x .01)) x 1.5 = 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.

## ANNOTATIONS

**The 2010 amendment,** effective May 19, 2010, in Paragraph (1) of Subsection C, after "means MEM on the", deleted "fortieth day" and added "first reporting date" and in Subsection C(3), after "means MEM on the", deleted "fortieth day" and added "first reporting date".

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

**The 2006 amendment,** effective July 1, 2007, added charter school and (Current Year MEM – Previous Year MEM) in Subsections A and B; added charter school and changed Section 22-2-19 NMSA 1978 to Section 22-13-3.2 NMSA 1978 in Paragraph (2) of Subsection C.

**The 2003 amendment,** effective June 20, 2003, rewrote the section to the extent that a detailed comparison is impracticable.

## 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:

(MEM for prior year — MEM for current year) x .17 = 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 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:

At-Risk Index x MEM = 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:

(1) for fiscal year 2019, Three-Year Average Total Rate x 0.130 = At-Risk Index;

(2) for fiscal year 2020, Three-Year Average Total Rate x 0.140 = At-Risk Index; and

(3) for fiscal year 2021 and subsequent fiscal years, Three-Year Average Total Rate x 0.150 = 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 I allocation, a three-year average of the percentage of membership classified as English language learners using criteria established by the federal office of civil rights 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.

**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.

## ANNOTATIONS

**The 2018 amendment,** effective July 1, 2018, made a phased-in adjustment to the at-risk index; and in Subsection A, added new Paragraphs A(1) through A(3), and after Paragraph A(3), added "Three-year Average Total Rate x 0.150 = At-Risk Index".

**The 2014 amendment,** effective July 1, 2015, modified the at-risk index; in Subsection A, in the first sentence, after "establishes within its", deleted "state board" and added "department", in the second sentence, after "report of specified services", deleted "in its annual accountability report pursuant to Section 22-1-6 NMSA 1978" and added the remainder of the sentence, and added the third and fourth sentences; in Subsection A, in the formula, after "Total Rate x", changed "0.0915" to "0.106"; and in Subsection C, deleted the former second sentence, which provided that for the years 2002-2003 through 2004-2005, a school district shall not receive less than ninety percent of the at-risk funding generated in fiscal year 2001.

**The 2002 amendment,** effective May 15, 2002, substituted "Three-Year Average Total Rate x 0.0915" for "Refined At-Risk Cluster x 0.015" in the formula at the end of Subsection A; rewrote Subsection B by deleting provisions relating to refined at-risk clusters and inserting references to calculations based on three-year average rates; and, in Subsection C, substituted "year" for "two years" at the end of the present first sentence and added the second sentence.

## 22-8-23.4. National board for professional teaching standards; certified teachers program units.

The number of program units for teachers certified by the national board for professional teaching standards is determined by multiplying by one and one-half the number of teachers 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 teachers 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.

**ANNOTATIONS**

**The 2010 amendment,** effective May 19, 2010, in the first sentence, after "charter school on or before the", deleted "fortieth day" and added "first reporting date".

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

**The 2006 amendment,** effective July 1, 2007, added charter schools.

## 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 0.0166 for fiscal year 2004, 0.0332 for fiscal year 2005 and 0.05 for fiscal year 2006 and succeeding fiscal years.

**History:** Laws 2003, ch. 144, § 3 and by Laws 2003, ch. 152, § 8.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2003, ch. 144, § 3 and Laws 2003, ch. 152, § 8, both effective June 20, 2003 enacted identical new sections.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2006, ch. 94, § 61 made Laws 2006, ch. 94, § 15 effective July 1, 2007.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 348 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**The 2012 amendment,** effective May 16, 2012, eliminated the requirement that home school student activities program units be based on athletic activities; in the third sentence, after "school district", deleted "athletic"; in the fourth sentence, after "school district", deleted "athletic"; and added the last sentence.

**Applicability.** — Laws 2012, ch. 23, § 2 provided that the provisions of Laws 2012, ch. 23, § 1 apply to the 2012-2013 school year and subsequent school years.

**The 2009 amendment,** effective June 19, 2009, increased the number of school district activities in which a home school student may participate from one athletic activity to three athletic activities.

## 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.

**ANNOTATIONS**

**The 2014 amendment,** effective May 21, 2014, changed "home schooled" to "home school" throughout the section.

**Applicability. —** Laws 2013, ch. 113, § 2 provided that Laws 2013, ch. 113, § 1 applies to the 2014-2015 school year and subsequent school years.

## 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:

| | Years of Experience | | | | |
|---|---|---|---|---|---|
| Academic Classification | 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.

## ANNOTATIONS

**Cross references.** —For transfer of powers and duties of former state superintendent, *see* 9-24-15 NMSA 1978.

**1993 amendments.** — Laws 1993, ch. 91, § 1, effective June 18, 1993, substituted "state superintendent" for "chief" in the first sentence of Subsection C and "1.0" for ".95" in two places in Subsection D, was approved March 31, 1993. Laws 1993, ch. 237, § 3, effective June 18, 1993, substituted "state superintendent" for "chief" in Subsection C,

substituted "1.0" for ".95" in two places in Subsection D and added Subsection E. This section was set out as amended by Laws 1993, ch. 237, § 3. *See* 12-1-8 NMSA 1978.

**Superintendent's interpretation of section entitled to deference.** — Subsection B is ambiguous; however, the superintendent's interpretation that interim credit hours are lost once a higher degree is conferred would be accorded substantial weight and deference. *Board of Educ. v. N.M. State Dep't of Pub. Educ.*, 1999-NMCA-156, 128 N.M. 398, 993 P.2d 112, cert. denied, 128 N.M. 148, 990 P.2d 822.

## 22-8-25. State equalization guarantee distribution; definitions; determination of amount.

A. The state equalization guarantee distribution is that amount of money distributed to each school district to ensure that its operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost. For state-chartered charter schools, the state equalization guarantee distribution is the difference between the state-chartered charter school's program cost and the two percent withheld by the department for administrative services.

B. "Local revenue", as used in this section, means seventy-five percent of receipts to the school district derived from that amount produced by a school district property tax applied at the rate of fifty cents ($.50) to each one thousand dollars ($1,000) of net taxable value of property allocated to the school district and to the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978].

C. "Federal revenue", as used in this section, means receipts to the school district or state-chartered charter school, excluding amounts that, if taken into account in the computation of the state equalization guarantee distribution, result, under federal law or regulations, in a reduction in or elimination of federal school funding otherwise receivable by the school district, derived from the following:

(1) seventy-five percent of the school district's share of forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978; and

(2) seventy-five percent of 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".

D. 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 fortieth day of the current year, whichever is greater; and

(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) for school districts and state-chartered charter schools, calculate the local and federal revenues as defined in this section;

(6) deduct the sum of the calculations made in Paragraph (5) of this subsection from the program cost established in Paragraph (4) of this subsection;

(7) 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

(8) 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].

E. 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.

F. 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 (6) through (8) of Subsection D of this section.

G. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. The calculation shall be based on the local and federal revenues specified in this section received from June 1 of the previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee distribution is being computed. 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.

## ANNOTATIONS

**Repeals.** — Laws 2006, ch. 94, § 60 repealed Laws 2005, ch. 176, § 12, effective July 1, 2007.

**Cross references.** — For state-support reserve fund, *see* 22-8-31 NMSA 1978.

For PL 874 funds, *see* 20 USCS § 7701 et seq.

**The 2018 amendment,** effective July 1, 2018, revised the formula for determining the amount of the state equalization guarantee distribution; and in Paragraph D(4), after "this subsection and the", deleted "instructional staff training and experience index" and added "staffing cost multiplier".

**Temporary provisions.** — Laws 2018, ch. 55, § 7 provided that:

A. Using funds appropriated by the legislature for fiscal years 2020 through 2022, the public education department shall supplement a school district's or charter school's calculated program cost in each of those fiscal years:

(1) if, for the fiscal year, the school district's or charter school's calculated program cost is less than its final program cost in the previous fiscal year, not considering any supplement the school district or charter school receives under this subsection; and

(2) as follows:

(a) for fiscal year 2020, in an amount equal to one hundred percent of the reduction attributable to the implementation of this act or the difference between the calculated program cost and the final program cost in the previous fiscal year, whichever is less;

(b) for fiscal year 2021, in an amount equal to seventy-five percent of the reduction attributable to the implementation of this act or the difference between the calculated program cost and the final program cost in the previous fiscal year, whichever is less; and

(c) for fiscal year 2022, in an amount equal to fifty percent of the reduction attributable to the implementation of this act or the difference between the calculated program cost and the final program cost in the previous fiscal year, whichever is less; but

(3) if, in a fiscal year, the appropriation for the purpose of implementing this subsection is insufficient to supplement school districts and charter schools in accordance with Paragraphs (1) and (2) of this subsection, then in an amount equal to the school district's or charter school's prorated share of the total appropriation.

B. On or before February 1 of 2020 through 2022, the public education department shall submit a report to the legislative education study committee and the legislative finance committee that states, regarding the current fiscal year:

(1) the sum needed to supplement school districts and charter schools in accordance with this section;

(2) a list of the school districts and charter schools eligible to receive a supplement in accordance with this section; and

(3) the supplement amount of each of those school districts and charter schools.

**The 2017 amendment,** effective June 16, 2017, required the public education department to take credit for certain state-chartered charter schools' impact aid receipts; in Subsection C, in the introductory clause, after the first occurrence of "school district", added "or state-chartered charter school"; and in Subsection D, Paragraph D(5), after "school districts", added "and state-chartered charter schools".

**The 2010 amendment,** effective May 19, 2010, in Subsection D(1), after "average of the MEM on the", deleted "eightieth and one-hundred twentieth days" and added "second and third reporting dates"; and in Subsection D(3), after "average of the MEM on the", deleted "eightieth and one-hundred twentieth days" and added "second and third reporting dates".

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting

dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

**The 2006 amendment,** effective July 1, 2007, provided for the state equalization guarantee distribution for state-chartered charter schools in Subsection A; added charter schools in Paragraphs (1) through (5) of Subsection D and in Subsection G and deleted condition that required the enactment of House Bill 32 or similar legislation of the first session of the forty-seventh legislature in Paragraph (8) of Subsection D and in Subsection E.

**The 2005 amendments,** effective July 1, 2005, deleted the former provision of Subsection B which provided that the school district shall budget and expend twenty percent of the total revenue receipts for capital outlay; deleted the former provision of Subsection C(1) which provided that the school district shall budget and expend twenty percent of the total forest reserve receipts for capital outlay; deleted the former provision of Subsection C(2) that the school district shall budget and expend twenty percent of the grant receipts for capital outlay; deleted the former provision in Subsection D(3) that the number of program units be calculated using the average MEM on the fortieth day of the prior year; added Subsection D(8) to provide that to determine the amount of the state equalization guarantee distribution, the department shall deduct ninety percent of the amount certified for the school district by the department pursuant to the Energy Efficiency and Renewal Energy Bonding Act, if the act becomes law pursuant to House Bill 32 of similar legislation of the first session of the forty-seventh legislature; and added Subsection E to provide that reduction of a district's state equalization guarantee distribution shall cease when the district's cumulative reductions equal its proportional share of cumulative debt service payments to service the bonds issued pursuant to the Efficiency and Renewal Energy Bonding Act, if the act became law pursuant to House Bill 32 or similar legislation of the first session of the forty-seventh legislature; and changed "state superintendent" and "state board" to "department".

**The 2002 amendment,** effective July 1, 2002, deleted "as defined in the manual of accounting and budgeting provided in Section 22-8-5 NMSA 1978" at the end of Subsections B, C(1), and C(2); in Subsection D, deleted provisions for calculating program units effective between July 1, 1999 and July 1, 2000 in Paragraph (1), substituted "an average of the MEM on appropriate dates" for "the basic program membership on an appropriate date" in Paragraph (2); and, in Paragraph (3), substituted "an average of the MEM on the fortieth, eightieth and one hundred twentieth days of the prior year or the fortieth day of the current year" for "the basic program membership on the fortieth day of either the prior or the current year", and deleted a proviso relating to special education program units.

**The 1999 amendment,** effective June 18, 1999, rewrote the section, changing the percentage of local revenue credit calculated in the state equalization guarantee distribution from ninety-five percent to seventy-five percent, and requiring the use of prior year average enrollment counts on certain days for the calculation of program units for distribution of the state equalization funds.

**The 1997 amendment,** effective July 1, 1997, in Subsection D, substituted "basic program membership of the fortieth day for all programs; provided that special education program units shall be calculated using the membership in special education programs on December 1" for "membership of the fortieth day of the school year, except for school districts with a MEM of 200 or less where the number of program units shall be calculated on the fortieth day membership of either the prior year or the current year, whichever is greater, for all programs except special education, which shall be calculated by using the membership on December 1 of the school year" in Paragraph (1); inserted "basic program" in Paragraph (2); added Paragraph (3) and redesignated the remaining paragraphs accordingly; inserted "distribution is being computed" in Subsection G; and made stylistic changes throughout the section.

**The 1993 amendment,** effective June 18, 1993, added Paragraph (6) in Subsection D; substituted "deductions made in Paragraphs (5) and (6)" for "deduction made in Paragraph (5)" in Subsection E; and inserted the language beginning ", and then reduced by the total" and ending "distribution is being computed," following "Oil and Gas Production Equipment Ad Valorem Tax Act" in Subsection G.

**The 1990 amendment,** effective May 16, 1990, substituted "on December 1 of the school year" for "the fortieth or eightieth day of the school year whichever is greater" at the end of Paragraph (1) of Subsection D.

**The 1989 amendment,** effective June 16, 1989, inserted "upon the assessed value of equipment in the school district as determined under" near the end of Subsection B; substituted "a MEM" for "an ADM" near the middle of Subsection D(1); added present Subsection D(2); redesignated former Subsections D(2) through D(4) as present Subsections D(3) through D(5); in present Subsection D(3) inserted "or (2)"; in present Subsection D(5) substituted "Paragraph (4)" for "Paragraph (3)" and "Paragraph (3)" for "Paragraph (2)"; and in Subsection G substituted "Paragraphs (1) or (2) and (3)" for "Paragraphs (1) and (2)" near the middle of the first paragraph and inserted "upon the assessed value of equipment in the school district as determined under" near the end of that paragraph.

**The 1988 amendment,** effective July 1, 1988, amended Subsections C(1),and C(2); deleted Subsection C(3) regarding grants from the federal government to public secondary schools; and substituted "state superintendent" for "director of the office of education" in Subsection D.

**Federal impact aid deductions.** — Where the New Mexico public education department (department) reduced state equalization guarantee (SEG) distribution payments to the Zuni public school district based on anticipated federal impact aid payments prior to certification from the secretary of the United States department of education (DOE), the district court erred in finding that the deductions were authorized under state law, because, under state and federal law, the state may not take into consideration impact aid payments, whether anticipated or actually received, prior to obtaining certification from the DOE secretary, and the department may not reduce SEG

distribution payments to an impacted district prior to certification, but once the state has received its certification from the DOE secretary, the certification shall apply retroactively to any impact aid payments received by the district during the entire fiscal year. *N.M. Pub. Educ. Dep't v. Zuni Pub. Sch. Dist. #89*, 2018-NMSC-029.

**Deductions of federal impact aid funds from state equalization guarantee distribution.** — Where the Zuni public school district (Zuni) petitioned the district court for a writ of mandamus, declaratory relief, and injunctive relief, claiming that the New Mexico department of education (department) violated the Public School Finance Act (the act) by deducting federal impact aid funds it anticipated that Zuni was gong to receive from funds it was otherwise entitled to under the act's share of school funding prior to the federal department of education (DOE) secretary certifying New Mexico's school funding system, the district court erred in granting the department's motion for summary judgment because under federal law, the department was prohibited from taking into account Zuni's federal impact aid payments before the DOE secretary issued its certification. *Zuni Pub. Sch. Dist. #89 v. N.M. Pub. Educ. Dep't*, 2017-NMCA-003, cert. granted.

**Law reviews.** — For note, "Indirect Funding of Sectarian Schools: A Discussion of the Constitutionality of State School Voucher Programs Under Federal and New Mexico Law After Zelman v. Simmons-Harris," see 34 N.M.L. Rev. 194 (2004).

For article, "No Cake For Zuni: The Constitutionality of New Mexico's Public School Capital Finance System," see 37 N.M.L. Rev. 307 (2007).

## 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.

**ANNOTATIONS**

**Cross references.** — For the public school fund, *see* 22-8-14 NMSA 1978.

**The 1988 amendment,** effective May 18, 1988, in the second sentence, substituted "department" for "director of the office of education" at the first occurrence of that word, "department" for "director" at the second occurrence, and "included within" for "in addition to".

## 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 [22-17-1 through 22-17-4 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.

**ANNOTATIONS**

**Cross references.** — For transportation of students generally, *see* 22-16-1 NMSA 1978 et seq.

For transfer of powers and duties of the former state board, *see* 9-24-15 NMSA 1978.

For other divisions of the public education department, *see* 9-24-4 NMSA 1978.

For the transportation emergency fund, *see* 22-8-29.6 NMSA 1978.

**The 2006 amendment,** effective July 1, 2007, added state-chartered charter schools in Subsections A through D and added governing body of a state-chartered charter school in Subsection E.

**The 2001 amendment,** effective June 15, 2001, added Subsection F.

**The 1999 amendment,** effective May 21, 1999, substituted "fifty percent of the remaining balance shall be deposited in the transportation emergency fund" for "the district shall revert remaining transportation funds to the transportation distributon in the department" in Subsection B; added Subsection C and redesignated the subsequent subsections accordingly; updated a section reference in Subsection E; and made a minor stylistic change.

**The 1995 amendment,** effective July 1, 1995, rewrote Subsections A and B, deleted former Subsection C relating to an objective allocation formula developed by the transportation director and superintendent, rewrote and redesignated former Subsection D as Subsection C, deleted former Subsection E relating to negotiation of school bus contracts, and redesignated former Subsection F as Subsection D.

**The 1988 amendment,** effective May 18, 1988, deleted "of instruction" following "superintendent" at the end of Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Buses: constitutionality, under state constitutional provision forbidding financial aid to religious sects, of public provision of schoolbus service for private school pupils, 41 A.L.R.3d 344.

Free transportation: nature and extent of transportation that must be furnished under statute requiring free transportation of school pupils, 52 A.L.R.3d 1036.

## 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.

## ANNOTATIONS

**Cross references.** — For transfer of powers and duties of former state superintendent to secretary of public education, *see* 9-24-15 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, required school districts to file liens on every contractor-owned school bus that is under contract; in Subsection D, after "contract", deleted "on which the contractor owes money", and after "securing", deleted "the" and added "a".

**The 2009 amendment,** effective June 19, 2009, added Subsection D; in Subsection E, after "is terminated", added "or not renewed by either party"; and added Subsection F.

**Applicability.** — Laws 2009, ch. 92, § 3 provided that the provisions of Laws 2009, ch. 92, §§ 1 and 2 apply to contracts, including contract renewals, entered into on or after June 19, 2009.

**The 2006 amendment,** effective July 1, 2007, changed "state superintendent" to "department" in Subsections A through C; and added state-chartered charter school in Subsection C.

**The 1995 amendment,** effective July 1, 1995, deleted "Local school boards may, with the approval of the state transportation director and" from the beginning of the section, designated the existing provisions as Subsection A, inserted "shall" in Subsection A, deleted "from the annual budget allocation for school transportation within the school district" from the end of Subsection A, and added Subsections B and C.

**The 1993 amendment,** effective July 1, 1993, rewrote the catchline, which formerly read "Transportation of students; additional budget allowance; purchase of equipment"; deleted former Subsections A and B, pertaining to authorization for an additional budget allowance for the cost of transporting students where special equipment is necessary or where special physical conditions exist; and deleted the subsection designation "C".

**The 1988 amendment,** effective May 18, 1988, substituted "state superintendent" for "chief" in Subsection C.

**Reimbursement of rental fees.** — A local school district is entitled to reimbursement from a school bus operator of unearned rental fees paid to the operator for bus purchases at the termination of the school bus service contract without distinction as to the reason for or the time of termination of the contract. *Gladden Motor Co., Inc. v. Eunice Sch. Bd.*, 2007-NMCA-118, 142 N.M. 483, 167 P.3d 931, cert. denied, 2007-NMCERT-009, 142 N.M. 715, 169 P.3d 408.

## 22-8-28. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 208, § 16 repealed 22-8-28 NMSA 1978, as amended by Laws 1979, ch. 305, § 3, relating to the submission of school bus cost reports, effective July 1, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com*.

## 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 calculated and distributed for the entire school year using an average of

the amounts reported on the second reporting date and third reporting date of the prior school year, and subject to audit and verification.

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.

## ANNOTATIONS

**Repeals.** — Laws 2001, ch. 350, § 2, repealed Laws 1999 (1st S.S.), ch. 11, § 7, effective June 15, 2001, which would have repealed 22-8-29 on July 1, 2001.

**Cross references.** — For transportation of students generally, *see* 22-16-1 NMSA 1978 et seq.

For transfer of powers and duties of the former state superintendent, *see* 9-24-15 NMSA 1978.

For the program support and student transportation division of the public education department, *see* 9-24-4 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, changed the dates for reporting school transportation information to the public education department and changed the basis for determining transportation distribution allocations; in the introductory sentence of Subsection A, deleted "Prior to November 15 of each year" and added "On the second reporting date and the third reporting date of each year", and after "operation on", deleted "the first" and added "each respective"; in Subsection A, Paragraph (3), after "the number of students", added "including special education students"; and in Subsection C, after "Public School Code", deleted "The allocations for the first six months of a school year shall be based upon the tentative transportation budget of the school district or state-chartered charter school for the current fiscal year. Allocations to a school district or state-chartered charter school for the remainder of the school year shall adjust the amount received by the school district or state-chartered charter school so that it equals the amount the school district or state-chartered charter school is entitled to receive for the entire school year based upon the November 15 report" and added "calculated and distributed for the entire school year using an average of the amounts reported on the second reporting date and third reporting date of the prior school year."

**Temporary provisions.** — Laws 2015, ch. 57, § 2 provided that notwithstanding the provisions of Laws 2015, ch. 57, for the transportation distribution for fiscal year 2016, the allocation shall be based upon the tentative transportation budget of the school

district or state-chartered charter school for fiscal year 2016. Allocations to a school district or state-chartered charter school for the remainder of the school year shall adjust the amount received by the school district or state-chartered charter school so that it equals the amount the school district or state-chartered charter school is entitled to receive based upon the number of students transported on the first reporting date of fiscal year 2016 and adjusted for special education students on December 1, and subject to audit and verification.

**The 2010 amendment,** effective May 19, 2010, in Subsection A, in the introductory sentence after "operation on the", deleted "fortieth day of school" and added "first reporting date of the current year"; and in Subsection A(3), after "transported on the", deleted "fortieth day of school" and added "first reporting date of the current year".

**The 2006 amendment,** effective July 1, 2007, added the governing body of a state-chartered charter school in Subsections A and B and added state-chartered schools in Subsection A, Paragraph (6) of Subsection A, and in Subsections C and D.

**The 1999 amendment,** effective May 21, 1999, in Subsection A added "and adjusted for special education students on December 1" at the end of Paragraph (3), deleted former Paragraph (5), which read "the percentage of unpaved or unimproved roads utilized by school buses in the school district; and" and redesignated the subsequent paragraph accordingly, substituted "used" for "utilized" in Paragraph (5), and added Paragraph (6).

**The 1995 amendment,** effective July 1, 1995, in Subsection A, in the introductory paragraph, deleted "maintaining a school bus route" following "school district" and substituted "the district's operation on the fortieth day of school" for "the school year to and including October 30", deleted "which have been approved by the state transportation director" from the end of Paragraph (1), deleted former Paragraph (2) relating to the number and capacity of the buses operating on the district, redesignated former Paragraphs (3) and (4) as Paragraphs (2) and (3), substituted "on the fortieth day of school" for "on each school bus route" in Paragraph (3), and added Paragraphs (4) to (6); deleted "concerning the information required by this section" following the first "director" in Subsection B, and rewrote Subsection C.

**The 1988 amendment,** effective May 18, 1988, deleted the last sentence of Subsection B regarding required periods for reporting; in Subsection C, substituted "state superintendent" for "director" near the beginning of the first sentence and "state superintendent" for "director of the public school finance division" at the end of the first sentence; and substituted "department" for "director" and deleted "to him" following "certified" in Subsection D.

## 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;

(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 operations 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.

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.

G. The adjustment factor shall be applied to the allocation amount determined pursuant to Subsections E and F of this section.

History: Laws 1995, ch. 208, § 10; 1999 (1st S.S.), ch. 11, § 3; 2001, ch. 350, § 1; 2006, ch. 94, § 20.

**ANNOTATIONS**

**Cross references.** — For the legislative education study committee, *see* 2-10-1 NMSa 1978.

For the legislative finance committee, *see* 2-5-1 NMSA 1978.

For references to the former state board, *see* 9-24-15 NMSA 1978.

For the program support and student transportation division of the department, *see* 9-24-4 NMSA 1978.

**The 2006 amendment,** effective July 1, 2007, added state-chartered charter schools in Paragraphs (1) and (4) of Subsection A and Subsections B through E; and added an amount established by rule for state-chartered charter schools in Paragraph (2) of Subsection A.

**The 2001 amendment,** effective June 15, 2001, in Subsection F, deleted "1999-2000, 2000-2001 and", inserted "2002-2003 and 2003-2004" substituted "ninety-five percent" for "one hundred percent" and "one hundred five percent" for "one hundred fifteen percent", and substituted "prior" for "1998-1999".

**The 1999 amendment,** effective May 21, 1999, added present Subsections A, C through E, and G and redesignated subsequent subsections accordingly; in Subsection B deleted "in the following manner" from the end of the introductory language and deleted Paragraphs (1) through (7), which set out the manner for calculating the transportation allocation for each school district; deleted former Subsection C, relating to determination of the transportation allocation by districts transporting less than 75 students; and in Subsection F substituted "1999-2000, 2000-2001 and 2001-2002 school years" for "1997-98, 1998-99 and 1999-2000 school years", "one hundred percent" for "ninety-five percent", "of the 1998-1999" for "of the 1996-97", and "expenditure" for "allocation".

## 22-8-29.2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999 (1st S.S.), ch. 11, § 6 repealed 22-8-29.2 NMSA 1978, as enacted by Laws 1995, ch. 208, § 11, relating to grouping of districts, calculation of average square miles served per student transported, and calculation of average operational expenditure per student, effective May 21, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

## 22-8-29.3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999 (1st S.S.), ch. 11, § 6 repealed 22-8-29.3 NMSA 1978, as enacted by Laws 1995, ch. 208, § 12, relating to the calculation of average operational expenditure per student, effective May 21, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

## 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: "[(total operational transportation distribution - C) ÷ 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.

**ANNOTATIONS**

**Cross references.** — For transfer of powers and duties of former state superintendent, *see* 9-24-15 NMSA 1978.

For the public education department, *see* 9-24-4 NMSA 1978.

**The 2006 amendment,** effective July 1, 2007, changed "state superintendent" to "department" in Subsection A; added state-chartered charter schools in Paragraphs (1) and (2) of Subsection A; and added the reference to Section 22-8-29.1 NMSA 1978 in Paragraph (1) of Subsection A.

**The 1999 amendment,** effective May 21, 1999, in Subsection A, in Paragraphs (1) and (2), inserted "product A plus product" and "school", and in Paragraphs (2) and (3), inserted "product" preceding "C".

## 22-8-29.5. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999 (1st S.S.), ch. 11, § 6 repealed 22-8-29.5 NMSA 1978, as enacted by Laws 1995, ch. 208, § 14, relating to calculation of a mileage supplement for each local school district, effective May 21, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**The 2014 amendment,** effective May 21, 2014, permitted fuel price increases to be deemed a transportation emergency; and in Subsection A, in the third sentence, after "funding transportation emergencies", added "including fuel price increases", in the fourth sentence, after "The", deleted "state superintendent" and added "secretary", and after "shall make distributions", deleted "only"; and in Subsection B, after "The", deleted "state superintendent" and added "secretary".

**The 1999 amendment,** effective May 21, 1999, rewrote this section to the extent that a detailed comparison would be impracticable.

## 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.

## ANNOTATIONS

**Cross references. —** For references to the former state superintendent, *see* 9-24-15 NMSA 1978.

For the public education department, *see* 9-24-4 NMSA 1978.

**The 2006 amendment,** effective July 1, 2007, changed "state superintendent" to "department" in Subsections A through C; added state-chartered charter schools in Paragraphs (2), (3) and (5) of Subsection A; changes "state board" to "department" in Paragraph (4) of Subsection A.

**The 1988 amendment,** effective May 18, 1988, substituted "state superintendent" for "director" in Subsections A and C; deleted "with the approval of the state superintendent" at the beginning of Subsections A(3), (4) and (5); in Subsection B, deleted "and director" following "state superintendent" and substituted "legislative

education study committee" for "legislative school study committee"; and deleted "directors" preceding "supplementary distribution authority" in Subsection C.

## 22-8-30.1. Recompiled.

**ANNOTATIONS**

**Recompilation.** — Laws 2004, ch. 27, § 28 recompiled former 22-8-30.1 NMSA 1978, relating to creation of adult basic education fund, as 21-1-27.5 NMSA 1978, effective May 19, 2004.

## 22-8-30.2. Recompiled.

**ANNOTATIONS**

**Recompilation.** — Laws 2004, ch. 27, § 28 recompiled former 22-8-30.2 NMSA 1978, relating to distribution of adult basic education fund, as 21-1-27.6 NMSA 1978, effective May 19, 2004.

## 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 insure [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 loans [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 said fund or any other fund in any one such 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 [secretary] shall notify the state treasurer in writing of the amount that will be needed for distribution.

E. In the event that local or federal revenues as defined in Section 22-8-25 NMSA 1978 are received after May 31 of the fiscal year for which the state equalization guarantee distribution is being computed and it is therefore necessary to use money

from the state support reserve fund to augment the appropriation for the state equalization guarantee distribution, the chief [director], upon receipt by the school district of the delayed local or federal revenues, shall deduct the appropriate amount from the current state equalization guarantee distribution to that school district and reimburse the state-support reserve fund in the amount of the deduction.

F. It is the intent of the legislature that the 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).

G. Distribution from this 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Compiler's notes.** — The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

**Cross references.** — For reference to the former chief of public school finance, *see* 9-6-3.1 and 9-24-15 NMSA 1978 and reorganization notes.

For secretary of public education, *see* 9-24-5 NMSA 1978.

For state equalization guarantee distribution generally, *see* 22-8-25 NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For public school fund generally, *see* 22-8-14 NMSA 1978.

## 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. Except for an annual appropriation to the instructional material fund and to the bureau of geology and mineral resources of the New Mexico institute of mining and technology, and except as provided in Subsection B of this section, all other money received by the state pursuant to the provisions of the federal Mineral Lands Leasing Act, 30 USCA 181, et seq., shall be distributed to the public school fund.

B. All money received by the state as its share of a prepayment of royalties pursuant to 30 U.S.C. 1726(b) 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.

**ANNOTATIONS**

**Cross references.** — For public school fund generally, *see* 22-8-14 NMSA 1978.

For instructional material fund generally, *see* 22-15-5 NMSA 1978 et seq.

For New Mexico institute of mining and technology generally, *see* 21-11-1 NMSA 1978 et seq.

**The 2001 amendment,** effective June 15, 2001, substituted "bureau of geology" for "bureau of mines" in Subsection A.

**The 1999 amendment,** effective June 18, 1999, rewrote the former section.

**Law reviews.** — For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For transfer of powers of the former chief of public school finance to the state superintendent, and from the state superintendent to the secretary of public education, *see* 9-6-3.1 and 9-24-15 NMSA 1978.

For general obligation bonds of school districts, *see* 22-18-1 NMSA 1978 et seq.

For school revenue bonds, *see* 22-19-1 NMSA 1978 et seq.

For public school emergency capital outlays, *see* 22-24-1 NMSA 1978 et seq.

For public school capital improvements, *see* 22-25-1 NMSA 1978 et seq.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For transfer of powers of the former chief of public school finance to the state superintendent, and from the state superintendent to the secretary of public education, *see* 9-6-3.1 and 9-24-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**Disposition of school revenue.** — If local school board has not been designated a board of finance, the county treasurer is to keep all school revenue. 1967 Op. Att'y Gen. No. 67-144.

## 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.

**ANNOTATIONS**

**The 2006 amendment,** effective July 1, 2007, changed "state superintendent" to "department" in Subsection A and in Paragraphs (1) and (2) of Subsection A; added Subsection B to provide for the designation of boards of finance for charter schools and state-chartered charter schools and the criteria for designation of the governing body of a state-chartered charter school as a board of finance; and added Subsection C to provide that failure of a governing body of a state-chartered charter school to qualify as a board of finance is grounds for denial, nonrenewal or revocation of its charter.

**The 1988 amendment,** effective May 18, 1988, substituted "state superintendent" for "chief" throughout the section; deleted "of the division" following "manual of accounting and budgeting" in Subsection B; and made a minor stylistic change in Subsection C.

## 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.

## ANNOTATIONS

**Cross references.** — For transfer of powers and duties of the former state superintendent to the secretary of public education, *see* 9-24-15 NMSA 1978.

**The 2006 amendment,** effective July 1, 2007, changed "state superintendent" to "department" and added the governing body of a state-chartered charter school; and added Subsection G to provide for proceedings to suspend, revoke or refuse to renew a charter of a state-chartered charter school in cases of mismanagement or improper recording or reporting of school funds.

**The 1988 amendment,** effective May 18, 1988, substituted "state superintendent" for "chief" twice in the introductory paragraph and made a minor stylistic change.

## 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.

## ANNOTATIONS

**Cross references.** — For state board of finance generally, *see* 6-1-1 NMSA 1978 et seq.

For the director of the financial institutions division, *see* 9-16-11 NMSA 1978.

For Section 103 of the Internal Revenue Code, *see* 26 U.S.C. § 103.

**The 2006 amendment,** effective July 1, 2007, changed "local school boards" to "school districts" in Subsections A through D and I, and added state-chartered charter schools in Subsections A through C and H and I.

## 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.

## ANNOTATIONS

**Cross references.** — For the secretary of public education, *see* 9-24-5 NMSA 1978.

For public school emergency capital outlays, *see* 22-24-1 NMSA 1978 et seq.

For public school capital improvements, *see* 22-25-1 NMSA 1978 et seq.

For the legislative finance committee, *see* 2-5-1 NMSA 1978.

**The 2017 amendment,** effective January 31, 2017, limited certain school districts' and charter schools' fiscal year 2016 cash balances by taking credits against those schools' fiscal year 2017 state equalization guarantee distributions; in Subsection C, deleted "For fiscal years 2004 and 2005, with the approval of the secretary, a school district or charter school may budget so much of its operational cash balance as is needed for nonrecurring expenditures, including capital outlay."; and added a new Subsection D.

**Temporary provisions.** — Laws 2017, ch. 3, § 2, provided that the secretary of public education shall:

A. apply as a credit against the fiscal year 2017 state equalization guarantee distribution of each school district and charter school that does not receive an emergency supplemental distribution in fiscal year 2017 and whose audited fiscal year 2016 operational fund cash balance is greater than three percent of its fiscal year 2016 program cost an amount equal to the result of the following calculation or, if, using that result, the applied credit would leave the school district's or charter school's audited fiscal year 2016 operational fund cash balance below three percent of its fiscal year 2016 program cost, then equal to the portion of that result that will leave the school district's or charter school's audited fiscal year 2016 operational fund cash balance at three percent of its fiscal year 2016 program cost:

(1) fifty million dollars ($50,000,000) divided by the fiscal year 2016 program costs for all school districts and charter schools; and

(2) that quotient multiplied by the school district's or charter school's fiscal year 2016 program cost;

B. promptly after January 31, 2017, notify each school district and charter school of the amount of its credit; and

C. for each school district and charter school that does not receive an emergency supplemental distribution in fiscal year 2017 and whose audited fiscal year 2016 operational fund cash balance is greater than three percent of its fiscal year 2016 program cost, reduce by the amount of its credit the school district's or charter school's state equalization guarantee distributions evenly over the period remaining in fiscal year 2017.

**The 2011 amendment,** effective April 4, 2011, permitted school districts to keep their cash balances for emergency or operational expenditures by eliminating the former limitation on allowable operational cash balances, the reduction of the state equalization guarantee distribution, and the prohibition against budgeting cash balances.

**Applicability.** — Laws 2011, ch. 39, § 2 provided that Laws 2011, ch. 39, § 1 applies to cash balances realized from the appropriations in fiscal year 2011 and subsequent fiscal years.

**The 2007 amendment,** effective June 15, 2007, made cash balance credits proportional to the amount of the excess cash balance.

**The 2006 amendment,** effective March 6, 2006, in Subsection D, deleted the provision at the beginning of the sentence, which provided that notwithstanding the provisions of Subsection G and changed "2006" to "2007"; in Paragraph (1) of Subsection E, changed "nine" to "fifteen"; in Paragraph (2) of Subsection E, changed "seven and one-half" to "twelve"; in Paragraph (3) of Subsection E, added "or more" after ten million dollars; in Paragraph (4) of Subsection E, added "or more" after twenty-five million dollars and changed "four and one-half" to "seven"; in Paragraph (5) of Subsection E, deleted the former provision that provided for fiscal year 2005, two and one-half percent of the budgeted expenditures and for subsequent fiscal years three percent and added five percent; in Paragraphs (1) and (2) of Subsection F, deleted "unrestricted, unreserved operational cash balance and the emergency reserve" and inserted "limit"; and added Subsection I to provide for waiver of the reduction required by Subsection F.

**The 2004 amendment,** effective May 19, 2004, amended Subsections A, B, C, D, E, F, G and H to change "state superintendent" to "secretary" and amended Subsection F to delete in Paragraph (1) "limit calculated pursuant to Subsection E of this section" and insert in its place: "unrestricted, unreserved operational cash balance and the emergency reserve" and to insert "unrestricted, unreserved operational cash balance and the emergency reserve" in two places in Paragraphs (1) and (2).

**The 2003 amendment,** effective April 4, 2003, substituted "A school" for "No school" at the beginning of Subsection A; inserted "or charter school" in the first sentence of Subsections B and C; added the last sentence in Subsection C; and added Subsections D to K.

**The 1988 amendment,** effective May 18, 1988, substituted "state superintendent" for "director" throughout the section.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 1988 amendment,** effective May 18, 1988, substituted "state superintendent" for "secretary of finance and administration" in Subsection E, and, in Subsection F, inserted "certified school" and substituted "revoked" for "cancelled".

**One need not be found guilty of felony to forfeit and be disqualified from office** under the New Mexico constitution and Subsection D of this section. *State ex rel. Martinez v. Padilla*, 1980-NMSC-064, 94 N.M. 431, 612 P.2d 223.

**Forfeiture of office required for approval of violative expenditures.** — Sale of gasoline to school district vehicles by school board member, purchase of airplane ticket for board member's wife and payment to board member and board member's wife for services not rendered are each a violation of this section and require the forfeiture of office of those members who approved the expenditures. *State ex rel. Martinez v. Padilla*, 1980-NMSC-064, 94 N.M. 431, 612 P.2d 223.

## 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 30 recompiled former 22-2-6.12 NMSA 1978 as 22-8-43 NMSA 1978, effective April 4, 2003.

**Cross references.** — For transfer of powers and duties of the state superintendent to the secretary of public education, *see* 9-24-15 NMSA 1978.

**The 2007 amendment,** effective July 1, 2007, authorized the use of the fund for awards to middle, junior and senior high schools. Laws 2007, ch. 307, § 5 and Laws 2007, ch. 308, § 5 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 308, § 5. *See* 12-1-8 NMSA 1978.

**The 2003 amendment,** effective April 4, 2003, deleted "of education" following "department" twice; substituted "public" for "local" preceding "schools" near the middle of the section; substituted "scientifically based" for "research-based" three times; and substituted "research" for "programs" following "reading" near the middle of the fifth sentence.

**The 2001 amendment,** effective June 15, 2001, substituted "department of education" for "state department of public education" in two places; added the fifth sentence; and substituted "state superintendent" for "superintendent of public instruction" in the sixth sentence.

## 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 31 recompiled former 22-10-4.1 NMSA 1978 as 22-8-44 NMSA 1978, effective April 4, 2003.

**The 2009 amendment,** effective July 1, 2009, in Subsection A, changed "state board" to "department"; in Subsection B, added "Subject to legislative appropriation" and "for the following purposes"; and added Paragraphs (2) and (3) of Subsection B.

**The 2003 amendment,** effective April 4, 2003, substituted "licensure" for "certification" in the catchline; in Subsection A, substituted "licensure" for "certification" three times, deleted "state" preceding "department" near the end of the first sentence, and deleted "of public education" at the end of the first sentence; and in Subsection B, deleted "state" preceding "department" near the beginning and substituted "to fund" for "of public education for the purpose of funding" near the middle.

## 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.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references. —** For the public education department, *see* 9-24-4 NMSA 1978.

## 22-8-46. Repealed.

**History:** Laws 2005, ch. 49, §1; 2006, ch. 56, § 1; repealed by Laws 2018, ch. 55, § 8.

**ANNOTATIONS**

**Repeals.** — Laws 2018, ch. 55, § 8 repealed 22-8-46 NMSA 1978, as enacted by Laws 2005, ch. 49, §1, relating to funding formula study task force created, membership, duties, effective July 1, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 207 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2007, ch. 366, § 25 recompiled former 22-24-11 NMSA 1978 as 22-8-48 NMSA 1978, effective July 1, 2007.

## 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.

**ANNOTATIONS**

**Effective date.** — Laws 2018, ch. 55, § 9 made Laws 2018, ch. 55, § 5 effective July 1, 2018.

# ARTICLE 8A
# Charter Schools

(Repealed by Laws 1999, ch. 281, § 25.)

## 22-8A-1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 281, § 25 repealed 22-8A-1 NMSA 1978, as enacted by Laws 1993, ch. 227, § 1, relating to charter schools, effective June 18, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 22-8B-1 NMSA 1978 et seq.

## 22-8A-2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 281, § 25 repealed 22-8A-2 NMSA 1978, as enacted by Laws 1993, ch. 227, § 2, relating to charter schools, effective June 18, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 22-8B-1 NMSA 1978 et seq.

## 22-8A-3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 281, § 25 repealed 22-8A-3 NMSA 1978, as enacted by Laws 1993, ch. 227, § 3, relating to charter schools, effective June 18, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 22-8B-1 NMSA 1978 et seq.

## 22-8A-4. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 281, § 25 repealed 22-8A-4 NMSA 1978, as enacted by Laws 1993, ch. 227, § 4, relating to charter schools, effective June 18, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 22-8B-1 NMSA 1978 et seq.

## 22-8A-5. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 281, § 25 repealed 22-8A-5 NMSA 1978, as enacted by Laws 1993, ch. 227, § 5, relating to charter schools, effective June 18, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 22-8B-1 NMSA 1978 et seq.

## 22-8A-6. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 281, § 25 repealed 22-8A-6 NMSA 1978, as enacted by Laws 1993, ch. 227, § 6, relating to charter schools, effective June 18, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 22-8B-1 NMSA 1978 et seq.

## 22-8A-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 281, § 25 repealed 22-8A-7 NMSA 1978, as enacted by Laws 1993, ch. 227, § 7, relating to charter schools, effective June 18, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 22-8B-1 NMSA 1978 et seq.

# 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.

**ANNOTATIONS**

**The 2006 amendment,** effective July 1, 2007, changed "1999 Charter Schools Act" to "Charter Schools Act".

**The 2005 amendment,** effective July 1, 2005, changed the statutory reference to the act.

## 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.

## ANNOTATIONS

**The 2015 amendment,** effective July 1, 2015, added numerous definitions to the definitions section of the Charter Schools Act; added new Subsection F and redesignated former Subsection F as Subsection G; in Subsection G, after "charter;", deleted "and"; and added new Subsections H through N and redesignated former Subsection G as Subsection O.

**The 2006 amendment,** effective July 1, 2007, in Subsection A, deleted the qualification that a charter school be located within a school district authorized by the local school board to operate as a charter school and added the qualification that a charter school be authorized by the chartering authority to operate as a public school; added Subsection B to define chartering authority; added Subsection C to define commission; provided in Subsection D (former Subsection B) that a conversion school is a school that was authorized to become a charter school prior to July 1, 2007; added a new

Subsection E to define division and changed "local school board of the school district" to "chartering authority" in Subsection G (formerly Subsection D).

## 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.

**ANNOTATIONS**

**The 2006 amendment,** effective July 1, 2007, changed "restructure" to "structure"; changed "state board" to "department" and deleted the requirement that charter schools meet minimum educational standards and financial requirements.

## 22-8B-4. Charter schools' rights and responsibilities; operation.

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.

B. 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.

C. A charter school shall be responsible for:

(1) its own operation, including preparation of a budget, subject to audits pursuant to the Audit Act; and

(2) contracting for services and personnel matters.

D. 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.

E. 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 F of this section.

F. The school district in which a charter school is geographically located shall provide a charter school with available facilities for the school's operations unless the facilities are currently used for other educational purposes. 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 Subparagraph (b) of 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.

G. 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.

H. 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.

I. 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 [except Article 5A] 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.

J. A charter school shall be a nonsectarian, nonreligious and non-home-based public school.

K. Except as otherwise provided in the Public School Code, a charter school shall not charge tuition or have admission requirements.

L. 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.

M. 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].

N. 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.

O. 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.

P. 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.

Q. 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.

R. 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.

S. To enable state-chartered charter schools to submit required data to the department, an accountability data system shall be maintained by the department.

T. 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.

## ANNOTATIONS

**Cross references.** — For the Human Rights Act, *see* 28-1-1 NMSA 1978.

For the Public School Facilities Authority, *see* 22-20-1 NMSA 1978.

For the Public School Capital Outlay Act, *see* 22-24-1 NMSA 1978.

For the Public School Capital Improvements Act, *see* 24-25-1 NMSA 1978.

For Public School Buildings Act, *see* 22-26-1 NMSA 1978.

For the federal Individuals with Disabilities Education Act, *see* 20 U.S.C. § 1400.

**The 2011 amendment,** effective July 1, 2012, prohibited discrimination based on physical or mental handicap, serious medical condition, sex, gender identity, sexual orientation and spousal affiliation; and prohibited a member of a local school board from being a member of the governing body of a charter school or being employed by a charter school in the school board’s school district.

**The 2007 amendment,** effective July 1, 2007, amended Subsection F to authorize reasonable lease payments for the use of school district facilities by charter schools provided that the payments do not exceed the lease reimbursement rate specified in 22-24-4 NMSA 1978 and that the payments are not considered to be cash balance in calculations under 22-8-41 NMSA 1978 and amended Subsection N to provide that upon the termination of the charter of a chartered school, the assets financed by general obligation bonds issued by the school district shall revert to the local school board.

**The 2006 amendment,** effective July 1, 2007, added the condition in Subsection B that a governing body must have at least five members; provided in Paragraph (1) of Subsection C that operations are subject to audit pursuant to the Audit Act; in Subsection E, added the qualification that the conversion school must be chartered before July 1, 2007 and added the condition that the use of equipment and facilities is subject to Subsection F; provided in Subsection F that the facilities provided to a charter

school must meet all occupancy standards specified by the public school capital outlay council; changed "charter school" to "locally chartered charter school" in Subsections G through I; changed "school district" to "chartering authority" in Subsection L; in Subsection N, added the qualification that the acquisition and disposition of property must be within constitutional and statutory limits and that all assets of state-chartered schools will revert to the state, added Subsection R to provide for contracting authority of charter schools; added Subsection S to require an accountability data system; and added Subsection T to provide for special education services.

**The 2005 amendment,** effective July 1, 2005, provided in Subsection B that no member of a governing body of a school that is initially approved or whose charter is renewed on or after July 1, 2005 shall serve on the governing body of another charter school; provided in Subsection D that a charter school may contract with the state and its political subdivisions, the federal government or its agencies and a tribal government; provided in Subsection D that the facilities of a charter school must meet the standards of 22-8B-4.2 NMSA 1978; deleted the former provision in Subsection E which provided for the use by charter schools of school district facilities; provided in Subsection E that a conversion school may choose to continue using school district facilities and equipment; added Subsection F to provide for the use by charter schools of school district facilities; authorized a charter school in Subsection G to pay the costs of operation and maintenance of its facilities and to contract with a school district for facility operation and maintenance services; added Subsection H to provide that 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; deleted the former provision of Subsection G, which provided that a charter school may negotiate with a school district for capital expenditures; added Subsection L to provide that a single charter school may maintain separate facilities at two or more locations, but that all locations shall be deemed to be a single location for purposes of calculating program units pursuant to the Public School Finance Act; and provided in Subsection Q that applicable health and safety requirements include health and safety codes relating to educational building occupancy.

**The 2003 amendment,** effective April 4, 2003, deleted "local" preceding "school district" throughout the section; and in Subsection J substituted "Section" for "Sections 22-1-6 and" preceding "22-2-8" near the middle and inserted "and the Assessment and Accountability Act" at the end.

**The 2001 amendment,** effective June 15, 2001, in Subsection F, substituted "shall" for "may" in the first sentence and added the second sentence.

**The 2000 amendment,** effective March 7, 2000, deleted former Subsection B, relating to enrollment procedures at start-up charter schools, and redesignated the remaining subsections accordingly.

**Procurement Code applies to charter schools.** — A charter school is a public entity, that is subject to the Procurement Code, 13-1-1 NMSA 1979 et seq., which requires

competitive bids or proposals unless the school demonstrates that a sole-source contract by a single vendor is warranted. 2014 Op. Att'y Gen. 14-03.

**Management agreement with a for-profit entity.** — Where a virtual charter school entered into a contract with a for-profit company for products and services that involved educational program consulting; personnel assistance; facility management; business administration of program aspects; budgeting, financial reporting and preparing a proposed annual budget; financial planning; maintenance of student records and retention of the records on behalf of the school; recommendation of school policies and procedures for student discipline; creation of the annual report to the chartering authority; development of teacher training and a faculty handbook; assistance in the development of charter policies and the charter renewal process; providing policies and procedures for instructional property; solicitation and receipt of grants and donations from public funds; and any other services agreed to by the parties, the services provided by the for-profit company and the relationship created under the contract constituted "management of the charter school" in violation of 22-8B-4(R) NMSA 1978, which prohibits the management of a charter school by a for-profit entity. 2014 Op. Att'y Gen. 14-03.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction, and application of statute or regulation governing charter schools, 78 A.L.R.5th 533.

## 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; and

(2) 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.

## 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.

## ANNOTATIONS

**Cross references.** — For the Public School Capital Outlay Council, *see* 22-24-6 NMSA 1978.

**The 2011 amendment,** effective July 1, 2011, added Subsection C to require new and relocated charter schools to use facilities that meet the average condition of public school facilities or to demonstrate the way in which the facilities will achieve the average condition of public school facilities; and added Subsection E to require the public school facilities authority to approve lease-purchase agreements.

**The 2009 amendment,** effective April 8, 2009, in Subsection A, after "and before", changed "July 1, 2010" to "July 1, 2015"; in Subsection B, after "charter school", deleted "that is in existence, or has been approved, prior to July 1, 2005" and added "whose charter has been renewed at least once"; after "grants may be used", deleted "as" and added "to provide"; and after "leasehold improvements", added "made by the lessor"; in Subsection C, after "July 1", deleted "2010, an application for a charter shall not be approved" and added "2015, a new charter school shall not open", in Paragraph (1) of Subsection C, after "housed in a", deleted "public"; deleted former Subparagraph (b) of Paragraph (1) of Subsection C, which provided that the building must be eligible for grants pursuant to the Public School Capital Outlay Act; deleted former Paragraph (2) of Subsection C, which provided that the building must meet statewide adequacy standards and be leased with an option to purchase; added Subparagraph (b) of Paragraph (1) of Subsection C; and in Paragraph (1) of Subsection D, after "Subsection A of this section", deleted "shall determine whether facilities of a charter school meet".

**The 2007 amendment,** effective July 1, 2007, added Paragraph (2) of Subsection C to require charter schools to meet the statewide adequacy standards for buildings on or after July 1, 2010.

## 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.

**ANNOTATIONS**

**Cross references.** — For the Public School Capital Outlay Council, *see* 22-24-6 NMSA 1978.

**The 2006 amendment,** effective July 1, 2007, provided in Subsection A for waiver of requirements for locally chartered charter schools; deleted former Subsection B; added a new Subsection B to provide that a state-chartered charter schools is exempt form school district requirements and is responsible for developing policies and procedures;

and in Subsection C (formerly Subsection B), provided that the department shall waive requirements for class load, teaching load, length of school day, staffing, subject areas and instructional material.

## 22-8B-5.1. Governing body training.

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.

History: Laws 2009, ch. 18, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 18 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 14, § 10 made Laws 2011, ch. 14, § 7 effective July 1, 2012.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 14, § 10 made Laws 2011, ch. 14, § 8 effective July 1, 2012.

## 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, it must 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 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.

F. 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.

G. 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.

H. A state-chartered charter school shall not be approved for operation unless its governing body has qualified to be a board of finance.

I. The chartering authority shall receive and review all applications for charter schools submitted to it. The chartering authority shall not charge application fees.

J. 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.

K. 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.

L. 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; or

(5) 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.

M. 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.

N. 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.

## ANNOTATIONS

**The 2015 amendment,** effective July 1, 2015, specified that each local school board has the authority to approve the establishment of a "locally chartered" charter school, and changed the date by when applications for initial charters must be submitted; in Subsection A, after "establishment of a", added "locally chartered", after "charter school within", deleted "the" and added "that local", after "school", added "board's", and after "district", deleted "in which it is located"; and in Subsection C, after "shall be submitted", deleted "between" and added "by", after "June 1", deleted "and July 1", and after "provided that the", deleted "July" and added "June".

**The 2011 amendment,** effective July 1, 2011, in Subsection E, required the director of the public school facilities authority or the director's designee to review and approve requests by charter schools for capital outlay assistance within forty-five days.

**The 2009 amendment,** effective June 19, 2009, in Subsection J, permitted a chartering authority to designate a subcommittee to hold public hearings; and in Subsection K, provided that prior to ruling on an application for which a subcommittee was used, any member of a charting authority who was not present at the public hearing shall receive the transcript of the public hearing and documents submitted for the public hearing.

**The 2007 amendment,** effective April 2, 2007, prohibited the filing of an application for a charter school after June 2007 if the school's proposed enrollment for all grades in combination with any other charter school's enrollment for all grades will equal or exceed ten percent of the total MEM of the school district.

**The 2006 amendment,** effective July 1, 2007, added Subsection B to provide advance notice to the commission and the school district of intent to establish a charter school; in Subsection C provided that the chartering authority must process applications submitted to it and changed "local school board" to "chartering authority"; added Subsection D to provide for the number of grades of charter schools and changed the number of grades; provided in Subsection E (formerly Subsection C) that the application shall include a detailed description of the projected capital outlay needs; provided in Subsection F (formerly Subsection D) that an application may be made by a public post-secondary educational institution or nonprofit organization and that certain institutions and entities are not eligible to apply for or to receive a charter; added Subsection G to prohibit applications after June 30, 2007 under certain circumstances; added Subsection H to require the charter school to qualify as a board of finance; deleted former Subsection E, which provided for applications for conversion schools; in Subsection I (formerly Subsection F) changed "local school board" to "chartering authority" and deleted the provision that if an application is incomplete, the board shall request the necessary information from the applicant; in Subsection J (formerly Subsection G), changed "local school board" to "chartering authority", requires a public meeting in the school district in which the charter school is proposed to be located, and provides for community input; deleted former Subsection H, which provided for an appeal by an applicant to the secretary; added Subsection K to provide for the approval and denial of an application; in Subsection L (formerly Subsection I), changed "local school board" to "chartering authority", required written reasons within fourteen days after a meeting, deleted the requirement that a copy of the approved charter be sent within fifteen days after granting the charter and added the provision that the approved charter be provided to the applicant together with any imposed conditions; and added Subsection M to provide for a hearing by the secretary if an application is denied.

**The 2005 amendment,** effective July 1, 2005, changed the application deadline from October 1 to July 1 and changed "school year" to "fiscal year" in Subsection B; added Subsection C to provide that an application shall include a request for capital outlay funding; and provided in Subsection I that if the local school board approves the application with conditions, it shall state the reasons for the conditions.

## 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.

**ANNOTATIONS**

**Cross references.** — For the Public School Capital Outlay Council, *see* 22-24-6 NMSA 1978.

For the secretary of public education, *see* 9-24-5 NMSA 1978.

For the secretary of public education, *see* 9-24-5 NMSA 1978.

For appeals to the district court, *see* 1-074 NMRA.

**The 2006 amendment,** effective July 1, 2007, changed "local school board" to "chartering authority" in Subsections A through C and E; in Subsection B, deleted the provision which provided for remand of the decision of the local school board if the secretary finds the decision contrary to the best interests of the students, school district or community with directions to approve the application and added a new provision which provides for the reversal of a decision of the chartering authority if the decision is arbitrary, capricious, not supported by substantial evidence or not in accordance with the law; deleted the provision of former Paragraph (2) of Subsection B which provided that within thirty days after remand the application shall be approved; deleted Paragraph (4) of Subsection C which provided for review to determine if the charter school would violate Section 22-8B-11 NMSA 1978; and added Subsection F to provide for an appeal to the district court.

**The 2005 amendment,** effective July 1, 2005, changed "state board" to "secretary"; provided in Subsection B that the appellant shall limit the grounds of the appeal to grounds that include the imposition of conditions that were specified by the local school board, that the notice shall include a statement of the reasons the governing board contends the local school board's decision was in error, and that except as provided in Subsection E, the appeal and review process shall consist of the procedure specified in Subsections B(1) and (2); provided in Subsection B(1) that the hearing shall be held in the school district in which the charter school is located; and added Subsection E to provide for the appeal by a charter school of a decision to deny an application or to refuse to renew a charter because the public school capital outlay council has determine the facilities does not meet statutory standards and to prescribe a standard of review by the secretary.

## 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.

**ANNOTATIONS**

**Cross references.** — For transfer of powers and duties of former state board of education, *see* 9-24-15 NMSA 1978.

For the Assessment and Accountability Act, *see* 22-2C-1 NMSA 1978.

For the Public School Finance Act, *see* 22-8-1 NMSA 1978.

For School Personnel Act, *see* 22-10A-1 NMSA 1978.

For educational standards, *see* 22-13-1 to 22-13-27 NMSA 1978.

**The 2011 amendment,** effective July 1, 2012, required that the applications of all charter schools contain the information specified in this section; required that applications contain a statement of student performance outcomes to be achieved by the school, an agreement between the charter school and the chartering authority regarding legal liability and insurance coverage, and a description of discretionary waivers and waivers under Section 22-8B-5 NMSA 1978 that will be provided and the school’s planned use of the waivers.

**The 2006 amendment,** effective July 1, 2007, changed "local school board" to "chartering authority"; deleted conversion schools in Subsection A; in Subsection C, changed "state board of education" to "department"; added Paragraph (2) of Subsection I to require inclusion of qualifications and terms of members, the method of filling vacancies and procedures for changing membership; in Paragraph (3) of Subsection I, deleted a statement of the relationship between the governing body and the local school board; in Subsection L, added the qualification referring to a locally chartered charter school; and in Subsection P, changed "local school board" to "chartering authority".

## 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.

**ANNOTATIONS**

**Cross references.** — For transfer of powers and duties of former state board of education, *see* 9-24-15 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, required that each charter school contract contain a listing of the charter school's nondiscretionary waivers; in Paragraph (1) of Subsection B, after "discretionary waivers", deleted "and waivers"; in Paragraph (4) of Subsection B, after "Section", deleted "8 of this 2011 act" and added "22-8B-5.3 NMSA 1978"; and added new Paragraph (18) of Subsection B and redesignated the succeeding subsection accordingly.

**The 2011 amendment,** effective July 1, 2012, required that a chartering authority and a charter school enter into a contract as a condition to chartering the school; provided a procedure for finalizing a contract if the parties fail to timely enter into a contract and for amending a contract if the parties cannot agree upon amendments; and specified the minimum required contents of a contract.

**The 2006 amendment,** effective July 1, 2007, changed "local school board" to "chartering authority" in Subsection A; in Subsection B, deleted the reference to a contract between the charter school and the local school board and changed "school district" to "department", in Subsection C; added the qualification for locally chartered charter schools at the beginning of the first sentence and changed "state board" to "department"; deleted former Subsection D, which provided for waiver of certain Public School Code requirements for charter schools; in Subsection E (formerly Subsection F), changed "local school board" to "chartering authority"; and in Subsection F (formerly Subsection G), added the qualification for locally chartered charter schools at the beginning of the first sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Validity, construction, and application of statute or regulation governing charter schools, 78 A.L.R.5th 533.

## 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.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, amended the performance framework that must be included in each charter school contract; in the introductory paragraph of Subsection A, after "performance indicators", deleted "measures", after the second occurrence of "and", deleted "metrics" and added "performance targets", after "performance framework shall", added "be a material term of the charter school contract and shall", after "include", added "performance", after "indicators", deleted "measures", and after the fourth occurrence of "and", deleted "metrics" and added "performance targets".

## 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.

**ANNOTATIONS**

**Cross references.** — For the Educational Retirement Act, *see* 22-11–1 NMSA 1978.

**The 2009 amendment,** effective June 19, 2009, in Subsection B, after "daughter-in-law", added "brother, brother-in-law, sister or sister-in-law".

**The 2008 amendment,** effective February 13, 2008, deleted the authorization of charter schools to authorize the governing board to make employment decisions.

**The 2007 amendment,** effective June 15, 2007, provided for employment decisions to be made by the head administrator and prohibits the head administrator from initially employing a person who is related to a member of the governing body or the head administrator.

**The 2006 amendment,** effective July 1, 2007, in Subsection A, deleted the qualification "notwithstanding the provisions of Section 22-5-4 NMSA 1978" at the beginning of the

first sentence and added the provision regarding employment decisions; deleted former Subsection B, which provided for leave of absence for employees of a school district who are employed by a conversion school; deleted former Subsection C, which provided for longevity credit for employees on leave of absence; deleted former Subsection D, which provided retirement benefits for employees on leave of absence; deleted former Subsection E, which provided that a leave of absence is not a break of service with a school district; deleted former Subsection F, which provided for the return of employees to a school district; deleted former Subsection G, which provided for the effect of discharge or termination by a charter school; added a new Subsection B to prohibit nepotism; and added a new Subsection C to provide for continued employment of persons employed on or before July 1, 2007.

## 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.

**ANNOTATIONS**

**Cross references.** — For transfer of powers and duties of former state board of education, *see* 9-24-15 NMSA 1978.

**The 2006 amendment,** effective July 1, 2007, in Subsection A, changed "local school boards" to "commission" and in Subsection B, deleted the references to conversion schools and the provision that the state board notify the local school board when the limits set in this section are reached.

## 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; and

(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.

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; or

(4) 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. 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.

## ANNOTATIONS

**Cross references.** — For transfer of powers and duties of former state board of education, *see* 9-24-15 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, amended the required contents of a charter school renewal application; in Paragraph (1) of Subsection J, after "state", deleted "minimum educational", after "standards", added of "excellence"; and in Paragraph (2) of Subsection K, after "department's", deleted "minimum educational", and after "standards", added "of excellence".

**The 2011 amendment,** effective July 1, 2012, required a chartering authority to monitor the performance of the charter schools it oversees, including visits to the school; permitted a chartering authority to take corrective actions and impose sanctions if a school's performance is unsatisfactory; required chartering authorities to submit an annual report to the charter school division that includes a performance report; required the department to review the annual report to determine how waivers of requirements affected the school's performance; and required chartering authorities to develop processes for suspension, revocation or nonrenewal of charters.

**The 2010 amendment,** effective May 19, 2010, added Subsection B and relettered succeeding subsections accordingly.

**The 2006 amendment,** effective July 1, 2007, in Subsection A, provided that the first year shall be used exclusively for planning and not for completing the application and changed "local school board" to "chartering authority"; added a new Subsection C to require demonstration of qualification as a board of finance and satisfaction of conditions imposed by the commission and to provide for the issuance of an authorization to commence operations; in Subsection D (formerly Subsection C), changed "January 1 of the year prior to the year the charter expires" to "two hundred seventy days prior to the date the charter expires"; changed "local school board" to "chartering authority", added the provision that a charter school may apply to a different chartering authority for renewal, and changed the date for ruling on a renewal application from March 1 of the fiscal year in which the charter expires to one hundred eighty days prior to the expiration of the charter; in Subsection E (formerly Subsection D), changed "local school board" to "chartering authority"; in Paragraph (5) of Subsection E (formerly Subsection D), changed "majority" to "at least seventy-five percent"; in Subsection F (formerly Subsection E), provided that a charter may be suspended and changes "local school board" to "chartering authority"; in Paragraph (2) of Subsection F (formerly Subsection E), changed "state board" to "department"; in Subsection G (formerly Subsection F), changed "local school board" to "chartering authority" and required written reasons for suspension of a charter; and in Subsection H (formerly Subsection G), provided for the appeal of the suspension of a charter.

**The 2005 amendment,** effective July 1, 2005, changed the initial term from five to six years and provided that the first year shall be used for planning; added Subsection B to provide that prior to the end of the planning year, the charter school shall demonstrate that its facilities meet statutory standards; provided in Subsection D(1) that an application for renewal shall contain a report on the progress in meeting the accountability requirements of the Assessment and Accountability Act; and added Subsection D(6) to provide that an application for renewal shall contain a description of the charter school facilities and assurances that the facilities comply with statutory standards.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 14, § 10 made Laws 2011, ch. 14, § 6 effective July 1, 2012.

## 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.

**ANNOTATIONS**

**The 2006 amendment,** effective July 1, 2007, provided in Subsection A for the withholding and use of two percent of school-generated program cost for administrative support of a charter school; in Subsection B, changed "charter school" to "locally chartered charter school"; added Subsection C to provide for the receipt of state and federal funds by state-chartered charter schools that are designated as a board of finance; and added Subsection D to provide that charter schools may apply for federal funds.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 22-8B-14.1. Repealed.

**History:** Laws 2007, ch. 214, § 3; repealed by Laws 2007, ch. 214, § 4.

**ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 214, § 4 repealed 22-8B-14.1, as enacted by Laws 2007, ch. 214, § 3, relating to charter school cpaital outlay fund, effective July 1, 2012. For provisions of former section, *see* the 2011 NMSA 1978 on *NMOneSource.com*.

Laws 2007, ch. 214, § 4 also provided that upon repeal, the proportion of the unencumbered balance of the charter school capital outlay fund attributable to proceeds of severance tax bonds shall revert to the severance tax bonding fund, and the remaining unencumbered balance shall revert to the general fund.

## 22-8B-15. Repealed.

**History:** Laws 1999, ch. 281, § 15.

**ANNOTATIONS**

**Repeals.** — Laws 2006, ch. 94, § 60 repealed 22-8B-15 NMSA 1978, as enacted by Laws 1999, ch. 281, § 15, relating to charter extensions, effective July 1, 2007. For provisions of former section, *see* the 2005 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Cross references.** — For the public education commission, *see* 9-24-9 NMSA 1978 and N.M. Const., art. XII, § 6.

**Effective dates.** — Laws 2006, ch. 94, § 61 made Laws 2006, ch. 94, § 29 effective July 1, 2007.

## 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.

**ANNOTATIONS**

**Cross references.** — For divisions of the public education department, *see* 9-24-4 NMSA 1978.

**Effective dates.** — Laws 2006, ch. 94, § 61 made Laws 2006, ch. 94, § 30 effective July 1, 2007.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 14, § 10 made Laws 2011, ch. 14, § 9 effective July 1, 2012.

# ARTICLE 8C
# Charter School Districts

## 22-8C-1. Repealed.

**History:** Laws 1999, ch. 293, § 1.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8C-1 NMSA 1978, as enacted by Laws 1999, ch. 293, § 1, the short title for the Charter School District Act, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on New Mexico Source of Law. For comparable provisions, *see* 22-8E-1 NMSA 1978.

## 22-8C-2. Repealed.

**History:** Laws 1999, ch. 293, § 2.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8C-2 NMSA 1978, as enacted by Laws 1999, ch. 293, § 2, relating to definitions, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

## 22-8C-3. Repealed.

**History:** Laws 1999, ch. 293, § 3.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8C-3 NMSA 1978, as enacted by Laws 1999, ch. 293, § 3, relating to creation of charter school districts, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

## 22-8C-4. Repealed.

**History:** Laws 1999, ch. 293, § 4.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8C-4 NMSA 1978, as enacted by Laws 1999, ch. 293, § 4, relating to charter school district application requirements, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

## 22-8C-5. Repealed.

**History:** Laws 1999, ch. 293, § 5.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8C-5 NMSA 1978, as enacted by Laws 1999, ch. 293, § 5, relating to charter school district contracts, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

## 22-8C-6. Repealed.

**History:** Laws 1999, ch. 293, § 6.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8C-6 NMSA 1978, as enacted by Laws 1999, ch. 293, § 6, relating to charter renewals, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

## 22-8C-7. Repealed.

**History:** Laws 1999, ch. 293, § 7.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8C-7 NMSA 1978, as enacted by Laws 1999, ch. 293, § 7, relating to report to legislature, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 97 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

# ARTICLE 8D
# Special Urban School District

## 22-8D-1. Repealed.

**History:** Laws 2003, ch. 434, § 1.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8D-1 NMSA 1978, as enacted by Laws 2003, ch. 434, § 1, the short title for Special Urban School District Act, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

## 22-8D-2. Repealed.

**History:** Laws 2003, ch. 434, § 2.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8D-2 NMSA 1978, as enacted by Laws 2003, ch. 434, § 2, relating to definitions, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

## 22-8D-3. Repealed.

**History:** Laws 2003, ch. 434, § 3.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8D-3 NMSA 1978, as enacted by Laws 2003, ch. 434, § 3, relating to special urban school district application requirements, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

## 22-8D-4. Repealed.

**History:** Laws 2003, ch. 434, § 4.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8D-4 NMSA 1978, as enacted by Laws 2003, ch. 434, § 4, relating to special urban school district requirements, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

## 22-8D-5. Repealed.

**History:** Laws 2003, ch. 434, § 5.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8D-5 NMSA 1978, as enacted by Laws 2003, ch. 434, § 5, relating to district responsibilities, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

## 22-8D-6. Repealed.

**History:** Laws 2003, ch. 434, § 6.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8D-6 NMSA 1978, as enacted by Laws 2003, ch. 434, § 6, relating to grounds for nonrenewal, probation or revocation of charter, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

## 22-8D-7. Repealed.

**History:** Laws 2003, ch. 434, § 7.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 292, § 9 repealed 22-8D-7 NMSA 1978, as enacted by Laws 2003, ch. 434, § 7, relating to report to legislature and governor, effective July 1, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com*.

# ARTICLE 8E
# Charter School District Act of 2005

## 22-8E-1. Short title.

Sections 1 through 8 [22-8E-1 through 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.

**ANNOTATIONS**

**Cross references.** — For the 1999 Charter Schools Act and the Charter Schools Act as amended in 2007, *see* 22-8B-1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 292, § 10 made the act effective July 1, 2005.

## 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.

**ANNOTATIONS**

**Cross references.** — For the Public Education Department Act, *see* 9-24-1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 292, § 10 made the act effective July 1, 2005.

## 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.

**ANNOTATIONS**

**Cross references.** — For the Public Education Department Act, *see* 9-24-1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 292, § 10 made the act effective July 1, 2005.

## 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.

## ANNOTATIONS

**Cross references.** — For the Public Education Department Act, *see* 9-24-1 NMSA 1978.

For the public education department, *see* 9-24-4 NMSA 1978.

For the Assessment and Accountability Act, *see* 22-2C-1 NMSA 1978.

For the Human Rights Act, *see* 28-1-1 NMSA 1978.

For courses of instruction and school programs, *see* 22-13-1 to 22-13-27 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 292, § 10 made the act effective July 1, 2005.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 292, § 10 made the act effective July 1, 2005.

## 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.

**ANNOTATIONS**

**Cross references.** — For the Public Education Department Act, *see* 9-24-1 NMSA 1978.

**The 2015 amendment,** effective June 19, 2015, removed provisions relating to adequate yearly progress; and in Subsection C, deleted former Paragraphs (2) and (3), relating to lists of schools that have made adequate yearly progress and lists of schools that have not made adequate yearly progress, and redesignated the succeeding paragraphs accordingly.

## 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.

**ANNOTATIONS**

**Cross references.** — For the public education department, *see* 9-24-4 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 292, § 10 made the act effective July 1, 2005.

## 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.

**ANNOTATIONS**

**Cross references.** — For the public education department, *see* 9-24-4 NMSA 1978.

For legislative education study committee, *see* 2-10-1 NMSA 1978.

**Effective dates.** — Laws 2005, ch. 292, § 10 made the act effective July 1, 2005.

# 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.

**ANNOTATIONS**

**Repeals.** — Laws 2011, ch. 35, § 6 repealed 22-9-1 NMSA 1978, as enacted by Laws 1967, ch. 16, § 101, relating to gifts and grants for education, effective June 17, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Cross references.** — For designation of the state educational authorities for administration of federal grants, *see* 22-9-8 NMSA 1978.

For designation of higher education department to administer funds furnished under acts of congress to state educational institutions, *see* 21-1-26 NMSA 1978.

For designation of the public education commission for vocational education programs, *see* 22-14-2 NMSA 1978.

For the public education department, *see* 9-24-4 NMSA 1978.

For the higher education department, *see* 9-25-4 NMSA 1978.

**The 2011 amendment,** effective June 17, 2011, added breakfast programs to the list of programs that are administered and supervised by the department.

**The 2004 amendment,** effective May 19, 2004, changed "state department" to "department" and changed a 1953 statutory reference to the NMSA 1978 section number.

## 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.

**ANNOTATIONS**

**Cross references.** — For designation of the department for submission of state plan for federal grants under Public Law 93-380, *see* 22-9-6 NMSA 1978.

For the public education department, *see* 9-24-4 NMSA 1978.

**The 2004 amendment,** effective May 19, 2004, changed "state department" to "department" and changed a 1953 statutory reference to the NMSA 1978 section number.

## 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.

**ANNOTATIONS**

**The 2011 amendment,** effective June 17, 2011, added breakfast programs to the list of programs for which federal funds, gifts or grants may be accepted.

## 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.

**ANNOTATIONS**

**The 2011 amendment,** effective June 17, 2011, added federal funds for breakfast programs to the list of funds within the custody of the state treasurer.

## 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.

**ANNOTATIONS**

**Cross references.** — For references to the former state department of public education, *see* 9-24-15 NMSA 1978.

For state equalization guarantee distributions generally, *see* 22-8-25 NMSA 1978.

For Section 842 of Public Law 93-380, *see* 20 U.S.C. § 246.

**The 1988 amendment,** effective May 18, 1988, substituted "state department of public education" for "public school finance division of the department of finance and administration".

## 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.

**ANNOTATIONS**

**Cross references. —** For designation and powers of public education department as educational agency of state for administration of state plans established for funds received pursuant to federal statutes, *see* 22-9-2 and 22-9-3 NMSA 1978.

For references to the former superintendent of public instruction, *see* 9-24-15 NMSA 1978.

For designation of higher education department to administer funds furnished under acts of congress to state educational institutions, *see* 21-1-26 NMSA 1978.

**Grants under Title I, Public Law 815,** 81st Cong. (2d sess.), may properly be applied for and administered by the superintendent of public instruction. 1951-52 Op. Att'y Gen. No. 51-5344. See also 1951-52 Op. Att'y Gen. No. 51-5365.

## 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.

## ANNOTATIONS

**Cross references. —** For references to the former state superintendent, *see* 9-24-15 NMSA 1978.

For the state librarian, *see* 18-2-3 NMSA 1978.

For powers of public education department when designated as sole educational agency of state for administration of state plans established for funds received pursuant to federal statutes, *see* 22-9-3 NMSA 1978.

For disbursement by state librarian of federal funds for rural library services, *see* 22-9-7 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references. —** For the state librarian, *see* 18-2-3 NMSA 1978.

For powers of public education department when designated as sole educational agency of state for administration of state plans established for funds received pursuant to federal statutes, *see* 22-9-3 NMSA 1978.

**The 2001 amendment,** effective June 15, 2001, added Subsection B and made stylistic changes.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For Sections 1 and 2 of the Congressional Act of August 30, 1935, as amended, *see* 40 U.S.C. §§ 276a and 276a-1. *See* 40 U.S.C.S. § 3141 et seq.

## 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.

**ANNOTATIONS**

**Cross references.** — For transfer of powers and duties of the former superintendent of public instruction, *see* 9-24-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For designation of the educational agency for administration of state plans established for funds received pursuant to federal statutes, *see* 22-9-2 NMSA 1978.

For enforcement of labor standards relating to school facility construction grants-in-aid, *see* 22-9-11 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all

references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

# ARTICLE 10
# Certified School Personnel

## 22-10-1. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 33 recompiled and amended former 22-10-1 NMSA 1978, relating to the School Personnel Act, as 22-10A-1 NMSA 1978, effective April 4, 2003.

## 22-10-2. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-2 NMSA 1978, relating to definitions, as 22-10A-2 NMSA 1978, effective April 4, 2003.

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-3 NMSA 1978, as enacted by Laws 1975, ch. 306, § 3, relating to certificate requirements, types of certificates, forfeiture of claims, exceptions, and administrator apprenticeships, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-3.1 NMSA 1978, as enacted by Laws 1986, ch. 33, § 18, relating to certified school administrators, evaluation and improvement training, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 22-10-3.2. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 53 recompiled and amended former 22-10-3.2 NMSA 1978, relating to certified school personnel and school nurses, as 22-10A-32 NMSA 1978, effective April 4, 2003.

## 22-10-3.3. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 36 recompiled and amended former 22-10-3.3 NMSA 1978, relating to background checks, as 22-10A-5 NMSA 1978, effective April 4, 2003.

## 22-10-3.4. Repealed.

**History:** Laws 1997, ch. 238, § 2

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-3.4 NMSA 1978, as enacted by Laws 1997, ch. 238, § 2, relating to known convictions, reporting requirements, limited immunity from liability and penalty for failure to report, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 22-10-3.5. Repealed.

**History:** Laws 1999, ch. 249, § 1.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-3.5 NMSA 1978, as enacted by Laws 1999, ch. 249, § 1, relating to issuance of alternative certificates, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 22-10-3.6. Repealed.

**History:** Laws 1999, ch. 249, § 2.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-3.6 NMSA 1978, as enacted by Laws 1999, ch. 249, § 2, relating to alternative certificates, employment, and discrimination, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 22-10-4. Repealed.

**History:** 1953 Comp., § 77-8-2, enacted by Laws 1967, ch. 16, § 107; 1997, ch. 238, § 3.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-4 NMSA 1978, as enacted by Laws 1967, ch. 16, § 107, relating to certificate fees, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 22-10-4.1. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 31 recompiled and amended 22-10-4.1 NMSA 1978, relating to the distribution and appropriation of educator certification funds, as 22-8-44 NMSA 1978, effective April 4, 2003.

## 22-10-5. Repealed.

**History:** 1953 Comp., § 77-8-3, enacted by Laws 1967, ch. 16, § 108; 1975, ch. 306, § 4.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-5 NMSA 1978, as enacted by Laws 1967, ch. 16, § 108, relating to the duties of certified school personnel, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 22-10-6. Repealed.

**History:** 1953 Comp., § 77-8-3.1, enacted by Laws 1973, ch. 135, § 1.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-6 NMSA 1978, as enacted by Laws 1973, ch. 135, § 1, relating to additional duties of school principals, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 22-10-7. Repealed.

**History:** 1953 Comp., § 77-8-4, enacted by Laws 1967, ch. 16, § 109.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-7 NMSA 1978, as enacted by Laws 1967, ch. 16, § 109, relating to certified school personnel salaries, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 22-10-8. Repealed.

**History:** 1953 Comp., § 77-8-5, enacted by Laws 1967, ch. 16, § 110; 1975, ch. 306, § 5.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-8 NMSA 1978, as enacted by Laws 1967, ch. 16, § 110, relating to compensation for educational meetings, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 22-10-9. Repealed.

**History:** 1953 Comp., § 77-8-6, enacted by Laws 1967, ch. 16, § 111; 1975, ch. 306, § 6.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-10-9 NMSA 1978, as enacted by Laws 1967, ch. 16, § 111, relating to professional status, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 22-10-10. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-10 NMSA 1978 as 22-10A-34 NMSA 1978, effective April 4, 2003.

Laws 2017, ch. 87, § 31 repealed 22-10A-34 NMSA 1978, effective June 16, 2017. For provisions of former section, *see* the 2016 NMSA 1978 on *NMOneSource.com*.

## 22-10-11. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-11 NMSA 1978 as 22-10A-21 NMSA 1978, effective April 4, 2003.

## 22-10-12. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-12 NMSA 1978 as 22-10A-22 NMSA 1978, effective April 4, 2003.

## 22-10-13. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-13 NMSA 1978 as 22-10A-23 NMSA 1978, effective April 4, 2003.

## 22-10-14. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-14 NMSA 1978 as 22-10A-24 NMSA 1978, effective April 4, 2003.

## 22-10-14.1. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-14.1 NMSA 1978 as 22-10A-25 NMSA 1978, effective April 4, 2003.

## 22-10-15. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1986, ch. 33, § 33 repealed 22-10-15 NMSA 1978, as amended by Laws 1975, ch. 306, § 11, relating to the procedure to be followed by a local school board or the governing body of a state agency in refusing to reemploy a certified school instructor with tenure rights. For present comparable provisions, *see* 22-10A-24 and 22-10A-25 NMSA 1978.

## 22-10-16. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-16 NMSA 1978 as 22-10A-26 NMSA 1978, effective April 4, 2003.

## 22-10-17. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-17 NMSA 1978 as 22-10A-27 NMSA 1978, effective April 4, 2003.

## 22-10-17.1. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-17.1 NMSA 1978 as 22-10A-28 NMSA 1978, effective April 4, 2003.

## 22-10-18. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-18 NMSA 1978 as 22-10A-29 NMSA 1978, effective April 4, 2003.

## 22-10-19. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1986, ch. 33, § 33 repealed 22-10-19 NMSA 1978, as amended by Laws 1975, ch. 306, § 14, effective May 21, 1986. For present comparable provisions, *see* 22-10A-24 NMSA 1978.

## 22-10-20. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1986, ch. 33, § 33 repealed 22-10-20 NMSA 1978, as amended by Laws 1975, ch. 306, § 15, effective May 21, 1986. For present comparable provisions, *see* 22-10A-25 NMSA 1978.

## 22-10-21. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-21 NMSA 1978 as 22-10A-30 NMSA 1978, effective April 4, 2003.

## 22-10-22. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 52 recompiled and amended former 22-10-22 NMSA 1978, relating to suspension and revocation of teaching certificates, as 22-10A-31 NMSA 1978, effective April 4, 2003.

## 22-10-23. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-23 NMSA 1978 as 22-10A-35 NMSA 1978, effective April 4, 2003.

## 22-10-24. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-24 NMSA 1978 as 22-10A-36 NMSA 1978, effective April 4, 2003.

## 22-10-25. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-25 NMSA 1978 as 22-10A-37 NMSA 1978, effective April 4, 2003.

## 22-10-26. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-26 NMSA 1978 as 22-10A-38 NMSA 1978, effective April 4, 2003.

## 22-10-27. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-27 NMSA 1978 as 22-10A-39 NMSA 1978, effective April 4, 2003.

# ARTICLE 10A
# School Personnel Act

## 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 33 recompiled and amended former 22-10-1 NMSA 1978 as 22-10A-1 NMSA 1978, effective April 4, 2003.

**Repeals and reenactments.** — Laws 1975, ch. 306, § 1, repealed 77-8-1, 1953 Comp., as enacted by Laws 1967, ch. 16, § 106, relating to requirements for certificates, and enacted a new section.

**The 2003 amendment,**effective April 4, 2003, substituted "10A" for "10" following "Article" near the beginning of the section.

**The 1991 amendment,** effective June 14, 1991, rewrote this section which read "Sections 77-8-1 through 77-8-24 NMSA 1953 may be cited as the 'Certified School Personnel Act'."

**Purpose of provisions.** — The purpose of the Certified School Personnel Act (now School Personnel Act) is to protect the public against incompetent teachers and to insure proper educational qualifications, personal fitness and a high standard of teaching performance. *N.M. State Bd. of Educ. v. Stoudt*, 1977-NMSC-099, 91 N.M. 183, 571 P.2d 1186.

By statute, teachers are assured an indefinite tenure of position during satisfactory performance of their duties. *Atencio v. Board of Educ.*, 1982-NMSC-140, 99 N.M. 168, 655 P.2d 1012, superseded by statute, *Naranjo v. Board of Educ.*, 1995-NMSC-015, 119 N.M. 401, 891 P.2d 542.

**Public school instructors and administrators are state employees** within the constraints of the prohibition against serving in the legislature while receiving compensation as an employee of the state. 1988 Op. Att'y Gen. No. 88-20, *overruled by State ex rel. Stratton v. Roswell Indep. Sch.*, 1991-NMCA-013, 111 N.M. 495, 806 P.2d 1085.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Tests of moral character or fitness as requisite to issuance of teacher's license or certificate, 96 A.L.R.2d 536.

Drugs and narcotics: use of illegal drugs as ground for dismissal of teacher, or denial or cancellation of teacher's certificate, 47 A.L.R.3d 754.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate, 78 A.L.R.3d 19.

Student's right to compel school officials to issue degree, diploma, or the like, 11 A.L.R.4th 1182.

Validity, construction, and effect of municipal residency requirements for teachers, principals, and other school employees, 75 A.L.R.4th 272.

78 C.J.S. Schools and School Districts § 197.

## 22-10A-2. Definitions.

As used in the School Personnel Act:

A. "discharge" means the act of severing the employment relationship with a certified school employee prior to the expiration of the current employment contract;

B "responsibility factor" means a value of 1.20 for an elementary school principal, 1.40 for a middle school or junior high school principal, 1.60 for a high school principal, 1.10 for an assistant elementary school principal, 1.15 for an assistant middle school or assistant junior high school principal and 1.25 for an assistant high school principal;

C. "state agency" means any state institution or state agency providing an educational program requiring the employment of certified school instructors;

D. "sabbatical leave" means leave of absence with pay as set by the local school board or governing authority of a state agency during all or part of a regular school term for purposes of study or travel related to the staff member's duties and of direct benefit to the instructional program;

E. "terminate" means, in the case of a certified school employee, the act of not reemploying an employee for the ensuing school year and, in the case of a noncertified school employee, the act of severing the employment relationship with the employee;

F. "working day" means every calendar day, excluding Saturday, Sunday or legal holiday; and

G. "just cause" means a reason that is rationally related to an employee's competence or turpitude or the proper performance of the employee's duties and that is not in violation of the employee's civil or constitutional rights.

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.

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-2 NMSA 1978, as 22-10A-2 NMSA 1978, effective April 4, 2003.

**Cross references.** — For sabbatical leave programs generally, *see* 22-10A-35 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, added Subsection B.

**The 1994 amendment,** effective May 18, 1994, substituted "with a certified school employee" for "with an employee" in Subsection A, and rewrote Subsection D, which read "'terminate' the act of not reemploying an employee for the ensuing school year."

**The 1991 amendment,** effective June 14, 1991, deleted "Certified" preceding "School Personnel Act" in the introductory phrase; added Subsection F; and made a related stylistic change.

**The 1990 amendment,** effective May 16, 1990, added present Subsections A, D and E, redesignated former Subsections A and B as present Subsections B and C, and made a minor stylistic change.

**Definition of "just cause".** — Legislature intended to codify and incorporate the rule in Swisher v. Darden when it defined "just cause" in 1991 amendment. *Aguilera v. Hatch Valley Schs.*, 2006-NMSC-015, 139 N.M. 330, 132 P.3d 587.

**Reduction in force as just cause.** — Statutory "just cause" allows for discharge of a teacher when exigent fiscal circumstances justify a reduction in force, but the teacher's competence, turpitude and performance do not. *Aguilera v. Hatch Valley Schs.*, 2006-NMSC-015, 139 N.M. 330, 132 P.3d 587.

**"Just cause" for termination.** — Evidence of teacher's arrest for driving under the influence and charges of resisting an officer and battery did not show conduct that had any relationship to his competence as an employee or to the proper performance of his duties. *Kibbe v. Elida Sch. Dist.*, 2000-NMSC-006, 128 N.M. 629, 996 P.2d 419.

## 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 or state agency; 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 as defined by the state board [department].

B. The state board [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.

C. 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 he demonstrates that he holds a valid license or certificate. This section does not apply to practice teachers as defined by rules of the state board [department].

D. Each licensed school employee shall:

(1) enforce all laws and rules applicable to his public school and school district or to the educational program of the state agency;

(2) if teaching, teach the prescribed courses of instruction;

(3) exercise supervision over students on property belonging to the public school or state agency and while the students are under the control of the public school or state agency; and

(4) furnish reports as required.

**History:** 1978 Comp., § 22-10A-3, enacted by Laws 2003, ch. 153, § 34.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

**Certified school personnel defined.** — A "certified" school employee is one who holds a certificate from the state board of education (now public education department) and includes both instructors and administrators. *Naranjo v. Board of Educ. of Espanola Pub. Schs.*, 1995-NMSC-015, 119 N.M. 401, 891 P.2d 542.

## 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.

**ANNOTATIONS**

**Cross references.** — For the public education department, *see* 9-24-4 NMSA 1978.

**The 2005 amendment,** effective April 7, 2005, deleted the former provision in Subsection C that a level one license shall be issued for the first three years of teaching. Laws 2005, ch. 315, § 4 and Laws 2005, ch. 316, § 1 enacted identical amendments. The section was set out as amended by Laws 2005, ch. 316, § 1. *See* 12-1-8 NMSS 1978.

## 22-10A-5. Background checks; known convictions; alleged ethical misconduct; reporting required; limited immunity; penalty for failure to report.

A. As used in this section, "ethical misconduct" means unacceptable behavior or conduct engaged in by a licensed school employee and includes inappropriate touching, sexual harassment, discrimination and behavior intended to induce a child into engaging in illegal, immoral or other prohibited behavior.

B. An applicant for initial licensure shall be fingerprinted and shall provide two fingerprint cards or the equivalent electronic fingerprints to the department to obtain the applicant's federal bureau of investigation record. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act [28-2-1 through 28-2-6 NMSA

1978]. Other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the denial, suspension or revocation of a license for good and just cause. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the licensure or employment decisions affecting the specific applicant. The applicant for initial licensure shall pay for the cost of obtaining the federal bureau of investigation record.

C. Local school boards and regional education cooperatives shall develop policies and procedures to require background checks on an applicant who has been offered employment, a contractor or a contractor's employee with unsupervised access to students at a public school.

D. An applicant for employment who has been initially licensed within twenty-four months of applying for employment with a local school board, regional education cooperative or a charter school shall not be required to submit to another background check if the department has copies of the applicant's federal bureau of investigation records on file. An applicant who has been offered employment, a contractor or a contractor's employee with unsupervised access to students at a public school shall provide two fingerprint cards or the equivalent electronic fingerprints to the local school board, regional education cooperative or charter school to obtain the applicant's federal bureau of investigation record. The applicant, contractor or contractor's employee who has been offered employment by a regional education cooperative or at a public school may be required to pay for the cost of obtaining a background check. At the request of a local school board, regional education cooperative or charter school, the department is authorized to release copies of federal bureau of investigation records that are on file with the department and that are not more than twenty-four months old. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act; provided that other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the employment decisions for good and just cause. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the employment decision affecting the specific applicant who has been offered employment, contractor or contractor's employee with unsupervised access to students at a public school.

E. A local superintendent, charter school administrator or regional education cooperative shall report to the department any known conviction of a felony or misdemeanor involving moral turpitude of a licensed school employee that results in any type of action against the licensed school employee.

F. A local superintendent, charter school administrator or director of a regional education cooperative or their respective designees shall investigate all allegations of ethical misconduct about any licensed school 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 wrongdoing, the local superintendent, charter school administrator or director of a regional education cooperative 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. Copies of that form shall not be maintained in public school, school district or regional education cooperative records. No agreement between a departing licensed school employee and the local school board, school district, charter school or regional education cooperative shall diminish or eliminate the responsibility of investigating and reporting the alleged ethical misconduct, and any such agreement to the contrary is void. Unless the department has commenced its own investigation of the licensed school employee prior to receipt of the form, the department shall serve the licensed school employee with a notice of contemplated action involving that employee's license within ninety days of receipt of the form. If that notice of contemplated action is not served on the licensed school employee within ninety days of receipt of the form, the form, together with any documents related to the alleged ethical misconduct, shall be expunged from the licensed school employee's records with the department and shall not be subject to public inspection.

G. The secretary may suspend, revoke or refuse to renew the license of a local superintendent, charter school administrator or regional education cooperative director who fails to report as required by Subsections E and F of this section.

H. A person who in good faith reports as provided in Subsections E and F of this section shall not be held liable for civil damages as a result of the report. The person being accused shall have the right to sue for any damages sustained as a result of negligent or intentional reporting of inaccurate information or the disclosure of any information to an unauthorized person.

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.

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 36 recompiled and amended former 22-10-3.3 NMSA 1978 as 22-10A-5 NMSA 1978, effective April 4, 2003.

**Cross references.** — For transfer of powers and duties of former state board of education, *see* 9-24-15 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, deleted former subsections and added new Subsections A, F and G.

**The 2003 amendment,** effective April 4, 2003, in Subsection A, substituted "licensure" for "certification" three times, deleted "of education" following "the department" near the beginning, and substituted "license" for "certificate" near the middle; divided former Subsection B into present Subsections B and C and deleted former Subsection C;

deleted "including a charter school" at the end of present Subsection B; in present Subsection C substituted "licensed" for "certified" following "been initially" near the beginning of the first sentence, substituted "twenty-four" for "twelve" following "within" near the beginning of the first sentence, deleted "of education" following "the department" near the end of the first sentence, deleted "including a charter school" near the middle of the second sentence, inserted "or charter school" following "education cooperative" near the end of the second sentence, deleted "including a charter school" following "public school" near the middle of the third sentence, deleted "of education" following "the department" twice in the fourth sentence, substituted "twenty-four" for "twelve" following "not more than" near the end of the fourth sentence, and deleted "including a charter school" at the end; and added present Subsections D, E and F.

**The 2001 amendment,** effective June 15, 2001, in Subsection B, added "regional education cooperative" to each of the first five sentences and added "contractor or contractor's employee" to the fourth sentence.

**The 1999 amendment,** effective June 18, 1999, inserted "at a public school, including a charter school" and "or a charter school" throughout Subsection B.

**The 1998 amendment,** effective May 20, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

**Liability of licensing officials.** — Student who allegedly suffered inappropriate touching by a teacher established no cause of action against a state licensing official for injury inflicted by the teacher based on the theory that the license-related investigation of the teacher was recklessly deficient. *B.T. v. Davis*, 557 F. Supp.2d 1262 (D.N.M. 2007).

## 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.

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.

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 37 recompiled and amended former 22-2-8.7 NMSA 1978 as 22-10A-6 NMSA 1978, effective April 4, 2003.

**Cross references.** — For student achievement, *see* 22-2C-1 NMSA 1978 et seq.

For transfer of powers and duties of former state board of education, *see* 9-24-15 NMSA 1978.

**The 2015 amendment,** effective July 1, 2016, increased the minimum requirements for persons seeking licensure or reciprocity in elementary special early childhood or secondary education; in Subsection A, after "elementary", added "special early childhood", deleted Paragraphs (1) through (6), and added new Paragraphs (1) through (5); and in Subsection C, after "no less than", deleted "fourteen" and added "sixteen".

**The 2009 amendment,** effective June 19, 2009, in Paragraph (3) of Subsection A, at the beginning of the sentence, added “nine hours in mathematics for elementary education and” and after “six hours in mathematics”, added “for secondary education”.

**The 2003 amendment,** effective April 4, 2003, substituted "Educational requirements for licensure" for "Certification requirements" in the section heading; substituted "licensure or reciprocity" for "certification" following "person seeking" near the beginning

of Subsection A; in Subsection B substituted "licensure" for "certification" twice in the first sentence, and inserted "The state board shall establish requirements that provide a reasonable period of time to comply with the provisions of this subsection." at the end; in Subsection C inserted "Except for licensure by reciprocity," at the beginning, substituted "initial licensure" for "certification" following "prior to" near the beginning, and substituted "teacher" for "certified school instructor" following "supervision of a" near the middle; substituted "licensure" for "certification" twice in Subsection D; deleted former Subsection E and redesignated former Subsection F as present Subsection E; and substituted "licensure" for "certification" following "that other" near the middle of present Subsection E.

**The 2001 amendment,** effective June 15, 2001, added Subsection B and redesignated the remaining subsections accordingly; substituted "Subsections A and C" for "Subsections A and B" in Subsection E; and substituted "Subsections A through C" for "Subsections A and B" in Subsection F.

## 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 an alternative level one license to an applicant who meets the requirements of Section 22-10A-8 NMSA 1978.

F. 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.

G. With the adoption by the department of a highly objective uniform statewide standard of evaluation for level one teachers, the minimum salary for a level one teacher shall be thirty-six thousand dollars ($36,000) for a standard nine and one-half month contract.

**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.

**ANNOTATIONS**

**Cross references.** — For the public education department, *see* 9-24-4 NMSA 1978.

**The 2018 amendment,** effective May 16, 2018, increased the statutory minimum salaries for teachers with a level one license; in Subsection G, deleted "Beginning", after "With the", deleted "2003-2004 school year, with the", after "teacher shall be", deleted "thirty thousand dollars ($30,000)" and added "thirty-six thousand dollars ($36,000)", and deleted Subsection H, which related to the requirement that teachers be evaluated by the 2006-2007 school year.

**The 2011 amendment,** effective June 17, 2011, in Subsection D, required that knowledge of the science of teaching reading be included in the assessment examination for elementary licensure beginning on January 1, 2013.

**The 2010 amendment,** effective May 19, 2010, in Subsection A, after "formal mentorship program", added "for at least one full school year".

**The 2005 amendment,** effective April 7, 2005, changed the level one license from a three-year license to a five-year license in Subsection A; required at least three full school years of formal mentorship and intensive performance evaluation before a person may apply for a level two license in Subsection A; and changed the period of time within which to demonstrate progress and competence from three years to five years.

## 22-10A-8. Alternative level one license.

A. 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) [has] demonstrated 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 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.

C. An alternative level one teacher shall participate in the same mentorship, evaluation and other professional development requirements as other level one teachers.

D. A school district or state agency shall not discriminate against a teacher on the basis that the teacher holds an alternative level one license.

E. 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For the public education department, *see* 9-24-4 NMSA 1978.

**2011 Multiple Amendments.** — Laws 2011, ch. 36, § 1 and Laws 2011, ch. 95, § 2 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2011, ch. 95, § 2, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2011, ch. 36, § 1 and Laws 2011, ch. 95, § 2 are described below. To view the session laws in their entirety, *see* the 2011 session laws on *NMOneSource.com*.

Laws 2011, ch. 95, § 2, effective June 17, 2011, required that knowledge of the science of teaching reading be included in the assessment examination for elementary licensure beginning on January 1, 2013.

Laws 2011, ch. 36, § 1, effective June 17, 2011, allowed a license to be issued based on a subject-area examination in the subject area for which the license will be issued and required the completion of instruction in teaching principles within two years of beginning teaching.

**The 2007 amendment,** effective June 15, 2007, added Subsection E.

## 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 first-year teachers. The program shall provide mentorship services by level two or level three mentors to the first-year teacher for the full school year. If sufficient mentorship funds are available, the department may provide funding for mentorship services that extend beyond the first year if the local superintendent or charter school administrator certifies to the secretary that further formal mentorship of a beginning teacher will accomplish the purposes of Subsection A of this section; provided that the state shall not pay for more than three years' mentorship for any beginning teacher.

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, school administrators and other school district personnel; and

(6) regular review and evaluation of the teacher mentorship program.

E. The department shall:

(1) require submission and approval of each school district's teacher mentorship program;

(2) provide technical assistance to school districts that do not have a well-developed teacher mentorship program in place;

(3) encourage school districts to collaborate with teacher preparation program administrators at institutions of higher education, career educators, educational organizations, regional service centers and other state and community leaders in the teacher mentorship program; and

(4) distribute no less than fifty percent of available funds for mentorship programs to school districts on or before September 15 of each fiscal year according to the estimated number of teachers eligible to participate in a mentorship program on the fortieth day of the school year and, on or before January 15 of each fiscal year, distribute the balance of the available funds based on the actual number of eligible teachers participating in a mentorship program on the fortieth day of the school year, adjusted for any over- or under-estimation made in the first allocation.

F. The department shall require that teacher preparation programs collaborate with colleges of arts and sciences and high schools to develop a model to provide mentorship services with structured supervision and feedback to each of their graduates who have obtained a teaching position in a public high school, including charter schools;

develop cost estimates; and provide recommendations to the legislative education study committee by November 1, 2007. The model shall provide for the following:

(1) mentorship services for the first year as a level one teacher to each of their graduates who has obtained a teaching position in any New Mexico public high school, including charter schools; provided that teacher preparation programs may enter into contracts or memoranda of agreement with each other or with level three teachers in providing services to their students;

(2) an annual report to the department of the number of teachers that have completed each of their programs the previous spring or summer and have been hired by public high schools, including charter schools, for the following school year; and

(3) an annual report providing a description of the mentorship services that will be provided to each of their teachers, including the name of the teacher, the grade level the teacher has been hired to teach and the name of the school and 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.

## ANNOTATIONS

**Cross references.** — For references to the former commission on higher education, *see* 9-25-4.1 NMSA 1978.

For the public education department, *see* 9-24-4 NMSA 1978.

**The 2010 amendment,** effective May 19, 2010, in the catchline, after "program for", deleted "level one" and added "beginning"; in Subsection B, in the first sentence, after "program for all", deleted "level one" and added "first-year" and added the second and third sentences; and in Subsection E(4), after "estimated number of", changed "beginning teachers on the fortieth day" to "teachers eligible to participate in a mentorship program on the fortieth day" and after "actual number of", changed "beginning teachers on the fortieth day" to "eligible teachers participating in a mentorship program on the fortieth day".

**The 2009 amendment,** effective June 19, 2009, in Paragraph (4) of Subsection E, after "distribute", added "no less than fifty percent of"; after "school district", deleted "annually on a per-teacher basis" and added "on or before September 15 of each fiscal year"; after "according to the", added "estimated"; and after "school year", added the remainder of the sentence.

**The 2007 amendment,** effective June 15, 2007, added Paragraph (4) of Subsection D and Subsection E.

**The 2005 amendment,** effective April 7, 2005, provided in Subsection C(4) that the framework shall include evaluation during at least the first three years of teaching.

## 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 successfully completes the level one license or is granted reciprocity as provided by department rules; demonstrates essential competency required by the department as verified by the local superintendent through the highly objective uniform statewide standard of evaluation; and meets 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. With the adoption by the department of the statewide objective performance evaluation for level two teachers, the minimum salary for a level two teacher for a standard nine and one-half month contract shall be forty-four thousand dollars ($44,000).

**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.

**ANNOTATIONS**

**The 2018 amendment,** effective May 16, 2018, increased the statutory minimum salaries for teachers with a level two license; and in Subsection D, after "contract shall be", deleted "as follows", deleted former Paragraphs D(1) through D(3) and added "forty-four thousand dollars ($44,000)".

**The 2005 amendment,** effective April 7, 2005, deleted the former provision that an applicant complete the three year level one license.

## 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. With the adoption by the department of a highly objective uniform statewide standard of evaluation for level three-A teachers, the minimum salary for a level three-A teacher for a standard nine and one-half month contract shall be fifty-four thousand dollars ($54,000).

D. 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 C 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.

## ANNOTATIONS

**The 2018 amendment,** effective May 16, 2018, increased the statutory minimum salaries for teachers with a level three-A license; and in Subsection C, after "contract shall be", deleted "fifty thousand dollars ($50,000)" and added "fifty-four thousand dollars ($54,000)".

**2015 Multiple Amendments.** — Laws 2015, ch. 74, § 1 and Laws 2015, ch. 103, § 1 enacted different amendments to this section that were reconciled. To view the session laws in their entirety, *see* the 2015 session laws on *NMOneSource.com*.

Laws 2015, ch. 103, § 1, effective June 19, 2015, added a new Subsection D.

Laws 2015, ch. 74, § 1, effective July 1, 2015, in the catchline, after "teachers", deleted "counselors and school administrators"; in Subsection C, after "one-half month contract shall be", deleted "as follows", deleted Paragraphs (1) through (4) and the designation from Paragraph (5), and deleted "for the 2007-2008 school year"; and deleted former Subsections D through G.

**The 2009 amendment,** effective June 19, 2009, in Paragraph (1) of Subsection E, deleted "has been a level three-A teacher for at least one year"; added "holds a level two license and meets the requirements for a level three-A license"; and added Paragraph (2) of Subsection E.

**The 2007 amendment,** effective June 15, 2007, amended Subsections F and G to implement the 2007 amendment of 22-10A-2 NMSA 1978.

**The 2005 amendment,** effective April 7, 2005, provided in Subsection A that if a level three-A teacher does not demonstrate competency in a school year, the school district shall provide the teacher with professional development and peer intervention during the following school year and that if by the end of that school year the teacher fails to demonstrate competency, the school district may choose not to contract with the teacher to teach in the classroom; and in Subsection F, provided that the minimum salary requirements apply to the 2007-2008 school year.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 146, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 10 contained an emergency clause and was approved March 18, 2009.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 117 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 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 shall be fifty thousand dollars ($50,000) 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 74, § 3 made Laws 2015, ch. 74, § 2 effective July 1, 2015.

## 22-10A-12. Limited reciprocity.

A teacher or school principal licensed in another state may be granted a level two or level three license if he has teaching experience, demonstrates the required competencies and meets other requirements and qualifications for the license for which he applies, including clearance of the required background check. The local superintendent may require a mentorship period for the licensee if he deems it necessary. A teacher who holds an out-of-state license may apply for a lower level license if he does not meet the requirements for the higher level.

**History:** 1978 Comp., § 22-10A-12, enacted by Laws 2003, ch. 153, § 43.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

## 22-10A-12.1. Expedited licensure; military service members and spouses; veterans.

A. The department shall, as soon as practicable after a military service member, the spouse of a military service member or a veteran with a valid and current or an expired license from another jurisdiction files an application for a license:

(1) process the application; and

(2) issue a license 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 applies, including clearance of the required background check. The local superintendent may require a mentorship period for the licensee if the local superintendent deems it necessary. A teacher who holds an out-of-state license may apply for a lower level license if the teacher does not meet the requirements for the higher level.

B. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance and the renewal of the license for which the teacher applies. Upon the issuance of a license pursuant to this section, the department shall notify the license holder of the requirements for renewing the license in writing.

C. A license issued pursuant to this section to an applicant with an expired license shall not be valid for more than one year.

D. As used in this section:

(1) "military service member" means a person who is serving 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

(2) "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.

**History:** Laws 2018, ch. 8, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2018, ch. 8, § 2 made Laws 2018, ch. 8, § 1 effective July 1, 2018.

## 22-10A-13. Native American language and culture certificates.

The state board [department] may 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 by the state board. 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 state board.

**History:** 1978 Comp., § 22-10A-13, enacted by Laws 2003, ch. 153, § 44.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

## 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.

**ANNOTATIONS**

**The 2015 amendment,** effective June 19, 2015, removed a provision relating to adequate yearly progress; in Subsection C, after "teach outside", deleted "his" and added "the teacher's"; and deleted Subsection D, which prohibited certain teachers from being assigned to schools that have not made adequate yearly progress for two consecutive years.

## 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.

**ANNOTATIONS**

**The 2004 amendment,** effective July 1, 2004, changed "state board" to "department" in two places and deleted "A local school board may provide for additional qualifications or requirements as it deems necessary".

## 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

## 22-10A-17. Instructional support provider licenses.

A. The department shall license instructional support providers, including 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 and other service providers. 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 requirements for licensure of types of 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. The instructional support provider shall notify the school district and department immediately if the provider's professional license is suspended, revoked or denied. Suspension, revocation or denial of a professional license shall be just cause for discharge or termination and suspension, revocation or denial of the 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.

**ANNOTATIONS**

**The 2009 amendment,** effective June 19, 2009, in Subsection A, in the first sentence, after "recreational therapist", added "marriage and family therapist".

**The 2004 amendment,** effective May 19, 2004, changed "state department" to "department".

## 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 must hold valid, educational assistants licensure issued by the public education department. Educational assistants shall be assigned, and serve as assistants, to school staff duly licensed by the public education 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 duly licensed staff.

B. The public education department will, through appropriate rules, institute a licensure system for educational assistants. The highest level of license must 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. Educational assistants hired on or after January 8, 2002, who provide instructional support in a Title 1 program, must meet the qualifications for the highest level of licensure on the effective date of this statute. Paraprofessionals hired prior to January 8, 2002, must meet the qualifications for the highest level of licensure by January 8, 2006.

C. The minimum annual salary for licensed educational assistants shall be twelve thousand dollars ($12,000) effective in the 2004-2005 school year.

D. The minimum salaries specified in Subsection C of this section may be adjusted in accordance with appropriations for that purpose in each school year as established by the secretary of public education.

E. School districts shall initiate the implementation of a career salary framework that supports the licensure system in public education department rules in fiscal year 2005.

History: Laws 2004, ch. 30, § 1.

**ANNOTATIONS**

**Cross references.** — For Title 1, *see* 20 U.S.C, 6301.

**Effective dates.** — Laws 2004, ch. 30, § 2 made Laws 2004, ch. 30, § 1 effective July 1, 2004.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 68 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## 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.

## ANNOTATIONS

**Emergency clauses.** — Laws 2003, ch. 153, § 74 contained an emergency clause and was approved April 4, 2003.

## 22-10A-19. Teachers and school principals; accountability; evaluations; 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.

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.

## ANNOTATIONS

**Cross references.** — For references of the former state board of education, *see* 9-24-15 NMSA 1978.

**The 2010 amendment,** effective May 19, 2010, in Subsection A, after "The", changed "state board" to "department", and added the second sentence; designated the former second paragraph of Subsection A as Subsection B; and relettered the succeeding subsections accordingly.

**Structure for teacher evaluation program is within the discretion of the secretary of public education department.** — The legislature has delegated broad authority to the secretary of public education to define how teachers will be evaluated, so long as evaluations are highly objective and uniform statewide. *State ex rel. Stapleton v. Skandera*, 2015-NMCA-044.

Where the secretary of the public education department (secretary) implemented new regulations governing the evaluation of teachers in public schools, and where Subsection A of this section requires the public education department to adopt criteria and minimum highly objective uniform statewide standards of evaluation for the annual performance evaluation of licensed school employees, the secretary was acting within her statutory authority and exercising her discretion under the statute as long as the teacher evaluation program was objective and uniform; the district court did not err in denying the petition for a writ of mandamus. *State ex rel. Stapleton v. Skandera*, 2015-NMCA-044.

**Department regulation does not violate the public school code.** — Where Subsection A of this section requires the department to adopt uniform statewide standards of evaluation for the annual performance evaluation of licensed school employees, and where the public education department's regulation for evaluation of teachers exempted district-authorized charter schools, the department's regulation did not violate this section because under Section 22-8B-5 NMSA 1978, of the public school code, the legislature expressly exempted charter schools from the public school code's provisions related to teacher evaluations. *State ex rel. Stapleton v. Skandera*, 2015-NMCA-044.

Where Subsection C of this section requires principals to observe each teacher in the classroom as part of the highly objective uniform statewide standard of evaluation for teachers, and where the public education department's regulation for evaluation of teachers required "school leaders" to observe instructional practice of teachers as part of a teacher evaluation program and where "school leaders" includes both principals and assistant principals, the department's regulation did not violate Subsection C of this section because the regulation did not relieve principals of their statutory duty to observe each teacher's performance. *State ex rel. Stapleton v. Skandera*, 2015-NMCA-044.

## 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 commission on higher education [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; and

(2) guidelines for developing extensive professional development activities for school districts that:

(a) improve teachers' knowledge of the subjects they teach and the 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 and parents.

History: Laws 2004, ch. 27, § 25.

**ANNOTATIONS**

**Cross references.** — For references to the former commission on higher education, *see* 9-25-4.1 NMSA 1978.

**Effective dates.** — Laws 2004, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2004, 90 days after adjournment of the legislature.

## 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.

**ANNOTATIONS**

**The 2009 amendment,** effective June 19, 2009, changed the name of the uniform statewide teacher education accountability reporting system to the uniform statewide educator accountability reporting system and included administrators in the uniform statewide educator accountability reporting system.

## 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.

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 51 recompiled and amended former 22-2-8.2 NMSA 1978 as 22-10A-20 NMSA 1978, effective April, 4, 2003.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For student achievement, *see* 22-2C-1 NMSA 1978 et seq.

**The 2003 amendment,** effective April, 4, 2003, substituted "educational" for "instructional" following "assistance of an" near the end of Subsection A; and near the end of Subsection B; deleted "Effective with the 1994-1995 school year" at the beginning of Subsection C; inserted present Subsection F and redesignated the subsequent paragraphs accordingly; substituted "G" for "F" following "Subsection" near the beginning of present Subsection H; and substituted "Teachers" for "Effective with the 1987-88 school year, certified school instructors" at the beginning of present Subsection L.

**The 1994 amendment,** effective May 18, 1994, substituted the last sentence in Subsection K for the former last two sentences, which read: "For purposes of this subsection, "noninstructional duties" means noon hall duty, cafeteria duty, ground duty and bus duty. It is the intent of the legislature to maintain the provision of this subsection; provided, however, that for the 1993-94 school year, "noninstructional duties" shall mean only noon hall duty, noon ground duty and noon cafeteria duty"; and made minor stylistic changes throughout the section.

**The 1993 amendment,** effective June 18, 1993, deleted "and grade one" following "kindergarten" in two places and "twenty-two students for grade two; twenty-four students for grade three; and twenty-five students for grades four through six" in Subsection A; added the provisions of current Subsections B, C, E and G to I; deleted former Subsections C to F, pertaining to the dates for phasing in the provisions of Subsection A, the effective date of the provisions of former Subsection B and the authority of the state superintendent to waive class load requirements in certain cases; redesignated former Subsections B, G, H and I as Subsections E, F, J and K; rewrote Subsection F; added "Notwithstanding the provisions of Subsection F of this section" at

the beginning of Subsection J; substituted "1993-94" for "1992-93" in the third sentence of Subsection K; and made minor stylistic changes.

**The 1992 amendment,** effective May 20, 1992, substituted "four hundred" for "400" in Subsection F and "1993-94 school year" for "1992-93 school year" several times throughout the section.

**The 1991 amendment,** effective June 14, 1991, in Subsection C, deleted "and instructional assistant entitlement" following "class load" in Paragraph (2), added present Paragraph (3), redesignated former Paragraphs (3) to (7) as Paragraphs (4) to (8) and substituted "1993-94" for "1992-93" in Paragraph (4), "1994-95" for "1993-94" in Paragraph (5), "1995-96" for "1994-95" in Paragraph (6), "1996-97" for "1995-96" in Paragraph (7), and "1997-98" for "1996-97" in Paragraph (8); substituted "1992-93" for "1991-92" in Paragraph (2) of Subsection D; and substituted "1991-92" for "1990-91" in Subsection I.

**The 1990 (1st S.S.) amendment,** effective July 1, 1990, in Subsection C, updated the school year dates, made changes in the grade level references, and added Paragraphs (5) to (7); rewrote Subsection D; in Subsection F, substituted "with a membership of four hundred or less" for "with an ADM of four hundred or less"; in Subsection G, deleted "for a period not to exceed two years" following "in Subsection A of this section" near the beginning; substituted present Subsection H for the former subsection which read "The state superintendent may waive the individual class load requirements established in Subsection B of this section for a period not to exceed two years upon a demonstration of necessary alternative curricular planning or a temporary shortage of classroom facilities"; and, in Subsection I, substituted "for the 1990-91 school year" for "for the 1987-88 school year and the 1988-89 school year" in the last sentence.

**The 1988 amendment,** effective May 18, 1988, substituted "instructional assistant" for "aide" in Subsections A, C(1), D(1), D(2), and D(4); substituted "twenty-two" for "twenty-three" in Subsection D(2); added present Subsection D(3) and redesignated former Subsection D(3) as present Subsection D(4); substituted "grades three through six" for "grades two through six" in Subsection 4; added present Subsection H and redesignated former Subsection H as present Subsection I; and inserted "and the 1988-89 school year" in present Subsection I.

**Amendments to section made in General Appropriations Act were not proper. —** Amendments to this section made in the General Appropriations Act of 1989 were not proper, where the 1989 appropriations measure changed the effective dates for various actions under the statute and enlarged the authority of the state superintendent to waive class load requirements. The amendments constituted general legislation which, though necessary or desirable, could not constitutionally be included in an appropriations bill. 1989 Op. Att'y Gen. No. 89-26.

## 22-10A-20.1. Repealed.

**History:** Laws 2014, ch. 77, § 1; repealed by Laws 2016, ch. 22, § 2.

**ANNOTATIONS**

**Repeals.** — Laws 2016, ch. 22, § 2 repealed 22-10A-20.1 NMSA 1978, as enacted by Laws 2014, ch. 77, § 1, relating to individual class load and teaching load, three-year phase-in, effective May 18, 2016. For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

## 22-10A-21. Employment contracts; duration.

A. All employment contracts between local school boards and certified school personnel and between governing authorities of state agencies and certified school instructors shall be in writing on forms approved by the state board [department]. These forms shall contain and specify the term of service, the salary to be paid, the method of payment, the causes for termination of the contract and other provisions required by the regulations of the state board.

B. All employment contracts between local school boards and certified school personnel and between governing authorities of state agencies and certified school instructors shall be for a period of one school year except:

(1) contracts for less than one school year are permitted to fill personnel vacancies which 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 permitted for certified school administrators in public schools who are engaged in administrative functions for more than one-half of their employment time; and

(5) contracts not to exceed three years are permitted at the discretion of the local school board for certified school instructors in public schools who have been employed in the school district 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 Certified School Personnel Act.

D. In determination of eligibility for unemployment compensation rights and benefits for certified school instructors where those rights and benefits are claimed to arise from the employment relationship between governing authorities of state agencies or local school boards and certified school instructors, that period of a year not covered by a school year shall not be considered an unemployment period.

E. Except as provided in Section 22-10-12 NMSA 1978, a person 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.

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-11 NMSA 1978, as 22-10A-21 NMSA 1978, effective April 4, 2003.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 1999 amendment,** effective June 18, 1999, substituted "three years" for "two years" in Paragraph B(4).

**Covenant of good faith and fair dealing.** — Where a school teacher alleged that school administrators breached the covenant of good faith and fair dealing by acting in bad faith in evaluating her job performance for the purpose of driving the teacher from her job, and the teacher was not demoted, did not suffer a reduction in pay or loss of employment benefits, and was not disqualified for Level III licensure or denied a Level III license, the teacher's claim failed as a matter of law. *Henning v. Rounds*, 2007-NMCA-139, 142 N.M. 803, 171 P.3d 317.

**Statutory claims beyond contract term.** — Subsection E of Section 22-10A-22 NMSA 1978 did not preclude former assistant superintendent of a school district from pursuing damage claims under Title VII, Americans With Disabilities Act, Age Discrimination in Employment Act and New Mexico Human Rights Act beyond the term of the assistant superintendent's written contract. *Keller v. Board of Educ. of City of Albuquerque*, 182 F. Supp.2d 1148 (D.N.M. 2001).

**Contracts governed by ordinary rules of contract law.** — Contracts for employment made by a school district and its employees are governed by the ordinary rules of contract law, except where expressly restricted by statute. *Board of Educ. v. Jennings*, 1982-NMCA-135, 98 N.M. 602, 651 P.2d 1037.

**Subsection A is directory only.** — Because Subsection A does not prescribe the result that will follow if a contract is not on a form approved by the state board, it is directory only. *Board of Educ. v. Jennings*, 1982-NMCA-135, 98 N.M. 602, 651 P.2d 1037.

**Words "for any other good and just cause" in employment contract** did not allow the state board of education to revoke a teacher's certificate for any reason that was not related to the purposes of the Certified School Personnel Act. *N.M. State Bd. of Educ. v. Stoudt*, 1977-NMSC-099, 91 N.M. 183, 571 P.2d 1186.

**Extension of two-year contract.** — A two-year contract between a local school board and a certified school administrator may not be extended for an additional year, in light of this section, which states that a school administrator's contract may not exceed two years (now three years). 1988 Op. Att'y Gen. No. 88-55.

## 22-10A-22. Notice of reemployment; termination.

On or before the last day of the school year of the existing employment contract, the local school board or the governing authority of the state agency shall serve written notice of reemployment or termination on each certified school instructor employed by the school district or state agency. 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 local school board or the governing authority of the state agency to serve a written notice of reemployment or termination on a certified school instructor shall be construed to mean that notice of reemployment has been served upon the person for the ensuing school year according to the terms of the existing employment contract but subject to any additional compensation allowed other certified school instructors of like qualifications and experience employed by the school district or state agency. Nothing in this section shall be construed to mean that failure of a local school board or the governing authority of the state agency to serve a written notice of reemployment or termination shall automatically extend a certified school instructor'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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-12 NMSA 1978, as 22-10A-22 NMSA 1978, effective April 4, 2003.

**Cross references.** — For grounds and procedure for refusal of reemployment of certified school instructors with tenure rights, *see* 22-10A-24 NMSA 1978.

For applicability of provisions of section, *see* 22-10A-26 NMSA 1978.

**Failure to serve required notice upon nontenured teacher.** — Because appeal to the state board was available only to tenured teachers for a local board's failure to serve the required notice, the failure of the local board to give a nontenured teacher the written notice required by the regulation 14 days before the end of the school year did not require that the court order her re-employment for an additional year. *Provoda v. Maxwell*, 1991-NMSC-022, 111 N.M. 578, 808 P.2d 28.

**Failure to comply with regulation requiring notice.** — A regulation of the state board of education requiring that notice of reemployment or termination be served no later than 14 days before the end of the school year did not give a nontenured teacher an enforceable right to notice before the end of the school year, and therefore the board's notice of intent not to employ, timely served in accordance with this section, complied with the law. *Giangreco v. Murlless*, 1997-NMCA-061, 123 N.M. 498, 943 P.2d 532.

**Reemployment offer to come from school board.** — An official offer to reemploy can come only from the school board; thus, a teacher's purported acceptance of employment based on a memorandum from his supervisors of their intent to recommend his reemployment did not form an employment contract. *Giangreco v. Murlless*, 1997-NMCA-061, 123 N.M. 498, 943 P.2d 532.

**Administrators have no tenure rights.** — While certified school instructors have procedural due process and certain other rights under the School Personnel Act, administrators have no tenure rights and therefore have no expectation of continued employment. *Swinney v. Deming Bd. of Educ.*, 1994-NMSC-039, 117 N.M. 492, 873 P.2d 238.

**Mandatory construction.** — Statutes requiring giving of notice of reemployment or dismissal are generally construed as mandatory, and in the absence of the giving of such notice reemployment is usually held to be effected. 1961-62 Op. Att'y Gen. No. 62-129.

**Law reviews.** — For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 68 Am. Jur. 2d Schools §§ 204 et seq.; 231 to 233.

Right to dismiss public schoolteacher on ground that services are no longer needed, 100 A.L.R.2d 1141.

What constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of public schoolteacher, 4 A.L.R.3d 1090.

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice, 52 A.L.R.4th 301.

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher, 60 A.L.R.4th 260.

Right to unemployment compensation or social security benefits of teacher or other school employee, 33 A.L.R.5th 643.

78 C.J.S. Schools and School Districts § 214 et seq.

## 22-10A-23. Reemployment; acceptance; rejection; binding contract.

A. Each certified school instructor shall deliver to the local school board of the school district or to the governing authority of the state agency in which the person is employed 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 person; or

(2) the last day of the school year when no written notice of reemployment or termination is served upon the person on or before the last day of the school year.

B. Delivery of the written acceptance of reemployment by a certified school instructor creates a binding employment contract between the certified school instructor and the local school board or the governing authority of the state agency until the parties enter into a formal written employment contract. Written employment contracts between local school boards or governing authorities of state agencies and certified school instructors 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.

### ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-13 NMSA 1978, as 22-10A-23 NMSA 1978, effective April 4, 2003.

**Failure to serve required notice upon nontenured teacher.** — A regulation of the state board of education requiring that notice of reemployment or termination be served no later than 14 days before the end of the school year did not give a nontenured teacher an enforceable right to notice before the end of the school year, and therefore the board's notice of intent not to employ, timely served in accordance with Section 22-10-12 NMSA 1978 (now Section 22-10A-22 NMSA 1978) , complied with the law. *Giangreco v. Murlless*, 1997-NMCA-061, 123 N.M. 498, 943 P.2d 532.

**Necessity for acceptance.** — Where teacher did not deliver an acceptance to school board within statutory period, there was no binding contract of employment. This is the case even if the teacher did not receive notice of termination of employment. *Hyde v. Taos Mun. Sch.*, 1972-NMSC-061, 84 N.M. 206, 501 P.2d 194.

**Time requirement for acceptance.** — This section does not authorize written acceptance within 15 days of the end of school, but from the end of school; moreover, the entirety of the section indicates that acceptance is contemplated only after school has ended without the teacher having received any notice. *Provoda v. Maxwell*, 1991-NMSC-022, 111 N.M. 578, 808 P.2d 28.

## 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 an employee with fewer than three years of consecutive service for any reason it deems sufficient. Upon request of the employee, the superintendent or 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 be publicly disclosed by the superintendent, administrator, local school board or governing authority. The reasons shall not provide a basis for contesting the decision under the School Personnel Act.

B. Before terminating a non-certified school employee, the local school board or governing authority shall serve the employee with a written notice of termination.

C. An employee who has been employed by a school district or state agency for three consecutive years and who receives a notice of termination pursuant to either Section 22-10-12 NMSA 1978 [recompiled] or this section, may request an opportunity to make a statement to the local school board or governing authority on the decision to terminate him by submitting a written request to the local superintendent or administrator within five working days from the date written notice of termination is served upon him. The employee may also request in writing the reasons for the action to terminate him. The local superintendent or administrator shall provide written reasons for the notice of termination to the employee 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 administrator. Neither the local superintendent or

administrator nor the local school board or governing authority shall publicly disclose its reasons for termination.

D. A local school board or governing authority may not terminate an employee who has been employed by a school district or state agency for three consecutive years without just cause.

E. The employee's request pursuant to Subsection C of this section shall be granted if he responds to the local superintendent's or administrator's written reasons as provided in Subsection C of this section by submitting in writing to the local superintendent or administrator a contention that the decision to terminate him 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 his 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 administrator. The submission of this statement constitutes a representation on the part of the employee that he can support his 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 his 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 administrator may each be accompanied by a person of his choice. First, the superintendent shall present the factual basis for his 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 his 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 his representative and the local superintendent or administrator or his 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. No record shall be made of the proceeding. The local school board or governing authority shall notify the employee and the local superintendent or 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.

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-14 NMSA 1978, as 22-10A-24 NMSA 1978, effective April 4, 2003.

**Compiler's notes.** — Section 22-10-12 NMSA 1978 referred to in Subsection C was recompiled by Laws 2003, ch. 153, § 72 as 22-10A-22 NMSA 1978, effective April 4, 2003.

**The 1994 amendment,** effective May 18, 1994, substituted "employee" for "certified school instructor" throughout the section, rewrote the first sentence of Subsection A, added Subsection B and redesignated former Subsections B through E as Subsections C through F and made related changes, substituted "or this section" for "or Subsection A of this section" in Subsection C, and substituted "terminate" for "refuse to reemploy" in Subsection D.

**The 1993 amendment,** effective July 1, 1993, substituted "Subsection A" for "Subsection B" in the first sentence and "were received" for "was received" in the third sentence of Subsection B; substituted "Subsection B" for "Subsection C" in two places in the first sentence of Subsection D and in the fourth sentence of Subsection E; and substituted "Subsection D" for "Subsection E" in the fifth sentence of Subsection E.

**The 1991 amendment,** effective June 14, 1991, rewrote this section to the extent that a detailed comparison would be impracticable.

**The 1990 amendment,** effective May 16, 1990, inserted "governing authority of a state agency" in the catchline and in the first sentence of Subsection A and "or governing authority" following "local school board", "or state agency" following "school district", and "local" before "superintendent" throughout the section; added the final four sentences in Subsection A; in Subsection B, substituted "five working days" for "five calendar days" in two places and deleted "local school board's" preceding "action to terminate him" at the end of the second sentence; in Subsection C, inserted "state agency" in Subparagraph (c) of Paragraph (2); substituted "ten working days" for "five calendar days" in the third sentence of Subsection D; and, in Subsection E, substituted "in no less than five or more than fifteen working days" for "within ten calendar days" in the first sentence and "five working days" for "five calendar days" in the final sentence.

### I. GENERAL CONSIDERATION.

**Effect of 1994 amendment.** — The 1994 amendment to this section and Section 22-10-14.1 NMSA 1978 (now Section 22-10A-25 NMSA 1978) does not protect a non-certified public school employee who was terminated a few days after the effective date of the amendment when the termination was authorized by the terms of a contract that predated the effective date of the amendment. *Gadsden Fed'n of Teachers v. Board of Educ.*, 1996-NMCA-069, 122 N.M. 98, 920 P.2d 1052.

## II. TENURE RIGHTS.

### A. GENERALLY.

**Compiler's notes.** — Most of the cases cited in the notes below were decided under this section as it existed prior to the 1986 reenactment. Prior to the reenactment, the section provided for tenure rights for certified school instructors employed for three consecutive school years and having entered into an employment contract for a fourth consecutive school year. *See now* 22-10-11E NMSA 1978 [now 22-10A-21 NMSA 1978], which provides that, except as provided in 22-10-12 NMSA 1978 [now 22-10A-22 NMSA 1978], no person employed by contract pursuant to 22-10-11 NMSA 1978 [now 22-10A-21 NMSA 1978] shall have a legitimate objective expectancy of reemployment, and Subsection F of this section.

**Drawing on facts predating statute not retroactive application.** — The supreme court has held that teacher tenure laws are prospective in application. However, a statute is not applied retroactively merely because it draws upon antecedent facts for its operation. *Lucero v. Board of Regents*, 1978-NMSC-054, 91 N.M. 770, 581 P.2d 458.

**Persons to whom applicable.** — Only certified school instructors with three or more years of service are entitled to procedural due process prior to nonrenewal; the statutory scheme does not give similar protection to administrators at the expiration and nonrenewal of their contracts. *Cole v. Ruidoso Mun. Sch.*, 947 F.2d 903 (10th Cir. 1991).

**Tenure rights of administrators.** — While certified school instructors have procedural due process and certain other rights under the School Personnel Act, administrators have no tenure rights and therefore have no expectation of continued employment. *Swinney v. Deming Bd. of Educ.*, 1994-NMSC-039, 117 N.M. 492, 873 P.2d 238.

The legislature purposely excluded school administrators from the protections afforded certified school instructors. *Naranjo v. Board of Educ. of Española Pub. Schs.*, 1995-NMSC-015, 119 N.M. 401, 891 P.2d 542.

**Teacher at state school held entitled to tenure.** — Where a certified teacher seeking recognition as a tenured teacher had been employed for three consecutive years prior to the effective date of the 1975 amendment making this section applicable to state agencies, and had entered into a contract for the fourth consecutive year after the amendment became effective, his years of service prior to that date could be counted towards the required number of years of employment, since a contract had been entered into after the effective date of the amendment. *Lucero v. Board of Regents*, 1978-NMSC-054, 91 N.M. 770, 581 P.2d 458.

**Section required only that a certified school instructor be employed by a school district;** it did not limit that employment to teaching positions or to employment in a

single school within that district. *Penasco Indep. Sch. Dist. No. 4 v. Lucero*, 1974-NMCA-099, 86 N.M. 683, 526 P.2d 825.

**Instructor lost tenure rights upon employment as administrator.** — A certified school instructor who had previously acquired tenure rights as a certified school instructor with a public school district lost those tenure rights as a result of being reemployed for the next consecutive school year as a certified school administrator. *Atencio v. Board of Educ.*, 1982-NMSC-140, 99 N.M. 168, 655 P.2d 1012 (decided prior to 1983 amendment adding last sentence of Subsection B), superseded by statute. *Naranjo v. Board of Educ. of Española Pub. Schs.*, 1995-NMSC-015, 119 N.M. 401, 891 P.2d 542.

An individual who voluntarily changed his teacher status to become a certified school administrator did not retain a property interest as a tenured certified school instructor entitled to protection by due process. *Atencio v. Board of Educ.*, 1982-NMSC-140, 99 N.M. 168, 655 P.2d 1012 (decided prior to 1983 amendment), superseded by statute. *Naranjo v. Board of Educ. of Española Pub. Schs.*, 1995-NMSC-015, 119 N.M. 401, 891 P.2d 542.

**Reduction in force or staff realignment.** — A tenured teacher subject to termination under a reduction-in-force plan is entitled to bump a non-tenured teacher holding a position for which both are certified, or take priority over a non-tenured teacher in obtaining the necessary certification for a vacant position for which neither is presently certified. However, a tenured teacher can be terminated and a non-tenured teacher retained as an alternative to a staff realignment which would seriously affect the educational program. *N.M. State Bd. of Educ. v. Abeyta*, 1988-NMSC-017, 107 N.M. 1, 751 P.2d 685.

**Reemployment offer to come from school board.** — An official offer to reemploy can come only from the school board; thus, a teacher's purported acceptance of employment based on a memorandum from his supervisors of their intent to recommend his reemployment did not form an employment contract. *Giangreco v. Murlless*, 1997-NMCA-061, 123 N.M. 498, 943 P.2d 532.

## B. PROCEDURE FOR REFUSAL TO REEMPLOY.

**Service of notice of termination during third year of employment.** — A certified teacher who is served during, but prior to the completion of, the teacher’s third year of teaching with notice of the school board’s intent not to renew the teacher’s contract may be terminated only after a hearing and based upon good cause. *Weiss v. Board of Educ. of Santa Fe Pub. Sch.*, 2014-NMCA-100, cert. denied, 2014-NMCERT-009.

Where plaintiff, who was a certified teacher, received notice that the school board would not renew plaintiff’s teaching contract for a fourth year; the notice was given to plaintiff two weeks before plaintiff had completed plaintiff’s third consecutive year of teaching; and the school board denied plaintiff's request for a hearing, the school board could

terminate plaintiff only after a hearing and based upon good cause. *Weiss v. Board of Educ. of Santa Fe Pub. Sch.*, 2014-NMCA-100, cert. denied, 2014-NMCERT-009.

**Sufficiency of notice of termination.** — Where teacher with tenure rights was only given two days notice - excluding the date of service - before the end of the school year, and under the regulations prescribed by the state board she was entitled to no less than 14 days notice before the end of the school year, the conduct of the local board in failing to follow the regulation amounted to unfairness, and although teacher may have known her principal was going to recommend to the local board that she not be reemployed, this placed no burden upon her to employ an attorney, or to otherwise begin the preparation of her defense, in anticipation of the ruling of the local board. She was entitled, insofar as the section and the rule permitted, to a timely notice, pursuant to the requirements of the rule. *Brininstool v. N.M. State Bd. of Educ.*, 1970-NMCA-034, 81 N.M. 319, 466 P.2d 885.

**Formality of notice of termination.** — Evaluation reports by a school principal and a supervisor addressed "To Whom It May Concern," copies of which were sent to counsel for teacher, did not constitute the written statement of the cause or causes for his dismissal even though the letter by which these evaluation reports were transmitted referred to them as formal charges on file with the local board, and also advised of complaints and observations made against teacher by school patrons and parents. *Belen Mun. Bd. of Educ. v. Sanchez*, 1965-NMSC-088, 75 N.M. 386, 405 P.2d 229.

**Grounds for termination.** — Absent grounds personal to a teacher, to terminate his services it is necessary to show affirmatively that there is no position available which he is qualified to teach, and where a local board asserts no grounds personal to the teacher, it is up to them to prove that no position is available for which he is qualified. *Penasco Indep. Sch. Dist. No. 4 v. Lucero*, 1974-NMCA-099, 86 N.M. 683, 526 P.2d 825; *Fort Sumner Mun. Sch. Bd. v. Parsons*, 1971-NMCA-066, 82 N.M. 610, 485 P.2d 366, cert. denied, 82 N.M. 601, 485 P.2d 357.

### C. HEARINGS.

**Due process required.** — Exhaustion of administrative remedies as a precursor to plaintiff's suit for wrongful termination was not required where school district did not inform plaintiff of his right to attend the board meeting where his termination would be discussed, and thereby deprived plaintiff of his due process right to employ the administrative process mandated by this section. *Franco v. Carlsbad Mun. Schs.*, 2001-NMCA-042, 130 N.M. 543, 28 P.3d 531.

**Hearing prerequisite to appeal.** — It is well settled that a teacher must first seek a hearing before the local board and, if dissatisfied there, appeal from an adverse decision of the local board to the state board of education. *Shepard v. Board of Educ.*, 1970-NMSC-067, 81 N.M. 585, 470 P.2d 306; (decided under former Section 22-10-19 NMSA 1978, repealed in 1986).

The right to appeal to the state board, affirmatively authorized, is from a decision of the local board "after a hearing." The negative implication is that where no hearing has been held, an appeal to the state board is not authorized. Absent a hearing before the local board, neither the state board nor the court of appeals has jurisdiction over any matter presented. *Quintana v. State Bd. of Educ.*, 1970-NMCA-074, 81 N.M. 671, 472 P.2d 385, cert. denied, 81 N.M. 668, 472 P.2d 382 (decided under former Section 22-10-19 NMSA 1978, repealed in 1986).

A teacher whose contract was not renewed and who so desired had an obligation to call for a hearing before the local school board, to be followed by an appeal to state board of education in event decision of the local board was unsatisfactory, before resorting to the courts for relief. *Jones v. Board of Sch. Dirs.*, 1951-NMSC-025, 55 N.M. 195, 230 P.2d 231 (decided under former Section 22-10-19 NMSA 1978, repealed in 1986).

**Local board's decision must rest on its conclusion of law** and the conclusion must in turn be supported by one or more findings of fact. *Morgan v. N.M. State Bd. of Educ.*, 1971-NMCA-102, 83 N.M. 106, 488 P.2d 1210, cert. denied, 83 N.M. 105, 488 P.2d 1209 (decided under former Section 22-10-19 NMSA 1978, repealed in 1986).

**Admission of hearsay evidence. —** Where discharged school principal, appealing from his discharge for insubordination, complained of the admission of four written exhibits at the local board hearing on the basis that the documents were hearsay and prejudicial to his interest, and where none of the four exhibits contained evidence of insubordination during the term of the current contract, but each tended to establish that principal's insubordination during the current contract was willful, admission of the written hearsay was not error, since it could not have said that principal's right to a fair hearing, or his interests, was substantially prejudiced thereby. *McAlister v. N.M. State Bd. of Educ.*, 1971-NMCA-088, 82 N.M. 731, 487 P.2d 159 (decided under former Section 22-10-19 NMSA 1978, repealed in 1986).

**Constitutionality. —** The procedures in this section, 22-10-14.1 (now 22-10A-25 NMSA 1978), 22-10-17 (now 22-10A-27 NMSA 1978), and 22-10-17.1 NMSA 1978 (now 22-10A-28 NMSA 1978) satisfy the requirements of the due process clause of the fourteenth amendment to the constitution of the United States. 1988 Op. Att'y Gen. No. 88-05.

**"Employed"** required that a contract be entered into for four consecutive years and services be rendered. 1968 Op. Att'y Gen. No. 68-70.

**Teacher did not acquire tenure** where the three years of service were not consecutive, being interrupted by a leave of absence for one year. 1968 Op. Att'y Gen. No. 68-70.

**Policy behind tenure statute. —** The legislature recognized the sound public policy of retaining in the public school system teachers who had become increasingly valuable by reason of their experience and had by statute assured these public servants an

indefinite tenure of position during satisfactory performance of their duties. 1963-64 Op. Att'y Gen. No. 63-152.

**Law reviews.** — For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Request for hearing, sufficiency under statute requiring hearing on request before discharge, 89 A.L.R.2d 1018.

Who is "teacher" for purposes of tenure statute, 94 A.L.R.3d 141.

Termination of teacher's tenure status by resignation, 9 A.L.R.4th 729.

Validity and construction of statutes, ordinances, or regulations requiring competency tests of schoolteachers, 64 A.L.R.4th 642.

## 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 22-10-14 NMSA 1978 [recompiled] 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 22-10-14 NMSA 1978 [recompiled] 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 him 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. No official record shall be made of the hearing. Either party desiring a record of the arbitration proceedings may, at his own expense, record or otherwise provide for a transcript of the proceedings; provided, however, that the record so provided shall not be deemed an official transcript of the proceedings nor shall it 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 22-10-14 NMSA 1978 [recompiled], 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. Local school districts shall file a record with the department of education [public education 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.

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-14.1 NMSA 1978, as 22-10A-25 NMSA 1978, effective April 4, 2003.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

Section 22-10-14 NMSA 1978 referred to in Subsections A and O was recompiled by Laws 2003, ch. 153, § 73 as 22-10A-24 NMSA 1978, effective April 4, 2003.

**The 1994 amendment,** effective May 18, 1994, substituted "employee" for "certified school instructor" throughout the section, substituted "Subsection E of Section 22-10-14 NMSa 1978" for "Subsection D of Section 22-10-14 NMSA 1978" in Subsection A, and substituted "professional or labor organization" for "teachers' organization" in Subsection C.

**The 1991 amendment,** effective June 14, 1991, rewrote this section to the extent that a detailed comparison would be impracticable.

**The 1990 amendment,** effective May 16, 1990, inserted "or governing authority" following "local school board" throughout the section; in Subsection A, deleted "who has been employed by a school district for three consecutive years and" following "school instructor", rewrote the second sentence which read "A written request for an appeal shall be submitted to the local superintendent within five calendar days from the receipt of the local school board's written decision or the refusal of the board to grant a hearing"; in Subsection B, substituted "ten working days" for "ten calendar days" in the first sentence and "five working days" for "five calendar days" in the third sentence; substituted "thirty working days" for "thirty calendar days" in Subsection E; substituted "ten working days" for "ten calendar days" in the third sentence of Subsection M; inserted "or state agency" following "school district" in two places in Subsection N and following "public school" near the end of Subsection P; and, in Subsection Q, substituted "assigned at the discretion of the arbitrator" for "borne by the school district; provided that if the certified school instructor does not prevail in the proceeding, he shall be responsible for reimbursing the school district for the costs incurred in the conduct of the arbitration proceedings and the arbitrator's fees" at the end thereof.

**Effect of 1994 amendment.** — The 1994 amendment to this section and Section 22-10-14 NMSA 1978 (now Sections 22-10A-24 NMSA 1978) does not protect a non-certified public school employee who was terminated a few days after the effective date of the amendment when the termination was authorized by the terms of a contract that predated the effective date of the amendment. *Gadsden Fed'n of Teachers v. Board of Educ.*, 1996-NMCA-069, 122 N.M. 98, 920 P.2d 1052.

**Adequate review necessary for reversal.** — Before the state board opts to reject the decision of its hearing officer, particularly when the credibility of the witnesses is at issue, at the very least it must review so much of the transcript of the proceedings before the hearing officer as is necessary to support its decision. *Board of Educ. v. New Mexico State Bd. of Educ.*, 1987-NMCA-084, 106 N.M. 129, 740 P.2d 123 (decided under former Section 22-10-20 NMSA 1978).

**Arbitration not required.** — Plaintiff was not required to appeal his termination by a school district to an independent arbitrator before filing suit for wrongful termination, where the district's own procedures successfully thwarted any possible effort by plaintiff to utilize available administrative procedures. *Franco v. Carlsbad Mun. Schs.*, 2001-NMCA-042, 130 N.M. 543, 28 P.3d 531.

**Board's reversal of hearing officer held erroneous.** — The state board improvidently found that the local board did not establish sufficient cause for its discharge of a teacher by a preponderance of the evidence, in light of the number of witnesses testifying before the local board as to the teacher's sexual advances and the nature of their testimony. *Board of Educ. v. N.M. State Bd. of Educ.*, 1987-NMCA-084, 106 N.M. 129, 740 P.2d 123 (decided under former Section 22-10-20 NMSA 1978).

**Appeals to state board under former Section 22-10-20 NMSA 1978.** *Board of Educ. v. State Bd. of Educ.*, 1968-NMCA-040, 79 N.M. 332, 443 P.2d 502; *Morgan v. State Bd. of Educ.*, 1969-NMCA-104, 80 N.M. 754, 461 P.2d 236, cert. denied, 81 N.M. 41, 462 P.2d 626 (1970); *Wickersham v. N.M. State Bd. of Educ.*, 1970-NMCA-012, 81 N.M. 188, 464 P.2d 918; *Shepard v. Board of Educ.*, 1970-NMSC-067, 81 N.M. 585, 470 P.2d 306; *Quintana v. State Bd. of Educ.*, 1970-NMCA-074, 81 N.M. 671, 472 P.2d 385, cert. denied, 81 N.M. 668, 472 P.2d 382; *Fort Sumner Mun. Sch. Bd. v. Parsons*, 1971-NMCA-066, 82 N.M. 610, 485 P.2d 366, cert. denied, 82 N.M. 601, 485 P.2d 357; *McAlister v. N.M. State Bd. of Educ.*, 1971-NMCA-088, 82 N.M. 731, 487 P.2d 159; *Brown v. N.M. State Bd. of Educ.*, 1971-NMSC-089, 83 N.M. 99, 488 P.2d 734; *Morgan v. N.M. State Bd. of Educ.*, 1971-NMCA-102, 83 N.M. 106, 488 P.2d 1210, cert. denied, 83 N.M. 105, 488 P.2d 1209; *Board of Educ. v. N.M. State Bd. of Educ.*, 1975-NMCA-057, 88 N.M. 10, 536 P.2d 274; *Bertrand v. N.M. State Bd. of Educ.*, 1975-NMCA-145, 88 N.M. 611, 544 P.2d 1176, cert. denied, 89 N.M. 5, 546 P.2d 70 (1976); *N.M. State Bd. of Educ. v. Stoudt*, 1977-NMSC-099, 91 N.M. 183, 571 P.2d 1186; *Board of Educ. v. Jennings*, 1982-NMCA-135, 98 N.M. 602, 651 P.2d 1037 (specially concurring opinion); *Redman v. Board of Regents*, 1984-NMCA-117, 102 N.M. 234, 693 P.2d 1266.

**Constitutionality.** — The procedures in Section 22-10-14 [now Section 22-10A-24 NMSA 1978], these sections, 22-10-17 (now 22-10A-27 NMSA 1978), and 22-10-17.1 NMSA 1978 (now 22-10A-28 NMSA 1978) satisfy the requirements of the due process clause of the fourteenth amendment to the constitution of the United States. 1988 Op. Att'y Gen. No. 88-05.

## 22-10A-26. Excepted from provisions.

Sections 22-10-12 through 22-10-14.1 NMSA 1978 [recompiled] do not apply to the following:

A. a certified school instructor employed to fill the position of a certified school instructor entering military service;

B. a person who is employed as a certified school administrator; or

C. a non-certified school employee employed to perform primarily district wide management functions.

**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.

## ANNOTATIONS

**Cross references.** — For the Rules of Civil Procedure, *see* 1-001 NMRA.

For service of subpoenas in the district court, *see* 1-045 NMRA.

**Compiler's notes.** — Sections 22-10-12 through 22-10-14.1 NMSA 1978 were recompiled by Laws 2003, ch. 153, § 72 as 22-10A-22, 22-10A-23, 22-10A-24 and 22-10A-25 NMSA 1978, respectively, effective April 4, 2003.

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-16 NMSA 1978 as 22-10A-26 NMSA 1978, effective April 4, 2003.

**The 1994 amendment,** effective May 18, 1994, substituted "Sections 22-10-12 through 22-10-14.1" for "Sections 22-10-12 through 22-10-15" near the beginning of the section, deleted former Subsection A, which read "a person not holding a standard certificate", redesignated former Subsection B as Subsection A, added present Subsection B, and rewrote Subsection C, which read " a person not qualified to teach".

**The 1993 amendment,** effective July 1, 1993, deleted former Subsection C, which read "a person attaining seventy years of age prior to the last day of the school year"; redesignated former Subsection D as Subsection C; and made a minor stylistic change.

**The 1991 amendment,** effective June 14, 1991, substituted "seventy years" for "sixty-five years" in Subsection C.

**Former exceptions construed.** *Penasco Indep. School Dist. No. 4 v. Lucero*, 1974-NMCA-099, 86 N.M. 683, 526 P.2d 825; *Atencio v. Board of Educ.*, 1982-NMSC-140, 99 N.M. 168, 655 P.2d 1012, superseded by statute *Naranjo v. Board of Educ. of Española Pub. Schs.*, 1995-NMSC-015, 119 N.M. 401, 891 P.2d 542.

**Administrators have no tenure rights.** — While certified school instructors have procedural due process and certain other rights under the School Personnel Act, administrators have no tenure rights and therefore have no expectation of continued employment. *Swinney v. Deming Bd. of Educ.*, 1994-NMSC-039, 117 N.M. 492, 873 P.2d 238.

**No property interest in position of principal.** — Where plaintiff's one-year contract to serve as a principal of a middle school was not renewed due to budgetary restraints and plaintiff was reassigned to a teaching position, plaintiff did not have a property interest that was subject to federal constitutional guarantees. *Cole v. Ruidoso Mun. Schs.*, 947 F.2d 903 (10th Cir, 1991).

## 22-10A-27. Discharge hearing; procedures.

A. A local school board or the governing authority of a state agency may discharge a certified school employee only for just cause according to the following procedure:

(1) the superintendent shall serve a written notice of his intent to recommend discharge on the certified school employee in accordance with the law for service of process in civil actions; and

(2) the superintendent shall state in the notice of his intent to recommend discharge the cause for his recommendation and shall advise the certified school employee of his right to a discharge hearing before the local school board or governing authority as provided in this section.

B. A certified school employee who receives a notice of intent to recommend discharge pursuant to Subsection A of this section may exercise his right to a hearing before the local school board or governing authority by giving the local superintendent or administrator written notice of that election within five working days of his receipt of the notice to recommend discharge.

C. The local school board or governing authority shall hold a discharge hearing no less than twenty and no more than forty working days after the local superintendent or administrator receives the written election from the certified school employee and shall give the certified school employee at least ten days written notice of the date, time and place of the discharge hearing.

D. Each party, the local superintendent or administrator and the certified school employee, may be accompanied by a person of his choice.

E. The parties shall complete and respond to discovery by deposition and production of documents prior to the discharge hearing.

F. The local school board or 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 local superintendent or administrator shall have the burden of proving by a preponderance of the evidence that, at the time of the notice of intent to recommend discharge, he had just cause to discharge the certified school employee.

H. The local superintendent or administrator shall present his evidence first, with the certified school employee presenting his evidence thereafter. The local school board or 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 local school board or governing authority.

J. The local school board 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.

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-17 NMSA 1978, as 22-10A-27 NMSA 1978, effective April 4, 2003.

**The 1991 amendment,** effective June 14, 1991, rewrote this section to the extent that a detailed comparison would be impracticable.

**The 1990 amendment,** effective May 16, 1990, inserted "or governing authority" following "local school board" and "or administrator" following "superintendent" throughout the section; substituted "ten working days" for "five calendar days" near the end of Subsection B; substituted "in no less than five and no more than fifteen working days" for "within ten calendar days" in the fourth sentence and "five working days" for "five calendar days" in the final sentence of Subsection C; and, near the middle of Subsection D substituted "five working days" for "five calendar days."

**The 1989 amendment,** effective June 16, 1989, inserted references to "certified school instructor" and "certified school administrator" throughout the section and added the last sentence in Subsection C.

### I. GENERAL CONSIDERATION.

**Constitutionality.** — Considered together, the pre- and post-termination procedures of the School Personnel Act, Sections 22-10A-27 to -28 NMSA 1978, comport with due process requirements. *West v. San Jon Bd. of Educ.*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Arbitration decision acts as collateral estoppel.** — Where plaintiff was a certified teacher; defendant gave plaintiff notice of intent to discharge; plaintiff did not request a hearing before the school board; after defendant discharged plaintiff, plaintiff requested a hearing before the school board or before an arbitrator; defendant subsequently filed an action in district court for breach of contract and violation of due process; the district court ordered arbitration and stayed the proceedings pending the outcome of the arbitration; plaintiff was afforded an arbitration hearing before an independent arbitrator; the parties to the arbitration and the district court hearing were the same; the issue in the arbitration and the district court was the same; in the arbitration, plaintiff had notice of the allegations against plaintiff, was represented by counsel, and presented evidence and cross-examined witnesses; and the arbitrator upheld plaintiff's discharge and concluded that the procedural errors concerning plaintiff's request for a hearing before the school board were mooted by the district court's ruling requiring arbitration, plaintiff's claim for damages in district court was determined by the arbitrator and was barred by collateral estoppel. *Larsen v. Farmington Mun. Sch.*, 2010-NMCA-094, 148 N.M. 926, 242 P.3d 493, cert. denied, 2010-NMCERT-009, 149 N.M. 49, 243 P.3d 753.

**The legislature can constitutionally prescribe the methods for adjudicating a dispute** over termination of a certified school employee's right to continued employment because that right is a public right created by statute. *Board of Educ. of Carlsbad Mun. Schs. v. Harrell*, 1994-NMSC-096, 118 N.M. 470, 882 P.2d 511.

**"Discharge" includes temporary or permanent removal.** — "Discharge," as used in this section, prohibiting the discharge of certified instructors without an opportunity for notice and hearing, includes removing the teacher either temporarily or permanently from employment. *Board of Educ. v. Singleton*, 1985-NMCA-112, 103 N.M. 722, 712 P.2d 1384.

**Reduction in force as just cause.** — Statutory "just cause" allows for discharge of a teacher when exigent fiscal circumstances justify a reduction in force, but the teacher's competence, turpitude and performance do not. *Aguilera v. Board of Educ.*, 2006-NMSC-015, 139 N.M. 330, 132 P.3d 587.

**Standard for reduction in force discharge.** — When a school board is forced to reduce its teaching staff by way of a reduction in force, it must prove that there is no other position for which the teacher, who is to be discharged, is qualified consistent with the academic necessities of the district. *Aguilera v. Board of Educ.*, 2006-NMSC-015, 139 N.M. 330, 132 P.3d 587.

**Justification for discharge for reduction in force.** — Unlike termination, which applies to the coming year, discharge results in a teacher losing his or her job in the

middle of the school year when there may be no opportunity to find other employment. Given the extreme hardship to the teacher, the justifications must be substantial to allow a school board to lay off a qualified teacher in the middle of a school year pursuant to a reduction in force. The school board has to show not just projected financial burdens in the future, but that it cannot survive financially in the present year, which is already underway. *Aguilera v. Board of Educ.*, 2006-NMSC-015, 139 N.M. 330, 132 P.3d 587.

## II. DISCHARGE PROCEDURE.

**Adequate notice.** — Where plaintiff, who was a certified teacher, was discharged; the notice of intent to recommend discharge alleged that plaintiff proposed to a student that the student pose for lewd photographs; the student at the arbitration hearing testified that plaintiff wanted the student to go with plaintiff somewhere in the woods after school to take pictures; the arbitrator found that defendant did not prove allegations that the proposed photographs were lewd; the arbitrator found only that plaintiff suggested to a student that the student pose for pictures outside the classroom and outside the presence of anyone else and that the photography was not part of a school project; and the arbitrator concluded that this suggestion alone constituted just cause for termination of plaintiff, plaintiff was not denied due process because the notice was sufficient to apprise plaintiff of the charges against plaintiff and the arbitrator's decision was not based on new charges but on information presented at the arbitration hearing which did not differ from the allegations contained in the notice. *Larsen v. Bd. of Educ. of the Farmington Mun. Sch.*, 2010-NMCA-093, 148 N.M. 926, 242 P.3d 487, cert. denied, 2010-NMCERT-009, 149 N.M. 49, 243 P.3d 753.

**The school board is required to conduct discharge hearings.** — Where the Albuquerque public school district (APS) sought to discharge a teacher by providing the teacher a discharge hearing before the superintendent and where the school board asserted that changes made to the Public School Code in 2003 divested school boards of all authority to act on any personnel matters and vested exclusive authority to act on all personnel matters in the local school superintendent, the district court did not err in issuing a permanent writ of mandamus to APS and its superintendent, directing that a proposed discharge hearing be conducted by the APS school board, because APS had a clear, legal duty under this section to provide the teacher with a discharge hearing before the school board. *Alarcon v. Albuquerque Pub. Schs. Bd. of Educ.*, 2018-NMCA-021, cert. denied.

**Reduction in force.** — A school board cannot discharge a certified school teacher before her current employment contract expires solely because of a reduction in force. *Aguilera v. Board of Educ.*, 2005-NMCA-069, 137 N.M. 642, 114 P.3d 322, cert. granted, 2005-NMCERT-006, 137 N.M. 767, 115 P.3d 230.

**Preponderance of evidence.** — It is incumbent upon a school board to demonstrate by a preponderance of the evidence that teacher's "discharge" was based upon her performance, competence, or turpitude. *Aguilera v. Board of Educ.*, 2005-NMCA-069,

137 N.M. 642, 114 P.3d 322, cert. granted, 2005-NMCERT-006, 137 N.M. 767, 115 P.3d 230.

**Construction of this section and Section 22-10-21 NMSA 1978 (now Section 22-10A-30 NMSA 1978).** *Morgan v. New Mexico State Bd. of Educ.*, 1971-NMCA-102, 83 N.M. 106, 488 P.2d 1210, cert. denied, 83 N.M. 105, 488 P.2d 1209 (decided prior to 1986 reenactment).

**Section inapplicable to suspensions with pay for duration of contract.** — School board's action in suspending school superintendent with pay for the duration of his contract period did not amount to a discharge and was not protected by the statutory requirements for a hearing. *Black v. Board of Educ.*, 1974-NMSC-095, 87 N.M. 45, 529 P.2d 271 (decided prior to 1986 reenactment).

**Neutral tribunal not required at pre-termination hearing,** because the statutory framework of the School Personnel Act, Sections 22-10A-27 to -28 NMSA 1978, provides for the opportunity to appeal the board's decision to an independent arbitrator in a post-termination hearing, followed by meaningful district court (now court of appeals) review. *West v. San Jon Bd. of Educ.*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Exhaustion of administrative remedies required.** – By not completing her appeal of the board's decision to an independent arbitrator, a discharged teacher failed to exhaust her administrative remedies under the procedures set forth by the School Personnel Act, Sections 22-10A-27 to -28 NMSA 1978. *West v. San Jon Bd. of Educ.*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Whether discharged teacher was entitled to pre-discharge work conferences** was a factual question where allegations against her were based on insubordination and willful misconduct. *West v. San Jon Bd. of Educ.*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Determination as to good cause for discharge.** — In the absence of a statutory definition of the term, it is the function of the state board of education in the exercise of its sound discretion to determine the question of "good cause," and its determination is conclusive unless the evidence discloses that it acted unlawfully, arbitrarily or capriciously. *Lopez v. State Bd. of Educ.*, 1962-NMSC-070, 70 N.M. 166, 372 P.2d 121 (decided prior to enactment of Section 22-10A-2 NMSA 1978).

**School boards may discharge superintendent without interim appointment.** — The school board may discharge those employees of the school district that it directly employs, specifically superintendents, and is not required to hire an interim employee to fulfill this task or wait for the superintendent to recommend his own discharge. *Stanley v. Raton Bd. of Educ.*, 1994-NMSC-059, 117 N.M. 717, 876 P.2d 232.

**Assault while intoxicated.** — State board of education did not act unlawfully, arbitrarily or capriciously in finding good cause for the termination of a teacher's contract where teacher assaulted a woman in a bar while intoxicated. *Lopez v. State Bd. of Educ.*, 1962-NMSC-070, 70 N.M. 166, 372 P.2d 121.

**Insubordination.** — A principal's permitting a reading program which departed from the self-contained classroom basis established in the school system constituted insubordination. *McAlister v. N.M. State Bd. of Educ.*, 1971-NMCA-088, 82 N.M. 731, 487 P.2d 159.

**Harmless error applies to untimely request for discharge hearing.** — The explicit application of the harmless error provision in 22-10A-28(L) NMSA 1978 to this section's provision for requesting a discharge hearing unambiguously expresses the legislature's intent that failure to comply with the five-day time limit, 22-10A-27(B) NMSA 1978, is deemed harmless error, absent a showing of prejudice. *National Educ. Ass'n of N.M. v. Santa Fe Pub. Sch.*, 2016-NMCA-009.

Where petitioner, who received notice of the Santa Fe public schools' intent to discharge him from his teaching and coaching positions, filed a request for hearing two days after the five-day time limit had passed, petitioner's departure from the five-day time requirement, 22-10A-27(B) NMSA 1978, was harmless error where respondent failed to demonstrate prejudice. *National Educ. Ass'n of N.M. v. Santa Fe Pub. Sch.*, 2016-NMCA-009.

**Timing of hearing mandatory.** — The time specified for conducting a dismissal hearing pursuant to this section is mandatory, unless waived by the parties or unless a continuance is sought and obtained for good cause. *Board of Educ. v. Singleton*, 1985-NMCA-112, 103 N.M. 722, 712 P.2d 1384.

**Appeal limited to issues urged at hearing.** — A school board's delay in according a dismissed teacher a timely hearing under this section and the provisions of her contract could not be urged as a basis for dismissal of the board's appeal, where this ground was not initially argued in the administrative hearing below. *Board of Educ. v. Singleton*, 1985-NMCA-112, 103 N.M. 722, 712 P.2d 1384.

**Constitutionality.** — The procedures in Section 22-10-14 (now Section 22-10A-24), Section 22-10-14.1 (now Section 22-10A-25), this section, and Section 22-10-17.1 NMSA 1978 (now Section 22-10A-28 NMSA 1978) satisfy the requirements of the due process clause of the fourteenth amendment to the constitution of the United States. 1988 Op. Att'y Gen. No. 88-05.

**Law reviews.** — For annual survey of New Mexico employment law, see 16 N.M.L. Rev. 39 (1986).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 68 Am. Jur. 2d Schools § 204 et seq.

Validity of governmental requirement of oath of allegiance or loyalty, 18 A.L.R.2d 268.

Dismissal or rejection of public schoolteacher because of disloyalty, 27 A.L.R.2d 487.

Assertion of immunity as grounds for discharge of teacher, 44 A.L.R.2d 799.

Right to dismiss public schoolteacher on the grounds that services are no longer needed, 100 A.L.R.2d 1141.

Incompetency: what constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of a public schoolteacher, 4 A.L.R.3d 1090.

Elements and measure of damages in action by schoolteacher for wrongful discharge, 22 A.L.R.3d 1047.

Use of illegal drugs as grounds for dismissal of teacher, or denial or cancellation of teacher's certificate, 47 A.L.R.3d 754.

Appearance: dismissal of, or disciplinary action against, public schoolteachers for violation of regulation as to dress or personal appearance of teachers, 58 A.L.R.3d 1227.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate, 78 A.L.R.3d 19.

Insubordination: what constitutes "insubordination" as ground for dismissal of public schoolteacher, 78 A.L.R.3d 83.

Tardiness: dismissal of public schoolteacher because of unauthorized absence or tardiness, 78 A.L.R.3d 117.

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice, 52 A.L.R.4th 301.

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher, 60 A.L.R.4th 260.

Maternity leave: mandatory maternity leave rules or policies for public schoolteachers as constituting violation of equal protection clause of fourteenth amendment to federal constitution, 17 A.L.R. Fed. 768.

78 C.J.S. Schools and School Districts § 270 et seq.

## 22-10A-28. Appeals; independent arbitrator; qualifications; procedure; binding decision.

A. A certified school employee aggrieved by a decision of a local school board or governing authority to discharge him after a discharge hearing held pursuant to Section 22-10-17 NMSA 1978 [22-10A-27 NMSA 1978] may appeal the decision to an independent arbitrator. A written notice of appeal shall be submitted to the local superintendent or administrator within five working days from the receipt of the copy of the written decision of the local school board or governing authority.

B. The local school board or governing authority and the certified 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 local school board or governing authority or is a member of or employed by any professional organization of which the certified school 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 local school board or 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 local superintendent or administrator had just cause to discharge the certified school employee. The local school board or governing authority shall present its evidence first, with the certified school employee presenting his 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 certified school 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 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 his own expense.

K. 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 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 22-10-17 NMSA 1978 [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.

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-17.1 NMSA 1978, as 22-10A-28 NMSA 1978, effective April 4, 2003.

**Compiler's notes.** — Section 22-10-17 NMSA 1978 referred to in Subsections A and L was recompiled by Laws 2003, ch. 153, § 73 as 22-10A-27 NMSA 1978, effective April 4, 2003.

**Cross references.** — For New Mexico Rules of Appellate Procedure, *see* 12-101 NMRA.

For issuance of subpoenas in civil actions, *see* 1-045 NMRA.

**The 1991 amendment,** effective June 14, 1991, substituted "employee" for "instructor or certified school administrator" throughout the section; substituted "notice of appeal" for "request for an appeal" in the second sentence in Subsection A and in the first sentence in Subsection B; in Subsection A, substituted "a discharge hearing held" for "his statement to the local school board presented" in the first sentence and deleted the former third sentence which read "The appeal shall be accompanied by a statement of particulars specifying the grounds on which it is contended that the decision was not based on good and just cause"; in Subsection C substituted "professional organization" for "teachers' or administrators' organization"; in Subsection D, inserted "de novo" in the first sentence and substituted the second and third sentences for the former second sentence which read "The issue to be decided by the independent arbitrator is whether the board's decision to discharge the certified school instructor or certified school administrator was based on good and just cause"; and made minor stylistic changes throughout the section.

**The 1990 amendment,** effective May 16, 1990, inserted "or governing authority" following "local school board" throughout the section; in Subsection A, in the first sentence, inserted "local school" preceding "board" the second time the reference appears and substituted "may appeal the decision" for "may request an appeal", in the second sentence, inserted "or administrator" and substituted "five working days" for "five calendar days" and, in the third sentence, substituted "The appeal shall be" for "The request for an appeal to an independent arbitrator shall be"; substituted "five working days" for "five calendar days" in the final sentence of Subsection B; in Subsection E, substituted "thirty working days" for "thirty calendar days" in the first sentence and inserted "or certified school administrator" in the second sentence; substituted "labor arbitration rules" for "rules for arbitration" near the end of Subsection H; substituted "thirty working days" for "thirty calendar days" in the third sentence of Subsection K; in Subsection N, substituted "Each party" for "Either party" at the beginning of the first sentence and rewrote the second sentence which read "The arbitrator's fees and other expenses incurred in the conduct of the arbitration shall be borne by the school districts; provided that if the certified school instructor or administrator does not prevail in the proceeding, he shall be responsible for reimbursing the school district for the costs incurred in the conduct of the arbitration proceeding and the arbitrator's fees"; and deleted former Subsection O relating to compliance with the American arbitration association's rules.

**Considered together, the pre- and post-termination procedures of the School Personnel Act,** 22-10A-27 and 22-10A-28 NMSA 1978, comport with due process requirements. *West v. San Jon Bd. of Educ.*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Neutral tribunal not required at pre-termination hearing,** because the statutory framework of the School Personnel Act, 22-10A-27 and 22-10A-28 NMSA 1978, provides for the opportunity to appeal the board's decision to an independent arbitrator in a post-termination hearing, followed by meaningful district court (now court of appeals) review. *West v. San Jon Bd. of Educ.*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Exhaustion of administrative remedies required.** – By not completing her appeal of the board's decision to an independent arbitrator, a discharged teacher failed to exhaust her administrative remedies under the procedures set forth in this section. *West v. San Jon Bd. of Educ.*, 2003-NMCA-130, 134 N.M. 498, 79 P.3d 842, cert. denied, 2003-NMCERT-002, 134 N.M. 723, 82 P.3d 533.

**Compulsory arbitration is constitutional** and the procedures used in judicial tribunals need not be used in compulsory arbitration, so long as the arbitration procedures are sufficient to guarantee a fair proceeding. Therefore, the provisions of this section mandating compulsory arbitration of the grievances of discharged school employees do not violate an employee's right of access to the courts, or right to jury trial; nor do these provisions unconstitutionally delegate power to a nonjudicial tribunal. *Board of Educ. of Carlsbad Mun. Schs. v. Harrell*, 1994-NMSC-096, 118 N.M. 470, 882 P.2d 511 (1994).

**Unconstitutional limit on judicial review.** — Because due process and the separation of powers principle requires that parties to statutorily mandated arbitration be offered meaningful review of the arbitrator's decision, the provision of Subsection M limiting judicial review of the arbitrator's decision to cases "where the decision was procured by corruption, fraud, deception or collusion" must be stricken as a violation of due process and as an unconstitutional delegation of judicial power. *Board of Educ. of Carlsbad Mun. Schs. v. Harrell*, 1994-NMSC-096, 118 N.M. 470, 882 P.2d 511.

**Standard of review.** — Subsection D requires the reviewing entity to determine whether the alleged misconduct actually occurred and constitutes just cause for discharge. *Santa Fe Pub. Schs. v. Romero*, 2001-NMCA-103, 131 N.M. 383, 37 P.3d 100.

**Harmless error applies to untimely request for discharge hearing.** — The explicit application of the harmless error provision in 22-10A-28(L) NMSA 1978 to 22-10A-27 NMSA 1978, the provision for requesting a discharge hearing, unambiguously expresses the legislature’s intent that failure to comply with the five-day time limit, 22-10A-27(B), is deemed harmless error, absent a showing of prejudice. *National Educ. Ass’n of N.M. v. Santa Fe Pub. Sch.*, 2016-NMCA-009.

Where petitioner, who received notice of the Santa Fe public schools' intent to discharge him from his teaching and coaching positions, filed a request for hearing two days after the five-day time limit had passed, petitioner's departure from the five-day time requirement, 22-10A-27(B) NMSA 1978, was harmless error where respondent failed to demonstrate prejudice. *National Educ. Ass'n of N.M. v. Santa Fe Pub. Sch.*, 2016-NMCA-009.

**Constitutionality.** — The procedures in Section 22-10-14 (now Section 22-10A-24 NMSA 1978), Section 22-10-14.1 (now Section 22-10A-25 NMSA 1978), Section 22-10-17 (now Section 22-10A-27 NMSA 1978), and this section satisfy the requirements of the due process clause of the fourteenth amendment to the constitution of the United States. 1988 Op. Att'y Gen. No. 88-05.

## 22-10A-29. Compensation payments to discharged personnel.

A. Payment of compensation to any certified school instructor employed by a local school board or by the governing authority of a state agency and payment of compensation to any certified school administrator employed by a local school board shall terminate as of the date, after a hearing, that a written copy of the decision of the local school board or the governing authority of the state agency to discharge the person is served on the person. If the compensation of the person 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 person 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 local school board in discharging a certified school instructor or administrator or the action of the governing authority of a state agency in discharging a certified school instructor is reversed on appeal, payment of compensation to the person shall be reinstated in full but subject to any additional compensation allowed other certified school instructor or administrator of like qualifications and experience employed by the school district or state agency and including reimbursement for compensation during the entire period the compensation was terminated less an offset for any compensation received by the person from a school district or state agency 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-18 NMSA 1978 as 22-10A-29 NMSA 1978, effective April 4, 2003.

**The legislature can constitutionally prescribe the methods for adjudicating a dispute** over termination of a certified school employee's right to continued employment

because that right is a public right created by statute. *Board of Educ. of Carlsbad Mun. Schs. v. Harrell*, 1994-NMSC-096, 118 N.M. 470, 882 P.2d 511.

**Offset provision in Subsection B is not exclusive;** rather, a school district or state agency may offset an award by any compensation that a terminated employee received from any source during his period of termination. *Board of Educ. v. Jennings*, 1985-NMSC-054, 102 N.M. 762, 701 P.2d 361.

## 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-21 NMSA 1978 as 22-10A-30 NMSA 1978, effective April 4, 2003.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Section is consistent with Section 22-10-17 NMSA 1978.** — Under this section the notice of discharge provided for in Section 22-10-17 NMSA 1978 [now Section 22-10A-27 NMSA 1978] is not to be served until the procedures of the state board regulations have been followed. *Morgan v. N.M. State Bd. of Educ.*, 1971-NMCA-102, 83 N.M. 106, 488 P.2d 1210, cert. denied, 83 N.M. 105, 488 P.2d 1209 (decided prior to 1986 changes to this section and Section 22-10-17 NMSA 1978).

**Purpose of work conferences** is to allow certified school personnel to work harmoniously with a supervisor to perform appointed tasks adequately. *Board of Educ. v. Jennings*, 1982-NMCA-135, 98 N.M. 602, 651 P.2d 1037 (specially concurring opinion).

**Meaning of "unsatisfactory work performance".** Punishment inflicted by a teacher imposed upon children under the teacher's supervision and control and while the teacher was acting as a classroom teacher inflicted in violation of school policy as set forth in the local board handbook comes within unsatisfactory work performance. *Morgan v. N.M. State Bd. of Educ.*, 1971-NMCA-102, 83 N.M. 106, 488 P.2d 1210, cert. denied, 83 N.M. 105, 488 P.2d 1209.

**Sexual harassment** constitutes "unsatisfactory work performance," therefore requiring work conferences. *Board of Educ. v. Jennings*, 1982-NMCA-135, 98 N.M. 602, 651 P.2d 1037.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Validity and construction of statutes, ordinances, or regulations requiring competency tests of schoolteachers, 64 A.L.R.4th 642.

## 22-10A-31. Denial, suspension and revocation of licenses.

In accordance with the procedures provided in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the state board [department] may deny, suspend or revoke a department-issued license for incompetency, moral turpitude 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 52 recompiled and amended former 22-10-22 NMSA 1978 as 22-10A-31 NMSA 1978, effective April 4, 2003.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 2003 amendment,** effective April 4, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection D.

**The 1998 amendment,** effective September 1, 1998, rewrote Subsection D and made minor stylistic changes.

**The 1997 amendment,** effective June 20, 1997, deleted "for" following "immorality or" in Subsection A, in Paragraph B(1), substituted "describe the rights of the person holding the certificate and include instructions for requesting a hearing" for "also designate a place, time and date, not less than thirty days from the date of the service of the notice of the suspension or revocation, for a hearing" in the second sentence, and added the last two sentences in that paragraph, added Subsection C and redesignated the following subsection accordingly, and made minor stylistic changes.

**Authority of secretary of public education to revoke teachers' licenses.** — Article XII, Section 6 of the New Mexico Constitution, the Uniform Licensing Act, Sections 61-1-1 et seq. NMSA 1978, the Public Education Department Act, Chapter 9, Article 24 NMSA 1978, the Public School Code, Chapter 22 NMSA 1978, and the School Personnel Act, Chapter 22, Article 10A NMSA 1978, do not preclude the secretary of public education from having exclusive authority to make the final decision to revoke a teacher's license. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

**Secretary's authority to disregard hearing officer's credibility determination.** — Where plaintiff was charged with engaging in inappropriate and improper sexual behavior with a fourteen-year-old victim at a charter school; a hearing officer found that the charges against plaintiff had not been proven by a preponderance of the evidence and recommended that the disciplinary action against plaintiff be dismissed; the secretary of public education reviewed the record before the hearing officer, adopted some of the hearing officer's recommendations and rejected others, and concluded that a preponderance of the evidence warranted revocation and revoked plaintiff's license to teach; the essential difference between the hearing officer's view of the case and that of the secretary was how they viewed the credibility of plaintiff and the victim and the believability of their testimony; the regulations of the public education department provided that the hearing officer had the duty to make proposed findings and conclusions; the secretary was not an appellate reviewer of the hearing officer's findings and conclusions, the secretary had the authority, after reviewing the record, to modify the hearing officer's findings and conclusions; and the secretary was ultimately responsible for issuing a final decision; and after reviewing the record, the secretary made independent findings of fact that were supported by references to the hearing transcript, the secretary did not exceed the secretary's authority by making the secretary's own credibility or fact-based determinations. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

**Revocation of teacher's license did not violate due process.** — Where plaintiff was charged with engaging in inappropriate and improper sexual behavior with a fourteen-

year-old victim at a charter school; a hearing officer found that the charges against plaintiff had not been proven by a preponderance of the evidence, based in part on the credibility of the witnesses, and recommended that the disciplinary action against plaintiff be dismissed; the secretary of public education reviewed the record and concluded that a preponderance of the evidence warranted revocation; the secretary's conclusions were supported by the record and were based on the secretary's analysis of the facts presented by the witnesses, the contradictions in the facts, and the victim's written statement, plaintiff was not denied due process by the fact that the secretary failed to observe the witnesses' demeanor or by the secretary's failure to defer to the hearing officer's proposed findings of fact. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

**Revocation of teacher's license was supported by substantial evidence.** — Where plaintiff was charged with engaging in inappropriate and improper sexual behavior with a fourteen-year-old victim; the victim was considering attending the charter school; the owners and operators of the school, who were the godparents of the victim, hosted an event in their home; the victim and plaintiff stayed overnight and slept in the living room where the alleged contact occurred when the victim and plaintiff were alone, the decision of the secretary of public education to revoke plaintiff's teacher's license was supported by substantial evidence. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Revocation of teacher's certificate for moral unfitness, 97 A.L.R.2d 827.

Drugs and narcotics: use of illegal drugs as ground for dismissal of teacher, or denial or cancellation of teacher's certificate, 47 A.L.R.3d 754.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate, 78 A.L.R.3d 19.

## 22-10A-32. Licensed school employees; required training program.

A. All licensed school employees shall be required to complete training in the detection and reporting of child abuse and neglect, including sexual abuse and assault, and substance abuse. Except as otherwise provided in this subsection, this requirement shall be completed within the licensed school employee's first year of employment by a school district. Licensed school employees hired prior to the 2014-2015 school year shall complete the sexual abuse and assault component of the required training during the 2014-2015 school year.

B. The department shall develop a training program, including training materials and necessary training staff, to meet the requirement of Subsection A of this section to make the training available in every school district. The department shall coordinate the development of the program with appropriate staff in school districts and at the human services department, the department of health and the children, youth and families

department. The department shall consult with the federal centers for disease control and prevention when developing the evidence-based training component on child sexual abuse and assault to include methods and materials that have proven to be effective.

C. The training program developed 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.

## ANNOTATIONS

**Recompilations.** — Laws 2003, ch. 153, § 53 recompiled and amended former 22-10-3.2 NMSA 1978 as 22-10A-32 NMSA 1978, effective April 4, 2003.

**Cross references.** — For references to the former state board of education, *see* 9-24-15 NMSA 1978.

**The 2014 amendment,** effective May 21, 2014, required licensed school employees to be trained in detecting and reporting child sexual abuse and assault; in Subsection A, in the first sentence, after "neglect", added "including sexual abuse and assault", in the second sentence, added "Except as otherwise provided in this subsection", and added the third sentence; and in Subsection B, in the first sentence, deleted "Pursuant to the policy and rules adopted by the state board", in the second sentence, after "appropriate staff", added "in school districts and", after "human services department" deleted "and", and after "department of health", added "and the children youth and families department", and added the third sentence.

**Applicability.** — Laws 2014, ch. 9, § 4 provided that the provisions of Laws 2014, ch. 9, §§ 1 through 3 apply to the 2014-2015 school year and subsequent school years.

**The 2003 amendment,** effective April 4, 2003, deleted "of education" following "the department" throughout the section; substituted "Licensed school employees" for "Certified school personnel and school nurses" in the section heading; in Subsection A, substituted "licensed school employees" for "certified school personnel and school nurses" following "All" at the beginning, substituted "licensed school employees" for "person's" near the end and deleted "in the state" at the end; in Subsection B, substituted "rules" for "regulations" following "the policy" near the beginning of the first sentence, deleted "in the state" at the end of the first sentence; and substituted "licensure" for "certification" at the end of Subsection C.

**The 1993 amendment,** effective July 1, 1993, deleted "by July 1, 1991 or, after that date" following "completed" in the second sentence of Subsection A and substituted

"department of health" for "health and environment department" at the end of Subsection B.

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2017, ch. 65, § 4 repealed 22-10A-33 NMSA 1978, as enacted by Laws 1989, ch. 344, § 2, relating to violence, vandalism, reporting, effective June 16, 2017. For provisions of former section, *see* the 2016 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2017, ch. 87, § 31 repealed 22-10A-34 NMSA 1978, as enacted by Laws 1967, ch. 16, § 112, relating to communicable diseases, prohibited employment, penalty, effective June 16, 2017. For provisions of former section, *see* the 2016 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-23 NMSA 1978 as 22-10A-35 NMSA 1978, effective April 4, 2003.

**Cross references.** — For definition of "sabbatical leave," *see* 22-10A-2 NMSA 1978.

## 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-24 NMSA 1978 as 22-10A-36 NMSA 1978, effective April 4, 2003.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-25 NMSA 1978 as 22-10A-37 NMSA 1978, effective April 4, 2003.

**Cross references.** — For the educational retirement board, *see* 22-11-3 NMSA 1978.

## 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-26 NMSA 1978 as 22-10A-38 NMSA 1978, effective April 4, 2003.

## 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22-10-27 NMSA 1978 as 22-10A-39 NMSA 1978, effective April 4, 2003.

# 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.

**ANNOTATIONS**

**The 1991 amendment,** effective July 1, 1991, substituted "Chapter 22, Article 11 NMSA 1978" for "Sections 77-9-1 through 77-9-45 New Mexico Statutes Annotated, 1953 Compilation".

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 78 C.J.S. Schools and School Districts § 338 et seq.

## 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 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 state school, San Juan college and Santa Fe community 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 state school, San Juan college or Santa Fe community college who is first employed by the institution on or after July 1, 1999 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; and

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.

**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.

## ANNOTATIONS

**The 2017 amendment,** effective June 16, 2017, revised the definitions of "regular member", "provisional member", and "medical authority" in the Educational Retirement Act; changed "he" and "his" to "the member" and the "the member's" throughout the section; in Subsection B, Paragraphs B(1), (2), (3) and (4), after "employed", deleted "as a teaching, nursing or administrative employee of" and added "by"; in Paragraph B(4), after "boys' school, the", deleted "New Mexico", and after "girls'", deleted "school" and added "welfare home"; in Subsection C, after "means a person", deleted "not eligible to be a regular member but who is employed by a local administrative unit designated in Subsection B of this section, provided, however, that 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 are not provisional members" and added "described in Section 22-11-17 NMSA 1978"; in Subsection R, after "medical doctor", deleted "within the state or as provided in Subsection D of Section 22-11-36 NMSA 1978 either" and added "or medical review panel", after "to examine", added "medical records", and after "report on the", deleted "physical" and added "medical"; in Subsection V, after "western New Mexico university", deleted "Albuquerque technical vocational institute" and added "central New Mexico community college", and after "Luna", deleted "vocational technical institute, Mesa technical" and added "community college, Mesalands community"; and in Paragraph W(1), after "professional employee of the", deleted "Albuquerque technical vocational institute" and added "central New Mexico community college", and after "Luna", deleted "vocational technical institute, Mesa technical" and added "community college, Mesalands community".

**The 2004 amendment,** effective May 19, 2004, amended Paragraph (4) of Subsection B to change "certified school instructor" to "licensed school employee" and change "state board to "department", and amended Paragraphs (5), (7) and (8) of Subsection B to change "state board" to "department" and to change "standard certificate" to "license".

**The 2003 amendment,** effective June 20, 2003, added "'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;" at the end of Subsection X.

**The 2001 amendment,** effective June 15, 2001, inserted "or retired member" in Subsection A; and added Subsection Z.

**The 1999 amendment,** effective June 18, 1999, deleted "except for a participant" at the end of Subsections B(2) to B(4); added the language beginning "Albuquerque technical-vocational institute" at the end of Subsection V; and in Subsection W(1), substituted the language beginning "the university of New Mexico" and ending "or western New Mexico university" for "a qualifying state educational institution", and added the language beginning "or a person regularly employed" and ending "on or after July 1, 1999".

**The 1995 amendment,** effective July 1, 1995, added Subsection X and redesignated former Subsection X as Subsection Y.

**The 1993 amendment,** effective July 1, 1993, inserted "or community college" and substituting "Chapter 21, Article 13 NMSA 1978" for "the Junior College Act" in Paragraph (2) of Subsection B; substituted "New Mexico girls' school" for "girls' welfare home" and "Los Lunas medical center" for "Los Lunas mental hospital" in Paragraph (4) of Subsection B; deleted "or the public school finance division" following "or the board" in Paragraph (5) of Subsection B; added Paragraph (8) of Subsection B; substituted "current" for "present" in Subsection T; substituted "22-11-47 through 22-11-52" for "22-11-46 through 22-11-51" in Subsection X; and made minor stylistic changes throughout the section.

**The 1991 amendment,** effective July 1, 1991, in Subsection A, inserted "except for a participant"; in Subsection B, divided former Paragraph (1) into Paragraphs (1) through (3) and designated its subsequent paragraphs accordingly, in Paragraph (1), added Subparagraph (a) and the designation for Subparagraph (b) and inserted "a person regularly employed as a teaching, nursing and administrative employee" in Paragraphs (2) and (3); in Subsection C, inserted "but who is"; in Subsections D to F, inserted references to participants; added Subsections V to X; and made minor stylistic changes throughout the section.

**Retired legislator entitled to benefits from educational and public employees' retirement systems.** — When a legislator is retired and no longer an employee, he is not, pursuant to this section, a "regular member" under the Educational Retirement Act and is not excluded from membership and participation in another state retirement program by Section 22-11-16 NMSA 1978; therefore he may receive benefits from both the educational retirement system and the public employees' retirement system. 1979 Op. Att'y Gen. No. 79-05.

**Public Employees Retirement Act (PERA) retiree** who returns to employment with a governmental entity whose employees are covered exclusively under the provisions of the Educational Retirement Act (ERA) for retirement purposes may not continue to receive PERA benefits. Such retiree's benefits must be suspended. That retiree is employed by an affiliated public employer and his "membership," within the meaning of that term, is not provided for in the ERA. 1987 Op. Att'y Gen. No. 87-79.

## 22-11-3. Educational retirement board; members; terms; vacancies.

A. The "educational retirement board" is created.

B. The board shall be composed of seven 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; and

(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.

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.

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.

**ANNOTATIONS**

**Cross references.** — For references to the former superintendent of public instruction, *see* 9-24-15 NMSA 1978.

**The 2011 amendment,** effective June 17, 2011, authorized the secretary of education and the state treasurer to appoint designees to serve on the board; specified the qualifications and authority of designees appointed by the secretary of education and the state treasurer; and in Subsection B(6), specified the qualifications of the members appointed by the governor.

**Temporary provisions.** — Laws 2011, ch. 160, § 3 provided that the provisions Section 22-11-3B(6) NMSA 1978 shall apply only to appointments made after June 17, 2011 (effective date of Laws 2011, ch. 160, § 1), and shall not affect the status of existing appointees to the educational retirement board.

**Appropriations.** — Laws 2009, ch. 125, § 41, effective June 19, 2009, appropriated $2,500,000 from the educational retirement fund to the educational retirement board for expenditure in fiscal years 2009 through 2013 to acquire land for and plan, design and construct a building or acquire and renovate an existing building for the educational retirement board in Santa Fe in Santa Fe county.

**The 1988 amendment,** effective May 18, 1988, deleted Subsection B(2) which read "the director of public school finance" and redesignated former Subsection B(3) as present Subsection B(2); added present Subsection B(3); and made a minor stylistic change in Subsection D.

**The educational retirement board** is an arm of the state rather than an independent political subdivision. *N.M. ex rel. National Educ. Ass'n of N.M. v. Austin Capital Mgmt. Ltd.*, 671 F. Supp. 2d 1248 (D.N.M. 2009).

**Member of board has right to resign** his office, and where no particular method of resigning is provided by law, no formal method is necessary or required. 1963-64 Op. Att'y Gen. No. 63-35.

## 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.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, in Subsection A, after "each year and may", deleted "by its bylaws"; in Subsection B, after "called by the", deleted "chairman" and added "chair"; and in Subsection C, after "Open Meetings Act, the", deleted "chairman" and added "chair".

**The 2003 amendment,** effective June 20, 2003, inserted "by" following "the chairman or" near the middle of Subsection B; and inserted Subsection C.

## 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 through 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.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, made technical changes; in the catchline, deleted "restriction on campaign contribution; required reporting"; redesignated former Paragraphs A(1) through A(4) as Subsections A through D, respectively; in Subsection A, after "with the", deleted "retirement", and deleted "or association"; in Subsection B, after "property to the", deleted "retirement", and deleted "or association"; and in Subsection D, after "described in", deleted "Paragraphs (1) through (3) of this subsection" and added "Subsections A through C of this section".

## 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 through 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 through 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.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, in Paragraph A(4), after "gifts or bequests", added "to the fund".

**The 2011 amendment,** effective June 17, 2011, authorized the board to select a custodial bank and to contract for legal services for contingent fee litigation, subject to the attorney general’s review of the contingent fee and subject to the disclosure of campaign contributions by prospective contractors for contingent fee representation.

## 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.

**ANNOTATIONS**

**Cross references.** — For official bonds of state officers and employees, *see* the Surety Bond Act, 10-2-13 NMSA 1978.

**The 2017 amendment,** effective June 16, 2017, made technical changes; in Subsection A, after "provided in the", deleted "regulations" and added "rules"; and in Subsection B, substituted "the director's" for "his" throughout the subsection, and after "director and employees of the", deleted "division" and added "board".

## 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.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, removed the provision regarding mandatory medical examinations of applicants for and recipients of disability benefits; in Subsection A, after "The medical authority", deleted "shall" and added "may", after "make reports", added "of", and after "certify the", deleted "physical" and added "medical"; and in Subsection B, after "reasonable fee for", deleted "his".

## 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.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, in Subsection B, after "reasonable fee for", deleted "his".

**The 2003 amendment,** effective June 20, 2003, added Subsection C.

## 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.

**ANNOTATIONS**

**The 2011 amendment,** effective June 17, 2011, created the educational retirement suspense fund for deposit of funds received in satisfaction of claims brought by private attorneys and payment of attorney fees and cost.

## 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.

**ANNOTATIONS**

**The 2011 amendment,** effective June 17, 2011, authorized the state treasurer to make disbursements from the educational retirement fund or the educational retirement suspense fund only on warrants or through another approved process.

**The 1993 amendment,** effective June 18, 1993, added the language beginning "or through any other process" at the end of the first sentence.

## 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 through 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.

## ANNOTATIONS

**Cross references. —** For applicability of insurance or banking laws to administration of article, see 22-11-43 NMSA 1978.

For the federal Investment Company Act of 1940, *see* 15 U.S.C. § 80a-1 et seq.

For the legislative finance committee, *see* 2-5-1 NMSA 1978.

For the department of finance and administration, *see* 9-6-3 NMSA 1978.

**The 2011 amendment,** effective June 17, 2011, provided for the indemnification of designees appointed by the secretary of education and the state treasurer.

**The 2009 amendment,** effective July 1, 2009, added Subsection G.

**The 2005 amendment,** effective July 1, 2005, deleted former Subsections A(1) through (10), which provided the classes of securities and investments in which the retirement board could invest and reinvest funds; added Subsection A to authorize the board to invest and reinvest the fund in accordance with the Uniform Prudent Investor Act; added Subsection B which provided that the board shall provide reports and investment policies to the legislative finance committee and the department of finance and administration; deleted former Subsection D, which provided that the prudent man rule applies to investment of the fund; deleted the former provision of Subsection F, which provided that the board may employ investment advisory services and investment management services; and in Subsection F, provided that the board may employ the investment management services and related management services of a trust company or national bank exercising trust powers or an investment counseling firm or brokers for the purchase and sale of securities, commission recapture and transitioning services and may pay for the services from funds administered by the board.

**The 2001 amendment,** effective June 15, 2001, in Paragraphs A(5) and A(7), substituted "debentures, instruments, conditional sales agreements, securities or other evidence of indebtedness of any corporation, partnership or trust" for "or commercial paper of any corporation", inserted "or any security convertible to common stock" following "common stock", inserted "partnership or trust" preceding "organized", and deleted "that the corporation shall have a minimum net worth of twenty-five million dollars ($25,000,000); and provided" preceding "that the fund shall not"; and in

Paragraph A(10), deleted "and which has net assets of at least twenty-five million dollars ($25,000,000)" following "United States".

**The 1993 amendment,** effective June 18, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

**The 1989 amendment,** effective March 10, 1989, in Subsection B, added "or consideration" at the end of the first sentence and added the fourth and fifth sentences.

**Reimbursement for expenses of privately retained attorney.** — The indemnification authorized by Subsection H of Section 22-11-13 NMSA 1978 applies only when legal representation is not available under the Tort Claims Act, Section 41-4-1 NMSA 1978 et seq., or by the attorney general's office. 2010 Op. Att'y Gen. No. 10-05.

Where a member of the educational retirement board retained an attorney to represent the board member personally in a lawsuit under the Fraud Against Taxpayers Act, Section 44-9-1 NMSA 1978 et seq., and in connection with a securities and exchange commission investigation and the risk management division of the general services department assigned or made counsel available to represent the board member, the state was not required to reimburse the board member for expenses resulting from retaining private counsel. 2010 Op. Att'y Gen. No. 10-05.

**Reimbursement for expenses of public relations firm.** — Where a member of the educational retirement board, who was a defendant in lawsuit under the Fraud Against Taxpayers Act, Section 44-9-1 NMSA 1978 et seq., and the subject of an investigation by the securities and exchange commission, personally incurred expenses for advice and consultation provided by a public relations firm; the board member did not incur the expense of hiring a public relations firm because of the board member's decisions as an educational retirement board member; and the board member incurred the expense as a result of the board member's independent, personal decision that the board member required the services of the public relations firm, the state was not required to reimburse the board member for the cost of hiring the public relations firm. 2010 Op. Att'y Gen. No. 10-05.

**Indemnification of an entity owned by a board member.** — Indemnification is not allowed under Subsection H of Section 22-11-13 NMSA 1978 where an entity in which an educational retirement board member has an ownership interest is sued as a result of decisions made by the board member as a member of the educational retirement board. 2010 Op. Att'y Gen. No. 10-05.

**Indemnification in criminal matters.** — Indemnification is allowed under Subsection H of Section 22-11-13 NMSA 1978 where an educational retirement board member is charged with a crime provided that the charges result from a decision the member made in the performance of the board member's duties and the board member successfully defends against the charges. Indemnification for expenses incurred by a board member

in a criminal defense should be strictly limited to reimbursement. 2010 Op. Att'y Gen. No. 10-05.

**Authority to implement Subsection H.** — The powers granted the educational retirement board by Subsections A and E of Section 22-11-6 NMSA 1978 and Subsection B of Section 22-11-14 NMSA 1978 provide sufficient authority to the educational retirement board to implement Subsection H of Section 22-11-13 NMSA 1978. 2010 Op. Att'y Gen. No. 10-05.

The educational retirement board has the right and duty to approve attorneys who represent board members under Subsection H of Section 22-11-13 NMSA 1978. 2010 Op. Att'y Gen. No. 10-05.

**Fiduciary duty with regard to indemnification of board members.** — The educational retirement board has the fiduciary duty to implement and apply Subsection H of Section 22-11-13 NMSA 1978 so that any expenditures made from the educational retirement fund to indemnify educational retirement board members are reasonable, necessary and appropriate. 2010 Op. Att'y Gen. No. 10-05.

## 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.

**ANNOTATIONS**

**Cross references.** — For compensation of members of board, *see* 22-11-5 NMSA 1978.

For payment of salaries and fees by board, *see* 22-11-10 NMSA 1978.

## 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 exempted himself from the Educational Retirement Act; or

(3) the member was not reemployed following a period of disability during which he 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 his 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.

D. The interest provided for in Subsection A of this section shall apply only to contributions paid to the fund after July l, 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.

## ANNOTATIONS

**Cross references.** — For payment of benefits upon death during reemployment, *see* 22-11-26 NMSA 1978.

For retirement benefit options, *see* 22-11-29 NMSA 1978.

For disability benefits, *see* 22-11-35 to 22-11-40 NMSA 1978.

**The 2003 amendment,** effective June 20, 2003, substituted "set by the board" for "equal to seventy-five percent of the average rate earned by the fund during the five fiscal years preceding the fiscal year of refund" near the middle of Subsection A.

**The 1993 amendment,** effective June 18, 1993, added present Subsection B; redesignated former Subsections B and C as Subsections C and D; and made a minor stylistic change.

## 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.

**ANNOTATIONS**

**Cross references.** — For optional coverage of persons qualified to be regular members and covered by retirement program for federal civil service employees, *see* 22-11-19 NMSA 1978.

**Retired legislator entitled to benefits from educational and public employees' retirement systems.** — Since when a legislator is retired and no longer an employee he is not, pursuant to Section 22-11-2 NMSA 1978, a "regular member" under the Education Retirement Act and is not excluded from membership and participation in another state retirement program by this section, therefore he may receive benefits from both the educational retirement system and the public employees' retirement system. 1979 Op. Att'y Gen. No. 79-05.

**Public employees retirement association.** — Full-time city public school teacher who was a member of the educational retirement system, and who was simultaneously employed on a part-time basis by the city, was not required to be a member of the public employees retirement association. 1988 Op. Att'y Gen. No. 88-70.

## 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.

## 22-11-17. 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.

**ANNOTATIONS**

**Cross references.** — For the Social Security Act, *see* 42 U.S.C. § 301 et seq.

For the school for the deaf, *see* 21-6-1 NMSA 1978.

For the northern New Mexico state school, *see* 21-4-1 NMSA 1978.

For the New Mexico school for the blind and visually impaired, *see* 21-5-2 NMSA 1978.

For the New Mexico boys' school, *see* N.M. Const. art. XIV, § 1.

For the girls' welfare home, *see* N.M. Const. art. XIV, § 1.

**The 2017 amendment,** effective June 16, 2017, clarified the requirements for provisional membership; deleted Subsections A through D and removed the subsection designation for former Subsection E; in the undesignated paragraph, after "provisional member", added "is a person who is", after "the department", deleted "of education", after "New Mexico school for the", added "blind and", after "visually", deleted "handicapped" and added "impaired", after the next occurrence of "the", deleted "New Mexico", after "girls'", deleted "school" and added "welfare home", after "Los Lunas medical center", deleted "shall have" and added "and who has", after each occurrence of "public employees retirement association", deleted "of New Mexico", after "written election with both the", deleted "educational retirement", and after "enumerated in this", deleted "subsection" and added "section".

**The 2003 amendment,** effective June 20, 2003, inserted "by the local administrative unit" following "shall be informed" in Subsection C; added present Subsection D; redesignated former Subsection D as present Subsection E; in present Subsection E, substituted "medical center" for "mental hospital" following "the Los Lunas", and substituted "executive secretary" for "director" following "director and the".

**The 1993 amendment,** effective June 18, 1993, deleted a portion of Subsection C, pertaining to conditions governing the right of a provisional member to acquire earned service credit for periods of employment during which the exemption or exemptions were in force and, in Subsection D, substituted "New Mexico girls' school" for "girls' welfare home" and made minor stylistic changes.

**The 1989 amendment,** effective July 1, 1989, in Subsection C, substituted all of the present language of Paragraph (1) beginning with "board's" for "average rate earned by the fund during the five fiscal years preceding the fiscal year in which payment is made", and substituted "1992" for "1986" in Paragraph (4).

**Suspension of benefits upon resumption of employment.** — An employee of the department of finance and administration, retired pursuant to the provisions of the Public Employees Retirement Act, may not resume employment with the department of education without suspension of retirement benefits. 1987 Op. Att'y Gen. No. 87-37 (decided under former Section 10-11-22 NMSA 1978).

An employee of a public school system, retired pursuant to the provisions of the Educational Retirement Act, may not resume employment with the department of education without suspension of her educational retirement benefits. 1987 Op. Att'y Gen. No. 87-38 (decided under former Section 10-11-8 NMSA 1978).

**Public Employees Retirement Act annuitants whom the department of education subsequently employs** and who elect to participate in the educational retirement system by making contributions to that system do not "qualify for (retirement) coverage" under Paragraph D, since they are not considered as having acquired any service credit for purposes of educational retirement benefits. 1987 Op. Att'y Gen. No. 87-37 (decided under former Section 10-11-22 NMSA 1978).

**"Double dipping" disallowed.** — This section does not contemplate a useless act or a manipulative election of coverage under the Public Employees Retirement Act for the sole purpose of enabling the state employee to engage in "double dipping". 1987 Op. Att'y Gen. No. 87-38.

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2017, ch. 21, § 20 repealed 22-11-18 NMSA 1978, as enacted by Laws 1971, ch. 73, § 1, relating to provisional members employed after July 1, 1971, effective June 16, 2017. For provisions of former section, *see* the 2016 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, designated the formerly undesignated provisions as Subsection A and added Subsection B.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — The federal Comprehensive Employment and Training Act, referred to in this section, was found at 29 U.S.C. §§ 801 to 999 before it was repealed in 1982 by P.L. 97-300, Title I, § 184(a)(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.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 69, § 11 repealed 22-11-20 NMSA 1978, as enacted by Laws 1967, ch. 16, § 143, relating to membership fees, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 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 thousand dollars ($20,000), the member shall make contributions to the fund according to the following schedule:

(1) from July 1, 2013 through June 30, 2014, the member contribution rate shall be ten and one-tenth percent of the member's annual salary; and

(2) on and after July 1, 2014, the member contribution rate shall be ten and seven-tenths percent of the member's annual salary.

B. On and after July 1, 2008, for a member whose annual salary is twenty thousand dollars ($20,000) or less, the member contribution rate shall be 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, 2013 through June 30, 2014, a sum equal to thirteen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit; and

(2) on and after July 1, 2014, a sum equal to thirteen and nine-tenths 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 the provisions of 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.

## ANNOTATIONS

**Cross references.** — For Section 401(a)(17) of the Internal Revenue Code of 1986, *see* 26 U.S.C. 401.

**The 2013 amendment,** effective July 1, 2013, increased the contribution rate of members whose annual salary is greater than twenty thousand dollars; in Subsection A, in the introductory sentence, after "Subsection", deleted "C" and added "D", and after "section", deleted "each" and added "for a member whose annual salary is greater than twenty thousand dollars ($20,000), the"; deleted former Paragraphs (1) through (5) of Subsection A, which provided the contribution rates for members for fiscal years beginning in 2005 and ending in 2013; added Paragraphs (1) through (2) of Subsection A; added Subsection B; in Subsection C, in the introductory sentence, after "Subsection", deleted "C" and added "D"; deleted former Paragraphs (1) through (8) of Subsection B, which provided the contribution rates for local administrative units for fiscal years beginning in 2005 and ending in 2013; renumbered former Paragraphs (9) and (10) of Subsection B as Paragraphs (1) and (2) of Subsection B respectively; and renumbered former Subsection C as Subsection D.

**The 2011 amendment,** effective July 1, 2011, for the period from July 1, 2011 through June 30, 2012, increased the member contribution rate for members whose annual salary is more than twenty thousand dollars; for the period July 1, 2011 through June 30, 2012, decreased the local administrative unit contribution rate by different percentages depending on whether the annual salary of members is more or less than twenty thousand dollars; for the period July 1, 2012 through June 30, 2013, increased the local administrative unit contribution rate for members whose annual salary is twenty thousand dollars or less; and increased the local administrative unit contribution rate for the period July 1, 2013 through June 30, 2014 and for periods beginning on and after July 1, 2014.

**Temporary provisions.** — Laws 2011, ch. 178, § 14 provided:

A. No later than September 30, 2013, the retirement board of the public employees retirement association and the educational retirement board shall each cause an actuarial study to be conducted for each retirement system administered by the board. Each study shall analyze whether the higher employee contribution rates and lower employer contribution rates required by Laws 2011, Chapter 178 and Laws 2009, Chapter 127 have had or will have an adverse actuarial effect on the retirement system in violation of Article 20, Section 22 of the constitution of New Mexico. The results of each study shall be submitted to the legislative finance committee and the governor.

B. If a study concludes that a retirement system has had or will have an adverse actuarial effect as a result of the higher employee contribution rates and the lower employer contribution rates required by Laws 2011, Chapter 178 and Laws 2009, Chapter 127, the board that administers that retirement system shall submit a request for a supplemental appropriation to the second session of the fifty-first legislature in the amount that will rectify the adverse actuarial effect.

**The 2010 amendment,** effective July 1, 2010, in Subsection B(7), after "July 1", changed "2010" to "2011"; after "June 30", changed "2011" to "2012"; after "a sum equal to", deleted "eleven and sixty-five hundredths" and added "thirteen and fifteen-hundredths"; after "local administrative unit", deleted the former language, which provided that for members whose annual salary is $20,000 or less, the local administrative unit would contribute thirteen and fifteen-hundredths percent of the member's annual salary; and in Subsection B(8), after "July 1", changed "2011" to "2012".

**The 2009 amendment,** effective July 1, 2009, in Paragraph (5) of Subsection A, added the exception at the end of the sentence; in Paragraph (6) of Subsection B, changed "twelve and four-tenths" to "ten and nine-tenths"; and added the exception at the end of the sentence; and in Paragraph (7) of Subsection B, changed "eleven and fifteen-hundredths" to "eleven and sixty-five hundredths" and added the exception at the end of the sentence.

**The 2008 amendment,** effective July 1, 2008, added Subsection C.

**Temporary provision.** — Laws 2008, ch. 68, § 3, provided for additional contributions to the educational retirement fund and restoration of service credit for employees whose member contributions and local administrative unit contributions were incorrectly capped prior to July 1, 2008, because the employee's salary exceeded the annual compensation limit set pursuant to Section 401(a)(17) of the Internal Revenue Code.

**The 2005 amendment,** effective June 17, 2005, deleted the former provision of Subsection A that each member shall contribute seven and six-tenths percent of his annual salary; provided in Subsections A(1) through (8) a schedule of annual contributions; deletes former provision of Subsection B which provided that each local administrative unit shall make an annual contribution of seven and six-tenths percent of the annual salary of each member employed by the administrative unit; provides in Subsections B(1) through (5) a schedule of annual contributions; and deleted former Subsection C, which provided that each administrative unit shall make an annual contribution of eight and sixty-five hundredths percent of the annual salary of each member employed by the administrative unit.

**The 1992 amendment,** effective March 10, 1992, substituted "1993" for "1992" near the beginning of Subsections B and C; and substituted "sixty-five hundredths" for "six-tenths" in Subsection C.

**The 1991 amendment,** effective June 14, 1991, added "Until July 1, 1992" at the beginning of Subsection B and added Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Validity and effect of retroactive change in rate of employee's contribution to public pension fund, 78 A.L.R.2d 1197.

## 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.

**ANNOTATIONS**

**Cross references.** — For the Internal Revenue Code, *see* 26 U.S.C. § 1 et seq. For Section 414(h) of the Internal Revenue Code, *see* 26 U.S.C. § 414(h).

**Provisions are salary reductions subject to FICA tax.** — "Pickup" provisions of this section and Section 10-11-125 NMSA 1978, whereby the state designated certain employee pension contributions as employer contributions, constituted salary reduction agreements, and, as such, were subject to FICA taxes under 26 U.S.C. § 3121(v)(1)(B), 42 U.S.C. § 409(i)(2), and 26 U.S.C. § 3306(r)(1)(B), following the 1984 amendments to those sections. *Pub. Employees' Ret. Bd. v. Shalala*, 153 F.3d 1160 (10th Cir. 1998).

**Exemption from income tax permitted.** — The legislature may grant a special income tax exemption to one kind of public employee, teachers, yet deny the same exemption to other public employees. *Vaughn v. State Taxation & Revenue Dep't*, 1982-NMCA-112, 98 N.M. 362, 648 P.2d 820, superseded by statute, *Pierce v. State*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288.

**Repeal of tax exemption.** — Because no private contractual rights were granted by the retirement plan, there was no impairment or breach of contract resulting from the 1990 repeal of the tax exemption provision and, although the plan conferred property rights that vested upon accumulating minimum earned service credits, those rights did not include the right to receive pension benefits exempt from tax. *Pierce v. State*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288.

Because the retirement plan provided no contractual or vested right to receive an irrevocable tax exemption, there was no constitutionally protected private interest in the tax exemption and there was no due process violation when the exemption was repealed. *Pierce v. State*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288.

**"Trading" tax exemptions for health care.** — Repeal of the state income tax exemptions for teacher pensions and public employee pensions does not remedy constitutional defects of the proposed retiree health care act under a theory that those exemptions would be "traded" for retiree health care. Those exemptions are not property rights, irrepealable contractual entitlements, or pension benefits. Hence, elimination of the favorable tax treatment for current retirees is not consideration for a multi-million dollar health care plan that the state proposes to provide them. 1990 Op. Att'y Gen. No. 90-03.

## 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.

**ANNOTATIONS**

**Cross references.** — For Section 401 of the Internal Revenue Code of 1986, *see* 26 U.S.C. § 401.

**The 1999 amendment,** effective June 18, 1999, added the last sentence.

## 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.

**ANNOTATIONS**

**Cross references.** — For the Internal Revenue Code of 1986, *see* 26 U.S.C.

**The 2017 amendment,** effective June 16, 2017, in Subsection A, after "member contributions permitted by", deleted "Subsection D of".

**The 2003 amendment,** effective June 20, 2003, inserted "of 1986" following "Internal Revenue Code" throughout the section, in Subsection A inserted "Subsection D of Section 22-11-17 NMSA 1978; Subsection C of Section 22-11-33 NMSA 1978; or" following "member contributions permitted by," added the last sentence; in Subsection B, deleted "educational retirement" near the beginning, inserted "Section 22-11-17 NMSA 1978 and" following "set forth in."

## 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.

**ANNOTATIONS**

**The 2009 amendment,** effective June 19, 2009, added Subsections D and E.

**The 1993 amendment,** effective June 18, 1993, deleted "Membership fees and" at the beginning of Subsection A; added the second sentence of Subsection B; and deleted "and fees" following "contributions" in the first sentence of Subsection C.

## 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.

## ANNOTATIONS

**Cross references.** — For deferred retirement, *see* 22-11-27 NMSA 1978.

For earned service-credit generally, *see* 22-11-33 NMSA 1978.

For allowed service-credit generally, *see* 22-11-34 NMSA 1978.

For reciprocal service credit under Public Employees Retirement Reciprocity Act, *see* 10-13A-4 NMSA 1978.

**The 2013 amendment,** effective July 1, 2013, increased age and service retirement requirements; in Subsection A, in the introductory sentence, at the beginning of the sentence, deleted "The retirement eligibility for", after "A member who", deleted "either", and after "NMSA 1978", deleted "is as follows" and added "shall be eligible for retirement benefits when"; deleted former Paragraphs (1) through (3) of Subsection A, which provided age and service eligibility requirements for retirement benefits; added Paragraphs (1) through (3) of Subsection A; and in Subsection B, after “provisions of”, deleted "Paragraphs (2) and (3) of".

**The 2009 amendment,** effective July 1, 2011, in Subsection A, deleted the introductory phrase "On or before July 1, 1984" and added the new introductory paragraph.

**Temporary provisions.** — Laws 2009, ch. 288, § 19, effective April 10, 2009, created a retirement systems solvency task force to study the actuarial soundness and solvency of the retirement plans of the public employees retirement association, the educational retirement association and the health care plan of the retiree health care authority, and prepare a solvency plan for each entity.

**The 1993 amendment,** effective June 18, 1993, substituted "cumulated four quarters" for "cumulated years" in Subsection B and made a minor stylistic change in Subsection A.

**Nature of retirement rights.** — Benefits under the Educational Retirement Act of this state are retirement allowances and not mere gratuities inasmuch as the employees themselves maintain in part the fund. When an employee meets all of the requirements for retirement - that is to say, when the contingency occurs on which payments are to be made - he or she acquires a vested right in his retirement benefits under the act and any subsequent discharge or other happenings cannot defeat this right. 1959-60 Op. Att'y Gen. No. 60-217.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Services included in computing period of services for purpose of teachers' retirement benefits, 2 A.L.R.2d 1033.

Disciplinary suspension of public employee as affecting computation of length of service for retirement or pension purposes, 6 A.L.R.2d 506.

Validity of repeal or modification of pension statute provisions, 52 A.L.R.2d 437.

Misconduct as affecting right to pension or retention of position in retirement system, 76 A.L.R.2d 566.

## 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.

**ANNOTATIONS**

**The 2013 amendment,** effective July 1, 2013, modified references to amended sections that provide for reduced benefits; in Subsection A, in the introductory sentence, after "Educational Retirement Act when", deleted "one of the following conditions occurs"; and in Paragraph (3) of Subsection A, after "benefit reductions provided in", deleted "Paragraphs (1) and (2) of".

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 61, § 8 made Laws 2013, ch. , § 3 effective July 1, 2013.

## 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.

**ANNOTATIONS**

**Effective dates.** — The Educational Retirement Act, enacted as part of the Public School Code (Laws 1967, ch. 16), contains no effective date. However, Laws 1967, ch. 16, § 303, made the Public School Code effective on July 1, 1967.

## 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.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, removed outdated provisions in the section regarding retirement benefits following reemployment; in Subsection A, after "Education Retirement Act may", deleted "remove himself" and added "be removed",

after "based upon all", deleted "service-credit" and added "service credit", after "receiving prior to", deleted "his" and added "the member's", and after the next occurrence of "reemployment", deleted the remainder of the subsection, which related to the amount of retirement benefits following reemployment; deleted former Subsection B and redesignated former Subsection C as Subsection B; and in Subsection B, after "first retirement.", deleted the remainder of the subsection.

**Suspension of benefits upon resumption of employment.** — An employee of a public school system, retired pursuant to the provisions of the Educational Retirement Act, may not resume employment with the department of education without suspension of her educational retirement benefits. 1987 Op. Att'y Gen. No. 87-38 (decided under former Section 10-11-8 NMSA 1978).

**The suspension provisions of the disbursing system** apply to the benefits granted pursuant to the [Public Employees Retirement] Reciprocity Act to a member retired under the public employee retirement association and the educational retirement system who resumes employment. 1988 Op. Att'y Gen. No. 88-22.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Validity of legislation providing for additional retirement or disability allowances for public employees previously retired or disabled, 27 A.L.R.2d 1442.

## 22-11-25.1. Return to employment; benefits continued; administrative unit contributions.

A. Except as provided in Subsections B and F of this section, beginning January 1, 2002 and continuing until January 1, 2022, a retired member may begin employment at a local administrative unit and shall not be required to suspend retirement benefits if the member has not rendered service to a local administrative unit for at least twelve consecutive months after the date of retirement. If the retired member returns to employment without first completing twelve consecutive months of retirement, the retired member shall remove himself or herself from retirement.

B. A retired member who was retired on or before January 1, 2001 and has not since suspended or been required to suspend retirement benefits pursuant to the Educational Retirement Act may, at any time prior to January 1, 2022, return to employment for a local administrative unit and shall not be required to suspend retirement benefits.

C. A retired member who returns to employment during retirement pursuant to Subsection A, B or F of this section is entitled to continue to receive retirement benefits but is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of the retired member's reemployment with a local administrative unit.

D. A retired member shall not be eligible to return to employment pursuant to Subsection A, B or F of this section unless an application to return to work, on a form prescribed by the board, has been submitted to, and approved by, the board and the applicant has complied with such other rules as promulgated by the board.

E. A retired member who returns to employment pursuant to Subsection A, B or F of this section shall pay to the fund an amount equal to the member contributions that would be required pursuant to Section 22-11-21 NMSA 1978 if the retired member was a non-retired employee and the local administrative unit employing the retired member shall pay to the fund an amount equal to the local administrative unit contributions that would be required pursuant to that section. Payments made by a retired member pursuant to this subsection shall not be refunded.

F. Beginning July 1, 2003 and continuing until January 1, 2022, a retired member who retired on or before January 1, 2001, who subsequently voluntarily suspended or was required to suspend retirement benefits and who has not rendered service to a local administrative unit for at least ninety days may begin employment at a local administrative unit without suspending retirement benefits if the retired member was not employed by a local administrative unit for an additional twelve or more consecutive months after the initial date of the retirement; provided that the ninety-day period shall not include any part of a summer or other scheduled break or vacation period.

G. Both the retired member who returns to employment and the local administrative unit that employs the retired member shall make contributions to the retiree health care fund in the amount specified in Subsections A and B of Section 10-7C-15 NMSA 1978.

H. As used in Subsections A and F of this section:

(1) "rendered service to a local administrative unit" includes employment by a local administrative unit, whether full or part time; substitute teaching; voluntarily performing duties for a local administrative unit that would otherwise be, or in the past have been, performed by a paid employee or independent contractor; or performing duties for a local administrative unit 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, whether or not 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.

## ANNOTATIONS

**The 2011 amendment,** effective July 1, 2011, in Subsection E, required retired members who return to employment to pay the educational retirement fund a

nonrefundable amount equal to the contributions the member would be required to pay if the member were a non-retired employee; and reduced the amount of the local administrative unit contribution by eliminating the requirement that the local administrative unit contribute an amount equal to the total of the member contribution in addition to the local administrative unit contribution specified in Section 22-11-21 NMSA 1978.

**The 2009 amendment,** effective July 1, 2009, in Subsection A, deleted "continuing until January 1, 2012"; deleted "been employed as an employer or independent contractor by" and added "rendered service to"; deleted "to the commencement of employment or reemployment with a local administrative unit"; in Subsection B, deleted "and is reemployed by a local administrative unit may continue employment at the" and added "may, at any time prior to January 1, 2022, return to employment for a"; in Subsection C, added the reference to Subsection F; added Subsection D; in Subsection E, added the reference to Subsection F; deleted "unit's contributions as specified in that act shall be paid to the fund as" and added new language; in Subsection F, deleted "continuing until January 1, 2012"; deleted "and who has not been employed as an employee or independent contractor" and added new language; and added Subsections G and H.

**The 2003 amendment,** effective June 20, 2003, inserted "Except as provided in Subsections B and E of this section" near the beginning of Subsection A, inserted present Subsections B and E; renumbered former Subsections B and C as Subsections C and D, inserted "or B" following "Subsection A" in present Subsection C; and in Subsection D, inserted "pursuant to Subsections A or B of this section" following "employment" and "local" preceding "administrative."

## 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 in the Educational Retirement Act.

B. An employee who continues to receive retirement benefits pursuant to the Public Employees Retirement Act and who does not make contributions to the fund is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of employment with a local administrative unit.

C. Nothing in this section shall affect the obligation of a local administrative unit to make contributions to the fund as required in the Educational Retirement Act.

**History:** Laws 2003, ch. 248, § 1.

## 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.

**ANNOTATIONS**

**The 2003 amendment,** effective June 20, 2003, in Subsection A inserted "Subsection A of" following "pursuant to" near the beginning and substituted "rate set by the board," for "average rate earned by the fund during the preceding five fiscal years," near the end; and inserted "of Subsection A" following "Option C" near the beginning of Subsection B.

**The 1999 amendment,** effective June 18, 1999, in Subsection A substituted the language beginning "an amount" to the end for "the difference, if any, between the member's total contribution and total benefits received prior to last reemployment, plus contributions made by the member during the period of last reemployment".

**The 1993 amendment,** effective June 18, 1993, substituted "retirement" for "retiring" in the introductory paragraph and substituted the language beginning "last reemployment" for "death" at the end of Subsection A.

## 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.

**ANNOTATIONS**

**Cross references. —** For retirement eligibility generally, *see* 22-11-23 NMSA 1978.

**The 2013 amendment,** effective July 1, 2013, permitted a member who is eligible for retirement benefits to retire upon satisfaction of the applicable age and earned service requirements; in Subsection A, after "A member", added "who is"; in Subsection B, at the beginning to the sentence, deleted "A member" and added "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" and after "at any time", deleted "after his age and his earned service credit equal the sum of seventy-five if the contributions he has made are left in the fund" and added "upon satisfying the applicable age and earned service requirements for retirement"; deleted former Subsection C, which provided for the retirement of a member who has five years or more of earned service credit; and in Subsection C, after "A member shall", added "not" and after "employment falls within", deleted "exceptions" and added "an exception".

**The 2003 amendment,** effective June 20, 2003, added "unless the employment falls within exceptions established by statute or rule of the board" at the end of Subsection D.

## 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.

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, 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 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 may exercise a one-time irrevocable option to designate another individual as the 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 designated beneficiary other than 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 I 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 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 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 estate of the member.

H. 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.

I. 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 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.

## ANNOTATIONS

**Cross references.** — For payment of benefits upon death during reemployment, *see* 22-11-26 NMSA 1978.

For disability benefits, *see* 22-11-35 to 22-11-40 NMSA 1978.

**The 2017 amendment,** effective June 16, 2017, added a new retirement benefits option; added new Paragraph A(1) and redesignated former Paragraphs A(1) and A(2) as Paragraphs A(2) and A(3), respectively; and deleted Subsection J, which related to certain void elections of benefit options.

**The 2011 amendment,** effective July 1, 2011, added Subsection D to permit a retired member who, because of the death of a designated beneficiary, is being paid an adjusted annuity pursuant to Subsection C to designate another beneficiary upon the death of the initial designated beneficiary and to be paid under either option B or C, subject to recalculation of the amount of the pension, court-ordered divisions of community property and payment of child support obligations, and payment of the prescribed fee; added Subsection E to permit a retired member to deselect a living designated beneficiary and designate another beneficiary, subject to recalculation of the amount of the annuity and payment of the prescribed fee; and in Subsection J, provided that elections of payment options on file with the director on June 30, 1984 by members who have not retired prior to June 30, 1984 are void.

**The 2003 amendment,** effective June 20, 2003, inserted "of Subsection A of this section" following "Option B or C" near the beginning of Subsection C; in Subsection D, inserted "of Subsection A of this section" following "Option B" and substituted "set by the board" for "earned by the fund during the preceding fiscal year" following "plus interest at the rate" near the middle; in Subsection E, inserted "of Subsection A of this section" following "Option B or C" near the beginning and substituted "rate set by the board" for "average rate earned by the fund during the preceding five fiscal years" following "interest at the" near the middle; and substituted "rate set by the board" for "rate earned by the fund during the preceding fiscal year" following "interest at the rate" near the middle of Subsection G.

**The 1999 amendment,** effective June 18, 1999, inserted the language beginning "plus accumulated" and ending "fiscal years" in Subsection E, and made a minor stylistic change.

**Amendment is not retroactive.** — The 1999 amendment (Laws 1999, ch. 93, § 2) to Subsection E of Section 22-11-29 NMSA 1978, which provided for the payment of interest on refunds of accumulated contributions, applies prospectively only. *Wood v. N.M. Educ. Ret. Bd.*, 2011-NMCA-020, 149 N.M. 455, 250 P.3d 881, cert. denied, 2011-NMCERT-001.

Where decedent elected to receive a single life annuity when decedent retired in 1998 and decedent died in 1998, the 1999 amendment (Laws 1999, ch. 93, § 2) to Subsection E of Section 22-11-29 NMSA 1978 did not apply, and decedent's beneficiary was not entitled to receive interest on the amount of decedent's accumulated contribution that was paid to the beneficiary. *Wood v. N.M. Educ. Ret. Bd.*, 2011-NMCA-020, 149 N.M. 455, 250 P.3d 881, cert. denied, 2011-NMCERT-001.

## 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 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. A member's average annual salary, pursuant to this section, shall be computed on the basis of the last five years for which contribution was made or upon the basis of any consecutive five years for which contribution was made by the member, whichever is higher; provided, however, that lump-sum payments made after July 1, 2010 of accrued sick leave or annual leave shall be excluded from the calculation of salary.

K. Unless otherwise required by the provisions of the Internal Revenue Code of 1986, members shall begin receiving retirement benefits by age seventy years and six months, or upon termination of employment, whichever occurs later.

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.

## ANNOTATIONS

**Cross references.** — For the Internal Revenue Code of 1986, *see* 26 U.S.C.

**The 2013 amendment,** effective July 1, 2013, provided for the reduction of retirement benefits; in the title of the section, added "reductions"; in Subsection G, in the introductory sentence, after "benefits for a member", deleted "age sixty or over, retired" and added "who retires"; added Paragraphs (1) and (3) of Subsection G; in Paragraph (2) of Subsection G, at the beginning of the sentence, added "the benefit formula provided in"; in Subparagraph (a) of Paragraph (1) of Subsection H, after the word "six-tenths", deleted "of one", after "retirement occurs prior to the", deleted "member's sixty-fifth birthday" and added "member attaining the age of sixty-five years", and after "but after the", deleted "sixtieth birthday" and added "member attains the age of sixty years";

in Subparagraph (b) of Paragraph (1) of Subsection H, after "retirement occurs prior to the", deleted "member's sixtieth birthday" and added "member attaining the age of sixty years; and"; added Paragraph (2) of Subsection H; and added Subsection I.

**The 2009 amendment,** effective July 1, 2011, in Subsection D, replaced each occurrence of "his" with "the member's"; in Subsection G, after "retired pursuant to", deleted "the Educational Retirement Act" and added "Section 22-11-23 NMSA 1978"; added Subsection H; and in Subsection I, after "whichever is higher", added the remainder of the sentence.

**The 2003 amendment,** effective June 20, 2003, inserted "credit" following "years earned service" near the end of Subsection F; and inserted "Unless otherwise required by the provisions of the Internal Revenue Code of 1986," at the beginning of the second sentence of Subsection H.

**The 1993 amendment,** effective June 18, 1993, added the second sentence of Subsection H.

**The 1991 amendment,** effective June 14, 1991, inserted "but not later than June 30, 1991" near the beginning of Subsection F; added Subsection G; redesignated former Subsection G as Subsection H; and made a minor stylistic change in Subsection D.

**Exemption from income tax permitted. —** The legislature may grant a special income tax exemption to one kind of public employee, teachers, yet deny the same exemption to other public employees. *Vaughn v. State Taxation & Revenue Dep't*, 1982-NMCA-112, 98 N.M. 362, 648 P.2d 820, superseded by statute, *Pierce v. State*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288.

**Repeal of tax exemption. —** Because no private contractual rights were granted by the retirement plan, there was no impairment or breach of contract resulting from the 1990 repeal of the tax exemption provision and, although the plan conferred property rights that vested upon accumulating minimum earned service credits, those rights did not include the right to receive pension benefits exempt from tax. *Pierce v. State*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288.

Because the retirement plan provided no contractual or vested right to receive an irrevocable tax exemption, there was no constitutionally protected private interest in the tax exemption and there was no due process violation when the exemption was repealed. *Pierce v. State*, 1996-NMSC-001, 121 N.M. 212, 910 P.2d 288.

**"Trading" tax exemptions for health care. —** Repeal of the state income tax exemptions for teacher pensions and public employee pensions does not remedy constitutional defects of the proposed retiree health care act under a theory that those exemptions would be "traded" for retiree health care. Those exemptions are not property rights, irrepealable contractual entitlements, or pension benefits. Hence, elimination of the favorable tax treatment for current retirees is not consideration for a

multi-million dollar health care plan that the state proposes to provide them. 1990 Op. Att'y Gen. No. 90-03.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** What constitutes "salary," "wages," "pay," or the like, within pension law basing benefits thereon, 14 A.L.R.2d 634.

## 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.

**ANNOTATIONS**

**Cross references.** — For Section 415 of the Internal Revenue Code, *see* 26 U.S.C. § 415.

## 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.

## ANNOTATIONS

**The 2017 amendment,** effective June 16, 2017, removed outdated provisions and made technical changes to the section; in Subsection D, after "the age of sixty-five", added "years"; in Subsection F, after "returns to work", added "and suspends retirement", and after "time of the member's", deleted "final" and added "latest"; and deleted Subsection H, which related to 1999 adjustments to benefits.

**The 2013 amendment,** effective July 1, 2013, delays cost of living adjustments; in the title of the section, added "eligibility; based on funded ratio"; added Paragraphs (5) and (6) of Subsection A; in Subsection B, in the introductory sentence, after "1984", deleted "each annuity shall"; in Paragraph (1) of Subsection B, at the beginning of the sentence, added "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"; added Paragraph (2) of Subsection B; in Subsection C, added "Beginning on July 1, 2013 and on each July 1 thereafter"; in Paragraph (1) of Subsection C, at the beginning of the sentence, added "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", after "greater, the annuity", added "adjustments provided for under Subsection B of this section", after "adjustment factor", deleted former language which provided for an adjustment factor of between two and four percent based on the increase in the consumer price index, and added "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"; added Subparagraphs (a) and (b) of Paragraph (1) of Subsection C; added Paragraphs (2), (3) and, (4) of

Subsection C; in Subsection E, in the introductory sentence, after "who", deleted "retires", in Paragraph (1) of Subsection E, at the beginning of the sentence, added "retires pursuant to Subsection A of Section 22-11-23 NMSA 1978 or Subsection A of Section 22-11-23.1 NMSA 1978" and after "member's annuity adjusted", deleted "annually and cumulatively" and added "as provided in Subsections B and C of this section"; added Paragraph (2) of Subsection E; and in Subsection G, after "a member who", added "is certified by", and after "certified by the board", deleted "certifies was".

**The 2010 amendment,** effective July 1, 2010, in Subsection B, in the second sentence, after "adjustment factor that results in", deleted "either", and after "one-half of the percentage increase", deleted "or decrease"; in the third sentence, after "that the percentage increase", deleted "or decrease" and after "same as the percentage increase", deleted "or decrease"; deleted the former fourth sentence, which provided that no negative adjustment in the retirement benefit shall reduce the member's benefit below that which the member received on the date of retirement; and added the last sentence.

**The 1999 amendment,** effective June 18, 1999, inserted 'Public Employees" in Paragraph A(2), substituted "who" for "whom" in Subsection E, and in Subsection F substituted "1999" for "1991" and inserted "the last".

**The 1991 amendment,** effective June 14, 1991, designated formerly undesignated provisions as Subsections C and D; deleted former Subsection C, relating to adjustment of benefits of persons receiving an annuity as of June 30, 1987; added Subsections E and F; and made a minor stylistic change in Subsection B.

**Property right in cost-of-living adjustments.** — Any future cost-of-living adjustment to a retirement benefit is merely a year-to-year expectation that, until paid, does not, under the New Mexico constitution, create a vested property right in an annual cost-of-living adjustment calculated according to the statutory formula in effect on the date of the retiree's eligibility for retirement. Once paid, the cost-of-living adjustment becomes a part of the retirement benefit and a property right subject to constitutional protections. *Bartlett v. Cameron*, 2014-NMSC-002.

Where the legislature amended Section 22-11-31 NMSA 1978 in 2013 to reduce future amounts educational retirees might receive as a cost-of-living adjustment; and retirees sought to compel the education retirement board to pay them an annual cost-of-living adjustment, for the entirety of their retirement, calculated according to the cost-of-living adjustment formula in effect on the date of their retirement on the grounds that under Article XX, Section 22 of the New Mexico constitution, the retirees had a vested property interest in future cost-of-living adjustments based on the formula in effect on the date of their retirement, a cost-of-living adjustment to a retirement benefit is provided independently from the obligation and payment of a retirement benefit and retirees do not have a vested property interest in an annual cost-of-living adjustment calculated in accordance with the formula in effect at the time they were eligible for retirement. *Bartlett v. Cameron*, 2014-NMSC-002.

## 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.

**ANNOTATIONS**

**Cross references.** — For effect of article upon benefits being paid under laws repealed by article or under laws establishing public employees retirement association, *see* 22-11-44 NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references. —** For reciprocal service credits under Public Employees Retirement Reciprocity Act, *see* 10-13A-4 NMSA 1978.

**The 2017 amendment,** effective June 16, 2017, removed the provision that allowed the educational retirement board to accept installment payments for allowed service credit; in Subsection B, after "period of time when", deleted "he" and added "the member"; and in Subsection C, deleted the last sentence of the section which provided "These payments may be made in installments, and, if the payments made to the fund are insufficient for the restoration of any full year of earned service credit, the member shall be certified to have acquired earned service credit for that period of time which is proportionate to the payments made.".

**The 2003 amendment,** effective June 20, 2003, substituted "set by the board" for "earned by the fund during the five-year period immediately preceding the application for the earned service-credit" following "rate of interest" near the middle of Subsection C.

## 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.

## ANNOTATIONS

**Cross references.** — For reciprocal service credits under Public Employees Retirement Reciprocity Act, *see* 10-13A-4 NMSA 1978.

For the federal Uniformed Services Employment and Reemployment Rights Act, *see* 38 U.S.C.S. § 4301 et seq.

For the Internal Revenue Code of 1986, *see* 26 U.S.C.

**The 2017 amendment,** effective June 16, 2017, removed the provision that allowed the educational retirement board to accept installment payments for allowed service credit; in Subsection B, after the first sentence, deleted the next two sentences which related to the purchase of allowed service credit by installments; and deleted Subsection E, which related to the applicability dates of the provisions of this section.

**The 2009 amendment,** effective July 1, 2009, in Paragraph (3) of Subsection A, deleted the former language of the paragraph which provided for credit if the member contributed a sum equal to ten and one half percent of average annual salary for the time the member acquired earned service credit; added Subparagraphs (a) through (d) of Paragraph (3) of Subsection A; and added Subsection D.

**The 2003 amendment,** effective June 20, 2003, substituted "July 1, 1967" for "the effective date of the Educational Retirement Act" following "employed prior to" near the beginning of Paragraph A(1); substituted "July 1, 1967" for "the effective date of the Educational Retirement Act" near the end of Subparagraph A(4)(c); in Subsection B deleted "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 twelve percent of the member's annual salary at the time payment is made if the member is employed or twelve percent times the member's annual salary during the member's last year of employment if the member is not employed at the time of payment. Contributions paid for the member who is not employed shall bear interest at the average rate earned by the fund during the five-fiscal-year period immediately preceding the date of payment. Such interest shall run from the date the member last terminated employment to the date of payment." at the beginning, and substituted "by that act. 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." for "thereby" at the end.

**The 1998 amendment,** effective May 20, 1998, inserted "pursuant to the Internal Revenue Code of 1986" near the middle of Subsection A; substituted "a" for "any" throughout the section; in Paragraph A(3), substituted "pursuant to" for "under" and inserted "and subject to the federal Uniformed Services Employment and Reemployment Rights Act of 1994" near the end of the first sentence, and substituted "on" for "upon" in the second sentence; and in Subsection B, deleted "of" following "over a period" and substituted "that" for "which" in the fifth sentence.

**The 1997 amendment,** effective June 20, 1997, in the last sentence of Paragraph A(3), deleted "prior to July 1 1992 or" preceding "three years" and deleted "whichever is later" following "service", and added the fourth sentence in Subsection B.

**The 1993 amendment,** effective June 18, 1993, rewrote Subparagraph (4)(d) of Subsection A which read "in any private school in New Mexico accredited by the state board of education"; inserted "or employer" in the first sentence and substituted "paid for the member" for "paid by the member" in the second sentence of Subsection B; substituted "Paragraphs (1) through (4) of Subsection A of this section" for "those Paragraphs" in Paragraph (2) of Subsection C; and made a minor stylistic change in Subsection A.

**The 1989 amendment,** effective July 1, 1989, in Subsection A(1) substituted "employed" for "serving as a teacher or administrator" in the first sentence; in Subsection A(3) inserted "or the commissioned corps of the public health service" in the first sentence, substituted "1992" for "1987" in the last sentence, and deleted "military" preceding "service" throughout the subsection; in Subsection A(4) deleted "a teacher or administrator" at the beginning of Subparagraphs (a) through (c) and deleted "a certified teacher or certified administrator" at the beginning of Subparagraph (d); and in Subsection B substituted all of the present language of the first sentence following "equal to" for "the prevailing combined percentage of contributions of members and

local administrative units in effect at the time of application for allowed service-credit times the member's annual salary if the member is employed, or time the member's annual salary during the member's last year of employment if the member is not employed at the time of the application" and inserted "at the discretion of the board" in the fourth sentence.

**Public health service officers.** — Active duty as a uniformed commissioned officer in the United States public health service qualifies as "military service" pursuant to Subsection (A)(3) in the following situations: (1) When the service was performed while the commissioned corps was declared to be a military service pursuant to 42 U.S.C. § 217, or (2) when the officer was detailed to a branch of the armed services, as 10 U.S.C. § 101(4) defines that term. 1987 Op. Att'y Gen. No. 87-73.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Services included in computing period of service for purpose of teachers' seniority, 2 A.L.R.2d 1033.

## 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.

### ANNOTATIONS

**The 2017 amendment,** effective June 16, 2017, removed the provision that required applicants for disability benefits to submit to a medical examination by a doctor approved by the educational retirement board, and required applicants for disability benefits to submit his or her medical records in support of the applicant’s disability claim; in Subsection A, substituted "the member" for "he" or "his" throughout the subsection, and after "earned", changed "service-credit" to "service credit"; and in Subsection B, after "submit", deleted "himself to a medical examination by the medical authority" and added "medical records as required by the board in support of the applicant’s disability claim".

**Scope of board's authority.** — The legislature, through this section has granted the board the authority to award disability benefits if certain requirements are met. If the board certifies the eligible member to be totally disabled, the board must award benefits.

Once the determination of total disability is made, it is the duty of the board to certify the member as disabled. There is nothing in this grant of authority which authorizes the board to refuse to accept an application for disability if the applicant continues to hold a property interest in a bus contract. *Gonzales v. N.M. Educ. Retirement Bd.*, 1990-NMSC-024, 109 N.M. 592, 788 P.2d 348, cert. denied, 498 U.S. 818, 111 S. Ct. 61, 112 L. Ed. 2d 36 (1990).

## 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.

**ANNOTATIONS**

**Cross references.** — For reports of improved health by members receiving disability benefits, *see* 22-11-39 NMSA 1978.

For suspension of payments for failure to make reports, *see* 22-11-40 NMSA 1978.

**The 2017 amendment,** effective June 16, 2017, required members who are receiving disability benefits to annually submit current medical records in support of the member's continuing disability claim, required the medical authority to make recommendations regarding the member's continuing disability claim, and provided for the suspension of disability benefits if the member fails to submit medical records; in Subsection A, after "designated by the", deleted "medical authority" and added "board", after "in each year of", deleted "his" and added "the member's", after "present", deleted "himself" and added "current medical records", after "the medical authority", deleted "for a medical re-examination" and added "in support of the applicant's continuing disability claim", and after "The medical authority shall", deleted "certify to the director after each medical examination whether there is a substantial betterment of the member's disability" and added "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", and after "commensurate with", deleted "his" and added "the member's"; in Subsection B, after "shall be suspended if", deleted "a certificate of medical re-examination by the medical authority is not filed with the director" and added "the member fails to submit medical records to the medical authority", after "member should have", deleted "been re-examined" and added "submitted the medical records and", after "failure to", deleted "file the certificate" and added "submit the medical records", after "refusal of the member to", deleted "report for the medical re-examination" and added "do so", and after "only after the member has", deleted "complied with the requirements of the Educational Retirement Act" and added "submitted current medical records to the board and the board has determined that the member is totally disabled"; in Subsection C, after "require", deleted "further or more frequent medical examinations of members having a disability status" and added "that the member obtain an independent medical examination; provided that the examination is performed at the board's expense"; and deleted former Subsection D, which related to a member's inability to report for a medical examination, and redesignated former Subsection E as new Subsection D.

**The 2003 amendment,** effective June 20, 2003, in Subsection A added "Unless designated by the medical authority as being permanently disabled," at the beginning and deleted "or is not" following "whether there is" near the middle; inserted "who is" following "disability benefits" near the beginning of Subsection D; and added Subsection E.

## 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.

**ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, in Subsection A, substituted "two percent" for "one and one-half percent" in the first sentence and in Paragraph (1); inserted "annual" preceding "salary" in Subsection B; and made minor stylistic changes in Subsections A and B.

## 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.

**ANNOTATIONS**

**Cross references.** — For requirement of reports and examinations of members receiving disability benefits generally, *see* 22-11-36 NMSA 1978.

**The 2017 amendment,** effective June 16, 2017, in Subsection A, after "improvement in", deleted "his" and added "the member's", after "thirty days after", deleted "he" and added "the member"; and in Subsection B, after "petty", changed "misdeameanor" to "misdemeanor".

## 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.

### ANNOTATIONS

**Cross references.** — For suspension of benefits upon failure to file certificate of reexamination, *see* 22-11-36 NMSA 1978.

**The 2017 amendment,** effective June 16, 2017, removed the provision related to the suspension of disability benefits for the failure of a member to make a required report; in the catchline, deleted "Reports"; deleted Subsection A, which related to the suspension of disability benefits for the failure of a member to make a required report, and deleted the subsection designation "B."; in the undesignated paragraph, after "director", deleted "he" and added "the member", after "forfeit", deleted "his", after "disability or retirement benefits", deleted "he" and added "the member", and after "former member or", deleted "his" and added "the former member's".

## 22-11-41. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1993, ch. 69, § 11 repealed 22-11-41 NMSA 1978, as enacted by Laws 1967, ch. 16, § 164, relating to prohibitions on insurance and continued eligibility

after retirement, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 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.

## ANNOTATIONS

**Cross references.** — For rules governing garnishment and writs of execution in the district, magistrate, and metropolitan courts, *see* Rules 1-065.1, 2-801, and 3-801 NMRA, respectively.

For form for claim of exemptions on executions, *see* Rule 4-803 NMRA.

For form for order on claim of exemption and order to pay in execution proceedings, *see* Rule 4-804 NMRA.

For form for application for writ of garnishment and affidavit, *see* Rule 4-805 NMRA.

For form for notice of right to claim exemptions from execution, *see* Rule 4-808A NMRA.

For form for claim of exemption from garnishment, *see* Rule 4-809 NMRA.

**The 2003 amendment,** effective June 20, 2003, added "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." at the end of Subsection B; and added "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." at the end of Subsection C.

**The 1991 amendment,** effective July 1, 1991, in Subsection A, inserted "guarantee fund or similar assessment"; in Subsection B, in the second sentence, inserted "or participant" and in two locations in the third sentence inserted "or a carrier or contractor for the alternative retirement plan"; in Subsection C, in the second and third sentences, inserted "or a carrier or contractor for the alternative retirement plan" and, in the fourth sentence, inserted "or participant" twice and "or alternative retirement plan".

**The 1990 amendment,** effective May 16, 1990, deleted "Tax exemption" in the catchline, deleted "and shall also be exempt from any state income tax" at the end of Subsection A and substituted "board" for "association" at the end of the second sentence of Subsection C.

**The 1989 amendment,** effective June 16, 1989, added "child support obligations" to the catchline; substituted "Subsections B and C" for "Subsection B" in Subsection A; substituted "Educational" for "Education" in the first sentence of Subsection B; and added Subsection C.

## 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.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, made technical changes; in Subsection C, after "public employees retirement association", deleted "of New Mexico"; and in Subsection D, after "No person who was", deleted "heretofore", after "monthly benefit", deleted "which" and added "that", after "less than", deleted "he" and added "the person", and after "received had", deleted "his" and added "the person’s".

## 22-11-44.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 69, § 11 repealed 22-11-44.1 NMSA 1978, as enacted by Laws 1982, ch. 37, § 2, relating to the transfer of assets of the New Mexico activities association, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

## 22-11-45. Repealed.

**History:** 1953 Comp., § 77-9-45, enacted by Laws 1967, ch. 16, § 168; repealed by Laws 2017, ch. 21, § 20.

**ANNOTATIONS**

**Repeals.** — Laws 2017, ch. 21, § 20 repealed 22-11-45 NMSA 1978, as enacted by Laws 1967, ch. 16, § 168, relating to elections of the public employees retirement association, payment of contributions, effective June 16, 2017. For provisions of former section, *see* the 2016 NMSA 1978 on *NMOneSource.com*.

## 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. 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 or October 1, 1999, 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.

## ANNOTATIONS

**Cross references. —** For Section 401 of the Internal Revenue Code, *see* 26 U.S.C.S. § 401.

**The 2009 amendment,** effective March 18, 2009, in Subsection A, provided that an employee who fails to make the election shall not later be eligible to be a participant even if the employee is subsequently employed in a position that is eligible for participation and provided that except as provided in Subsection D, an election to become a participant is irrevocable; and added Subsections D and E.

**The 2008 amendment,** effective July 1, 2008, deleted former Subsection D that provided for participation of clinical faculty members of the university of New Mexico health sciences center in the alternative retirement plan.

**The 1999 amendment,** effective June 18, 1999, added Subsection D.

## 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. Each participant shall contribute an amount equal to the percent of the participant's salary that the participant would have been required to contribute as a regular member. The contribution shall be made in the manner provided for by the board.

B. Each qualifying state educational institution shall contribute on behalf of each participant an amount of the participant's salary equal to the contribution that would have been required of the employer if the participant was, instead, a regular member. Of the contribution made by a qualifying state educational institution on behalf of a participant beginning October 1, 1991, or October 1, 1999, whichever is applicable, a sum equal to three percent of the annual salary of each participant shall be contributed to the fund, and the remainder of the contribution shall be paid to the alternative retirement plan as provided by the board; provided, however, that on July 1 following any report by the actuary to the board that concludes that less than three percent of the contributions made by a qualifying state educational institution on behalf of its participants is required to satisfy the unfunded actuarial liability attributable to the

participation of the participants in the alternative retirement plan, the three percent shall be reduced to the percentage determined by the actuary.

C. Contributions required by the provisions of this section may be made by a reduction in salary or by a public employer pick-up pursuant to any applicable provision of 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.

**ANNOTATIONS**

**Cross references.** — For the Internal Revenue Code of 1986, *see* 26 U.S.C.

**The 1999 amendment,** effective June 18, 1999, inserted "or October 1, 1999, whichever is applicable" in the second sentence of Subsection B.

## 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.

**ANNOTATIONS**

**Cross references.** — For Sections 401(a) and 403(a) of the Internal Revenue Code, *see* 26 U.S.C. §§ 401(a) and 403(a), respectively.

## 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.

**ANNOTATIONS**

**Cross references. —** For Section 401(a)(17) of the federal Internal Revenue Code, *see* 26 U.S.C. § 401(a).

**The 2009 amendment,** effective March 18, 2009, in Subsection A, gives a participant the option to have benefits paid in the form of a lifetime income if the benefit is held in an annuity contract, payments for a term of years, or a single-sum cash payment; and added Subsection B.

**The 1999 amendment,** effective June 18, 1999, purported to amend this section but made no change.

## 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.

**ANNOTATIONS**

**Cross references.** — For Sections 401(a)(17) and 403(a) of the federal Internal Revenue Code, *see* 26 U.S.C. §§ 401(a)(17) and 403(a), respectively.

**The 2009 amendment,** effective March 18, 2009, in Subsection A, required the board to solicit proposals for providing 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; in Paragraph (2) of Subsection B, provided that the rights of participants include the right to maintain an account or to transfer the balance of an account to another eligible retirement plan upon termination of employment to the extent permitted under Section 401(a) of the Internal Revenue Code; and in Paragraph (6) of Subsection B, added compliance with Section 401(a) or 403(a) of the Internal Revenue Code as a criteria.

## 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 he is owed because he provided fraudulent information on his 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.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 152 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**The 2010 amendment,** effective May 19, 2010, in Subsection A, after "reported salary", added "retirement and disability benefits".

# ARTICLE 12
# Compulsory School Attendance

## 22-12-1. Short title.

Chapter 22, Article 12 NMSA 1978 may be cited as the "Compulsory School Attendance Law".

**History:** 1953 Comp., § 77-10-1, enacted by Laws 1967, ch. 16, § 169; 2003, ch. 153, § 55.

**ANNOTATIONS**

**Cross references.** — For constitutional provision pertaining to compulsory school attendance, *see* N.M. Const., art. XII, § 5.

**The 2003 amendment,** effective April 4, 2003, substituted "Chapter 22, Article 12 NMSA 1978" for "Sections 22-12-1 through 22-12-7 NMSA 1978" at the beginning of the section.

**Law reviews.** — For comment, "Compulsory School Attendance - Who Directs the Education of a Child? State v. Edgington," see 14 N.M.L. Rev. 453 (1984).

## 22-12-2. Compulsory school attendance; responsibility.

A. Except as otherwise provided, 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 person has graduated from high school or received a high school equivalency credential. A parent may give written, signed permission for the school-age person to leave school in case of hardship approved by the local superintendent.

B. A school-age person subject to the provisions of the Compulsory School Attendance Law shall attend school for at least the length of time of the school year that is established in the school district in which the person is a resident or the state-chartered charter school in which the person is enrolled and the school district or state-chartered charter school shall not excuse a student from attending school except as provided in that law or for parent-authorized medical reasons.

C. Any parent of a school-age person subject to the provisions of the Compulsory School Attendance Law is responsible for the school attendance of that person.

D. Each local school board and each governing body of a charter school or private school shall enforce the provisions of the Compulsory School Attendance Law for students enrolled in their respective schools.

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.

## ANNOTATIONS

**Cross references.** — For age of majority, *see* 28-6-1 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, replaced the term "general educational development certificate" with "high school equivalency credential" in the provision relating to compulsory school attendance in the Compulsory School Attendance Law; and in Subsection A, after "high school or received a", deleted "general educational development certificate" and added "high school equivalency credential".

**The 2007 amendment,** effective July 1, 2007, deleted former Subsection A and added a new Subsection A; and in Subsection B, provided that a school district and a state-chartered school district shall not excuse a student from attending school except as provided by law or for parent-authorized medical reasons. Laws 2007, ch. 307, § 6 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 308, § 6. *See* 12-1-8 NMSA 1978.

**The 2006 amendment,** effective July 1, 2007, in Paragraph (3) of Subsection A, added the governing body of a state-chartered charter school and deleted the reference to guardian or other person having custody and control; in Paragraph (4) of Subsection A,

added the head administrator of the state-chartered charter school; in Subsection B, added the state-chartered charter school in which the person is enrolled; and in Subsection D, added the governing body of a charter school.

**The 2004 amendment,** effective May 19, 2004, deleted from Paragraph (4) of Subsection A and Subsection C, "guardian or person having custody or control" and added new Subsection D.

**The 2001 amendment,** effective June 15, 2001, substituted "seventeen years" for "sixteen years" in Paragraph A(3).

**The 1997 amendment,** effective June 20, 1997, deleted former Paragraph A(5) relating to persons with learning disabilities or mental, physical or emotional conditions being excused from compulsory school attendance, and made minor stylistic changes at the end of Paragraphs A(3) and (4).

**Duty to protect children.** — Compulsory attendance laws in no way restrain a child's liberty so as to render the child and his parents unable to care for the child's basic needs. Thus, the state does not incur under the due process clause an affirmative duty to protect school children who attend state-run schools from deprivations by private actors merely on the basis of compulsory attendance laws. *Maldonado v. Josey*, 975 F.2d 727 (10th Cir. 1992), cert. denied, 507 U.S. 914, 113 S. Ct. 1266, 122 L. Ed. 2d 662 (1993).

**Constitutionality of prohibiting home instruction.** — The exclusion of home instruction by a parent, guardian or custodian of a child from satisfying the requirements of the compulsory school attendance law does not violate equal protection as guaranteed in the United States and New Mexico constitutions. *State v. Edgington*, 1983-NMCA-036, 99 N.M. 715, 663 P.2d 374, cert. denied, 464 U.S. 940, 104 S. Ct. 354, 78 L. Ed. 2d 318 (1983) (decided prior to 1985 amendment).

**Legislature did not intend for the law to require a student to attend the public schools** of his district, nor that such a student be required to do so by any rule of any other body. 1973 Op. Att'y Gen. No. 73-59.

**Validity of regulations prohibiting school attendance by certain students.** — A rule which requires the withdrawal of a student when it is known that she is pregnant and when the school officials do not believe that such attendance is proper, clearly violates the compulsory attendance law, therefore, if the girl is physically capable of attending school, the local school board may not prohibit her attendance by rule or regulation merely because she is pregnant. 1967 Op. Att'y Gen. No. 67-117.

**Married students.** — Children under 17 (now 18) years of age may not be excluded or exempted from school because they are married. 1967 Op. Att'y Gen. No. 67-117.

**Law reviews.** — For comment, "Compulsory School Attendance - Who Directs the Education of a Child? State v. Edgington," see 14 N.M.L. Rev. 453 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 68 Am. Jur. 2d Schools § 253 et seq.

Releasing public school pupils from attendance for purposes of attending religious-education classes, 2 A.L.R.2d 1371.

Religious beliefs of parents as defense to prosecution for failure to comply with compulsory education law, 3 A.L.R.2d 1401.

Marriage or pregnancy of public school student as ground for expulsion, exclusion or restriction of activities, 11 A.L.R.3d 996.

Participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college, 32 A.L.R.3d 864.

What constitutes "private school" within statute making attendance at such a school compliance with compulsory school-attendance law, 65 A.L.R.3d 1222.

Conditions at school as excusing or justifying nonattendance, 9 A.L.R.4th 122.

Validity of regulation of athletic eligibility of students voluntarily transferring from one school to another, 15 A.L.R.4th 885.

79 C.J.S. Schools and School Districts §§ 463 to 474.

## 22-12-2.1. Interscholastic extracurricular activities; student participation.

A. A student shall have a 2.0 grade point average on a 4.0 scale, or its equivalent, either cumulatively or for the grading period immediately preceding participation, in order 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 special education students placed in class C and class D programs.

B. No student shall be absent from school for school-sponsored interscholastic extracurricular activities in excess of fifteen days per semester, and no class may be missed in excess of fifteen times per semester.

C. The provisions of Subsections A and B of this section apply only to interscholastic extracurricular activities.

D. The state superintendent [secretary] may issue a waiver relating to the number of absences for participation in any state or national competition. The state superintendent

shall develop a procedure for petitioning cumulative provision eligibility cases, similar to other eligibility situations.

E. Student standards for participation in interscholastic extracurricular activities shall be applied beginning with a student's academic record in grade nine.

**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.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 1997 amendment,** effective June 20, 1997, inserted "interscholastic" at the beginning of the section heading and throughout the section; in Subsection C, substituted "only to interscholastic" for "to all"; and in Subsection E, substituted "academic record in grade nine" for "second semester of grade eight" at the end. Laws 1997, ch. 239, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 1997, ch. 245, § 1. *See* 12-1-8 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, deleted "Effective with the 1986-87 school year," at the beginning of Subsections A and B and substituted "fifteen days" and "fifteen times" for "ten days" and "ten times" in Subsection B.

**The 1988 amendment,** effective May 18, 1988, deleted former Subsections C and D, regarding absences in the 1989-90 and 1990-91 school years, and redesignated former Subsections E to G as present Subsections C to E, substituting "Subsections A and B" for "Subsections A through D" in present Subsection C.

## 22-12-3. Religious instruction excusal.

A student may, subject to the approval of the school principal, be excused from school to participate in religious instruction for not more than one class period each school day with the written consent of the student's parents at a time period not in conflict with the academic program of the school. The local school board or governing body of a charter school, and its school employees, shall not assume responsibility for the religious instruction or permit it to be conducted on school property.

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.

**ANNOTATIONS**

**Cross references.** — For constitutional right to freedom of religion, *see* N.M. Const., art. II, § 11.

For prohibition against requiring attendance at or participation in religious services by teachers or students, *see* N.M. Const., art. XII, § 9.

**The 2006 amendment,** effective July 1, 2007, added the governing body of a charter school.

**The 2003 amendment,** effective April 4, 2003, deleted "local" following "approval of the" near the beginning of the section; substituted "principal" for "board" following "school" near the beginning of the section; and inserted "school" preceding "employees shall not" near the end of the section.

**The 1997 amendment,** effective July 1, 1997, substituted "class period" for "hour" in the first sentence and substituted "religious instruction or permit it" for "religious instructions or permit them" in the second sentence.

## 22-12-3.1. Excused absences for pregnant and parenting students.

A. Each school district and charter school shall maintain an attendance policy that:

(1) provides at least ten days of excused absences for a student who provides documentation of the birth of the student's child and provides excused absences for any additional days missed by a pregnant or parenting student for which a longer period of absence is deemed medically necessary by the student's physician; provided that the student shall be allowed a time period to make up the work that the student missed that equals the number of days the student was absent for the birth of a child; and

(2) provides four days per semester of excused absences, in addition to the number of allowed absences for all students, 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 allows the student a time period to make up the work that the student missed that equals the number of days the student was absent.

B. The pregnant or parenting student is responsible for communicating the student's pregnancy and parenting status to the appropriate school personnel if the student chooses to disclose the information.

C. The school district or charter school shall provide a copy of the pregnant and parenting student absence policies to all students in middle, junior high and high schools.

History: Laws 2013, ch. 198, § 1.

**ANNOTATIONS**

**Compiler's notes.** — Section 22-12-13.1 NMSA 1978 was incorrectly compiled without the House Education Committee amendments. The corrected version of the section is set out above and includes the following changes: in Subsection A(1), after the first occurrence of "provides", added "at least", and after "of the student's child", added "and provides excused absences for any additional days missed by a pregnant or parenting student for which a longer period of absence is deemed medically necessary by the student's physician;"; and in Subsection A(2), after "provides four days", added "per semester" and after "of excused absences", added "in addition to the number of allowed absences for all students,".

**Effective dates.** — Laws 2013, ch. 198 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

## 22-12-4. Right to education.

All school age persons in the state shall have a right to a free public education as follows:

A. except for school age persons who are detained or enrolled in state institutions other than those school age persons provided for in Subsection C of this section, any school age person shall have a right to attend public school within the school district in which he resides or is present;

B. except as provided in Subsection C of this section, the state institution in which a school age person is detained or enrolled shall be responsible for providing educational services for the school age person; and

C. any 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 the health and environment department [department of health] shall have a right to attend public school in the school district in which the institution, in which he is a client, is located if:

(1) the school age person has been recommended for placement in a public school by the educational appraisal and review committee of the district in which the institution is located; or

(2) the school age person has been recommended for placement in a public school as a result of the appeal process as provided in the special education regulations of the state board [department] of education.

**History:** 1953 Comp., § 77-10-3, enacted by Laws 1967, ch. 16, § 171; reenacted by Laws 1978, ch. 211, § 10.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**No contractual right to free public education.** — The right and privilege to a free public education does not give rise to a contractual relationship for which an individual may sue for breach of contract. *Rubio v. Carlsbad Mun. Sch. Dist.*, 1987-NMCA-127, 106 N.M. 446, 744 P.2d 919.

**School board may allocate attendance within district.** — So long as the statutory and constitutional minimum educational standards are satisfied, the local school board may allocate attendance within the district. 1979 Op. Att'y Gen. No. 79-36.

**Students may not be forced to attend particular public school,** although enrollment in another school within or without the local district is subject to availability of accommodations and must be determined by the local board. 1979 Op. Att'y Gen. No. 79-36.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.

## 22-12-5. School attendance.

A. Local school boards may admit 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 permit school-age persons to transfer to a school outside the child's attendance zone but within the school district when there are sufficient school accommodations to provide for them.

C. Local school boards may charge a tuition fee for the right to attend public school within the school district only 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 school-age person similarly situated within the school district for the current school year.

D. When the parent or guardian of a student not living in the state pays an ad valorem property tax for school purposes within the district, the amount of the tuition payable for the school year shall be reduced by the district average ad valorem tax per pupil as determined by the ad valorem tax credit utilized in calculating state equalization guarantee distribution.

**History:** 1953 Comp., § 77-10-4, enacted by Laws 1967, ch. 16, § 172; 1979, ch. 55, § 1; 1990 (1st S.S.), ch. 9, § 11.

**ANNOTATIONS**

**The 1990 (1st S.S.) amendment,** effective June 18, 1990, substituted "the school district" for "their school district" in Subsection A, added present Subsection B, redesignated former Subsections B and C as present Subsections C and D, adding "distribution" at the end of Subsection D.

**Child who lives in state is state resident.** — For the purpose of public school education, a child is considered a resident of the state if he lives in the state. 1978 Op. Att'y Gen. No. 78-14 (rendered under former law).

**Students may not be forced to attend particular public school,** although enrollment in another school within or without the local district is subject to availability of accommodations and must be determined by the local board. 1979 Op. Att'y Gen. No. 79-36.

**Tuition assessment is mandatory** although Subsection B (now C) uses the word "may." 1978 Op. Att'y Gen. No. 78-14 (rendered under former law).

**Law reviews.** — For comment, "Compulsory School Attendance - Who Directs the Education of a Child? State v. Edgington," see 14 N.M.L. Rev. 453 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Determination of residence or nonresidence for purpose of fixing tuition fees or the like in public school or college, 83 A.L.R.2d 497, 56 A.L.R.3d 641.

79 C.J.S. Schools and School Districts §§ 455 to 462.

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 307, § 11 and Laws 2007, ch. 308, § 11 repealed 22-12-6 NMSA 1978, as enacted by Laws 1967, ch. 16, § 174, relating to certificates of

employment, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

## 22-12-7. Enforcement of attendance law; habitual truants; penalty.

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 Compulsory School Attendance Law for students enrolled in their respective schools.

B. To initiate enforcement of the provisions of the Compulsory School Attendance Law against an habitual truant, a local school board or governing body of a charter school or private school or its authorized representatives shall give written notice of the habitual truancy by mail to or by personal service on the parent of the student subject to and in noncompliance with the provisions of the Compulsory School Attendance Law. The notice shall include a date, time and place for the parent to meet with the local school district, charter school or private school to develop intervention strategies that focus on keeping the student in an educational setting.

C. If unexcused absences continue after written notice of habitual truancy as provided in Subsection B of this section has occurred, the student shall be reported to the probation services office of the judicial district where the student resides for an investigation as to whether the student shall be considered to be a neglected child or a child in a family in need of services because of habitual truancy and thus subject to the provisions of the Children's Code [Chapter 32A NMSA 1978]. The probation services office may send a written notice to a parent of the student directing the parent and student to report to the probation services office to discuss services for the student or the family. In addition to any other disposition, the children's court may order the habitual truant's driving privileges to be suspended for a specified time not to exceed ninety days on the first finding of habitual truancy and not to exceed one year for a subsequent finding of habitual truancy.

D. If, after review by the juvenile probation office where the student resides, a determination and finding is made that the habitual truancy by the student may have been caused by the parent of the student, then the matter will be referred by the juvenile probation office to the district attorney's office or any law enforcement agency having jurisdiction for appropriate investigation and filing of charges allowed under the Compulsory School Attendance Law. Charges against the parent may be filed in metropolitan court, magistrate court or district court.

E. A parent of the student who, after receiving written notice as provided in Subsection B of this section and after the matter has been reviewed in accordance with Subsection D of this section, knowingly allows the student to continue to violate the Compulsory School Attendance Law shall be guilty of a petty misdemeanor. Upon the first conviction, a fine of not less than twenty-five dollars ($25.00) or more than one hundred dollars ($100) may be imposed, or the parent of the student may be ordered to perform community service. If violations of the Compulsory School Attendance Law

continue, upon the second and subsequent convictions, the parent of the student who knowingly allows the student to continue to violate the Compulsory School Attendance Law shall be guilty of a petty misdemeanor and shall be 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.

F. The provisions of this section shall apply beginning July 1, 2004.

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.

**ANNOTATIONS**

**The 2009 amendment,** effective June 19, 2009, in Subsection B, in the first sentence, after "habitual truancy by", deleted "certified" and added the last sentence; and in Subsection C, added the second sentence.

**The 2006 amendment,** effective July 1, 2007, in Subsections A and B, added the governing body of a charter school.

**The 2004 amendment,** effective July 1, 2004, added "against habitual truant" and "habitual truancy" throughout the section; deleted "guardian or custodian" and "guardian or one having custody" throughout the section; in Subsection D, deleted "the children's court division or by the district judge of the children's court division", and added the last sentence permitting charges against a parent to be filed in magistrate, metropolitan or district court; and in Subsection F, changed the applicability of the section from July 1, 1987 to July 1, 2004.

**Constitutionality of prohibiting home instruction.** — The exclusion of home instruction by a parent, guardian or custodian of a child from satisfying the requirements of the compulsory school attendance law does not violate equal protection as guaranteed in the United States and New Mexico constitutions. *State v. Edgington*, 1983-NMCA-036, 99 N.M. 715, 663 P.2d 374, cert. denied, 464 U.S. 940, 104 S. Ct. 354, 78 L. Ed. 2d 318 (1983) (decided prior to 1985 amendment to Section 22-12-2 NMSA 1978).

**Law reviews.** — For comment, "Compulsory School Attendance - Who Directs the Education of a Child? State v. Edgington," see 14 N.M.L. Rev. 453 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Conditions at school as excusing or justifying nonattendance, 9 A.L.R.4th 122.

## 22-12-8. Early identification; unexcused absences and truancy.

Notwithstanding the provisions of Section 22-12-7 NMSA 1978, if a student is in need of early intervention, the school district, charter school or private school shall contact the student's parent to inform the parent that the student has unexcused absences from school and to discuss possible interventions. The provisions of this section do not apply to any absence if the parent has contacted the school to explain the absence.

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.

**ANNOTATIONS**

**The 2009 amendment,** effective June 19, 2009, in the first sentence, after "if a student is", deleted "truant" and added "in need of early intervention"; after "charter school", added "or private school"; and after "parent that the student", deleted "is truant" and added "has unexcused absences from school".

**The 2006 amendment,** effective July 1, 2007, added "charter school".

**The 2004 amendment,** effective May 19, 2004, amended this section to require the school district to contact a parent that a student is truant and discuss possible interventions and deleted "legal guardian or custodian".

## 22-12-9. Unexcused absences and truancy; attendance policies.

A. As used in this section and Sections 22-12-7 and 22-12-8 NMSA 1978:

(1) "habitual truant" means a student who has accumulated the equivalent of ten days or more of unexcused absences within a school year;

(2) "student in need of early intervention" means a student who has accumulated five unexcused absences within a school year; and

(3) "unexcused absence" means an absence from school or classes for which the student does not have an allowable excuse pursuant to the Compulsory School Attendance Law or rules of the local school board or governing authority of a charter school or private school.

B. An unexcused absence of two or more classes up to fifty percent of an instructional day shall be counted as one-half day absence, and the unexcused absence of more than fifty percent of an instructional day shall be counted as one full-day absence.

C. Each school district and charter school shall maintain an attendance policy that:

(1) provides for early identification of students with unexcused absences, students in need of early intervention and habitual truants and provides intervention strategies that focus on keeping students in need of early intervention in an educational setting and prohibit out-of-school suspension and expulsion as the punishment for unexcused absences and habitual truancy;

(2) uses withdrawal as provided in Section 22-8-2 NMSA 1978 only after exhausting intervention efforts to keep students in educational settings;

(3) requires that class attendance be taken for every instructional day in every public school or school program in the school district; and

(4) provides for schools to document the following for each student identified as an habitual truant:

(a) attempts of the school to notify the parent that the student had unexcused absences;

(b) attempts of the school to meet with the parent to discuss intervention strategies; and

(c) intervention strategies implemented to support keeping the student in school.

D. The department shall review and approve school district and charter school attendance policies.

E. School districts and charter schools shall report unexcused absences and habitual truancy rates to the department in a form and at such times as the department determines and shall document intervention efforts made to keep students in need of early intervention and habitual truants in educational settings. Locally chartered charter schools shall provide copies of their reports to the school district. The department shall compile school district and charter school reports on rates of unexcused absences and habitual truancy and require school districts and charter schools to certify that the information is being reported consistently.

History: Laws 2004, ch. 28, § 1; 2005, ch. 260, § 2; 2006, ch. 94, § 45; 2009, ch. 193, § 4; 2011, ch. 146, § 1.

## ANNOTATIONS

**The 2011 amendment,** effective June 17, 2011, in Subsection A(1), after "ten" inserted "days".

**The 2009 amendment,** effective June 19, 2009, in Paragraph (2) of Subsection A, deleted "truant" as the defined term and added "student in need of early intervention" as

the defined term, and after "unexcused absences within", deleted "any twenty-day period" and added "a school year"; added Subsection B; in Paragraph (1) of Subsection C, changed "truants" to "students in need of early intervention" and after "expulsion as the punishment for", added "unexcused absences and habitual"; in Paragraph (2) of Subsection C, after "only after exhausting", added "intervention"; added Paragraph (4) of Subsection C; added Subsection D; and in Subsection E, after "charter schools shall report", changed "truancy" to "unexcused absences"; after "determines and shall document", added "intervention"; after "efforts made to keep", deleted "truants" and added "students in need of early intervention"; and added the last sentence.

**The 2006 amendment,** effective July 1, 2007, added charter schools in Paragraph (3) of Subsection A and in Subsections B and C and provided in Subsection C that locally chartered charter schools shall provide copies of reports to the school district.

**The 2005 amendment,** effective June 17, 2005, added Subsection B(2) to provide that each school district shall maintain an attendance policy that uses withdrawal as provided in Section 22-8-2 NMSA 1978 only after exhausting efforts to keep students in educational settings and provided in Subsection D that school districts shall document efforts made to keep truants and habitual truants in educational settings.

## 22-12-10. 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 disruption in the student's education" means a student who experiences one or more changes in 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 as determined by the 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 Family Services Act [Chapter 32A, Article 3A 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 through 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 school or school district shall communicate with the sending school district within two days of the student's enrollment. The sending school or school district shall provide the receiving school or school district with any requested records within two days of having received the receiving school's or school district's communication.

C. A student who has experienced a disruption in the student's education transferring to a new 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 school or schools as soon as the school or school district receives verification from the student's records.

D. For a student who has experienced 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 [Chapter 22 NMSA 1978];

(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.

**History:** Laws 2017, ch. 53, § 1 and Laws 2017, ch. 85, § 1.

**ANNOTATIONS**

**Duplicate laws.** — Laws 2017, ch. 53, § 1 and Laws 2017, ch. 85, § 1, both effective June 16, 2017, enacted identical new sections. The section was set out as enacted by Laws 2017, ch. 85, § 1. *See* 12-1-8 NMSA 1978.

# 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.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 2003, ch. 153, § 57 repeals former 22-13-1 NMSA 1978, as enacted by Laws 1967, ch. 16, § 180, and enacted a new section, effective April 4, 2003.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**The 2016 amendment,** effective May 18, 2016, required the public education department to add lifesaving skills training to health education courses and directed the secretary of the public education department to promulgate rules to implement the training; in Subsection H, after "shall include", added the paragraph designation "(1)", and added new Paragraph (2).

Laws 2016, ch. 17, § 1 and Laws 2016, ch. 18, § 1, both effective May 18, 2016, enacted identical amendments to this section. The section was set out as amended by Laws 2016, ch. 18, § 1. *See* 12-1-8 NMSA 1978.

**Applicability.** — Laws 2016, ch. 17, § 4 and Laws 2016, ch. 18, § 4 provided that lifesaving skills training pursuant to Paragraph (2) of Subsection H of Section 22-13-1 NMSA 1978 and Paragraph (2) of Subsection K of Section 22-13-1.1 NMSA 1978 shall not be required for students in grades nine through twelve who are enrolled in a virtual charter school.

**Temporary provisions.** — Laws 2016, ch. 17, § 3 and Laws 2016, ch. 18, § 3 provided that by December 31, 2016, the secretary of public education shall adopt and promulgate rules to implement the provisions of Laws 2016, ch. 17, §§ 1 and 2, and Laws 2016, ch. 18, §§ 1 and 2.

**The 2014 amendment,** effective May 21, 2014, required all health education courses to include age-appropriate sexual abuse and assault awareness and prevention training that meets federal standards; and added Subsection H.

**Applicability.** — Laws 2014, ch. 9, § 4 provided that the provisions of Laws 2014, ch. 9, §§ 1 through 3 apply to the 2014-2015 school year and subsequent school years.

**The 2009 amendment,** effective June 19, 2009, in Subsection F, added the last sentence.

**The 2007 amendment,** effective July 1, 2007, amended Subsection C to require that first, second and third grade classes provide instruction that meets content and performance standards in science and social studies; and added Subsection E.

Laws 2007, ch. 307, § 7 and Laws 2007, ch. 308, § 7 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 308, § 7. *See* 12-1-8 NMSA 1978.

**The 2005 amendment,** effective April 7, 2005, added kindergarten in Subsection B and provided in Subsection B that students 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; provided in Subsection C that classes shall provide instruction that meets content and performance standards shall be provided in physical education and health education; added health education in Subsection D(13); and added Subsection F to provide that in ninth through twelfth grades, instruction that meets academic content and performance standards shall be provided in health education.

## 22-13-1.1. Graduation requirements.

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

B. Each student must complete a final next-step plan during the senior year and prior to graduation. The plan shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent and the student's guidance counselor or other school official charged with coursework planning for the student.

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

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

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

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

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

E. The secretary shall:

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

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

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

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

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

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

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

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

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

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

(5) one unit in physical education;

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

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

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

Financial literacy shall be offered as an elective. Pre-apprenticeship programs may be offered as electives. Media literacy may be offered as an elective.

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

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

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

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

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

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

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

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

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

(7) seven and one-half elective units that meet department content and performance standards. Career and technical education courses shall be offered as an

elective. Student service learning shall be offered as an elective. Financial literacy shall be offered as an elective. Pre-apprenticeship programs may be offered as electives. Media literacy may be offered as an elective.

K. For students entering the eighth grade in the 2012-2013 school year, a course 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. Each school district shall submit to the department by the beginning of the 2011-2012 school year a health education implementation plan for the 2012-2013 and subsequent school years, including in which grade health education will be required and how the course aligns with department content and performance standards. 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.

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

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

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

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

N. Until July 1, 2010, a student who has not passed a state graduation examination in the subject areas of reading, English, mathematics, writing, science and social science shall not receive a high school diploma. The state graduation examination on social science shall include a section on the constitution of the United States and the constitution of New Mexico. If a student exits from the school system at the end of grade twelve without having passed a state graduation examination, the student shall receive an appropriate state certificate indicating the number of credits earned and the grade completed. If within five years after a student exits from the school system the student takes and passes the state graduation examination, the student may receive a high school diploma. Any student passing the state graduation examination and completing all other requirements within five years of entering ninth grade, including a final summer session if completed by August 1, may be counted by the school system in which the student is enrolled as a high school graduate for the year in which completion and examination occur.

O. Beginning with the 2010-2011 school year, a student shall not receive a New Mexico diploma of excellence if the student has not demonstrated competence in the subject areas of mathematics, reading and language arts, writing, social studies and science, including a section on the constitution of the United States and the constitution of New Mexico, based on a standards-based assessment or assessments or a portfolio of standards-based indicators established by the department by rule. The standards-based assessments required in Section 22-2C-4 NMSA 1978 may also serve as the assessment required for high school graduation. If a student exits from the school system at the end of grade twelve without having satisfied the requirements of this subsection, the student shall receive an appropriate state certificate indicating the number of credits earned and the grade completed. If within five years after a student exits from the school system the student satisfies the requirements of this subsection, the student may receive a New Mexico diploma of excellence. Any student satisfying the requirements of this subsection and completing all other requirements within five years of entering ninth grade, including a final summer session if completed by August 1, may be counted by the school system in which the student is enrolled as a high school graduate for the year in which all requirements are satisfied.

P. As used in this section:

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

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

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

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

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

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

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

(a) advanced placement or honors courses;

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

(c) distance learning courses;

(d) career-technical courses; and

(e) pre-apprenticeship programs.

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

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.

## ANNOTATIONS

**Cross references.** — For student achievement, *see* 22-2C-1 NMSA 1978 et seq.

For the federal Individuals with Disabilities Education Act, *see* 20 U.S.C.

**Compiler's notes.** — Senate Bill 134, enacted by the Fifty-Third Legislature, First Session, 2017, was vetoed by the governor on March 14, 2017. Pursuant to the First Judicial District Court's decision in State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al., D-101-CV-2017-01550, and affirmed by S.Ct. Order No. S-1-SC-36731, on April 25, 2018, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, Senate Bill 134 was chaptered into law by the Secretary of State.

**The 2017 amendment,** effective June 16, 2017, provided that mathematics or science units required for high school graduation may include a computer science unit; and added a new Subsection L and redesignated the succeeding subsections accordingly.

**The 2016 amendment,** effective May 18, 2016, included lifesaving skills training to health education courses as a requirement for graduation; in Subsection K, in the fourth sentence of the introductory paragraph, after "Health education", added "courses", after "shall include", added the new paragraph designation "(1)", in Paragraph (1), after the semicolon, added "and", and added new Paragraph (2); and in Subsection N, in the fourth sentence, after "student satisfies the", deleted "requirement" and added "requirements".

Laws 2016, ch. 17, § 2 and Laws 2016, ch. 18, § 2, both effective May 18, 2016, enacted identical amendments to this section. The section was set out as amended by Laws 2016, ch. 18, § 2. *See* 12-1-8 NMSA 1978.

**Applicability.** — Laws 2016, ch. 17, § 4 and Laws 2016, ch. 18, § 4 provided that lifesaving skills training pursuant to Paragraph (2) of Subsection H of Section 22-13-1 NMSA 1978 and Paragraph (2) of Subsection K of Section 22-13-1.1 NMSA 1978 shall not be required for students in grades nine through twelve who are enrolled in a virtual charter school.

**Temporary provisions.** — Laws 2016, ch. 17, § 3 and Laws 2016, ch. 18, § 3 provided that by December 31, 2016, the secretary of public education shall adopt and promulgate rules to implement the provisions of Laws 2016, ch. 17, §§ 1 and 2, and Laws 2016, ch. 18, §§ 1 and 2.

**The 2015 amendment,** effective July 1, 2015, amended the Public School Code to require inclusion of certain career technical education courses as electives and to allow inclusion of certain certificates or degrees to be weighed in calculating a student's grade point average; in Subsection D, Paragraph (1), after "career clusters", added "and career pathways"; in Subsection I, after "certain graduation requirements", added "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"; in Subsection J, Paragraph (7), after "content and performance standards." added "Career and technical education courses shall be offered as elective."; and in Subsection O, added Paragraphs (1), (2), (3) and (4), and renumbered the succeeding paragraphs accordingly.

**The 2014 amendment,** effective March 12, 2014, authorized school districts to determine ways for students to meet the physical education unit requirements for graduation; limited changes to graduation requirements after students enter ninth grade; required health education to include age-appropriate sexual abuse and assault awareness and prevention training that meets federal standards; added Subsection F; in Subsection J, Paragraph (5), after "physical education", added "as determined by each school district, which may include a physical education program that meets state content and performance standards or participation in marching band, junior reserve officers' training corps or interscholastic sports sanctioned by the New Mexico activities association or any other co-curricular physical activity"; and in Subsection K, added the fourth sentence.

**The 2010 amendment,** effective May 19, 2010, added Subsection J.

**The 2009 amendment,** effective April 8, 2009, in Subsections K and L, added the last sentences.

**The 2008 amendment,** effective May 14, 2008, added financial literacy as an elective in Paragraph (7) of Subsection I and in Subsection L, provided that the standards-based assessment required by 22-2C-4 NMSA 1978 may serve as the assessment required for high school graduation.

**The 2007 amendment,** effective July 1, 2007, required school boards to ensure that students have an opportunity to develop next-step plans based on reports of college and workplace readiness assessments and are informed about honors or advance placement courses, career cluster or remediation programs that college and workplace readiness assessments indicate to be appropriate; added Subsections G, I and L; and required that a "next-step plan" include advanced placement or honors courses, dual-credit courses and distance learning courses.

**The 2005 amendment,** effective April 7, 2005, deleted reference to "guardian" in Subsections A and B; and deleted "other physical activity" in Subsection F(5).

**The 2004 amendment,** effective July 1, 2004, deleted Subsection A, added new Subsections A through G, redesignated Subsections C and D as Subsections G and H, added Subsection I, added Subsection J, redesignated former Subsection E as Subsection K and changed "state board" to "secretary of public education" in Subsection K.

**The 2003 amendment,** effective April 4, 2003, recompiled former 22-2-8.4 NMSA 1978 as present 22-13-1.1 NMSA 1978; deleted "of education" following "the department" throughout the section; substituted "scientifically based reading research that has been" for "research based reading programs" following "based upon quality," near the middle of Subsection A; substituted "licensed school employees" for "classroom certified instructional staff" following "staff development" near the beginning of Subsection A(2); substituted "teachers and other applicable licensed school employees" for "certified school instructors" following "provided to" near the beginning of Subsection A(4); and substituted "licensed" for "certified" following "especially" near the middle of Subsection C.

**The 2001 amendment,** effective June 15, 2001, in Subsection D, deleted "Beginning with students entering the ninth grade in the 1986-87 school year" from the beginning of the subsection; substituted "state graduation examination" for "state competency examination" throughout the subsection; and inserted "writing" preceding "science and social science".

**The 1997 amendment,** effective June 20, 1997, inserted "American sign language" following "health education" near the end of Paragraph B(7), and inserted the second sentence in Subsection D.

**The 1995 amendment,** effective June 16, 1995, added the last sentence in Subsection B, and deleted the first part of Subsection C, which read "Effective with the 1987-88 school year".

**The 1993 amendment,** effective June 18, 1993, added the final sentence of Subsection D.

**The 1990 (1st S.S.) amendment,** effective July 1, 1990, deleted "in grades nine through twelve" following "twenty-three units" near the beginning of Subsection B.

**The 1989 amendment,** effective June 16, 1989, added "which may include a language other than English" at the end of Subsection B(6).

**The 1988 amendment,** effective May 18, 1988, inserted "or during the ninth grade" in Subsection A and added Subsection E.

## 22-13-1.2. 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 post-secondary eductional [educational] institutions in New Mexico. The department shall collaborate with the commission on higher education in aligning high school curricula and end-of-course tests with the placement tests.

**History:** 1978 Comp., § 22-13-1.2, enacted by Laws 2003, ch. 153, § 59.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Emergency clauses.** — Laws 2003, ch. 153, § 74 made the act effective immediately. Approved April 4, 2003.

## 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 60 recompiled and amended former 22-2-6.11 NMSA 1978 as 22-13-1.3 NMSA 1978, effective April 4, 2003.

**Cross references.** — For the public education department, *see* 9-24-4 NMSA 1978.

**The 2003 amendment,** effective April 4, 2003, deleted "of education" following "the department" throughout the section; substituted "scientifically based reading research that has been" for "research based reading programs" following "based upon quality," near the middle of Subsection A; substituted "licensed school employees" for "classroom certified instructional staff" following "staff development" near the beginning of Subsection A(2); substituted "teachers and other applicable licensed school employees" for "certified school instructors" following "provided to" near the beginning of Subsection A(4); and substituted "licensed" for "certified" following "especially" near the middle of Subsection C.

**The 2001 amendment,** effective June 15, 2001, substituted "The department of education" for "The state department of public education" in Subsections A, B and C; added Paragraph A(5); and deleted "local" preceding "school district personnel" in Subsection C.

## 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.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, added Subsections B and C. Laws 2007, ch. 307, § 9 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 308, § 9. *See* 12-1-8 NMSA 1978.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 300 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Effective dates.** — Laws 2007, ch. contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 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.

## ANNOTATIONS

**The 2017 amendment,** effective June 16, 2017, removed the requirement that public schools submit an elementary physical education program plan to the public education department; in Subsection D, deleted "As they become eligible for elementary physical education program funding, public schools shall submit to the department their elementary physical education program plans that meet academic content and performance standards and other guidelines of the department. At a minimum, the plan

shall include the elementary physical education program being taught and an evaluation component. To be eligible for state financial support, an elementary physical education program" and added "An elementary physical education program that receives state financial support"; and added the language from former Subsection E to Subsection D.

## 22-13-2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 54, § 1, repealed 22-13-2 NMSA 1978, relating to required course of instruction in drug abuse education in the public schools.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, deleted "and may provide transportation for students attending those programs" at the end of Subsection A.

**The 1988 amendment,** effective May 18, 1988, inserted "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" in Subsection D.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 79 C.J.S. Schools and School Districts § 484.

## 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.

**ANNOTATIONS**

**Cross references.** — For the legislative education study committee, *see* 2-10-1 NMSA 1978.

**The 2017 amendment,** effective June 16, 2017, removed the requirement that public schools that receive even start family literacy program funds report to the public education department the results of the program, and removed certain duties of the public education department related to the even start family literacy program; after each occurrence of "department", deleted "of education"; and deleted Subsections D through F.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For length of school day, *see* 22-2-8.1 NMSA 1978.

For the legislative education study committee, *see* 2-10-1 NMSA 1978.

**The 2001 amendment,** effective June 15, 2001, in Subsection C and D, substituted "at-risk index" for "at-risk factor"; in Subsection D, inserted "school" prior to "districts" and added the language beginning "or that serve" to the end of the subsection; in Subsection E, substituted "and in schools with available classroom space" for "and to schools with available classroom space".

## 22-13-3.3. Short title.

Sections 1 through 5 [22-13-3.3 through 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22A-1-1 NMSA 1978 as 22-13-3.3 NMSA 1978, effective April 4, 2003.

## 22-13-3.4. Purpose.

The purpose of the Literacy For Children At Risk Act [22-13-3.3 through 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22A-1-2 NMSA 1978 as 22-13-3.4 NMSA 1978, effective April 4, 2003.

## 22-13-3.5. Definitions.

As used in the Literacy For Children At Risk Act [22-13-3.3 through 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22A-1-3 NMSA 1978 as 22-13-3.5 NMSA 1978, effective April 4, 2003.

## 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22A-1-4 NMSA 1978 as 22-13-3.6 NMSA 1978.

## 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2003, ch. 153, § 72 recompiled former 22A-1-4 NMSA 1978 as 22-13-3.7 NMSA 1978, effective April 4, 2003.

**The 2006 amendment,** effective July 1, 2007, added state-chartered charter schools in Subsections A through E.

## 22-13-4. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 54, § 1, repeals 22-13-4 NMSA 1978, relating to evaluation of early childhood education programs.

## 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.

## ANNOTATIONS

**Cross references.** — For references to the former state board, *see* 9-24-15 NMSA 1978.

For the department of health's family, infant and toddler program, *see* 28-16A-13 and 28-18-1 NMSA 1978.

**The 2011 amendment,** effective July 1, 2012, eliminated the option of having a child who is enrolled in the family, infant, toddler program remain in the program during the child's third year and the option of having a child with a disability who is enrolled in a preschool program receive special education services during the child's third year.

**The 1995 amendment,** effective June 16, 1995, deleted "for exceptional children" at the end in the section heading; in the first sentence, inserted "and related services" and substituted "children requiring special education and related services" for "exceptional children, unless otherwise provided by law"; substituted "provision" for "conduct" in the second sentence; in the fourth sentence, substituted "preschool" for "developmentally disabled" and inserted "with disabilities"; added the fifth and sixth sentences; in the seventh sentence, inserted "for students age three through twenty-one", inserted "but are not limited to", deleted "and diagnosing" following "evaluating", and substituted "related services as defined by the state board" for "speech, physical or occupational therapy"; and in the eighth sentence, inserted "certified", substituted "shall" for "may" and substituted the language beginning "provided in age-appropriate" for "either home based or center based".

**The 1989 amendment,** effective June 16, 1989, substituted "appropriate" for "sufficient" in the first sentence; rewrote the third sentence, which formerly read: "Beginning on July, 1986, school districts shall also provide services for four-year old developmentally disabled children whose parents or guardians request such services"; and rewrote the fourth sentence, which formerly read: "Beginning on July 1, 1987, school districts shall also provide services for three-year-old developmentally disabled children whose parents or guardians request such services".

**State forbidden from discriminating against handicapped in providing education.** — The state is obligated by both federal and state law to provide all its pre-college age children with appropriate educations. Under federal law relating to state programs receiving federal financial assistance, the state is forbidden from discriminating against the handicapped in meeting this obligation. *N.M. Ass'n for Retarded Citizens v. State*, 678 F.2d 847 (10th Cir. 1982).

**Discretionary nature of Public Law 94-142,** appearing as 20 U.S.C. § 1400 et seq., frees the state to participate or not in the acquisition of federal funds under the federal Elementary and Secondary Education Act as it chooses. Its choice not to participate is, without more, a governmental decision that is within the state's power and not subject to judicial inquiry. *N.M. Ass'n for Retarded Citizens v. State*, 495 F. Supp. 391 (D.N.M. 1980), *rev'd on other grounds*, 678 F.2d 847 (10th Cir. 1982).

**State has no obligation to seek federal funds.** — The theory that the state has a continuing obligation to seek federal funds to implement educational goals for handicapped children must fail in light of the congressional amendment rendering the federal Elementary and Secondary Education Act discretionary. *N.M. Ass'n for Retarded Citizens v. State*, 495 F. Supp. 391 (D.N.M. 1980), *rev'd on other grounds*, 678 F.2d 847 (10th Cir. 1982).

**State's status as monitor over spending of federal funds.** — The state may not technically be required to monitor compliance with § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. Its failure to insure compliance by the local school districts, however, implicates it under § 504 insofar as the state's status as the recipient of federal financial assistance obligates it not to permit, directly or indirectly, programs benefiting from federal financial assistance received by the state, to discriminate against handicapped persons within the context of the regulations promulgated under § 504. *N.M. Ass'n for Retarded Citizens v. State*, 495 F. Supp. 391 (D.N.M. 1980), *rev'd on other grounds*, 678 F.2d 847 (10th Cir. 1982).

**Students in psychiatric care and substance abuse treatment centers.** — Public schools have no constitutional or statutory obligation to provide educational services to students within private, for-profit adolescent psychiatric care and substance abuse treatment centers, but if the student is handicapped, federal law may require such education. 1988 Op. Att'y Gen. No. 88-10.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Tort liability of public school or government agency for misclassification or wrongful placement of student in special education program, 33 A.L.R.4th 1166.

AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.

Construction of "stay-put" provision of Education of the Handicapped Act (20 U.S.C. § 1415(e)(3)), that handicapped child shall remain in current educational placement pending proceedings conducted under section, 103 A.L.R. Fed. 120.

Obligation of public educational agencies, under Individuals with Disabilities Education Act (20 USCA §§ 1400 et seq.), to pay tuition costs for students unilaterally placed in private schools - post-Burlington cases, 152 A.L.R. Fed. 485.

Who is prevailing party for purposes of obtaining attorney's fees under § 615(i)(3)(B) of Individuals with Disabilities Education Act (20 USCA § 1415(i)(3)(B)) (IDEA), 153 A.L.R. Fed. 1

What constitutes services that must be provided by federally assisted schools under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C.A. § 1400 et seq.), 161 A.L.R. Fed. 1

What constitutes reasonable accommodation under federal statutes protecting rights of disabled individual, as regards educational program or school rules as applied to learning disabled student, 166 A.L.R. Fed. 503.

## 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 through 28-16A-18 NMSA 1978];

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 condition of neurological origin 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.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1972, ch. 95, § 2, repealed 77-11-3.1, 1953 Comp., as enacted by Laws 1967, ch. 290, § 1, relating to nonprofit training centers for educating or training handicapped students, and enacted a new 22-13-6 NMSA 1978.

**The 2010 amendment,** effective May 19, 2010, in Subsection D, in the first sentence, after "standards adopted by the", deleted "state board" and added "department"; and in the second sentence, after "school district", added "or charter school" and after "only provide state funds for", deleted "department of education approved" and added "department-approved"; and added Subsections E, F and G.

**The 1995 amendment,** effective June 16, 1995, substituted "children with disabilities" for "developmentally disabled" in Subsection C, deleted combined former Subsections D and E to form Subsection D, and inserted "school" preceding "district" and deleted "state" preceding "department of education" in the last sentence in Subsection D.

**The 1994 amendment,** effective July 1, 1994, deleted "Community Services" preceding "Act" in Subsection C; and rewrote and restructured Subsection D, which formerly contained an introductory paragraph and Paragraphs (1) to (3).

## 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.

**ANNOTATIONS**

**The 2005 amendment,** effective June 17, 2005, allowed each school district to create a single district-wide gifted education program advisory committees or as many committees as there are high schools in the district and provided that each committee shall reflect the cultural diversity of the enrollment of the district of the schools the committee advises.

## 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.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1972, ch. 95, § 3, repealed 77-11-3.2, 1953 Comp., as enacted by Laws 1971, ch. 109, § 1, relating to provision of special education services and facilities by localities, and enacted a new 22-13-7 NMSA 1978.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For the legislative education study committee, *see* 2-10-1 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, deleted "and environment" at the end of Subsection B and added Subsection D.

**The 1990 amendment,** effective May 16, 1990, substituted "state board" for "state board of education" in Subsections A and B, deleted "department" after "health and environment" at the end of Subsection B, added Subsection C, and made minor stylistic changes in Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Requisite conditions and appropriate factors affecting educational placement of handicapped children, 23 A.L.R.4th 740.

## 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.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 2009, ch. 162, § 1 repealed and reenacted former 22-13-8 NMSA 1978, effective July 1, 2009.

**Effective dates.** — Laws 2009, ch. 162, § 3 made Laws 2009, ch. 162, § 1 effective July 1, 2009.

**Residency requirement is constitutional.** — The residency requirement of Subsection C Section 22-13-8 NMSA 1978 does not violate the equal protection clause of the United States and New Mexico Constitutions and does not create an irrebutable presumption of nonresidence in violation of the procedural due process protections of the United States and New Mexico Constitutions. 2011 Op. Att'y Gen. No. 11-05.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Validity of, and sufficiency of compliance with, state standards for approval of private school to receive public placements of students or reimbursement for their educational costs, 48 A.L.R.4th 1231.

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 307, § 11 and Laws 2007, ch. 308, § 11 repealed 22-13-9 NMSA 1978, as enacted by Laws 1967, ch. 16, § 183, relating to part-time schools, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 307, § 11 and Laws 2007, ch. 308, § 11 repealed 22-13-10 NMSA 1978, as enacted by Laws 1967, ch. 16, § 184, relating to restriction on employment, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

## 22-13-11. Repealed.

**History:** 1953 Comp., § 77-11-6, enacted by Laws 1967, ch. 16, § 185.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 394, § 7 repealed 22-13-11 NMSA 1978, as enacted by Laws 1967, ch. 16, § 185, relating to adult education classes, effective April 8, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For designation of the public education department as the sole educational agency of state for administration or supervision of state plan established for funds received pursuant to federal statute relating to school lunch programs, *see* 22-9-2 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the public education department as the sole educational agency of state for administration or supervision of state plan established for funds received pursuant to federal statute relating to school lunch programs, see 22-9-2 NMSA 1978.

**Cross references.** — For designation of the public education department as the sole educational agency of state for administration or supervision of state plan established for funds received pursuant to federal statute relating to school lunch programs, *see* 22-9-2 NMSA 1978.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 115 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 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.

## ANNOTATIONS

**Cross references.** — For the National School Lunch Act, *see* 42 U.S. Code § 1751.

**The 2016 amendment,** effective May 18, 2016, clarified provisions of the "breakfast after the bell program"; added new Subsection C and redesignated the succeeding subsections accordingly; in Subsection J, in Paragraph (2), after "Subsection", deleted "C" and added "D"; and in Subsection K, after "breakfast after the bell", added "program".

**The 2014 amendment,** effective May 21, 2014, provided for breakfast after the bell programs for students in kindergarten through twelfth grade; in Subsection A, after "charter schools shall establish a", deleted "school", after "establish a ‘breakfast", added "after the bell", after "after the bell program’", changed "providing" to "to provide", after "all students attending", deleted "an elementary" and added "a public", after "a public school", deleted "in that school district", and after "more of the enrolled students", deleted "at the elementary school"; in Subsection B, after "charter school that includes", deleted "an elementary" and added "a public", after "National School Lunch Act", deleted "of 1946", after "may establish a", deleted "school", after "may establish a breakfast", added "after the bell", after "after the bell program", deleted "providing" and

added "to provide", after "students attending that", deleted "elementary" and added "public", after "rules relating to the", deleted "school", and after "relating to the breakfast", added "after the bell"; in Subsection C, after "waiver of the", deleted "school", and after "waiver of the breakfast", added "after the bell"; in Subsection D, in the first sentence, after "The department shall", deleted "reimburse" and added "award funding to", after "charter school that establishes a", deleted "school", after "establishes a breakfast", added "after the bell", after "provisions of this section for", deleted "costs associated with", at the end of the first sentence, deletes "Reimbursement", and added the second sentence; in Subsection E, in the first sentence, added the subsection letter and "Disbursements", after "Disbursements for the", deleted "school", after "Disbursements for the breakfast", added "after the bell", after "until the state", deleted "school", and after "until the state breakfast", added "after the bell", in the second sentence, after "School districts", deleted "or" and added "and", after "charter schools whose", deleted "elementary" and added "public", and after "National School Lunch Act", deleted "of 1946", and in the third sentence, after "School districts", deleted "or" and added "and", after "charter schools whose", deleted "elementary" and added "public", and after "National School Lunch Act", deleted "of 1946"; added Subsections F, G and H; in Subsection I, in Paragraph (1), after "standards for", deleted "school" and after "standards for breakfast", added "after the bell"; in Subsection I, in Paragraph (3), after "procedures for", deleted "reimbursement" and added the remainder of the sentence; and in Subsection J, after "this section", deleted "shall not", after "this section apply", deleted "until the 2011-2012" and added "to the 2014-2015 and succeeding", and after "school", deleted "year" and added the remainder of the sentence.

## 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 and at least once each month thereafter until the end of the school year. Two drills during the year shall be shelter-in-place drills and one shall be an evacuation drill, as directed by the department. The remainder of the drills 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.

**ANNOTATIONS**

**Cross references.** — For fire protection training programs, *see* 59A-52-6 NMSA 1978.

**The 2005 amendment,** effective July 1, 2005, required that two emergency drills during the year be shelter-in-place drill, one drill be an evacuation drill and the remainder of the drills be fire drills.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — Sections 22-10-19 and 22-10-20 NMSA 1978, referred to in the second sentence in Subsection B, were repealed in 1986.

Laws 2003, ch. 153, § 72 recompiled former 22-10-17 NMSA 1978 as 22-10A-27 NMSA 1978, recompiled former 22-10-17.1 NMSA 1978 as 22-10A-28 NMSA 1978 and recompiled former 22-10-18 NMSA 1978 as 22-10A-29 NMSA 1978, effective April 4, 2003.

**Cross references.** — For constitutional right to freedom of religion, *see* N.M. Const., art. II, § 11.

For prohibition against requiring religious tests and requiring attendance at or participation in religious services by teachers or students, *see* N.M. Const., art. XII, § 9.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the public education department as the sole educational agency of state for administration or supervision of state plan established for funds received pursuant to federal statute relating to school lunch programs, see 22-9-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Liability of private school or educational institution for breach of contract arising from provision of deficient educational instruction, 46 A.L.R.5th 581.

Liability of private school or educational institution for breach of contract arising from expulsion or suspension of student, 47 A.L.R.5th 1.

78 C.J.S. Schools and School Districts §§ 58, 811.

## 22-13-17. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 54, § 1, repealed 22-13-17 NMSA 1978, enacted by Laws 1969, ch. 180, § 27, relating to education enrichment program and diesel mechanics program.

## 22-13-18. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 54, § 1, repealed 22-13-18 NMSA 1978, enacted by Laws 1969, ch. 180, § 28, relating to education enrichment program and diesel mechanics program.

## 22-13-19. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 54, § 1, repealed 22-13-19 NMSA 1978, enacted by Laws 1969, ch. 180, § 29, relating to education enrichment program and diesel mechanics program.

## 22-13-20. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 54, § 1, repealed 22-13-20 NMSA 1978, enacted by Laws 1969, ch. 180, § 30, relating to education enrichment program and diesel mechanics program.

## 22-13-21. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 54, § 1, repealed 22-13-21 NMSA 1978, enacted by Laws 1969, ch. 180, § 31, relating to education enrichment program and diesel mechanics program.

## 22-13-22. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 54, § 1, repealed 22-13-22 NMSA 1978, enacted by Laws 1969, ch. 180, § 32, relating to education enrichment program and diesel mechanics program.

## 22-13-23. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 54, § 1, repealed 22-13-23 NMSA 1978, enacted by Laws 1969, ch. 180, § 33, relating to education enrichment program and diesel mechanics program.

## 22-13-24. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 54, § 1, repealed 22-13-24 NMSA 1978, enacted by Laws 1972, ch. 29, § 1, relating to education enrichment program and diesel mechanics program.

## 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.

**ANNOTATIONS**

## 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 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 22-13-27. Recompiled.

**History:** Laws 2003, ch. 162, § 2; recompiled by Laws 2007, ch. 292, § 11 and Laws 2007, ch. 293, § 11.

**ANNOTATIONS**

**Recompilations.** — Laws 2007, ch. 292, § 11 and Laws 2007, ch. 293, § 11, recompiled former 22-13-27 NMSA 1978 as 22-30-7 NMSA 1978, effective June 15, 2007.

## 22-13-28. K-3 plus; eligibility; application; reporting and evaluation.

A. The six-year K-3 plus pilot project has demonstrated that increased time in kindergarten and the early grades narrows the achievement gap between disadvantaged students and other students and increases cognitive skills and leads to higher test scores for all participants.

B. The "K-3 plus" program is created in the department to provide funding for additional educational time for students in kindergarten through third grade. K-3 plus shall be administered by the department and shall provide the funding for approved full-day kindergarten and grades one through three to be extended by at least twenty-five instructional days, beginning up to two months earlier than the regular school years.

C. K-3 plus shall be conducted upon application in:

(1) a high-poverty elementary school in which eighty percent or more of the students are eligible for free or reduced-fee lunch at the time the school applies for the program;

(2) an elementary school with a D or F school grade at the time of application or schools that improved their school grade with K-3 plus and wish to continue the program; or

(3) an elementary school that serves students in specific grade levels between kindergarten and third grade that is not otherwise eligible that receives students from or sends students to another elementary school that is eligible and participating in the regular course of the school district attendance zoning.

D. The department shall prioritize funding to school districts and charter schools that keep students that participate in K-3 plus with the same teacher and cohort of students during the regular school year.

E. The department shall promulgate rules for application requirements and procedures and criteria for evaluating applications. In evaluating applications for K-3 plus, the department shall grant priority to those schools with research-based, scientific reading strategies and programs. An applicant shall demonstrate that its K-3 plus program will meet all department standards and employ only qualified teachers and other staff.

F. K-3 plus programs shall be funded at no less than thirty percent of the unit value per student. Up to two percent of the money received by a school district shall be used for student recruitment and to ensure regular attendance by K-3 plus students. Funding

for individual school programs shall be based on enrollment on the fifteenth day of the program.

G. School districts and charter schools that meet the qualifications for K-3 plus funding may submit applications by March 15 for the succeeding fiscal year. The department shall notify all school districts and charter schools by February 1 that applications will be accepted until March 15 and that final funding is contingent on the final unit value set by the secretary. The notification shall include the application and any requirements for supplementary documentation. Applications may be submitted electronically or by mail or other delivery. Schools that are awarded funding for K-3 plus for the next school year shall be notified by April 15 of the calendar year.

H. The department shall provide additional professional development for K-3 plus teachers in how young children learn to read. Teachers and educational assistants shall be paid at the same rate and under the same terms for K-3 plus as teachers and educational assistants are paid for regular educational programs.

I. Students participating in K-3 plus shall be evaluated at the beginning of K-3 plus, and their progress shall be measured through department-approved summative and formative assessments.

J. The department shall establish reporting and evaluation requirements for participating schools, including student and program assessments. The department shall report annually to the legislature and the governor on the efficacy of K-3 plus.

K. The department may use up to four percent of any appropriation made by the legislature for K-3 plus for professional development for participating educators and department administrative costs.

L. The department shall develop and disseminate information on best practices in the areas of student recruitment, retention and academic success of early learners.

M. The secretary shall appoint a "K-3 plus advisory committee" composed of representatives of school districts that participate in K-3 plus and other stakeholders. The advisory committee shall meet twice a year to advise the department on K-3 plus implementation.

**History:** Laws 2007, ch. 12, § 1; 2012, ch. 21, § 1; 2013, ch. 175, § 1; 2015, ch. 75, § 1; 2017, ch. 19, § 1.

## ANNOTATIONS

**The 2017 amendment,** effective March 17, 2017, expanded eligibility to participate in the K-3 plus program to elementary schools that feed into K-3 plus eligible schools and participating schools, and required the public education department to prioritize funding to school districts and charter schools that keep K-3 plus students with the same

teacher and cohort of students for the school year; in Subsection C, after "upon application in", deleted the remainder of the subsection and added new Paragraphs C(1) through C(3); and added a new Subsection D and redesignated the succeeding subsections accordingly.

**The 2015 amendment,** effective April 8, 2015, provided for schools that qualified for the K-3 plus program because they had a D or F school grade to continue participating in the K-3 plus program if they improved their letter grade to a C or better; in Subsection B, after "educational time for", deleted "disadvantaged"; in Subsection C, after "conducted", added "upon application", after "public schools", added "schools with a D or F grade the previous year or schools that improved their school grade with the K-3 plus program and wish to continue the program", and after "applies for the program", deleted the remainder of the subsection.

**Applicability.** — Laws 2015, ch. 75, § 2 provided that for the summer 2015 K-3 plus program, the public education department may accept applications from schools that meet the requirements of Laws 2015, ch. 75, § 1 and withhold its decision on the applications until the effective date of Laws 2015, ch. 75, § 1. Laws 2015, ch. 75 contained an emergency clause and was approved April 8, 2015.

**The 2013 amendment,** effective April 4, 2013, changed eligibility and testing requirements for the K-3 plus program, used tenth-day enrollment data for funding; clarified notice of application deadlines; in Subsection C, after "public school in which", deleted "eighty-five" and added "eighty" and after "applies for the program", added "or an elementary school with a D or F grade the previous year"; in Subsection E, added the third sentence; in Subsection F, added the first through fourth sentences; in Subsection H, after "standardized" added "department-approved summative and formative" and after "assessments", deleted "as follows"; deleted former Paragraph (1) of Subsection H, which required a literacy assessment measuring the acquisition of reading skills; and deleted "in numeracy, in grades three and four" of former Paragraph (2) of Subsection H.

**The 2012 amendment,** effective May 16, 2012, converted K-3 plus from a pilot project to a program in the public education department; in the title, deleted "pilot project"; in Subsection A, deleted the former first sentence, which created K-3 plus as a six-year pilot project that extended the school year for kindergarten through third grade by up to two months, in the current first sentence, deleted "The purpose of" and added "The six-year", after "K-3 plus", deleted "is to demonstrate" and added "pilot project has demonstrated"; in Subsection B, added the first sentence and at the end of the second sentence, deleted "other classes" and added "the regular school years"; in Subsection D, in the first sentence, after "The department shall", deleted "determine" and added "promulgate rules for" and in the second sentence, after "those schools with", deleted "kindergarten plus" and added "research-based, scientific reading strategies and", and after "reading strategies and programs", deleted "that have received one or more satisfactory annual evaluations"; added Subsections E and F; in Subsection H, in Paragraph (1), after "in literacy", deleted "the dynamic indicator of basic early literacy

skills" and added "an assessment approved and provided by the department that measures the acquisition of reading skills, including phonological awareness, phonics, spelling, reading fluency, vocabulary and comprehension"; in Subsection I, in the second sentence, after "The department shall", deleted "provide interim and final reports" and added "report"; and added Subsections K and L.

**ANNOTATIONS**

## 22-13-28.1. K-3 plus fund; created; administration; current appropriation.

The "K-3 plus 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 for K-3 plus programs, K-3 plus-related professional development and department administrative costs as provided in Section 22-13-28 NMSA 1978. Any unexpended or unencumbered balance of the fiscal year 2012 appropriation for K-3 plus in Subsection I of Section 4 of Chapter 179 of Laws 2011 shall not revert to the general fund and shall be transferred to the K-3 plus fund.

History: Laws 2012, ch. 21, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2012, ch. 21 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2012, 90 days after the adjournment of the legislature.

## 22-13-28.2. K-5 plus pilot project; purpose; eligibility; application; reporting and evaluation.

A. "K-5 plus" is created as a four-year pilot project that:

(1) extends the school year in participating public schools by at least twenty-five additional days for students in kindergarten through fifth grade; and

(2) measures the effect of the provided additional time on literacy and numeracy.

B. The purpose of K-5 plus is to demonstrate that increased time in kindergarten through fifth grade:

(1) narrows the achievement gap between certain disadvantaged students and other students;

(2) better prepares elementary students for success in middle and high school;

(3) improves truancy rates at all school levels and improves dropout rates in high school; and

(4) increases students' cognitive skills and leads to higher test scores for participants.

C. K-5 plus shall be administered by the department and shall provide funding to successful public school applicants that extend their school calendars for kindergarten through fifth grade by at least twenty-five instructional days prior to the beginning of the regular school year.

D. K-5 plus shall be conducted upon application in public schools at which either eighty percent or more of the students are eligible for free or reduced-fee lunch or the school has a D or F school grade at the time the public school initially applies for the pilot project. Public schools that conduct K-3 plus programs may apply to participate in the K-5 plus pilot project, and the department shall give priority to those public schools that have a current K-3 plus program. The pilot project shall be conducted in no more than twenty public schools.

E. The department shall determine application requirements and procedures and criteria for evaluating applications. In evaluating applications for K-5 plus, the department shall grant priority to those public schools with research-based, scientific reading strategies and programs. An applicant shall demonstrate that its K-5 plus pilot project will meet all department standards and employ only qualified teachers and other staff.

F. K-5 plus shall be funded at no less than thirty percent of the final unit value per student established as of January 31 of the current calendar year. Up to two percent of the money received by a school district or charter school shall be used to ensure regular attendance by K-5 plus students. Funding for individual public schools shall be based on enrollment on the fifteenth day of the project.

G. School districts and charter schools that meet the qualifications for K-5 plus funding may submit applications by March 15 for the succeeding fiscal year. The department shall notify all school districts and charter schools by February 1 that applications will be accepted until March 15. The notification shall include the application and any requirements for supplementary documentation. Applications may be submitted electronically or by mail or other delivery. Public schools that are awarded funding for K-5 plus for the next school year shall be notified by April 15 of the calendar year.

H. The department shall provide additional professional development for K-5 plus teachers in how children learn to read. The department may use up to four percent of

any appropriation made by the legislature for the K-5 plus pilot project for professional development for participating educators and department administrative costs.

I. Teachers and educational assistants shall be paid at the same rate and under the same terms as teachers and educational assistants are paid for regular educational programs.

J. Students participating in K-5 plus shall be evaluated at the beginning of each grade year, and their progress shall be measured through department-approved summative assessments.

K. The department shall establish and implement reporting and evaluation requirements for participating public schools, including students and pilot project assessments. The department shall provide interim and final reports annually to the legislature and the governor on the efficacy of K-5 plus.

L. In addition to legislative appropriations for the K-5 plus pilot project, the department, school districts, public schools and local communities shall seek public and private gifts, grants and donations to benefit the pilot project.

History: Laws 2016, ch. 62, § 1.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2016, ch. 62, § 3 contained an emergency clause and was approved March 7, 2016.

**Temporary provisions.** — Laws 2016, ch. 62, § 2, effective March 7, 2016, provided that the rules promulgated by the public education department for the K-3 plus program shall apply to the K-5 plus pilot project until new rules can be adopted. The provisions of Subsection G of Section 1 of this act notwithstanding, the department may extend the deadline date for applications, but such extension shall not interfere with the April 15 date of notice of awards. The department shall notify all school districts and charter schools immediately when this act has become law and provide the school districts and charter schools with the appropriate deadline dates for the first year. The legislature encourages the public education department to notify school districts and charter schools of a tentative schedule prior to this act being signed into law.

## 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.

## ANNOTATIONS

**Compiler's notes.** — Laws 2007, ch. 307, § 10 and Laws 2007, ch. 308, § 10 enacted identical sections, effective July 1, 2007.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 353, § 2 and Laws 2007, ch. 357, § 2, enacted identical new sections, effective January 1, 2008.

## 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 [Chapter 61, Article 6 NMSA 1978];

(b) a practicing osteopathic physician licensed pursuant to the Osteopathic Medicine Act [Chapter 61, Article 10 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's assistant licensed pursuant to the Osteopathic Medicine Act [Chapter 61, Article 10 NMSA 1978];

(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 through 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.

**ANNOTATIONS**

**The 2017 amendment,** effective July 1, 2017, required brain injury training for student athletes, and required acknowledgment of training and information by the student athlete; in the catchline, added "and student athletes", and added "requiring acknowledgment of training and information"; in Subsection C, after "school athletic activities", added "and each student athlete"; in Subsection D, Paragraph D(1), in the introductory clause, after "school athletic activities, added "and each student athlete", in Subparagraph D(1)(b), after "coach", added "or student athlete", in Paragraph D(2), after the first occurrence of "brain injury", added "training and"; in Subsection E, after "academic year or", added "the first", after "school athletic activities", added "by a student athlete during an academic year", after the first occurrence of "brain injury", added "training and", after "athlete's parent or guardian", added "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", and added the last sentence of the subsection; in Subsection F, changed "2 of this 2016 act" to "22-13-31.1 NMSA 1978"; and in Subsection G, Subparagraph G(3)(b), after "licensed pursuant to", deleted "Chapter 61, Article 10 NMSA 1978" and added "the Osteopathic Medicine Act", and in Subparagraph G(3)(d), after "Osteopathic", deleted "Physicians' Assistants" and added "Medicine".

**The 2016 amendment,** effective May 18, 2016, extended the time out of commission for student athletes who have suffered a possible brain injury, and established a brain injury protocol compliance certification for nonscholastic youth athletic activities taking place on school district property; in the catchline, added "nonscholastic youth athletic activity on school district property; brain injury protocol compliance; certification"; in Subsection B, in the introductory sentence, after "activity no sooner than", deleted "one week after" and added "two hundred forty hours from the hour in which", in Paragraph (2), after "receives a", added "written"; added new Subsection F and redesignated former Subsection F as Subsection G; in Subsection G, added new Paragraphs (3) and (4) and redesignated former Paragraphs (3) and (4) as Paragraphs (5) and (6), respectively, deleted former Paragraph (5), and in Paragraph (6), after "school athletic activity", deleted "and".

## 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 Osteopathic Medicine Act [Chapter 61, Article 10 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's assistant licensed pursuant to the Osteopathic Medicine 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 through 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2016, ch. 53, § 2 was not enacted as part of the Public School Code, but was compiled there for the convenience of the user.

**The 2017 amendment,** effective July 1, 2017, required brain injury training for youth athletes participating in youth athletic activities, and required acknowledgment of training and information by the youth athlete; in Subsection C, after "youth athletic activities", added "and each youth athlete in the league"; in Subsection D, Paragraph D(1), after "youth athletic activities", added "and each youth athlete", in Subparagraph D(1)(b), after "coach", added "or youth athlete", in Paragraph D(2), after the first occurrence of "brain injury", added "training and"; in Subsection E, after "beginning of each", added "youth", after the next occurrence of "athletic", added "activity", after "season or", added "the first", after "youth athletic activities", added "by a youth athlete during a youth athletic activity season", after the first occurrence of "brain injury", added "training and", after the second occurrence of "brain injury", added "training and", and after "youth athlete's parent or guardian", added "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"; and in Subsection F, Subparagraph F(2)(b), after "pursuant to", deleted "Chapter 61, Article 10 NMSA 1978" and added "the Osteopathic Medicine Act", in Subparagraph F(2)(d), after "Osteopathic", deleted "Physicians' Assistants" and added "Medicine", and in Paragraph F(3), after "engage in a", deleted "community" and added "youth".

## 22-13-32. Intervention for students displaying characteristics of dyslexia.

A. A student who, despite effective classroom instruction in general education as provided by department standards, demonstrates characteristics of dyslexia and is having difficulty learning to read, write, spell, understand spoken language or express thoughts clearly shall be referred to a student assistance team.

B. In accordance with department response to intervention procedures, guidelines and policies, each school district or charter school shall provide timely, appropriate, systematic, scientific, research-based interventions prescribed by the student assistance team, with progress monitoring to determine the student's response or lack of response, for a student in the secondary tier of response to intervention who meets the criteria in Subsection A of this section prior to referring the student for a special education evaluation.

C. 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.

D. The department shall provide lists of recommended teacher professional development materials and opportunities for teachers and administrators regarding research-based reading instruction for students at risk for reading failure and displaying the characteristics of dyslexia.

E. School districts and charter schools shall train school administrators and teachers who teach reading to implement appropriate research-based reading interventions prior to referring the student for a special education evaluation. School districts and charter schools shall train special education teachers to provide appropriate specialized reading instruction for students who are identified with dyslexia as a specific learning disability and who are eligible for special education services.

F. 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.

G. The department shall adopt rules, standards and guidelines necessary to implement this section.

History: Laws 2010, ch. 59, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 59 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 64 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

# ARTICLE 13A
# Incentives for School Improvement

**ANNOTATIONS**

**(Repealed by Laws 2003, ch. 153, § 73.)**

**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.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-13A-1 NMSA 1978, as enacted by Laws 1989, ch. 137, § 1, relating to the short title, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 22-13A-2. Repealed.

**History:** Laws 1989, ch. 137, § 2; 1997, ch. 236, § 2.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-13A-2 NMSA 1978, as enacted by Laws 1989, ch. 137, § 2, relating to the purpose of the Incentives for School Improvement Act, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 22-13A-3. Repealed.

**History:** Laws 1989, ch. 137, § 3.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-13A-3 NMSA 1978, as enacted by Laws 1989, ch. 137, § 3, relating to defining terms used in the Incentives for School Improvement Act, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 22-13A-4. Repealed.

**History:** Laws 1989, ch. 137, § 4; 1997, ch. 236, § 3.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-13A-4 NMSA 1978, as enacted by Laws 1989, ch. 137, § 4, relating to the creation and administration of the incentives for school improvement program, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 22-13A-5. Repealed.

**History:** Laws 1989, ch. 137, § 5; 1997, ch. 236, § 4.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-13A-5 NMSA 1978, as enacted by Laws 1989, ch. 137, § 5, relating to the measurement criteria for the incentives for school improvement program, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

## 22-13A-6. Repealed.

**History:** Laws 1989, ch. 137, § 6; 1997, ch. 236, § 5.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 153, § 73 repealed 22-13A-6 NMSA 1978, as enacted by Laws 1989, ch. 137, § 6, relating to the creation of the incentives for school improvement fund, effective April 4, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

# ARTICLE 13B
# Twenty-First Century Education

(Repealed by Laws 1993, ch. 286, § 1.)

## 22-13B-1. Repealed.

**History:** Laws 1990 (1st S.S.), ch. 9, § 1.

**ANNOTATIONS**

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13 repealed 22-13B-1 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, § 1, relating to the short title of the Twenty-First Century Education Act, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

## 22-13B-2. Repealed.

**History:** Laws 1990 (1st S.S.), ch. 9, § 2.

**ANNOTATIONS**

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13 repealed 22-13B-2 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, § 2, relating to the purpose of the act, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

## 22-13B-3. Repealed.

**History:** Laws 1990 (1st S.S.), ch. 9, § 3.

**ANNOTATIONS**

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13 repealed 22-13B-3 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, § 3, relating to definitions, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

## 22-13B-4. Repealed.

**History:** Laws 1990 (1st S.S.), ch. 9, § 4.

**ANNOTATIONS**

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13 repealed 22-13B-4 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, § 4, relating to creation and membership of commission, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

## 22-13B-5. Repealed.

**History:** Laws 1990 (1st S.S.), ch. 9, § 5.

**ANNOTATIONS**

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13 repealed 22-13B-5 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, § 5, relating to purpose and duty of commission, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

## 22-13B-6. Repealed.

**History:** Laws 1990 (1st S.S.), ch. 9, § 6.

**ANNOTATIONS**

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13 repealed 22-13B-6 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, § 6, relating to administration, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

## 22-13B-7. Repealed.

**History:** Laws 1990 (1st S.S.), ch. 9, § 7.

**ANNOTATIONS**

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13 repealed 22-13B-7 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, § 7, relating to the twenty-first century education fund, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

## 22-13B-8. Repealed.

**History:** Laws 1990 (1st S.S.), ch. 9, § 8.

**ANNOTATIONS**

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13 repealed 22-13B-8 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, § 8, relating to board regulations, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

## 22-13B-9. Repealed.

**History:** Laws 1990 (1st S.S.), ch. 9, § 9.

**ANNOTATIONS**

**Repeals.** — Laws 1990 (1st S.S.), ch. 9, § 13 repealed 22-13B-9 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, § 9, relating to program applications, evaluations and monitoring, effective July 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

# ARTICLE 13C
# Hunger-Free Students' Bill of Rights

## 22-13C-1. Short title.

This act [22-13C-1 through 22-13C-7 NMSA 1978] may be cited as the "Hunger-Free Students' Bill of Rights Act".

**History:** Laws 2017, ch. 117, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 117 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## 22-13C-2. Definitions.

As used in the Hunger-Free Students' Bill of Rights Act:

A. "meal application" means an application for free or reduced-fee meals pursuant to the national school lunch program and school breakfast program; and

B. "school" means a public school district, a public school, a private school or a religious school.

**History:** Laws 2017, ch. 117, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 117 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 117 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## 22-13C-4. Requirement to provide meals and ensure that eligible students are enrolled.

A. Regardless of whether or not a student has money to pay for a meal or owes money for earlier meals, a school:

(1) shall provide a United States department of agriculture reimbursable meal to a student who requests one, unless the student's parent or guardian has specifically provided written permission to the school to withhold a meal; and

(2) shall not require that a student throw away a meal after it has been served because of the student's inability to pay for the meal or because money is owed for earlier meals.

B. If a student owes money for five or more meals, a school shall:

(1) check the state list of students categorically eligible for free meals to determine if the student is categorically eligible;

(2) make at least two attempts, not including the application or instructions included in a school enrollment packet, to reach the student's parent or guardian and have the parent or guardian fill out a meal application; and

(3) require a principal, assistant principal or counselor to contact the parent or guardian to offer assistance with a meal application, determine if there are other issues within the household that have caused the child to have insufficient funds to purchase a school meal and offer any other assistance that is appropriate.

**History:** Laws 2017, ch. 117, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 117 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 117 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 117 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## 22-13C-7. Applicability.

The 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 117 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

# 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.

**ANNOTATIONS**

**Cross references.** — For technical and vocational institute districts, *see* 21-16-1 NMSA 1978 et seq.

For development training, *see* 21-19-7 NMSA 1978 et seq.

**The 2007 amendment,** effective June 15, 2007, amended the section to change a 1953 compilation reference and to make other non-substantive language changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Physical or mental illness as basis of dismissal of student from school, college, or university, 17 A.L.R.4th 519.

When does change in "educational placement" occur for purposes of § 615(b)(1)(C) of the Education for All Handicapped Children Act of 1975 (20 USCS § 1415(b)(1)(C)), requiring notice to parents prior to such change, 54 A.L.R. Fed. 570.

What constitutes services that must be provided by federally assisted schools under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C.A. § 1400 et seq.), 161 A.L.R. Fed. 1

## 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.

**ANNOTATIONS**

**Cross references.** — For designation of public education department as the sole educational agency for state for administration or supervision of administration of state plan established for funds received pursuant to federal statutes generally, *see* 22-9-2 NMSA 1978.

For the powers and duties of the public education commission and the public education department, *see* N.M. Const., art. XII, § 6, 9-24-4 and 9-24-9 NMSA 1978.

**The 2005 amendment,** effective June 17, 2005, changed "state board" to "commission" and deleted "vocational rehabilitation" in Subsections A and B; and added Subsection C to provide that the commission may delegate to administrative functions relating to vocational education to the department.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 328 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Cross references.** — For designation of public education department as the sole educational agency for state for administration or supervision of administration of state plan established for funds received pursuant to federal statutes generally, *see* 22-9-2 NMSA 1978.

For the powers and duties of the public education commission and the public education department, *see* N.M. Const., art. XII, § 6, 9-24-4 and 9-24-9 NMSA 1978.

**The 2005 amendment,** effective June 17, 2005, deleted the former provision that the state board was the sole agency for the administration of federal funds and provided that the commission is the sole agency for the administration of federal funds relating to vocational education; added Subsection H to provide that the commission may coordinate as required by the federal agency with the state workforce development board; and added Subsection I to provide that the commission may as required by the federal agency make available a list of school dropout, post-secondary and adult programs assisted pursuant to the state plan.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 328 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 22-14-4. Repealed.

**History:** 1953 Comp., § 77-12-4, enacted by Laws 1967, ch. 16, § 194.

**ANNOTATIONS**

**Repeals.** — Laws 2005, ch. 328, § 9 repealed 22-14-4 NMSA 1978, as enacted by Laws 1967, ch. 16, § 194, relating to the vocational education division, effective June 17, 2005. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**The 2005 amendment,** effective June 17, 2005, changed "state board" to "commission" and the "vocational education division" to the "instructional support and vocational education division".

**The 1993 amendment,** effective July 1, 1993, inserted "of the department of education" in the introductory paragraph and substituted "enforce" for "adopt" at the beginning of Subsection F.

## 22-14-6. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 226, § 54 repealed 22-14-6 NMSA 1978, as enacted by Laws 1971, ch. 324, § 1, transferring the division of the services for the blind of the health and social services department to the vocational rehabilitation division of the department of education, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**The 2005 amendment,** effective June 17, 2005, deleted the former provision in Subsection B that with the approval of the state board, the state superintendent shall appoint a director; provided in Subsection B that the secretary shall appoint a director; and deleted former Subsection C, which provided that the state board may delegate to the vocational rehabilitation division its administrative functions relating to vocational rehabilitation.

## 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.

**ANNOTATIONS**

**The 2004 amendment,** effective May 19, 2004, added Subsection H and made other minor amendments.

**The 1993 amendment,** deleted former Subsection H, which read "coordinate programming related to the transition of persons with disabilities from secondary and post-secondary education programs to employment or vocational placement" and made grammatical changes.

**The 1989 amendment,** effective June 16, 1989, added Subsection H.

## 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.

**ANNOTATIONS**

**Cross references.** — For provisions relating to custody, budgeting and disbursement of federal aid funds generally, *see* 22-9-5 NMSA 1978.

**The 2005 amendment,** effective June 17, 2005, changed "vocational education" to "the instructional support and vocational education division"; provided that warrants may be issued by the director's authorized representative in Subsection B and provided in Subsection C that warrants may be issued by the vocational rehabilitation division or the director's authorized representative.

## 22-14-10. Recompiled.

**ANNOTATIONS**

**Recompilations.** — Laws 1993, ch. 226, § 53B recompiled former 22-14-10 NMSA 1978 as 22-14-30 NMSA 1978, effective July 1, 1993.

## 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.

**ANNOTATIONS**

**The 2005 amendment,** effective June 17, 2005, deleted "vocational education".

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

For designation of the public education department as the sole educational agency of state for administration or supervision of state plan established for funds received pursuant to federal statute relating to school lunch programs, see 22-9-2 NMSA 1978.

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 60, § 4, repealed 22-14-15 NMSA 1978, as enacted by Laws 1967, ch. 16, § 203, relating to the cooperation of health officials in the examination of applicants for vocational rehabilitation.

## 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.

**ANNOTATIONS**

**Cross references.** — For the transfer of powers and duties of the former state board, *see* 9-24-1 NMSA 1978.

**The 2007 amendment,** effective June 15, 2007, amended the section to make non-substantive language changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Physical or mental illness as basis of dismissal of student from school, college, or university, 17 A.L.R.4th 519.

## 22-14-17. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 156, § 3, repealed 22-14-17 NMSA 1978, as enacted by Laws 1976 (S.S.), ch. 30, § 1, relating to the northern New Mexico rehabilitation center, effective July 1, 1983.

## 22-14-18. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 156, § 3, repealed 22-14-18 NMSA 1978, as enacted by Laws 1976 (S.S.), ch. 30, § 2, relating to the northern New Mexico rehabilitation center, effective July 1, 1983.

## 22-14-19. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1983, ch. 156, § 3, repealed 22-14-19 NMSA 1978, as enacted by Laws 1976 (S.S.), ch. 30, § 3, relating to the northern New Mexico rehabilitation center, effective July 1, 1983.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For divisions of the department, *see* 9-24-14 NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For the state purchasing agent, *see* 13-1-95 NMSA 1978.

For the commission for the blind, *see* 28-7-16 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, rewrote the catchline, which formerly read "Products of clients of services for the blind; division of vocational rehabilitation; purchasing agent to determine value"; substituted "the commission for the blind" for "services for the blind" in two places; substituted "22-14-21 through 22-14-23 NMSA 1978" for "73-23-7 through 73-23-9 NMSA 1953" at the end of the section; and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Works and Contracts § 10.

72 C.J.S. Supp. Public Contracts § 4.

## 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.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, substituted "the commission for the blind" for "services for the blind"; substituted "22-14-21 NMSA 1978" for "73-23-7 NMSA 1953"; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Works and Contracts § 10.

72 C.J.S. Supp. Public Contracts § 4.

## 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.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, substituted "the commission for the blind" for "services for the blind" in two places; inserted "manufactured by clients of the commission for the blind"; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 63A Am. Jur. 2d Public Funds § 5; 68 Am. Jur. 2d Schools § 53 et seq.

## 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.

**ANNOTATIONS**

**Cross references.** — For employment of the disabled, *see* 28-10-1 NMSA 1978 et seq.

## 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.

**ANNOTATIONS**

**Cross references.** — For the commission on the blind, *see* 28-7-16 NMSA 1978.

## 22-14-26. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1986, ch. 108, § 16 repealed former 22-14-26 NMSA 1978, as enacted by Laws 1971, ch. 324, § 3 and recompiled by Laws 1983, ch. 60, § 3, defining "division," effective July 1, 1986.

## 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.

**ANNOTATIONS**

**Determinations where cooperative effort.** — While under this section there was to be a cooperative effort between the division (now the commission) and the agency, it was the division that made the determination as to the need for a vending stand and the further determination that such stand might be properly and satisfactorily operated by a blind person. 1964 Op. Att'y Gen. No. 64-77.

## 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.

**ANNOTATIONS**

**Broad powers granted.** — In order that the division (now the commission) be able to achieve the statutory ends, the legislature granted it broad powers. 1964 Op. Att'y Gen. No. 64-77.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 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.

## ANNOTATIONS

**Effective dates.** — Laws 2009, ch. 256 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 256 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

# 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.

**ANNOTATIONS**

**Cross references.** — For courses of instruction generally, *see* 22-13-1 NMSA 1978 et seq.

**The 2005 amendment,** effective April 4, 2005, made no changes to this section.

**Constitutionality.** — N.M. Const., Art. XII, § 3 expressly prohibits the appropriation of public funds to sectarian, denominational or private schools. The Instructional Material

Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, *rev'g* 2015-NMCA-036, 346 P.3d 396.

Where petitioners filed a complaint for declaratory judgment against the secretary of the New Mexico public education department seeking a declaration that the state issuing instructional materials to students attending private schools is unconstitutional, the New Mexico supreme court held that the Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, *rev'g* 2015-NMCA-036, 346 P.3d 396.

The Instructional Material Law (IML), Sections 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), Sections 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), Sections 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IV, § 31, because

under the IML, no funds are appropriated to any private school; the mere indirect or incidental benefit to the private schools does not violate N.M. Const., art. IV, § 31. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), Sections 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the Establishment Clause of the First Amendment of the United States Constitution; the United States Supreme Court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the Establishment Clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 68 Am. Jur. 2d Schools § 318 et seq.

Furnishing free textbooks to sectarian school or student therein, 93 A.L.R.2d 986.

## 22-15-2. Definitions.

As used in the Instructional Material Law [22-15-1 through 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.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, added Subsection H.

**The 2006 amendment,** effective July 1, 2007, added Subsection G to define school district.

**The 2005 amendment,** effective April 4, 2005, changed the definition of "instructional material" to textbooks and media that are used as the basis for instruction, including combinations of textbooks, kits, supplementary material and electronic media.

**The 2003 amendment,** effective June 20, 2003, substituted "of" for "in" following "material bureau" in Subsection A; and added "including on-line resources, distance learning media and productivity software" at the end of Subsection C.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, rewrote the catchline, which formerly read "Division director; surety bond"; substituted "instructional material bureau" for "state instructional material division" in Subsection A; substituted "chief of the bureau" for "director of the division to be known as the 'state instructional material director'"; and deleted former Subsection C, pertaining to the official bond of the director.

## 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 through 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.

**ANNOTATIONS**

**The 2009 amendment,** effective July 1, 2010, in Subsection B, after "and private schools", deleted "and adult basic education centers".

**The 2005 amendment,** effective April 4, 2005, added Subsection E to require the bureau to enforce rules that require local school boards to implement a process that ensures parents and community members are involved in the instructional material review process.

**The 1997 amendment,** effective July 1, 1998, inserted "and instructional material funds" in Subsection B.

**The 1993 amendment,** effective July 1, 1993, substituted "Bureau" and "bureau" for "Division" and "division" in the catchline and introductory paragraph; inserted "and regulations" in the introductory paragraph; deleted "adopt and" at the beginning of Subsection B; and added Subsection D, making related grammatical changes.

## 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 through 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.

## ANNOTATIONS

**The 2009 amendment,** effective July 1, 2010, in Subsection A, added the last sentence; in Subsection B, after "a private school as agent", deleted "or an adult basic education center".

**The 1997 amendment,** effective July 1, 1998, made a stylistic change in Subsection B.

**The 1992 amendment,** effective May 20, 1992, inserted "a" preceding "state institution" in the second sentence of Subsection B and added the third sentence of that subsection.

**Constitutionality.** — N.M. Const., Art. XII, § 3 expressly prohibits the appropriation of public funds to sectarian, denominational or private schools. The Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, *rev'g* 2015-NMCA-036, 346 P.3d 396.

Where petitioners filed a complaint for declaratory judgment against the secretary of the New Mexico public education department seeking a declaration that the state issuing instructional materials to students attending private schools is unconstitutional, the New Mexico supreme court held that the Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other

than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, *rev'g* 2015-NMCA-036, 346 P.3d 396.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IV, § 31, because under the IML, no funds are appropriated to any private school; the mere indirect or incidental benefit to the private schools does not violate N.M. Const., art. IV, § 31. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

## 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.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, substituted "department of education" for "director".

**Constitutionality.** — N.M. Const., Art. XII, § 3 expressly prohibits the appropriation of public funds to sectarian, denominational or private schools. The Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, *rev'g* 2015-NMCA-036, 346 P.3d 396.

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The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus

of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IV, § 31, because under the IML, no funds are appropriated to any private school; the mere indirect or incidental benefit to the private schools does not violate N.M. Const., art. IV, § 31. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

## 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 through 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.

## ANNOTATIONS

**Cross references.** — For transfer of usable materials, *see* 22-15-10 NMSA 1978.

For the transfer of powers and duties of the former state board of education, *see* 9-24-15 NMSA 1978.

**The 2009 amendment,** effective July 1, 2010, in Subsection A, deleted the last sentence which provided that any student in a basic education program approved by the commission on higher education was entitled to the free use of instructional material from the instructional material bureau; in Subsection B, after “private schools”, deleted "and adult basic education centers"; and in Subsection C, after "private school as agent", deleted "and adult basic education centers".

**The 2003 amendment,** effective April 8, 2003, in Subsection A, substituted "commission on higher education" for "state board" following "approved by the" and added "from the instructional material bureau of the department of education" at the end.

**The 1997 amendment,** effective July 1, 1998, in Subsection C, made a stylistic change and substituted "by" for "of".

**The 1993 amendment,** effective July 1, 1993, in Subsection A, substituted "22-13-3 NMSA 1978" for "77-11-2 NMSA 1953" and made a minor stylistic change in the second sentence.

**Constitutionality.** — N.M. Const., Art. XII, § 3 expressly prohibits the appropriation of public funds to sectarian, denominational or private schools. The Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly

prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, *rev'g* 2015-NMCA-036, 346 P.3d 396.

Where petitioners filed a complaint for declaratory judgment against the secretary of the New Mexico public education department seeking a declaration that the state issuing instructional materials to students attending private schools is unconstitutional, the New Mexico supreme court held that the Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, *rev'g* 2015-NMCA-036, 346 P.3d 396.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IV, § 31, because under the IML, no funds are appropriated to any private school; the mere indirect or incidental benefit to the private schools does not violate N.M. Const., art. IV, § 31. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional

material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

**Right to inspect instructional material.** — Local school boards have no authority to prohibit citizens of the state from inspecting instructional material used in a public school within the district. 1988 Op. Att'y Gen. No.88-37.

## 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 through 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.

## ANNOTATIONS

**Cross references.** — For contracts with publishers for purchase and delivery of materials on list, *see* 22-15-13 NMSA 1978.

**The 2009 amendment,** effective July 1, 2010, in Subsection B, after "private school as agent", deleted "and adult basic education centers".

**The 2005 amendment,** effective April 4, 2005, added Subsection C to require the department to establish an instructional review process for the adoption of instructional material on a multiple list; provided in new Subsection D that participants in the summer review institute shall receive a stipend as determined by department rule; and in new Subsection E, required the department to charge a processing fee to vendors of instructional material.

**The 2003 amendment,** effective June 20, 2003, added the second sentence of Subsection A, pertaining to ten percent of instructional material on the multiple list concerning language arts and social studies.

**The 1997 amendment,** effective July 1, 1998, made a stylistic change in Subsection B.

**The 1993 amendment,** effective July 1, 1993, inserted "and other community members "in the second sentences of Subsections A and B.

**Constitutionality.** — N.M. Const., Art. XII, § 3 expressly prohibits the appropriation of public funds to sectarian, denominational or private schools. The Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, *rev'g* 2015-NMCA-036, 346 P.3d 396.

Where petitioners filed a complaint for declaratory judgment against the secretary of the New Mexico public education department seeking a declaration that the state issuing instructional materials to students attending private schools is unconstitutional, the New Mexico supreme court held that the Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, *rev'g* 2015-NMCA-036, 346 P.3d 396.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

**Right to inspect instructional material. —** Local school boards have no authority to prohibit citizens of the state from inspecting instructional material used in a public school within the district. 1988 Op. Att'y Gen. No. 88-37.

## 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2005, ch. 80, § 8 contained an emergency clause and was approved April 4, 2005.

## 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 reading programs 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 may apply to the department for money from the reading materials fund to purchase the necessary instructional materials for the selected program. A school district may apply for funding for its reading program if:

(1) core and supplemental materials are highly rated by either the Oregon reading first center or the Florida center for reading research or the materials are listed in the international dyslexia association's framework for informed reading and language instruction;

(2) the district selects no more than two comprehensive published core reading programs; and

(3) the district has established a professional development plan describing how it will provide teachers with professional development and ongoing support in the effective use of the selected instructional materials.

History: Laws 2006, ch. 58, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2006, ch. 58 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

**Constitutionality.** — N.M. Const., Art. XII, § 3 expressly prohibits the appropriation of public funds to sectarian, denominational or private schools. The Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, *rev'g* 2015-NMCA-036, 346 P.3d 396.

Where petitioners filed a complaint for declaratory judgment against the secretary of the New Mexico public education department seeking a declaration that the state issuing instructional materials to students attending private schools is unconstitutional, the New Mexico supreme court held that the Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, *rev'g* 2015-NMCA-036, 346 P.3d 396.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they

never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IV, § 31, because under the IML, no funds are appropriated to any private school; the mere indirect or incidental benefit to the private schools does not violate N.M. Const., art. IV, § 31. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

## 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.

## ANNOTATIONS

**The 2009 amendment,** effective July 1, 2010, in Subsection A, added the last sentence; in Subsection C, after "state institution", deleted "or adult basic education center"; at the beginning of the fourth sentence, deleted "Adult basic education centers" and added "Private schools"; after "may expend up to", deleted "one hundred" and added "fifty"; and in the last sentence, after "multiple list", added the remainder of the sentence; in Subsection D, after "state institutions" deleted "and adult basic education centers"; in Subsection E, after "provide payment to", deleted "a publisher or" and added "an in-state"; and at the end of the sentence, deleted "included on the multiple list provided for in Section 22-15-8 NMSA 1978"; and in Subsection F, after "state institution" deleted "or adult basic education center".

**The 2007 amendment,** effective June 15, 2007, in Subsection C provided that up to twenty-five percent of the funds appropriated by instructional materials to also be used for other classroom materials.

**The 2005 amendment,** effective April 4, 2005, in Subsection A, changed the deadline for allocations of entitlements from July 1 to April 1 of each year; in Subsection C,

increased the amount of allocations that may be used for instructional material from thirty to fifty percent and provides for a waiver of the use of funds allocated for instructional material; in Subsection D, required the department make payment to the publisher or depository on behalf of a private school for instructional material on the multiple list; and in Subsection E, provided that funds remaining for the purchase of instructional material at the end of the fiscal year shall be retained and used in subsequent year.

**The 1999 amendment,** effective June 18, 1999, in Subsection A, added the third sentence and deleted the last sentence which read: "For the purpose of this allocation, additional pupils shall be counted as four pupils".

**The 1997 amendment,** effective July 1, 1998, added "Distribution of Funds for" in the section heading; deleted former Subsection A, relating to the establishment of separate instructional material accounts; redesignated the first paragraph of former Subsection B as Subsection A; in the first sentence of Subsection A, deleted "credit" following "allocate" and deleted "the instructional material account of" preceding "each", and deleted "transportation charges and" preceding "emergency" in the second sentence; redesignated the second paragraph of former Subsection B as Subsection B; in Subsection B, in the first sentence, substituted "adjusting" for "compensating" and deleted "of credit" following "under-estimation", and deleted the former second sentence, relating to disposition of funds remaining for the allocation; rewrote Subsection C; added Subsection D and redesignated former Subsection D as Subsection E; and rewrote Subsection E.

**The 1993 amendment,** effective July 1, 1993, substituted "department of education" for "division" throughout the section; substituted "not less than ninety percent" for "equal to ninety percent" in the first sentence of the first paragraph of Subsection B; deleted the former third sentence of the first paragraph of Subsection B, which read "Kindergarten MEM shall be calculated on a .5 full-time equivalent basis"; rewrote Subsection C; and substituted "expenditure" for "requisitioning against" near the end of Subsection D.

**The 1992 amendment,** effective May 20, 1992, substituted "forty-day membership" for "forty-day average daily membership" several times throughout the section; in Subsection B made minor stylistic changes in the first and second sentences and substituted "MEM" for "ADM" in the third sentence; and, in Subsection C, inserted "including the rebinding of used instructional material" in the first and second sentences.

**Constitutionality.** — N.M. Const., Art. XII, § 3 expressly prohibits the appropriation of public funds to sectarian, denominational or private schools. The Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly

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The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IV, § 31, because under the IML, no funds are appropriated to any private school; the mere indirect or incidental benefit to the private schools does not violate N.M. Const., art. IV, § 31. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

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material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

**Textbooks for student in private schools.** — The public education department's payment of public money for textbooks that are provided to students attending private schools, including sectarian and denominational schools, may violate Article IX, Section 14 and Article XII, Section 3 of the New Mexico Constitution. 2010 Op. Att'y Gen. No. 10-06.

## 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 through 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.

## ANNOTATIONS

**Cross references.** — For transfer of powers and duties of former chief of public school finance, *see* 9-6-3.1 NMSA 1978.

For transfer of the powers and duties of the former state board and department of education, *see* 9-24-15 NMSA 1978.

**The 2009 amendment,** effective July 1, 2010, in Subsections A, B and E, after "private school", deleted "or adult basic education center"; in Subsection C, after "state institution" deleted "or adult basic education center"; in Subsection B, in the first, second and third sentences, after "parent", deleted "guardian"; and in the last sentence, after "parent", deleted "or guardian".

**The 1997 amendment,** effective July 1, 1998, substituted "acquired by" for "distributed to" in Subsection A; in Subsection B, deleted "as agent" following "center" in the first sentence and deleted "of education" in the last sentence; added Subsection C and redesignated the remaining subsections accordingly; rewrote Subsection D; in Subsection E, deleted "as ordered" following "transfer" and substituted "purchased with" for "purchased from the"; and made stylistic changes throughout the section.

**The 1993 amendment,** effective July 1, 1993, substituted "chief" for "director" in Subsections A and D; substituted "department of education" and "department" for "division" in Subsections C and D; added the final sentence of Subsection C; and made a minor stylistic change in Subsection D.

**The 1989 amendment,** effective June 16, 1989, added the last three sentences in Subsection B and made minor stylistic changes.

**Constitutionality.** — N.M. Const., Art. XII, § 3 expressly prohibits the appropriation of public funds to sectarian, denominational or private schools. The Instructional Material Law, §§ 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, *rev'g* 2015-NMCA-036, 346 P.3d 396.

Where petitioners filed a complaint for declaratory judgment against the secretary of the New Mexico public education department seeking a declaration that the state issuing instructional materials to students attending private schools is unconstitutional, the New Mexico supreme court held that the Instructional Material Law, §§ 22-15-1 through 22-

15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, violates N.M. Const., Art. XII, § 3, because the constitutional provision expressly restricts the use of public funds to other than sectarian schools and expressly prohibits the appropriation of educational funds to private schools. *Moses v. Skandera*, 2015-NMSC-036, *rev'g* 2015-NMCA-036, 346 P.3d 396.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

## 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.

## ANNOTATIONS

**The 2009 amendment,** effective July 1, 2010, after "private school", deleted "or adult basic education center".

**The 1997 amendment,** effective July 1, 1998, deleted former Subsection A, which read: "The division shall keep accurate records of the cost of all instructional material distributed pursuant to the Instructional Material Law", deleted the Subsection B designation, and substituted "including cost records" for "distributed to it pursuant to the Instructional Material Law".

**Constitutionality.** — The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2017, ch. 65, § 4 repealed 22-15-12 NMSA 1978, as enacted by Laws 1967, ch. 16, § 216, relating to annual reports, effective June 16, 2017. For provisions of former section, *see* the 2016 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Cross references.** — For transfer of the powers and duties of the former state board and department of education, *see* 9-24-15 NMSA 1978.

**The 2011 amendment,** effective June 17, 2011, added Subsection E to require publishers to provide instructional material in both written and electronic format beginning with the 2013-2014 school year.

**The 1993 amendment,** effective July 1, 1993, substituted "authorized agent" for "representative" in Subsections A and C.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 79 C.J.S. Schools and School Districts §§ 491, 492.

## 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 through 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For instructional material fund generally, *see* 22-15-5 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, substituted "department of education" for "division" in Subsections A and B.

## 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.

**ANNOTATIONS**

**Cross references.** — For the federal Individuals with Disabilities Education Act, *see* Titles 20, 25, 29 and 42 U.S.C.

## 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.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 313, § 7 repealed 22-15-21 NMSA 1978, as enacted by Laws 1993, ch. 156, § 1, relating to the short title of the Braille Literacy Act, effective July 1, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*. For similar present provisions, *see* the Braille Access Act, 22-15-26 NMSA 1978 et seq.

## 22-15-22. Repealed.

**History:** Laws 1993, ch. 156, § 2.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 313, § 7 repealed 22-15-22 NMSA 1978, as enacted by Laws 1993, ch. 156, § 2, relating to definitions in the Braille Literacy Act, effective July 1, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*. For similar present provisions, *see* the Braille Access Act, 22-15-26 NMSA 1978 et seq.

## 22-15-23. Repealed.

**History:** Laws 1993, ch. 156, § 3.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 313, § 7 repealed 22-15-23 NMSA 1978, as enacted by Laws 1993, ch. 156, § 3, relating to Braille instruction, effective July 1, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*. For similar present provisions, *see* the Braille Access Act, 22-15-26 NMSA 1978 et seq.

## 22-15-24. Repealed.

**History:** Laws 1993, ch. 156, § 4.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 313, § 7 repealed 22-15-24 NMSA 1978, as enacted by Laws 1993, ch. 156, § 4, relating to individualized planning and assessment, effective July 1, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*. For similar present provisions, *see* the Braille Access Act, 22-15-26 NMSA 1978 et seq.

## 22-15-25. Repealed.

**History:** Laws 1993, ch. 156, § 5.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 313, § 7 repealed 22-15-25 NMSA 1978, as enacted by Laws 1993, ch. 156, § 5, relating to personnel qualifications, effective July 1, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*. For similar present provisions, *see* the Braille Access Act, 22-15-26 NMSA 1978 et seq.

## 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.

**ANNOTATIONS**

## 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.

**ANNOTATIONS**

## 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.

**ANNOTATIONS**

## 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.

**ANNOTATIONS**

**Cross references.** — For Section 316 of Public Law 104-197, *see* 17 U.S.C.S § 121 and note preceeding 17 U.S.C.S. § 101.

For the Americans with Disabilities Act, *see* 42 U.S.C.S. 12101 et seq.

For the Rehabilitation Act of 1973, *see* 29 U.S.C.S. § 701 et seq. Section 504 is codified as 29 U.S.C.S. § 794.

For the federal Individuals with Disabilities Education Act, *see* 20 U.S.C.

## 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.

**ANNOTATIONS**

## 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.

**ANNOTATIONS**

# ARTICLE 15A
# Technology for Education

## 22-15A-1. Short title.

Chapter 22, Article 15A NMSA 1978 may be cited as the "Technology for Education Act".

**History:** Laws 1994, ch. 96, § 1; 2005, ch. 222, § 1.

**ANNOTATIONS**

**The 2005 amendment,** effective June 17, 2005, added the statutory reference of the act.

## 22-15A-2. Definitions.

As used in the Technology for Education Act:

A. "bureau" means the education technology bureau in the department of education [public education department];

B. "chief" means the chief of the bureau;

C. "council" means the council on technology in education; and

D. "educational technology" means tools used in the educational process that constitute learning resources and may include closed circuit television systems, educational television and radio broadcasting, cable television, satellite, copper and fiber optic transmission, computer, video and audio laser and CD ROM [CD-ROM] discs, video and audio tapes or other technologies and the training, maintenance, equipment and computer infrastructure information, techniques and tools, used to implement technology in classrooms and library and media centers.

**History:** Laws 1994, ch. 96, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 22-15A-3. Bureau established; chief appointed.

A. The "education technology bureau" is created within the department of education [public education department].

B. With the approval of the state board [department], the state superintendent [secretary] shall appoint a chief of the bureau.

**History:** Laws 1994, ch. 96, § 3.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 22-15A-4. Bureau duties.

In accordance with the policies and regulations of the state board [department], the bureau shall:

A. administer the provisions of the Technology for Education Act;

B. develop a statewide plan for the integration of educational technology into the public schools and coordinate technology-related education activities with other state agencies, the federal government, business consortia and public or private agencies or individuals;

C. assist school districts to develop and implement a strategic, long-term plan for utilizing educational technology in the school system;

D. upon approval of a school district's technology plan, make distributions to school districts from the educational technology fund;

E. recommend funding mechanisms that will support the development and maintenance of an effective educational technology infrastructure in the state;

F. promote collaboration among government, business, educational organizations and telecommunications entities to expand and improve the use of technology in education;

G. assess and determine the educational technology needs of school districts; and

H. provide staff support for and coordinate the activities of the council.

**History:** Laws 1994, ch. 96, § 4.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 22-15A-5. Council on technology in education; created; purpose.

The "council on technology in education" is created. The council shall advise the bureau, the state board [department] and the legislature regarding the establishment of appropriate educational technology standards, technology-enhanced curricula, instruction, appropriations for educational technology and administrative resources and services for the public schools.

**History:** Laws 1994, ch. 96, § 5.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not a part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 22-15A-6. Council membership.

A. The council shall be composed of seventeen members. Members shall be appointed by the state board [department] for terms of four years. As designated by the state board at the time of initial appointment, the terms of five members shall expire at the end of two years, the terms of five members shall expire at the end of three years and the terms of seven members shall expire at the end of four years.

B. When appointing members, the state board [department] shall appoint:

(1) one member who shall have expertise in state government;

(2) three members who shall have expertise in school district administration;

(3) two members who shall have expertise in providing instructional services in post-secondary, technical-vocational or adult education;

(4) three members who shall have expertise in providing instructional services in elementary or secondary schools;

(5) two members who shall be parents of school-age children;

(6) one member who shall be a public school secondary student;

(7) three members who shall have expertise in educational technology; and

(8) two members at large.

C. In making appointments to the council, the state board [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 chairman from among the membership. The council shall meet at the call of the chairman 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 through 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance.

**History:** Laws 1994, ch. 96, § 6.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not a part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 22-15A-7. Council duties.

The council shall:

A. advise the bureau on implementation of the provisions of the Technology for Education Act;

B. work with the bureau 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;

C. promote the collaborative development and implementation of educational technologies, projects and practices to enhance on-site and distance learning instruction capabilities;

D. develop and recommend to the department a statewide plan to infuse educational technology into the public school system in support of state and national education goals, including a statewide cyber academy plan that states short- and long-range goals for distance learning; and

E. provide assistance to the bureau in review of school district technology plans to support on-site and distance learning.

History: Laws 1994, ch. 96, § 7; 2007, ch. 292, § 8.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, required the council to support on-site and distance learning, and to develop and recommend a statewide cyber academy plan.

Laws 2007, ch. 292, § 8 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 293, § 8. *See* 12-1-8 NMSA 1978.

## 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 of education [public education department] for the purpose of implementing the provisions of the Technology for Education Act. Money in the fund shall be distributed in the manner provided in the Technology for Education Act. 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 chief or the state superintendent [secretary]. Money in the fund shall not revert at the end of the fiscal year but shall remain to the credit of the fund.

**History:** Laws 1994, ch. 96, § 8.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 22-15A-9. Educational technology fund; distribution.

A. Upon annual review and approval of a school district's educational technology plan, the bureau shall determine a separate distribution from the educational technology fund for each school district.

B. On or before July 31 of each year, the bureau shall distribute money in the educational technology fund directly to each school district in an amount equal to ninety percent of the school district's estimated adjusted entitlement calculated pursuant to Subsection C of this section. A school district's unadjusted entitlement is that portion of the total amount of the annual appropriation that the projected membership bears to the projected membership of the state. Kindergarten membership shall be calculated on a one-half full-time-equivalent basis.

C. A school district's estimated adjusted entitlement shall be calculated by the bureau using the following procedure:

(1) a base allocation is calculated by multiplying the total annual appropriation by seventy-five thousandths percent;

(2) the estimated adjusted entitlement amount for a school district whose unadjusted entitlement is at or below the base allocation shall be equal to the base allocation. For a school district whose unadjusted entitlement is higher than the base allocation, the estimated adjusted entitlement shall be calculated pursuant to Paragraphs (3) through (6) of this subsection;

(3) the total projected membership in those school districts that will receive the base allocation pursuant to Paragraph (2) of this subsection is subtracted from the total projected state membership;

(4) the total of the estimated adjusted entitlement amounts that will be distributed to those school districts receiving the base allocation pursuant to Paragraph (2) of this subsection is subtracted from the total appropriation;

(5) the projected membership for the district is divided by the result calculated pursuant to Paragraph (3) of this subsection; and

(6) the estimated adjusted entitlement amount for the school district equals the number calculated pursuant to Paragraph (5) of this subsection multiplied by the value calculated pursuant to Paragraph (4) of this subsection.

D. On or before January 30 of each year, the bureau shall recompute each adjusted entitlement using the final funded membership for that year and, without making any additional reductions, shall allocate the balance of the annual appropriation adjusting for any over- or under-projection of membership.

E. A school district receiving funding pursuant to the Technology for Education Act is responsible for the purchase, distribution, use and maintenance of educational technology.

F. As used in this section, "membership" means the total enrollment of qualified students, as defined in the Public School Finance Act [Chapter 22, Article 8 NMSA 1978], on the current roll of class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawal of students, in addition to students formally withdrawn from the public school, includes students absent from the public school for as many as ten consecutive school days.

**History:** Laws 1994, ch. 96, § 9; 2000, ch. 89, § 1; 2003, ch. 147, § 11; 2004, ch. 125, § 5; 2005, ch. 274, § 3.

## ANNOTATIONS

**The 2005 amendment,** effective April 6, 2005, in Subsection C(6), provided that the estimated adjusted entitlement amount for the school district equals the number

calculated pursuant to Subsection C(5) multiplied by the value calculated pursuant to Subsection C(6); and deleted former Subsections C(7) through (13).

**The 2004 amendment,** effective May 19, 2004, amended Subsection C to rewrite Paragraph (7) to substitute for "legislative council service" the "department of finance and administration" and to add at the end of the paragraph "An appropriation made in a fiscal year shall be deemed to be accepted by a school district unless, prior to July 15 of the fiscal year following the appropriation, the district notifies the department of finance and administration and the public education department that the district is rejecting the appropriation" and to amend Paragraph (10) to substitute "the immediately two preceding" for "prior" preceding "fiscal years".

**The 2003 amendment,** effective April 4, 2003, rewrote Subsection C and inserted "without making any additional reductions" preceding "shall allocate" in Subsection D.

**The 2000 amendment,** effective May 17, 2000, in Subsection B, inserted "adjusted" following "district's estimated", substituted "calculated pursuant to Subsection C of this section" for "as determined by the projected membership for the school year" in the first sentence and inserted "unadjusted" following "school district's" in the second sentence; added present Subsection C and redesignated the remaining subsections accordingly; and inserted "adjusted" preceding "entitlement" in present Subsection D.

## 22-15A-10. Annual report.

Annually, at a time specified by the department of education [public education department], each school district receiving distributions from the educational technology fund shall file a report with the department of education [public education department] regarding distributions received, direct legislative appropriations for educational technology made and not rejected, expenditures made and educational technology obtained by the district and such other related information as may be required by the department of education [public education department].

**History:** Laws 1994, ch. 96, § 10; 2003, ch. 147, § 12.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 2003 amendment,** effective April 4, 2003, substituted "each school district" for "each local school district" and inserted "direct legislative appropriations for educational technology made and not rejected" following "distributions received".

## 22-15A-11. Educational technology deficiencies; correction.

A. No later than September 1, 2005, the bureau, with the advice of the council and the secretary of information technology, shall define and develop minimum educational technology adequacy standards to supplement the adequacy standards developed by the public school capital outlay council for school districts to use to identify outstanding serious deficiencies in educational technology infrastructure.

B. A school district shall use the standards to complete a self-assessment of the outstanding educational technology deficiencies within the school district and provide cost projections to correct the outstanding deficiencies.

C. The bureau 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 educational technology deficiency correction fund, the bureau 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 contracts to correct the deficiencies.

E. No allocation shall be made pursuant to this section unless:

(1) the method for prioritizing projects developed by the bureau has been reviewed and approved by the council;

(2) the school district has agreed to consult and coordinate with the public school facilities authority before installing any educational technology infrastructure;

(3) the council has approved the proposed allocation; and

(4) for the 2009 and subsequent fiscal years, the initial assessment required in the Technology for Education Act has been verified by an independent third party as determined in consultation with the public school capital outlay council.

F. In entering into contracts to correct deficiencies pursuant to this section, the bureau shall include such terms and conditions as necessary to ensure that the state money is expended in the most prudent manner possible consistent with the original purpose.

History: Laws 2005, ch. 222, § 2; 2007, ch. 290, § 23; 2007, ch. 292, § 9; 2007, ch. 293, § 9; 2007, ch. 294, § 1.

**ANNOTATIONS**

**2007 Multiple Amendments.** — Laws 2007, ch. 290, § 23, Laws 2007, ch. 292, § 9, Laws 2007, ch. 293, § 9 and Laws 2007, ch. 294, § 1 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2007, ch. 294, § 1, as the last act signed by the governor, is set out above and incorporates all amendments. The amendments enacted by Laws 2007, ch. 290, § 23, Laws 2007, ch. 292, § 9, Laws 2007, ch. 293, § 9 and Laws 2007, ch. 294, § 1 are described below. To view the session laws in their entirety, *see* the 2007 session laws on *NMOneSource.com*.

Laws 2007, ch. 294, § 1, effective July 1, 2007, Laws 2007, ch. 292, § 9, effective June 15, 2007, and Laws 2007, ch. 293, § 9, effective June 15, 2007, added a new Subsection E and relettered former Subsection E as F.

Laws 2007, ch. 290, § 23, effective July 1, 2007, in Subsection A, changed "chief information officer" to "secretary of information technology".

## 22-15A-12. Educational technology deficiency correction fund.

The "educational technology deficiency correction fund" is created in the state treasury. The fund shall consist of money appropriated, distributed or transferred to the fund by law. Earnings from investment of the fund shall be credited to the fund. Money in the fund is appropriated to the education technology bureau for the purpose of making allocations to correct educational technology deficiencies pursuant to Section 22-15A-11 NMSA 1978. Except as otherwise provided, any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the chief of the education technology bureau.

History: Laws 2005, ch. 222, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 222 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

## 22-15A-13. Obsolete computer replacement.

To the extent that money has been appropriated to replace functionally obsolete computers and network devices in public schools, including charter schools, on a five-year cycle, the bureau shall base allocations on a ratio of one computer to three students in each school. Prior to making allocations, the bureau shall compile and maintain an inventory of computer and network devices in public schools, including

charter schools, and develop a methodology for prioritizing the replacement of computers and network devices to ensure that state money is expended in the most prudent manner possible consistent with the original purpose.

History: Laws 2007, ch. 292, § 10; 2007, ch. 293, § 10.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 292, § 10 and Laws 2007, ch. 293, § 10 enacted identical new sections, effective June 15, 2007.

# ARTICLE 15B
# Educational Technology Opportunity Program

## 22-15B-1. Statewide educational technology opportunity program; findings and purpose.

A. The legislature finds that:

(1) local school districts need increased access to information technologies, extensive professional development and sustained network support to use technology effectively;

(2) the technological needs of New Mexico's individual school children and classrooms are best defined by the teachers and principals who work with them on a day-to-day basis;

(3) New Mexico is fortunate to have high technology laboratories and corporations that have programs to supply low-cost, state-of-the-art central processing units for use in New Mexico classrooms; and

(4) there are large nonprofit programs in place to build and rehabilitate computers for New Mexico classrooms using a combination of donated, surplus and purchased equipment.

B. The purpose of this act is to establish a statewide educational technology opportunity program for New Mexico's teachers and students by creating a partnership between private industry, state government and local school districts that will build, distribute and install low-cost, network-ready computers in New Mexico classrooms over the next three years.

**History:** Laws 1999, ch. 234, § 1.

**ANNOTATIONS**

**Compiler's notes.** — The phrase "this act", referred to in Subsection B, means Laws 1999, ch. 234, which enacted 22-15B-1 and 22-15B-2 NMSA 1978.

## 22-15B-2. Educational technology opportunity program; duties of the state department of public education [public education department].

A. The state department of public education [public education department] shall contract with a nonprofit corporation to administer the statewide educational technology opportunity program. The department shall select a contractor that has a program in place to build and rehabilitate computers for New Mexico classrooms using a combination of donated, surplus and purchased equipment. In administering the statewide educational technology opportunity program, the contractor, in coordination with the department, shall:

(1) solicit and accept applications for computer assistance from local school teachers through the local school principals;

(2) establish criteria for evaluating applications for computer assistance. The criteria shall include requirements for an established technology plan and an established network infrastructure;

(3) establish a review process involving public and private entities to evaluate each application, determine the amount of computer assistance needed and allocate the available computers to ensure that computer assistance is distributed equitably; and

(4) submit an annual report to the state board [department] of education, the governor and the legislature on the progress of the program, showing the regional distribution of the program, the number of computers distributed and the cost of each computer.

B. Upon the approval of an application for computer assistance, the contractor shall distribute the allocated computers directly to the classroom and teacher. Pursuant to the contract and upon the receipt of an invoice, the state department of public education shall reimburse the contractor for the state portion of the cost of the computer assistance granted.

C. The state department of public education [public education department], after consulting with private industry, local school districts and other interested parties, shall promulgate such rules as are necessary to implement the statewide educational technology opportunity program.

**History:** Laws 1999, ch. 234, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

# 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.

**ANNOTATIONS**

**The 2006 amendment,** effective July 1, 2007, added the statutory reference.

## 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.

**ANNOTATIONS**

**Cross references.** — For the transfer of powers and duties of the former department of education, *see* 9-24-15 NMSA 1978.

**The 2009 amendment,** effective June 19, 2009, added Subsection C; added Subsection E; in Subsection H, after "public school", added "or governmentally controlled school"; in Paragraph (2) of Subsection H, after "public school students", added "or by the bureau of Indian education for students enrolled in a governmentally controlled school"; and in Paragraph (3) of Subsection H, at the beginning of the sentence, added "in terms of age:".

**The 2006 amendment,** effective July 1, 2007, in Paragraphs (2) and (4) of Subsection F, changed "state board" to "department" and added Subsection H to define school district.

## 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.

**ANNOTATIONS**

**Cross references.** — For the transfer of powers and duties of the former department of education and former state superintendent, *see* 9-24-15 NMSA 1978.

**The 2009 amendment,** effective June 19, 2009, after "state institutions", added "and governmentally controlled schools".

## 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.

**ANNOTATIONS**

**Cross references.** — For the transfer of powers and duties of the former state board of education, *see* 9-24-15 NMSA 1978.

**The 2009 amendment,** effective June 19, 2009, in Subsection C, after "state institutions", added "and governmentally controlled schools".

## 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.

**ANNOTATIONS**

**The 2009 amendment,** effective June 19, 2009, in Subsection A, after "state institution", added "or a governmentally controlled school"; in Subsection B, after "state institution", added "or a governmentally controlled school"; and in Subsection C, after "state institution", added "or a governmentally controlled school".

## 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.

**ANNOTATIONS**

**The 2009 amendment,** effective June 19, 2009, in Subsection A, after the first occurrence of "state institution", added "or governmentally controlled school"; after the second occurrence of "state institution", added "and governmentally controlled school"; and after the third occurrence of "state institution", added "or a governmentally controlled school"; in Subsection C, after "state institution", added "or a governmentally controlled school"; and in Subsection D, after "state institution", added "or a governmentally controlled school".

**The 2005 amendment,** effective June 17, 2005, changed "distribute" to "allocate" in Subsection A.

## 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.

**ANNOTATIONS**

**Cross references.** — For transfer of powers and duties of the state board of education to the public education department, *see* 9-24-15 NMSA 1978.

**The 2009 amendment,** effective June 19, 2009, in Subsection A, after the first occurrence of "state institution", added "or a governmentally controlled school" and after the second occurrence of "state institution", added "or governmentally controlled school"; in Subsection B, after "state institution" added "or a governmentally controlled school" and after "school district", added "or a governmentally controlled school"; in Subsection C, after "state institution", added "or a governmentally controlled school".

## 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.

**ANNOTATIONS**

**The 2009 amendment,** effective June 19, 2009, after the first occurrence of "state institution", added "or a governmentally controlled school" and after the second occurrence of "state institution", added "or governmentally controlled school“.

## 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.

**ANNOTATIONS**

**Cross references.** — For the transfer of powers and duties of the former department of education, *see* 9-24-15 NMSA 1978.

**The 2009 amendment,** effective June 19, 2009, after "state institution", added "or a governmentally controlled school".

## 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.

**ANNOTATIONS**

**Cross references.** — For the transfer of powers and duties of the former department of education, *see* 9-24-15 NMSA 1978.

**The 2009 amendment,** effective June 19, 2009, in Subsection B, changed "state board" to "public education commission".

# 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.

**ANNOTATIONS**

**The 2006 amendment,** effective July 1, 2007, added the statutory reference.

## 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.

**ANNOTATIONS**

**The 2006 amendment,** effective July 1, 2007, added state-chartered charter schools in Subsection A.

## 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.

**ANNOTATIONS**

## 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.

**ANNOTATIONS**

**Cross references.** — For the transfer of powers and duties of the former state board of education and the former department of education, *see* 9-24-15 NMSA 1978.

**The 2006 amendment,** effective July 1, 2007, changed "state board" to "department"; changed "local school boards" to "school districts and charter schools" in Subsection B (formerly Paragraph (2) of Subsection B).

## 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.

**ANNOTATIONS**

**Cross references.** — For the transfer of powers and duties of the former state board of education and the former department of education, *see* 9-24-15 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, removed "state-chartered" from each reference to "charter school" regarding fine arts education programs; in Subsection A, after "school district or", deleted "state-chartered", and in Subsection C, after "school district or", deleted "state-chartered".

**The 2006 amendment,** effective July 1, 2007, changed "local school boards" to "school district or state-chartered charter school" in Subsections A and C; changed "state board" to "department" in Subsection A; and in Subsection C, changed "state board" to "secretary" and provided for parent advisory committees from charter schools.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2003, ch. 153, § 36 recompiled former 22-10-3.3 NMSA 1978 as 22-10A-5 NMSA 1978, effective April 4, 2003.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

# 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 44 and Laws 2007, ch. 239, effective June 15, 2007, enacted duplicate laws.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 44 and Laws 2007, ch. 239, effective June 15, 2007, enacted duplicate laws.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 44 and Laws 2007, ch. 239, effective June 15, 2007, enacted duplicate laws.

## 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 through 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance.

History: Laws 2007, ch. 44, § 4; 2007, ch. 239, § 4.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 44, § 4 and Laws 2007, ch. 239, § 4, both effective June 15, 2007, enacted duplicate laws, with the exception of the third sentence in Subsection A of Laws 2007, ch. 239, "Members shall serve until their successors have been appointed and qualified." The section was set out as enacted by Laws 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 44 and Laws 2007, ch. 239, effective June 15, 2007, enacted duplicate laws.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 44, § 6 and Laws 2007, ch. 239, § 6, both effective June 15, 2007, enacted duplicate laws, with the exception of the additional language, "of public education", in the second sentence of Subsection A of Laws 2007, ch. 239. The section was set out as enacted by Laws 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.

**ANNOTATIONS**

**The 2013 amendment,** effective July 1, 2013, added the NMSA chapter and article for the New Mexico School for the Arts Act; and at the beginning of the sentence, deleted "This act" and added "Chapter 22, Article 15F NMSA 1978".

## 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2008, ch. 15, § 9 contained an emergency clause and was approved February 22, 2008.

## 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2008, ch. 15, § 9 contained an emergency clause and was approved February 22, 2008.

## 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2008, ch. 15, § 9 contained an emergency clause and was approved February 22, 2008.

## 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2008, ch. 15, § 9 contained an emergency clause and was approved February 22, 2008.

## 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2008, ch. 15, § 9 contained an emergency clause and was approved February 22, 2008.

## 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2008, ch. 15, § 9 contained an emergency clause and was approved February 22, 2008.

## 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.

**ANNOTATIONS**

**The 2013 amendment,** effective July 1, 2013, prohibited the use of state equalization guarantee distributions for outreach activities and room and board expenses for students at the school for the arts; in the title, after "activities", deleted "private funding required" and added "use of state equalizaton guarantee distributions prohibited"; in the first sentence, after "or other private", added "or public", after "funding sources", added "shall", after "funding sources shall obtain", deleted "gifts, grants and donations" and adds the word "funding", after "provided for in Section", deleted "6 of the New Mexico School for the Arts Act" and added "22-15F-6 NMSA 1978", and after "as provided in Section", deleted "7 of the New Mexico School for the Arts Act" and added "22-15F-7 NMSA 1978", in the second sentence, after "received from private", added "or public"; and in the third sentence, after "received from the state", added "equalization guarantee distribution".

# 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For emergency transportation, *see* 22-17-1 NMSA 1978 et seq.

For divisions of the public education department, *see* 9-24-4 NMSA 1978.

**The 1995 amendment,** effective July 1, 1995, deleted "With approval of the state board" from the beginning of Subsection B, and substituted "Superintendent" for "transportation division" in Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 68 Am. Jur. 2d Schools §§ 263 to 269.

One transporting children to or from school as independent contractor, 66 A.L.R. 724.

Constitutionality of statute providing school-bus service for pupils of parochial or private schools, 168 A.L.R. 1434.

Buses: constitutionality, under state constitutional provision forbidding financial aid to religious sects, of public provision of school bus service for private school pupils, 41 A.L.R.3d 344.

78 C.J.S. Schools and School Districts § 7.

## 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 through 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.

**ANNOTATIONS**

**Cross references.** — For divisions of the public education department, *see* 9-24-4 NMSA 1978.

For transfer of powers and duties of the former state board and former department of education, *see* 9-24-15 NMSA.

For provisions relating to financing of public school bus transportation generally, *see* 22-8-29 to 22-8-32 NMSA 1978.

For school bus advertisements, *see* 22-28-1 NMSA 1978.

For transportation of blind children to New Mexico school for visually handicapped, *see* 21-5-6 NMSA 1978.

For design and operation regulations for school buses, *see* 22-16-11 NMSA 1978.

**The 1997 amendment,** effective June 20, 1997, added Subsection G.

**The 1995 amendment,** effective July 1, 1995, inserted "provisions of" in Subsection B, rewrote Subsection C, and in Subsection F, deleted "inspect" preceding "and certify" and inserted "that are".

**The 1993 amendment,** effective July 1, 1993, inserted "of the department of education" in the introductory paragraph; inserted "for school bus design and operation" and substituted "22-16-11" for "66-7-365" in Subsection B; substituted "vocational and special" for "cooperative" in Paragraph (2) of Subsection C; deleted former Paragraphs (3) to (5) of Subsection C, pertaining to transportation routes to and from training centers for execptional children, early childhood education programs and state institutions under the authority of the secretary of health, making a related grammatical change; deleted former Subsection D, which read "cooperate with the director in matters relating to the financing of public school bus transportation"; resdesignated former Subsections E to G as Subsections D to F; deleted "issue and" at the beginning of Subsection D; substituted "state transportation director" for "school transportation director" in Subsection E; and substituted "the Motor Vehicle Code" for "Section 66-1-4 NMSA 1978" in Subsection F.

**Duty of care.** — The state transportation division of the state board of education had a legal duty to establish bus stops on school bus routes, and thus owed a duty of care to a child injured in an accident while crossing a road to catch the bus to her school. *Gallegos v. State Bd. of Educ.*, 1997-NMCA-040, 123 N.M. 362, 940 P.2d 468.

## 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.

## ANNOTATIONS

**Cross references.** — For transfer of powers and duties of the former state board and department of education, *see* 9-24-15 NMSA.

**The 2009 amendment,** effective June 19, 2009, in Subsection B, in the second sentence, after "approved by the", deleted "state board" and added the remainder of the sentence; in Subsection C, after "contract, the", changed "state board" to "department" and changed "regulation" to "rule"; and in Subsection E, after "terminated", added "or not renewed by either party".

**Applicability.** — Laws 2009, ch. 92, § 3 provided that the provisions of Laws 2009, ch. 92, §§ 1 and 2 apply to contracts, including contract renewals, entered into on or after June 19, 2009.

**The 1995 amendment,** effective July 1, 1995, added Subsection A, redesignated former Subsection A as Subsection B, deleted "and the state transportation director" at the end of the first sentence in Subsection B, added Subsection C, redesignated former Subsection B as Subsection D, substituted "five years" for "four years" and deleted "if approval is granted by the state transportation director" following "school board" in Subsection D, and redesignated former Subsection C as Subsection E.

**The 1993 amendment,** effective July 1, 1993, inserted "local school board and the" in the first sentence and substituted "approved by the state board" for "provided by the state transportation division" at the end of the second sentence of Subsection A; and made a minor stylistic change in Subsection C.

## 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.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, authorized certain school districts to transport certain students to and from school by means of a six-passenger sport utility vehicle; in Subsection B, after "Subsections C and", deleted "D" and added "E"; in Subsection C, after the first occurrence of "department", deleted "of education", and after "approval of the", deleted "state board" and added "department"; added a new Subsection D and redesignated former Subsection D as Subsection E; and in Subsection E, after "children who meet the", deleted "state board-approved" and added "department-approved".

**The 1995 amendment,** effective July 1, 1995, substituted "established by the local school district" for "approved annually" in Subsection A, deleted "approved or" preceding "maintained" in Subsection B, inserted "of the department of education" in Subsection C, and deleted former Subsections E, F and G relating to bus routes serving less than ten students.

**The 1993 amendment,** effective June 18, 1993, in Subsection C, deleted "extremely" preceding "hazardous" near the beginning, added "General" at the beginning of the second sentence and added the language beginning "but the standards" at the end of the second sentence.

## 22-16-4.1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 226, § 54 repealed 22-16-4.1 NMSA 1978, as enacted by Laws 1979, ch. 289, § 2 and ch. 305, § 6, concerning vocational education school bus routes, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com*.

## 22-16-5. Repealed.

**History:** 1953 Comp., § 77-14-5, enacted by Laws 1967, ch. 16, § 223; 1975, ch. 342, § 5.

**ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 208, § 16 repealed 22-16-5 NMSA 1978, as enacted by Laws 1967, ch. 16, § 223, relating to procedures for the local school board to object to a school bus route, effective July 1, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com*.

## 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.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 1995 amendment,** effective July 1, 1995, deleted "and with the approval of the state transportation director" preceding "provide" near the beginning of the section, and deleted the former last sentence of the section which read: "A schedule providing for the reimbursement of parents and guardians in an amount that is reasonable and comparable to that which would be paid to a school bus contractor for the transportation of pupils, when computation for payment excludes the factors of size and age of school bus equipment and the driver's salary, shall be established by the state transportation division of the department of education with the approval of the state board."

**The 1993 amendment,** effective July 1, 1993, deleted the subsection designation "A" at the beginning of the section and deleted former Subsections B and C, pertaining to the requirement for application for reimbursement of a parent for transportation costs and defining "attendance zone".

**The 1990 (1st S.S.) amendment,** effective June 18, 1990, added the Subsection A designation, inserting therein "subject to regulations adopted by the state board and", "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", and "of the department of education", made minor stylistic changes, and added Subsections B and C.

**Purpose of reimbursement schedule.** — The reimbursement schedule provision is apparently designed to insure a maximum amount of uniformity in payments for this type of transportation in school districts where similar conditions prevail. 1966 Op. Att'y Gen. No. 66-134 (decided under prior law).

## 22-16-7. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1993, ch. 226, § 54 repealed 22-16-7 NMSA 1978, as enacted by Laws 1967, ch. 16, § 225, concerning county school bus transportation expenditures, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com*.

## 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.

### ANNOTATIONS

**The 2009 amendment,** effective June 19, 2009, required a county to pay for cattle guards only where publicly owned fences intersect a school bus route.

## 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.

### ANNOTATIONS

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 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 through 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.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For duty of the state transportation division to establish standards pursuant to this section, *see* 22-16-2 NMSA 1978.

For overtaking and passing a school bus, *see* 66-7-347 NMSA 1978.

For the markings which indicate a school bus, *see* 66-7-347 and 22-16-9 NMSA 1978.

For special lighting equipment on school buses, *see* 66-7-348 NMSA 1978.

For the penalty for a misdemeanor, *see* 66-8-7 NMSA 1978.

**The 1995 amendment,** effective July 1, 1995, inserted "adopted by the state board" in Subsection A, substituted "state transportation director" for "director of transportation" in Subsections A and B, and made minor stylistic changes throughout the section.

**Liability under Tort Claims Act.** — Neither the adoption and enforcement of regulations to govern the design and operation of school buses, nor the design, planning and enforcement of safety rules for school bus transportation, fall within the meaning of "operation" of a motor vehicle, for purposes of Section 41-4-5 NMSA 1978 (liability of government employees under Tort Claims Act). *Chee Owens v. Leavitts Freight Serv., Inc.,* 1987-NMCA-037, 106 N.M. 512, 745 P.2d 1165.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 79 C.J.S. Schools and School Districts § 480.

Tort liability of public schools and institutions of higher learning for accidents associated with transportation of students, 23 A.L.R.5th 1.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2014, ch. 74, § 2 made Laws 2014, ch. 74, § 1 effective July 1, 2014.

**Compiler's notes.** — Laws 2014, ch. 74, § 1 was erroneously compiled as 22-2-22 NMSA 1978 and has been recompiled as 22-16-12 NMSA 1978 by the compiler.

# ARTICLE 17
# Emergency Transportation

## 22-17-1. Short title.

Sections 1 through 4 [22-17-1 to 22-17-4 NMSA 1978] of this act may be cited as the "Emergency Transportation Act".

**History:** 1953 Comp., § 77-14A-1, enacted by Laws 1974, ch. 38, § 1.

## 22-17-2. Public regulation commission permits.

A. Subject to the Emergency Transportation Act, the public regulation commission 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 commission 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 public regulation commission.

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.

**ANNOTATIONS**

**Cross references. —** For exemption of motor vehicles used pursuant to article from motor carrier regulations, *see* 65-2A-38 NMSA 1978.

For Public Regulation Commission, *see* 8-7-1 NMSA 1978.

**The 2001 amendment,** effective June 15, 2001, substituted "Public regulation commission" for "Corporation commission" in the section heading; substituted "public regulation" for "state corporation" in Subsection A; in Subsection B, deleted "of the state transportation division of the department of education" following "director", inserted "public regulation" preceding "commission"; and added Subsection C.

## 22-17-3. State transportation director; approval.

A. Upon the receipt of approval of the permit application from the state corporation commission [public regulation commission], 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 he determines:

(1) that school bus service to students will not be adversely affected by issuing the permit;

(2) that the operation of such buses for general public transportation service by the 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 district; and

(3) that 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 state superintendent [secretary] of public instruction, 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 state corporation commission [public regulation commission] 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 state corporation commission [public regulation commission] and the local school board concerned.

**History:** 1953 Comp., § 77-14A-3, enacted by Laws 1974, ch. 38, § 3.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

Laws 1998, ch. 108, § 80 provided that all references in law, rules, tariffs, orders and other official acts to the state corporation commission, the insurance board, the fire board or the New Mexico public utility commission shall be construed to be references to the public regulation commission.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 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 state corporation commission [public regulation commission] 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 such area; or

B. the local school board that such 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1998, ch. 108, § 80 provided that all references in law, rules, tariffs, orders and other official acts to the state corporation commission, the insurance board, the fire board or the New Mexico public utility commission shall be construed to be references to the public regulation commission.

# 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;

(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 [55-1-101 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.

## ANNOTATIONS

**Cross references. —** For public school finances generally, *see* 22-8-1 NMSA 1978 et seq.

For school revenue bonds, *see* 22-19-1 NMSA 1978 et seq.

For school construction, *see* 22-20-1 NMSA 1978 et seq.

For public school emergency capital outlays, *see* 22-24-1 NMSA 1978 et seq.

For public school capital improvements, *see* 22-25-1 NMSA 1978 et seq.

For constitutional provision relating to school district indebtedness, *see* N.M. Const., art. IX, § 11.

For issuance and sale of bonds by school districts generally, *see* 6-15-3 to 6-15-10 NMSA 1978.

For issuance of refunding bonds by school districts generally, *see* 6-15-11 to 6-15-22 NMSA 1978.

For bond elections generally, *see* 6-15-23 to 6-15-28 NMSA 1978.

For the Public School Lease Purchase Act, *see* 22-26A-1 NMSA 1978.

**The 2009 amendment,** effective June 19, 2009, deleted former Paragraph (5) of Subsection A, which provided for payment pursuant to a financing agreement for the leasing of a building or other real property with an option to purchase.

**The 2007 amendment,** effective June 15, 2007, added Paragraph (5) of Subsection A to provide for the issuance of bonds to make certain lease payments.

**The 2005 amendment,** effective April 6, 2005, provided that a school district may issue bonds after considering the priorities for the school district's capital needs as shown by the facility assessment database maintained by the public school facilities authority and

that bonds may be issued to provide matching funds for capital outlay projects funded pursuant to the Public School Capital Outlay Act.

**The 1996 amendment,** effective May 15, 1996, inserted "purchasing computer software and hardware for student use in public schools" near the end of the first sentence.

**"School building".** — The term "school building" has been defined by the courts in the context of the expenditure of revenues from a bond issue to mean a structure which is used for teaching. 1981 Op. Att'y Gen. No. 81-01.

**Buildings for teacher housing not school buildings.** — Buildings used for teacher housing, which are not used for instructional purposes, do not fall within the meaning of the term "school building" as it is commonly used in bonding provisions. 1981 Op. Att'y Gen. No. 81-01.

Revenues generated by school district general obligation bonds or pursuant to the Public School Capital Improvements Act may not be spent to construct teacher housing. 1981 Op. Att'y Gen. No. 81-01.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 122.

For article, "No Cake For Zuni: The Constitutionality of New Mexico's Public School Capital Finance System," see 37 N.M.L. Rev. 307 (2007).

## 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 1-12-71 NMSA 1978.

**History:** 1953 Comp., § 77-15-2, enacted by Laws 1967, ch. 16, § 229; 2001, ch. 61, § 1; 2018, ch. 79, § 91.

## ANNOTATIONS

**Cross references.** — For requirement that persons be registered voters to vote in bond elections, *see* 22-18-4 NMSA 1978.

**The 2018 amendment,** effective July 1, 2018, provided that elections on the question of creating a debt by issuing general obligation bonds shall be held pursuant to the Local Election Act, restricted the timing of the bond election so it will not conflict with other provisions of law, and made technical and conforming changes; in Subsection A, after "electors of the school district", deleted "owning real estate in the school district"; and in Subsection B, after "shall be held", deleted "at the same time as a regular school district election or at any special school district election which is not within ninety days after a regular school district election" and added "pursuant to the provisions of the Local Election Act", after "submitted to a vote at", deleted "general or special school", after "qualified electors of the school district", deleted "having paid a property tax on property in the school district for the preceding year, according to the latest completed tax rolls", after "call for a bond election at", deleted "a" and added "the next", after "regular", added "local", after "special", deleted "school district", and added "provided that the timing of the election does not conflict with the provisions of Section 1-12-71 NMSA 1978".

**The 2001 amendment,** effective June 15, 2001, substituted "filed with it" for "filed with them" at the end of Subsection B.

**Constitutionality of section.** — New Mexico Const., art. IX, § 11 violates the equal protection clause of the U.S. Const. by restricting the right to vote in school district bond elections to real estate owners, and likewise, this section, which implements N.M. Const., art. IX, § 11, conflicts with the equal protection clause of the U.S. Const. insofar as it restricts the franchise in school district bond elections to real estate owners or to those who have paid a property tax on property in the school district for the preceding year. *Prince v. Board of Educ.*, 1975-NMSC-068, 88 N.M. 548, 543 P.2d 1176.

**Provision means that a voter in a school bond election must be a resident of the district,** an owner of real estate within the same, but it is not necessary to have paid taxes on said real estate in order to vote in the school bond election. 1957-58 Op. Att'y Gen. No. 58-128. See Prince v. Board of Educ., 1975-NMSC-068, 88 N.M. 548, 543 P.2d 1176.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** Power of school district or school authorities to rescind or modify vote or resolution for bond issue, 68 A.L.R.2d 1041.

79 C.J.S. Schools and School Districts § 366.

## 22-18-3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2001, ch. 61, § 3 repealed 22-18-3 NMSA 1978, as enacted by Laws 1967, ch. 16, § 230, relating to giving the public notice of bond elections and provisions for publications concerning bond elections, effective June 15, 2001. For provisions of former section, *see* the 2000 NMSA 1978 on *NMOneSource.com*.

## 22-18-4. Bond elections; conduct.

A. A person is required to be a registered 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.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, required bond elections in a school district to be conducted pursuant to the Local Election Act, and made technical and conforming changes; in Subsection A, after "registered", deleted "voter" and added "qualified elector"; and in Subsection B, after "pursuant to the", deleted "Election Code, except as otherwise provided in Sections 22-18-1 through 22-18-12 NMSA 1978, the School Election Law and the Bond" and added "Local".

**Temporary provisions.** — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

**The 2001 amendment,** effective June 15, 2001, updated the code section references in Subsection B.

## 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.

**ANNOTATIONS**

**Use of the language "for school purposes," with no other qualification, on a school bond issue** was too broad, because such language did not sufficiently apprise the voter of the exact purpose for which the election was held. *Board of Educ. v. Hartley*, 1964-NMSC-204, 74 N.M. 469, 394 P.2d 985 (decided under prior law).

## 22-18-6. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2001, ch. 61, § 3 repealed 22-18-6 NMSA 1978, as enacted by Laws 1967, ch. 16, § 233, regarding the authority of local school boards to issue bonds, effective June 15, 2001. For provisions of former section, *see* the 2000 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, removed an exception to the provision prohibiting a bond election within two years of a bond election in which a majority of voters voted against creating a debt by issuing general obligation bonds; and after "the date of the bond election", deleted the remainder of the subsection, which related to the presentation of a petition calling for a bond election.

**Bond elections on the "same question".** — Alamogordo school district's proposed February, 1989 bond question, which differed materially in amount of bonded indebtedness and in purpose, was not the "same question" that the voters defeated in May, 1987, and therefore did not violate this section. 1988 Op. Att'y Gen. No. 88-53.

## 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.

**ANNOTATIONS**

**Cross references.** — For preparation and disposition of transcripts of proceedings relating to bond issues, *see* 6-15-2 NMSA 1978.

## 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 through 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 1977, ch. 246, § 69 abolished the public school finance division of the department of finance and administration.

**Cross references.** — For the transfer of powers of the former public school finance division, *see* 9-6-3.1 NMSA 1978.

For the transfer of powers of the former state superintendent to the secretary of public education, *see* 9-24-15 NMSA 1978.

## 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.

## ANNOTATIONS

**Compiler's notes.** — The phrase "the effective date of this 2007 act" in Subsection C, is March 30, 2007, the effective date of Laws 2007, ch. 102, § 1.

**Cross references.** — For transfer of powers and duties of the former department of education, *see* 9-24-15 NMSA.

For the legislative finance committee, *see* 2-5-1 NMSA 1978.

For the legislative education study committee, *see* 2-10-1 NMSA 1978.

**The 2007 amendment,** effective March 30, 2007, added a new Subsection C, which required the department of finance and administration to pay a payment due on a bond from a school district's undistributed state equalization guarantee distribution if the school district indicates that it will not make the payment by the due date and to withhold the distribution until the amount has been recouped by the department.

# ARTICLE 18A
# School District Loans

## 22-18A-1. Short title.

Sections 1 through 4 [22-18A-1 through 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Cross references.** — For the state board of finance, *see* 6-1-1 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

# 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.

**ANNOTATIONS**

**Cross references.** — For Section 1397E of the Internal Revenue Code, see 26 U.S.C. § 1397E.

## 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.

**ANNOTATIONS**

**Cross references.** — For Section 1397E of the Internal Revenue Code, see 26 U.S.C. § 1397E.

## 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.

**ANNOTATIONS**

**Cross references.** — For Section 1397E of the Internal Revenue Code, see 26 U.S.C. § 1397E.

# 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.

**ANNOTATIONS**

**The 2010 amendment,** effective March 8, 2010, deleted "Sections 1 through 4 of this act" and added "Chapter 22, Article 18C NMSA 1978".

## 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.

**ANNOTATIONS**

**The 2010 amendment,** effective March 8, 2010, deleted former Subsection C, which defined "eligible taxpayer" as an entity that qualifies as an eligible taxpayer under the Internal Revenue Code; and in Subsection C, deleted "3 of the Qualified School Construction Bonds Act" and added "22-18C-3 NMSA 1978".

## 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.

**ANNOTATIONS**

**Cross references.** — For the Internal Revenue Code of 1986, *see* 26 U.S.C.

**The 2010 amendment,** effective March 8, 2010, in Subsection A(1)(a), after "school facility", deleted "or for"; added Subsection A(1)(c); in Subsection A(3), deleted "designates the bonds as qualified school construction bonds" and added "is"; added Subparagraphs (a) and (b) of Subsection A(3); and in Subsection B, after "sold at a public sale", added "or at not less than par" and after "public or private sale to", deleted "eligible taxpayers" and added the remainder of the sentence.

## 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.

**ANNOTATIONS**

**The 2010 amendment,** effective March 8, 2010, in Subsection A, after "shall not exceed the", added "available", and after "available allocation", added "including any carry-forward allocation"; in Subsection C, in the first sentence, after "school district", added "that has been authorized to issue bonds, or is in the process of obtaining authorization to issue bonds"; after "desires to designate", added "all or any portion of the"; after "construction bonds, it shall", deleted "by July 1 of the calendar year in which the bonds are to be issued"; after "submit an application", deleted "for reservation of an allocation"; and after "to the council", added "for an allocation distribution"; added the second sentence; and in the third sentence; after "Paragraphs (1) and (2)", deleted "and (3)" and after "Subsection A of Section", deleted "3 of the Qualified School Construction Bonds Act" and added "22-18C-3 NMSA 1978"; in Subsection D, after "year, the excess", added "shall revert to the council and" and after "subsequent year", added "as follows"; added Paragraphs “(1) and (2) of Subsection D; in Subsection E, after "the council shall", deleted "ratably apportion" and added "after considering the factors listed in Subsection F of this section, decide how"; after "the remaining allocation", deleted "among the state and school districts" and added "shall be distributed to applicants"; and after "however, that the", deleted "apportionment" and added "distribution"; and added Subsection F.

# 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.

**ANNOTATIONS**

**Cross references.** — For public school finances generally, *see* 22-8-1 NMSA 1978 et seq.

For general obligation bonds of school districts, *see* 22-18-1 NMSA 1978 et seq.

For public school emergency capital outlays, *see* 22-24-1 NMSA 1978 et seq.

For public school capital improvements, *see* 22-25-1 NMSA 1978 et seq.

For constitutional provision relating to school district indebtedness, *see* N.M. Const., art. IX, § 11.

For issuance and sale of bonds by school districts generally, *see* 6-15-3 to 6-15-10 NMSA 1978.

For issuance of refunding bonds by school districts generally, *see* 6-15-11 to 6-15-22 NMSA 1978.

For bond elections generally, *see* 6-15-23 to 6-15-28 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For pledge of additional revenue, *see* 22-19-12 NMSA 1978.

## 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.

**ANNOTATIONS**

**Cross references.** — For exchange of bonds, *see* 22-19-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 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.

**ANNOTATIONS**

## 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.

**ANNOTATIONS**

**Cross references. —** For receipt and distribution of federal forest reserve funds, *see* 6-11-2 and 6-11-3 NMSA 1978.

For PL 874 funds, *see* 20 USCS § 7701 et seq.

## 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.

**ANNOTATIONS**

## 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.

**ANNOTATIONS**

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 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.

**ANNOTATIONS**

## 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.

**ANNOTATIONS**

**The 2003 amendment,** effective April 4, 2003, added Subsection C.

## 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.

**ANNOTATIONS**

## 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 through 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.

**ANNOTATIONS**

## 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 through 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.

**ANNOTATIONS**

## 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.

**ANNOTATIONS**

## 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.

**ANNOTATIONS**

# 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 54, § 11 contained an emergency clause and was approved March 4, 2002.

## 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 54, § 11 contained an emergency clause and was approved March 4, 2002.

## 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 54, § 11 contained an emergency clause and was approved March 4, 2002.

## 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 54, § 11 contained an emergency clause and was approved March 4, 2002.

## 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.

**ANNOTATIONS**

**Cross references.** — For the New Mexico finance authority, *see* 6-21-4 NMSA 1978.

**Emergency clauses.** — Laws 2002, ch. 54, § 11 contained an emergency clause and was approved March 4, 2002.

## 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 54, § 11 contained an emergency clause and was approved March 4, 2002.

## 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 54, § 11 contained an emergency clause and was approved March 4, 2002.

## 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 54, § 11 contained an emergency clause and was approved March 4, 2002.

## 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2002, ch. 54, § 11 contained an emergency clause and was approved March 4, 2002.

**Severability.** — Laws 2002, ch. 54, § 10 provided for the severability of the act if any part or application thereof is held invalid.

# 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.

## ANNOTATIONS

**Cross references.** — For public works generally, *see* 13-4-1 NMSA 1978 et seq.

**The 2011 amendment,** effective July 1, 2011, required the director of the public school facilities authority or the director's designee to approve lease-purchase agreements for buildings that will be used as school buildings or related school structures and required the director to prescribe an application form for approval of lease-purchase agreements and the reopening of existing structures; specified criteria for approval of applications for lease-purchase agreements and the reopening of existing structures; and prohibited charter schools from applying for lease payment grants unless the lease-purchase agreement has been approved.

**The 2007 amendment,** effective July 1, 2007, added Subsection D to provide that the public school capital outlay council may exempt classes or types of construction from approval under this section.

**The 2006 amendment,** effective March 6, 2006, added Paragraph (5) of Subsection B to provide for a five-year facilities plan; added Subparagraphs (a) through (d) of Paragraph (5) of Subsection B to provide for the content of a five-year facilities plan; and in Subparagraph (b) of Paragraph (6) (formerly Paragraph (5)) of Subsection B, changed "master plan" to "five-year facilities plan".

**The 2005 amendment,** effective April 6, 2005, deleted the requirement in Subsection A(4) that the application include a description of the structure to be built; added Subsections B(5)(a) and (b) to provide that the project shall be approved if it is in compliance with statewide adequacy standards and is appropriately integrated into the school district master plan; added Subsection D to provide that a construction contract shall contain provisions requiring the construction to be in compliance with statewide adequacy standards and that for a contract funded by insurance proceeds, the cost of settlement of an insurance claim shall not be increased by inclusion of the proceeds in the contract and the settlement shall be governed by insurance policies, memoranda of coverage and rules related to them; added Subsection E to provide that public school facilities shall be constructed pursuant to state standards or codes and rules for the prevention and control of fires and that municipal or county standards or codes do not apply the construction of public school facilities except structures constructed as part of a program of a school district; added Subsection F to provide that the provisions of Subsection E relating to fire prevention shall not be effective until the public regulation commission has adopted the International Fire Code and all standards related to that code; and added Subsection G to define "construction".

**The 2003 amendment,** effective July 1, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

**The 1988 amendment,** effective May 18, 1988, substituted "the state superintendent" for "chief" in the catchline and in the second and last sentences in Subsection A; substituted "state superintendent or his designee" for "chief" in the first sentence in Subsection A and in Subsections B and C; added the designations (1) to (5) in Subsection B; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Title to buildings when school lands revert for nonuse for school purposes, 28 A.L.R.2d 564.

Use of public school premises for religious purposes during nonschool time, 79 A.L.R.2d 1148.

## 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.

**ANNOTATIONS**

**Cross references.** — For transfer of powers and duties of former state board of education, *see* 9-24-15 NMSA 1978.

**The 2006 amendment,** effective July 1, 2007, added the governing body of a charter school and changes "state board" to "department" in Subsection A.

## 22-20-3. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 147, § 14 repealed 22-20-3 NMSA 1978, as enacted by Laws 1967, ch. 16, § 272, relating to state board approval for school construction, effective July 1, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

## 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.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2011 (1st S.S.), ch. 3, § 8 repealed 13-1-21.2 NMSA 1978, effective October 5, 2011.

**Cross references.** — For Governmental Conduct Act, *see* Chapter 10, Article 16 NMSA 1978.

For sales to and contracts with schools or educational institutions by boards, officers and employees, *see* 21-1-35 NMSA 1978.

For sentencing for felonies, *see* 31-18-15 NMSA 1978.

For transfer of powers and duties of former state board, state superintendent and department of education, *see* 9-24-15 NMSA 1978.

**The 2006 amendment,** effective July 1, 2007, in Subsection A, changed "state board" to "commission", added a member of the governing body of a charter school, changed "state superintendent" to "secretary", deleted certified school instructor or certified school administrator and added a school employee to the board; in Subsection B, changed "Section 13-1-1 through 13-1-26 NMSA 1978" to "Sections 13-1-21, 13-1-21.2 and 13-1-22 NMSA 1978", deleted certified school instructor and certified school administrators from application of this section and added school employees, and added contract for other employment; in Subsection C, changed "state board" to "commission", deleted state superintendent, certified school instructor or certified school administrator and added a member of the governing body of a charter school and the secretary; in Subsection D, added charter schools; and in Subsection E, changed "state board of education" to "department" and changed "certification of a certified school administrator or a certified school instructor" to "licensure of a licensed school employee".

**Purpose of this section and Section 21-1-35 NMSA 1978,** is to prevent a conflict of interest between school board members and the districts they are connected with. *State ex rel. Martinez v. Padilla*, 1980-NMSC-064, 94 N.M. 431, 612 P.2d 223.

**Practice restricting district bus drivers in location of gas purchase prohibited. —** The practice of requiring certain district bus drivers to buy their gas at a school board member's gas station is exactly the type of improper conflict this section was designed to prohibit, and such activity does not fall within the "regular course of business" exception of Subsection B. *State ex rel. Martinez v. Padilla*, 1980-NMSC-064, 94 N.M. 431, 612 P.2d 223.

**Applicability of Conflict of Interest Act to school district employees. —** The Conflict of Interest Act does not apply to employees of school districts. 1969 Op. Att'y Gen. No. 69-19, *but see* 1989 Op. Att'y Gen. No. 89-34 and 1988 Op. Att'y Gen. No. 88-20.

**Transfer by board of contract to wife of board member. —** No violation of this section would result where a school board transfers a school bus transportation contract to the wife of a member of the local board making such transfer, as the board member is neither directly nor indirectly working under contract to his school district and the contract is truly between the school board and the wife only, with the husband having no personal interest, pecuniary or otherwise, in the contract. 1971 Op. Att'y Gen. No. 71-36.

**Seeking of assistance from bidders in preparation of specifications. —** The conflict of interest provision of the Public School Code does not prohibit school districts from

seeking the assistance of bidders in the preparation of specifications. 1969 Op. Att'y Gen. No. 69-19.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was added by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

# ARTICLE 22
# Variable School Calendars

## 22-22-1. Short title.

This act [22-22-1 through 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 2003 amendment,** effective April 4, 2003, deleted "request" from the end of the section heading; deleted "of any school district" following "school board" near the beginning, deleted "adopt by resolution a request to the state board for approval to" following "may" near the beginning, inserted "a public school or the school district" following "operate" near the middle, and deleted the last sentence.

**The 1993 amendment,** effective June 18, 1993, substituted "board" for "department of education" in two places in the first sentence; added the second and third sentences; and made a minor stylistic change.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 2003 amendment,** effective April 4, 2003, substituted "state" for "department and" preceding "board" in the catchline; deleted Subsection A; deleted the "B." subsection designation; and deleted "and regulations" following "rules" twice in the section.

**The 1993 amendment,** effective July 1, 1993, substituted "state board" and "board" for "department" and "department of education" in Subsection A; deleted "of education" following "state board" in Subsection B; and made minor stylistic changes.

## 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.

**ANNOTATIONS**

**The 2003 amendment,** effective April 4, 2003, deleted "of approval of request" at the end of the section heading; substituted "The variable school" for "Upon approval of the state board of the request of a local school board for operation under a variable school calendar, such" at the beginning of the section; deleted "and the rules and regulations made pursuant thereto" at the end of the first sentence; inserted "public" preceding "school" near the beginning of the second sentence; substituted "discontinues" for "requests the state board by resolution for approval of the discontinuance of" following "local school board" in the second sentence; and deleted "and the request is approved by the state board" at the end of the section.

**The 1993 amendment,** effective June 18, 1993, substituted "state board" for "state department of education" and "department" and made minor stylistic changes.

# 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.

**ANNOTATIONS**

**Cross references.** — For courses of instruction generally, *see* 22-13-1 NMSA 1978 et seq.

For constitutional provision requiring legislature to provide for training of teachers in English and Spanish languages and to provide means and methods to facilitate teaching of English language to Spanish-speaking students, *see* N.M. Const., art. XII, § 8.

For constitutional provision relating to educational rights of children of Spanish descent, *see* N.M. Const., art. XII, § 10.

**The 2004 amendment,** effective May 19, 2004, revised the short title to include all of Chapter 22, Article 23 NMSA 1978.

**Law reviews.** — For comment, "Education and the Spanish-Speaking - An Attorney General's Opinion on Article XII, Section 8 of the New Mexico Constitution," see 3 N.M.L. Rev. 364 (1973).

For note, "Bilingual Education: Serna v. Portales Municipal Schools," see 5 N.M.L. Rev. 321 (1975).

## 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.

**ANNOTATIONS**

**Cross references.** — For the federal No Child Left Behind Act, *see* 20 U.S.C., § 6301.

## 22-23-2. Definitions.

As used in the Bilingual Multicultural Education Act:

A. "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;

B. "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;

C. "district" means a public school or any combination of public schools in a district;

D. "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;

E. "heritage language" means a language other than English that is inherited from a family, tribe, community or country of origin;

F. "home language" means a language other than English that is the primary or heritage language spoken at home or in the community; and

G. "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.

**ANNOTATIONS**

**Compiler's notes.** — The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978,

designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance. Laws 1980, ch. 151, § 58, abolished the educational finance and cultural affairs department, § 4 of that act created the department of finance and administration and § 47 of that act created the public school finance division of the department of finance and administration. Laws 1983, ch. 301, § 83, abolished the public school finance division of the department of finance and administration and § 69 of that act created the office of education of the department of finance and administration and designated the administrative and executive head of the office of education as the director of the office of education. Laws 1983, ch. 301, § 83 also provided that all references to the director or chief of public school finance shall be construed to be references to the director of the office of education.

**The 2015 amendment,** effective July 1, 2015, amended and removed certain definitions from the Bilingual Multicultural Education Act; deleted Subsection C, which defined "department", and redesignated former Subsections D through G as Subsections C through F, respectively; and deleted Subsection H, which defined "school board" and redesignated former Subsection I as Subsection G.

**The 2006 amendment,** effective July 1, 2007, added charter school in Subsection D and added governing body of a state-chartered charter school in Subsection H.

**The 2004 amendment,** effective May 19, 2004, in Subsection A, revised the definition of "bilingual multicultural education"; deleted Subsection B; redesignated Subsection C as Subsection B and changed the definition of "culturally and linguistically different", changed the definition of "department" to the public education department and revised the definition of "district"; and added new Subsections E through G and I.

## 22-23-3. Repealed.

**History:** 1953 Comp., § 77-23-3, enacted by Laws 1973, ch. 285, § 3.

**ANNOTATIONS**

**Repeals.** — Laws 2004, ch. 31, § 7 repealed 22-23-3 NMSA 1978, as enacted by Laws 1973, ch. 285, § 3, relating to purpose of act, effective May 19, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**The 2004 amendment,** effective May 19, 2004, in Subsection A, changed "state board" to "department"; and in Subsections A, C and D, inserted "bilingual multicultural education".

## 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.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, authorized the governing body of a charter school to prepare a bilingual multicultural education program and provided for the process by which the governing body should implement the bilingual multicultural education program; in Subsection A, deleted "The" and added "A", after "school board", added "or, for charter schools, a governing body of a charter school"; in Subsection B, after "school board", added "or governing body of a charter school", and after "district", added "or charter school"; in Subsection C, “after programs shall be", deleted "located in the district and"; in Subsection D, after "Each district", added "or charter school", and after "compile and report", deleted "this" and added "these"; in the introductory sentence of Subsection E, after "Districts", added "and charter schools", and after "development to", deleted "district"; and in Subsection F, after "district’s", added "or charter school’s".

**The 2004 amendment,** effective May 19, 2004, inserted "bilingual multicultural education" in Subsections A and C, changed "state board" to "department" and added new Subsections D through F.

**The 1988 amendment,** effective May 18, 1988, deleted "the state superintendent of public instruction or his representative and the chief" following "to the department" in Subsection A.

## 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.

## ANNOTATIONS

**The 2004 amendment,** effective May 19, 2004, inserted "bilingual multicultural education" in Subsections A and B, added “both English and the home language” to Paragraph (2) of Subsection A, added to Subsection A the last sentence of Paragraph (4), “home or heritage language” to Paragraph (5) and added new Subparagraphs (6) and (7) and made other minor amendments.

**School district would not be justified in failing to take affirmative steps to rectify language deficiencies because the state did not provide additional funding** for bilingual multicultural programs at each grade level. Neither *Lau v. Nichols*, 414 U.S. 563, 94 S. Ct. 786, 39 L. Ed. 2d 1 (1974), nor *Serna v. Portales Mun. Schs.*, 499 F.2d 1147 (10th Cir. 1974) even suggests that the state is responsible for providing any such additional funds. 1976 Op. Att'y Gen. No. 76-03.

**Law reviews.** — For note, "Bilingual Education: Serna v. Portales Municipal Schools," see 5 N.M.L. Rev. 321 (1975).

# 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.

**ANNOTATIONS**

**The 2005 amendment,** effective June 17, 2005, added the statutory reference to the act.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, added Subsections A through D and F. Laws 2007, ch. 295, § 2 and Laws 2007, ch. 296, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 296, § 2. *See* 12-1-8 NMSA 1978.

## 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.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, rewrote this section. Laws 2007, ch. 295, § 3 and Laws 2007, ch. 296, § 3 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 296, § 3. *See* 12-1-8 NMSA 1978.

## 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.

**ANNOTATIONS**

**Compiler's note.** — Laws 2007, ch. 295, § 1 and Laws 2007, ch. 296, § 1 enacted identical sections, effective June 15, 2007.

**Cross references.** — For the department referred to in the section, *see* the public education department, 22-2-1 NMSA 1978.

## 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.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, required the assistant secretary to advise the secretary on policy regarding education of tribal students and to coordinate transition efforts for tribal students in public schools with the higher education department and to work to expand Indian education for tribal students in preschool through grade twenty; and added Subsections B through D and Paragraphs (5) and (6) of Subsection E. Laws 2007, ch. 295, § 4 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 296, § 4. *See* 12-1-8 NMSA 1978.

## 22-23A-6. Advisory council.

A. The "Indian education advisory council" is created and shall advise the secretary and assistant secretary 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 the effective date of this 2007 act.

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.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, required the council to advise the secretary and assistant secretary on implementation of the Indian Education Act; changed the number of members of the council to sixteen members; changed the number of urban Indian members to three; provided for three at-large representatives; and added Subsections B and C. Laws 2007, ch. 295, § 5 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 296, § 5. *See* 12-1-8 NMSA 1978.

## 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.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, required submission of the report no later than November 15 and that the report include information about consultations with district Indian education committees, school-site parent advisory councils and tribal, municipal and Indian organizations and information about indigenous research and evaluation measures and results of effective curricula for tribal students. Laws 2007, ch. 295, § 6 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 296, § 6. *See* 12-1-8 NMSA 1978.

## 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.

**ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, added Subsection B. Laws 2007, ch. 295, § 7 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 296, § 7. *See* 12-1-8 NMSA 1978.

# 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2010, ch. 108, § 1 and Laws 2010, ch. 114, § 1 enacted identical sections, both effective July 1, 2010. The section was set out as enacted by Laws 2010, ch. 114, § 1. *See* 12-1-8 NMSA 1978.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2010, ch. 108, § 2 and Laws 2010, ch. 114, § 2 enacted identical sections, both effective July 1, 2010. The section was set out as enacted by Laws 2010, ch. 114, § 2. *See* 12-1-8 NMSA 1978.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2010, ch. 108, § 3 and Laws 2010, ch. 114, § 3 enacted identical sections, both effective July 1, 2010. The section was set out as enacted by Laws 2010, ch. 114, § 3. *See* 12-1-8 NMSA 1978.

## 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.

## ANNOTATIONS

**Compiler's notes.** — Laws 2010, ch. 108, § 4 and Laws 2010, ch. 114, § 4 enacted different sections, both effective July 1, 2010. The section was set out as enacted by Laws 2010, ch. 114, § 4. *See* 12-1-8 NMSA 1978.

Laws 2010, ch. 108, § 4 provided:

"A. The "Hispanic education liaison" is created in the department.

B. The liaison shall:

(1) focus on issues related and implementations 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."

## 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2010, ch. 108, § 5 and Laws 2010, ch. 114, § 5 enacted identical sections, both effective July 1, 2010. The section was set out as enacted by Laws 2010, ch. 114, § 5. *See* 12-1-8 NMSA 1978.

## 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.

**ANNOTATIONS**

**The 2015 amendment,** effective June 19, 2015, removed a provision requiring adequate yearly progress information to be included in Hispanic education status reports; in Subsection B, Paragraph (3), after the semicolon, added "and"; and deleted Paragraph (4) of Subsection B, relating to information on Hispanic students in schools that make adequate yearly progress, and redesignated the succeeding paragraph accordingly.

# 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.

**ANNOTATIONS**

**Cross references.** — For public school finances generally, *see* 22-8-1 NMSA 1978 et seq.

For public school capital improvements, see 22-25-1 NMSA 1978 et seq.

**The 2000 amendment,** effective April 12, 2000, substituted "Chapter 22, Article 24 NMSA 1978" for "Sections 22-24-1 through 22-24-6 NMSA 1978".

For article, "No Cake For Zuni: The Constitutionality of New Mexico's Public School Capital Finance System," see 37 N.M.L. Rev. 307 (2007).

## 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.

**ANNOTATIONS**

**The 2004 amendment,** effective May 19, 2004, replaced the previous purpose to "meet critical school district capital outlay which cannot be met by the school district after it has exhausted available resources" with the purpose that follows "is to" at the beginning of the section.

**The 1994 amendment,** effective May 18, 1994 deleted "all" preceding "available" near the end of the section.

## 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 used to interconnect education technology equipment for school districts and school buildings necessary to support broadband connectivity 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.

## ANNOTATIONS

**2018 Multiple Amendments.** — Laws 2018, ch. 66, § 1, and Laws 2018, ch. 71, § 2, both effective May 16, 2018, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2018, ch. 71, § 2, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2018, ch. 66, § 1, and Laws 2018, ch. 71, § 2 are described below. To view the session laws in their entirety, *see* the 2018 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2018, ch. 66, § 1, defined "authority", "maximum allowable gross square foot per student", "replacement cost per square foot", "school district population density", and "school district population density factor" as used in the Public School Capital Outlay Act, and Laws 2018, ch. 71, § 2, added "school security system" to the definition of "building system".

**Laws 2018, ch. 71, § 2**, effective May 16, 2018, added "school security system" to the definition of "building system"; in Subsection A (now Subsection B), after "air conditioning systems", added "and school security systems", and made minor stylistic changes.

**Laws 2018, ch. 66, § 1**, effective May 16, 2018, defined "authority", "maximum allowable gross square foot per student", "replacement cost per square foot", "school district population density", and "school district population density factor" as used in the Public School Capital Outlay Act; added a new Subsection A and redesignated former Subsections A through F as Subsections B through G, respectively; and added Subsections H through L, and made minor stylistic changes.

**The 2015 amendment,** effective July 1, 2015, defined "building system" in the Public School Capital Outlay Act; and added Subsection A and redesignated the succeeding subsections accordingly.

**The 2014 amendment,** effective March 6, 2014, added a definition of "education technology infrastructure" to provide for allocations from the public school capital outlay fund for education technology infrastructure; and added Subsection D.

**The 2012 amendment,** effective May 16, 2012, made the school for the blind and visually impaired and the school for the deaf, including all facilities that are necessary for their educational missions, eligible for public school capital outlay funding; added Subsections A and B; and in Subsection E, after "charter schools", added "and the constitutional special schools".

**The 2006 amendment,** effective May 17, 2006, added Subsection C to define school district.

# 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 public school facilities 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 public school facilities 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 public school facilities 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 public school facilities 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, which 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 public school facilities authority pursuant to the Public School Capital Outlay Act, and, in addition, balances in the fund may be expended by the public school facilities 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 three 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 may be expended annually by the council for grants to school districts for the purpose of making lease payments for classroom 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 shall not exceed:

(a) the actual annual lease payments owed for leasing classroom space for schools, including charter schools, in the school district; or

(b) seven hundred dollars ($700) multiplied by the MEM using the leased classroom 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 No Child Left Behind Act of 2001;

(3) at the end of each fiscal year, any unexpended or unencumbered balance of the appropriation 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 classroom 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 classroom facilities in the first year of instruction, as shown in the approved charter school application; provided that, after the eightieth day of the school year, the MEM shall be adjusted to reflect the full-time-equivalent enrollment on that date; and

(b) "classroom facilities" or "classroom space" includes the space needed, as determined by the minimum required under the statewide adequacy standards, for the direct administration of 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 public school facilities 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 public school facilities 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 Paragraph (5) of 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 Paragraph (5) of 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 under which an amount equal to the savings to the district in lower insurance premiums are used to reimburse the fund fully or partially for the demolition costs allocated to the district.

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. For each fiscal year from 2018 through 2022, twenty-five million dollars ($25,000,000) of the public school capital outlay fund is reserved for appropriation by the legislature to the instructional material fund or to the transportation distribution of the public school fund. The secretary shall certify the need for the issuance of supplemental severance tax bonds to meet an appropriation from the public school capital outlay fund to the instructional material fund or to the transportation distribution of the public school fund. Any portion of an amount of the public school capital outlay fund that is reserved for appropriation by the legislature for a fiscal year, but that is not appropriated before the first day of that fiscal year, may be expended by the council as provided in this section.

O. Up to ten million dollars ($10,000,000) of the fund may be expended in each of fiscal years 2019 through 2022 for school security system project grants made in accordance with Section 22-24-4.7 NMSA 1978.

**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.

## ANNOTATIONS

**Cross references.** — For the federal No Child Left Behind Act of 2001, *see* 20 U.S.C. § 6301.

For the public school facilities authority, *see* 22-24-9 NMSA 1978.

**The 2018 amendment,** effective May 16, 2018, authorized up to $10,000,000 of the public school capital outlay fund to be expended in each of fiscal years 2019 through 2022 for school security system project grants and made technical changes; deleted three occurrences of "eightieth and one hundred twentieth days" and added "second and third reporting dates"; in Subsection B, after "through", deleted "N" and added "O"; in Subsection I, Subparagraph I(1)(b), after "multiplied by the", deleted "number of"; in Subsection M, after, "expended", added "in", and after "each", deleted "year in" and added "of"; and added Subsection O.

**Compiler's notes.** — Laws 2018, ch. 71, § 4 provided that if acts making amendments to Section 22-24-4 NMSA 1978 are enacted by the first and second sessions of the fifty-third legislature, the provisions of those acts shall be reconciled and compiled in accordance with the provisions of Section 12-1-8 NMSA 1978, notwithstanding that the amendments were not made in the same session of the legislature. This section

includes language enacted by Laws 2017, ch. 142, § 1, which was given force of law by the New Mexico Supreme Court in State ex rel. New Mexico Legislative Council v. Honorable Susana Martinez, Governor of the State of New Mexico et al., S.Ct. Order No. S-1-SC-36731, which held that Article IV, Section 22 of the New Mexico Constitution requires that objections must accompany a returned bill, and has been reconciled with Laws 2018, ch. 71, § 3.

**The 2017 amendment**, effective June 16, 2017, removed the time period which limited the use of the public school capital outlay fund for an education technology infrastructure deficiency corrections initiative; and in Subsection M, after "expended each year", deleted "in fiscal years 2014 through 2019".

**The 2016 (2nd S.S.) amendment,** effective October 7, 2016, removed the four-year fifteen million dollar ($15,000,000) cap on expenditures from the public school capital outlay fund for building system repairs, renovation or replacement initiatives, and reserved certain amounts from the public school capital outlay fund for appropriation by the legislature to the instructional material fund or the transportation distribution of the public school fund; in Subsection B, after "G and I through", deleted "M" and added "N"; in Subsection H, deleted "Up to fifteen million dollars ($15,000,000) of", after "may be expended", deleted "annually", after "by the council for", deleted "expenditure in fiscal years 2016 through 2020 for a", after "renovation or replacement", changed "initiative" to "initiatives", and after "pursuant to Section", deleted "3 of this 2015 act" and added "22-24-4.6 NMSA 1978"; in Subparagraph I(1)(a), after "schools, in the", added "school"; and added new Subsection N.

**Compiler's notes.** — Laws 2016 (2nd S.S.), ch. 2, § 3, effective October 7, 2016, appropriated twelve million five hundred thousand dollars ($12,500,000) from the public school capital outlay fund to the instructional material fund for expenditure in fiscal year 2017 and subsequent fiscal years for the purchase of instructional material pursuant to the Instructional Material Law; provided that the secretary of public education certifies the need for the issuance of supplemental severance tax bonds to meet that appropriation. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the public school capital outlay fund.

**The 2015 amendment,** effective July 1, 2015, authorized the expenditure of fifteen million dollars ($15,000,000) from the public school capital outlay fund to be used in fiscal years 2016 through 2020 for a building system repair; in Subsection H, after "Up to", deleted "ten million dollars ($10,000,000) of the fund may be allocated annually by the council for expenditure in fiscal years 2010 through 2015 for a roof repair and replacement initiative with projects to be identified by the council pursuant to Section 22-24-4.3 NMSA 1978; provided that money allocated pursuant to this subsection shall be expended within two years of the allocation" and added the remainder of the subsection; and in Subsection M, after "pursuant to this Section", deleted "4 of this 2014 act" and added "22-24-4.5 NMSA 1978".

**The 2014 amendment,** effective March 6, 2014, established an education technology infrastructure deficiency corrections initiative; in Subsection J, in the second sentence, added "public school facilities"; and added Subsection M.

**The 2010 amendment,** effective March 9, 2010, in Subsection C, in the third sentence, after "Title", added "to" and after "custody" deleted "to"; in Subsection H, after "fund may be allocated", added "annually" and after "fiscal years 2010 through", changed "2012" to "2015"; and in Subsection J, in the second sentence, after "The authority", changed "shall" to "may"; and added the last sentence.

**The 2009 amendment,** effective April 8, 2009, in Subsection B, added the reference to Subsection I; in Paragraph (1) of Subsection G, after "expenditures from the fund", added "for the core administrative functions"; in Subsection H, after "Up to", deleted "thirty million dollars ($30,000,000)" and added "ten million dollars ($10,000,000)"; after "allocated", deleted "annually"; after "by the council", changed "in fiscal years 2006 and 2007" to "for expenditure in fiscal years 2010 through 2012"; and after "subsection shall be expended", deleted "prior to September 1, 2008" and added "within two years of the allocation"; in Subsection I, after "annually by the council", deleted "in fiscal years 2006 through 2020"; in Subparagraph (b) of Paragraph (1) of Subsection I, after "percentage", deleted "increase" and added "change"; and after "department of labor", deleted the remainder of the sentence, which provided for a rate if the total grants awarded exceed the total annual amount available; added Paragraph (4) of Subsection I; deleted former Subparagraph (a) of Paragraph (5) of Subsection I, which provided that a grant shall not be made unless the facilities met the statewide adequacy standards; and deleted former Paragraph (5) of Subsection I, which provided limitations on the amounts expended from the fund.

**The 2008 amendment,** effective May 14, 2008, in Subsection J, provided that the contract may provide for initial estimated payments from the fund prior to the expenditures if the contract provides for additional payments from the fund if the actual expenditures exceed the initial payments and for repayments to the fund if the initial payments exceed the actual expenditures.

**The 2007 amendment,** effective July 1, 2007, provided that, except as permitted in 22-24-5.8 NMSA 1978, money in the fund shall be used for capital expenditures for an adequate educational program; eliminated the $7,500,000 limitation on expenditures for lease payments; increased the maximum amount of a grant to a school district to $700,000,000; provided a formula for adjustment of the maximum amount of grants; added Paragraphs (4) and (5) of Subsection I; and added Subparagraph (b) of Paragraph (6) of Subsection I.

**The 2006 amendment,** effective March 6, 2006, added the qualification "except as provided in Subsection K" in Subsection D; deleted former Subsection H, which provided for expenditure of balances in the fund in fiscal years 2003 and 2004; in Subsection I (formerly Subsection J), changed four million dollars to seven million five hundred thousand dollars, changed "2005" to "2006" and changed "2009" to "2010"; in

Subparagraph (b) of Paragraph (1) of Subsection I (formerly Subsection J), deleted three hundred dollars for fiscal year 2005 and deleted fiscal years 2006 through 2006 after six hundred dollars; in Subparagraph (b) of Paragraph (4) of Subsection I (formerly Subsection J), changed "fortieth" to "eightieth"; added a new Subsection K to provide for allocations for five-year facilities plans; added Paragraphs (1) and (2) of Subsection K to provide criteria for allocations for five-year facilities plans; added Subsection L to provide for allocations for demolishing abandoned school district facilities; and added Paragraphs (1) through (3) of Subsection L to provide criteria for allocations for demolishing abandoned school district facilities.

**The 2005 amendment,** effective April 6, 2005, changed the statutory reference in Subsection F from Section 22-24-5.5 NMSA 1978 to Section 22-24-5.4 NMSA 1978; deleted former Subsection I, which provided an appropriation to the council for core administrative functions of the deficiencies corrections program; deleted former Subsection J, which provided for the expenditures by the council for the core administrative functions of the public school facilities authority; provided in Subsection I for the allocation of funds for a roof repair and replacement initiative; provided in Subsection J 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, the charter school may submit is own application; provided in Subsection J(1)(b) that the amount of the grant shall not exceed $300 for fiscal year 2005 and $600 for fiscal years 2006 through 2009; changed "total" to "average" and "final funded prior school year" to "fortieth, eightieth and one hundred twentieth days of the prior school year" in Subsection J(4)(a); added Subsection J(4)(b) to define "MEM" in the case of a charter school that has not commenced classroom instruction; and added Subsection K to provide for the reimbursement of the state fire marshal, the constriction industries division and local jurisdiction of costs incurred to permit and inspect projects.

**The 2004 amendment,** effective May 19, 2004, amended Subsection B to substitute "through K" for "and H", Subsection C to substitute in three places "public school facilities authority" for "property control division of the general services department" and to change in three places "property" to "portable classrooms", Subsection F to insert after "approved" "or an expenditure has been ordered by a court pursuant to Section 22-24-5.5 NMSA 1978" and Paragraph (2) to change "make" to "authorize", Subsection G to delete the present subsection and add new Subsection G, amended Subsection I to change "fiscal year 2004" to "fiscal years 2004 through 2007", and added new Subsection K.

**The 2003 amendment,** effective April 4, 2003, in Subsection F, inserted the second sentence and added Paragraphs F(1) and (2); rewrote Subsections G and H pertaining to distribution of money for projects; and added Subsections I and J.

**The 2002 amendment,** effective May 15, 2002, inserted the exception clause in Subsection B; and added Subsections G and H.

**The 2001 amendment,** effective July 1, 2001, added the last sentence of Subsection D; deleted "that cannot be financed by the school district from other sources and" following "capital outlay projects" in Subsection E; and added Subsection F.

**The 1994 amendment,** effective May 18, 1994, deleted "and the capital expenditures are limited to the purchase or construction of temporary or permanent classrooms" following "educational program" in Subsection B, and deleted "public" preceding "school" near the end of the fifth sentence of Subsection C.

**The 1993 amendment,** effective July 1, 1993, deleted "Annual" from the beginning of the fourth sentence of Subsection C.

**Disposal of portable classrooms not limited to sale.** — The discretion of the council to authorize the disposal of portable classrooms purchased by the fund is not limited to sale for consideration or exchange. 1980 Op. Att'y Gen. No. 80-05.

**When gratis transfer of classrooms proper.** — A gratis transfer by the public school capital outlay council of portable classrooms to local school boards does not violate N.M. Const., art. IX, § 14, since the prohibition there does not apply as between the state and one of its subordinate agencies. 1980 Op. Att'y Gen. No. 80-05.

**Veto power over gratis transfer.** — Section 13-6-2C NMSA 1978 (now Section 13-6-2D NMSA 1978) gives the secretary of finance and administration or the state board of finance (now the state budget divison) veto power over any gratis transfer of school property. 1980 Op. Att'y Gen. No. 80-05.

## 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.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, amended Subsection G to authorize the council to extend the expenditure period for a project.

**The 2004 amendment,** effective May 19, 2004, amended Subsection B to add "school" before "district" and amended Subsection G to change "June 30, 2004" to "June 30, 2005" and "June 30, 2005" to "June 30, 2007".

**The 2003 amendment,** effective April 4, 2003, deleted "local" preceding "school district" in Subsection B; in Subsection G, substituted "awards made" for "funded" and added "and that funds be expended no later than June 30, 2006" at the end of the sentence.

## 22-24-4.2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 147, § 14 repealed 22-24-4.2 NMSA 1978, as enacted by Laws 2001, ch. 338, § 7, regarding the deficiencies correction unit, effective July 1, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*. For provisions of present law, *see* 22-24-9 NMSA 1978.

## 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.

**ANNOTATIONS**

**The 2009 amendment,** effective April 8, 2009, in Subsection E, after "cost of an approved", added "roof repair or replacement"; and in Subsection F, after "school district", deleted "prior to September 1, 2008" and added "within two years of the grant allocation".

## 22-24-4.4. Serious roof deficiencies; correction.

A. To complete the program to correct outstanding deficiencies, those serious deficiencies in the roofs of public school facilities identified pursuant to Section 22-24-4.1 NMSA 1978 as adversely affecting the health or safety of students and school personnel shall be corrected pursuant to this section, regardless of the local effort or percentage of indebtedness of the school district, subject to the following provisions:

(1) if the council determines that the school district has excess capital improvement funds received pursuant to the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978], the cost of correcting the deficiencies shall first come from the school district's excess funds, and if the excess funds are insufficient to correct the deficiencies, the difference shall be paid from the public school capital outlay fund; and

(2) if the school district refuses to pay its share of the cost of correcting deficiencies as determined pursuant to Paragraph (1) of this subsection, future distributions from the public school capital improvements fund pursuant to Section 22-25-9 NMSA 1978 shall not be made to the school district but shall be made to the public school capital outlay fund until the public school capital outlay fund is reimbursed in full for the school district's share.

B. It is the intent of the legislature that all awards for correcting outstanding deficiencies in public school roofs that may adversely affect the health and safety of students and school personnel be made pursuant to this section no later than September 30, 2005 and that funds be expended no later than September 30, 2008.

History: Laws 2005, ch. 274, § 7; 2007, ch. 366, § 5.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, changed the deadline for expenditure of funds to September 30, 2008.

## 22-24-4.5. Education technology infrastructure deficiency corrections.

A. No later than September 1, 2014, the council, with the advice of the public education 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 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.

**ANNOTATIONS**

**Emergency clauses.** — Laws 2014, ch. 28, § 5, contained an emergency clause and was approved March 6, 2014.

## 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 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 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 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 three years of the grant allocation.

History: Laws 2015, ch. 93, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 93, § 5 made Laws 2015, ch. 93, § 3 effective July 1, 2015.

## 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 public school facilities 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 Paragraph (5) of 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.

**ANNOTATIONS**

**Effective dates. —** Laws 2018, ch. 71 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2018, 90 days after the adjournment of the legislature.

## 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 one formula shall be calculated for each school district in accordance with the following procedure:

(a) the final prior year net taxable value for a school district divided by the MEM for that school district is calculated for each school district;

(b) the final prior year net taxable value for the whole state divided by the MEM for the state is calculated;

(c) excluding any school district for which the result calculated pursuant to Subparagraph (a) of this paragraph is more than twice the result calculated pursuant to Subparagraph (b) of this paragraph, the results calculated pursuant to Subparagraph (a) of this paragraph are listed from highest to lowest;

(d) the lowest value listed pursuant to Subparagraph (c) of this paragraph is subtracted from the highest value listed pursuant to that subparagraph;

(e) the value calculated pursuant to Subparagraph (a) of this paragraph for the subject school district is subtracted from the highest value listed in Subparagraph (c) of this paragraph;

(f) the result calculated pursuant to Subparagraph (e) of this paragraph is divided by the result calculated pursuant to Subparagraph (d) of this paragraph;

(g) the sum of the property tax mill levies for the prior tax year imposed by each school district on residential property pursuant to Chapter 22, Article 18 NMSA 1978, the Public School Capital Improvements Act [Chapter 22, Article 25 NMSA 1978], the Public School Buildings Act [Chapter 22, Article 26 NMSA 1978], the Education Technology Equipment Act [6-15A-1 through 6-15A-16 NMSA 1978] and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978 is calculated for each school district;

(h) the lowest value calculated pursuant to Subparagraph (g) of this paragraph is subtracted from the highest value calculated pursuant to that subparagraph;

(i) the lowest value calculated pursuant to Subparagraph (g) of this paragraph is subtracted from the value calculated pursuant to that subparagraph for the subject school district;

(j) the value calculated pursuant to Subparagraph (i) of this paragraph is divided by the value calculated pursuant to Subparagraph (h) of this paragraph;

(k) if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is less than five-tenths, then, except as provided in Subparagraph (n) or (o) of this paragraph, the value for that school district equals the value calculated pursuant to Subparagraph (f) of this paragraph;

(l) if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is five-tenths or greater, then that value is multiplied by five-hundredths;

(m)if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is five-tenths or greater, then the value calculated pursuant to Subparagraph (l) of this paragraph is added to the value calculated pursuant to Subparagraph (f) of this paragraph. Except as provided in Subparagraph (n) or (o) of this paragraph, the sum equals the value for that school district;

(n) in those instances in which the calculation pursuant to Subparagraph (k) or (m) of this paragraph yields a value less than one-tenth, one-tenth shall be used as the value for the subject school district;

(o) in those instances in which the calculation pursuant to Subparagraph (k) or (m) of this paragraph yields a value greater than one, one shall be used as the value for the subject school district;

(p) except as provided in Section 22-24-5.7 NMSA 1978 and except as adjusted pursuant to Paragraph (6), (10), (11) or (12) of this subsection, the amount to be distributed from the fund for an approved project shall equal the total project cost multiplied by a fraction the numerator of which is the value calculated for the subject school district in the current year plus the value calculated for that school district in each of the two preceding years and the denominator of which is three; and

(q) as used in this paragraph: 1) "MEM" means the average full-time-equivalent enrollment of students attending public school in a school district on the eightieth and one hundred twentieth days of the prior school year; 2) "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; and 3) in the case of a state-chartered charter school that has submitted an application for grant assistance pursuant to this section, the "value calculated for the subject school district" means the value calculated for the school district in which the state-chartered charter school is physically located;

(6) the amount calculated pursuant to Subparagraph (p) of Paragraph (5) of this subsection shall be reduced by the following procedure:

(a) the total of all legislative appropriations made after January 1, 2003 for nonoperating purposes either directly to the subject school district or to another governmental entity for the purpose of passing the money through directly to the subject school district, and not rejected by the subject school district, is calculated; provided that: 1) an appropriation made in a fiscal year shall be deemed to be accepted by a school district unless, prior to June 1 of that fiscal year, the school district notifies the department of finance and administration and the public education department that the school district is rejecting the appropriation; 2) the total shall exclude any education technology appropriation made prior to January 1, 2005 unless the appropriation was on or after January 1, 2003 and not previously used to offset distributions pursuant to the Technology for Education Act [Chapter 22, Article 15A NMSA 1978]; 3) the total shall exclude any appropriation previously made to the subject school district that is

reauthorized for expenditure by another recipient; 4) the total shall exclude one-half of the amount of any appropriation made or reauthorized after January 1, 2007 if the purpose of the appropriation or reauthorization is to fund, in whole or in part, a capital outlay project that, when prioritized by the council pursuant to this section either in the immediately preceding funding cycle or in the current funding cycle, ranked in the top one hundred fifty projects statewide; 5) the total shall exclude the proportionate share of any appropriation made or reauthorized after January 1, 2008 for a capital project that will be jointly used by a governmental entity other than the subject school district. Pursuant to criteria adopted by rule of the council and based upon the proposed use of the capital project, the council shall determine the proportionate share to be used by the governmental entity and excluded from the total; and 6) unless the grant award is made to the state-chartered charter school or unless the appropriation was previously used to calculate a reduction pursuant to this paragraph, the total shall exclude appropriations made after January 1, 2007 for nonoperating purposes of a specific state-chartered charter school, regardless of whether the charter school is a state-chartered charter school at the time of the appropriation or later opts to become a state-chartered charter school;

(b) the applicable fraction used for the subject school district and the current calendar year for the calculation in Subparagraph (p) of Paragraph (5) of this subsection is subtracted from one;

(c) the value calculated pursuant to Subparagraph (a) of this paragraph for the subject school district is multiplied by the amount calculated pursuant to Subparagraph (b) of this paragraph for that school district;

(d) the total amount of reductions for the subject school district previously made pursuant to Subparagraph (e) of this paragraph for other approved public school capital outlay projects is subtracted from the amount calculated pursuant to Subparagraph (c) of this paragraph; and

(e) the amount calculated pursuant to Subparagraph (p) of Paragraph (5) of this subsection shall be reduced by the amount calculated pursuant to Subparagraph (d) of this paragraph;

(7) no later than May 1 of each calendar year, the phase two formula 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;

(8) except as provided in Paragraph (6), (10), (11) or (12) of this subsection, the state share of a project approved by the council shall be funded within available resources pursuant to the provisions of this paragraph. The school district calculation for grant awards made in accordance with this section shall be pursuant to the following procedure, except that in no case shall the state share be less than six percent:

(a) for fiscal year 2020, the school district calculation shall be the sum of eight-tenths multiplied by the calculation in Paragraph (5) of this subsection and two-tenths multiplied by the calculation in Paragraph (7) of this subsection;

(b) for fiscal year 2021, the school district calculation shall be the sum of six-tenths multiplied by the calculation in Paragraph (5) of this subsection and four-tenths multiplied by the calculation in Paragraph (7) of this subsection;

(c) for fiscal year 2022, the school district calculation shall be the sum of four-tenths multiplied by the calculation in Paragraph (5) of this subsection and six-tenths multiplied by the calculation in Paragraph (7) of this subsection;

(d) for fiscal year 2023, the school district calculation shall be the sum of two-tenths multiplied by the calculation in Paragraph (5) of this subsection and eight-tenths multiplied by the calculation in Paragraph (7) of this subsection; and

(e) for fiscal year 2024 and thereafter, the school district calculation shall be the calculation specified in Paragraph (7) of this subsection;

(9) as used in this subsection:

(a) "governmental entity" includes an Indian nation, tribe or pueblo; and

(b) "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;

(10) the amount calculated pursuant to Subparagraph (p) of Paragraph (5) of this subsection, after any reduction 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;

(11) 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 eightieth and one hundred twentieth days of the prior school year; 2) has at least seventy percent of its students eligible for free or reduced-fee lunch; 3) has a share of the total project cost, as calculated pursuant to provisions of this section, 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;

(12) 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

(13) 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 (5), (6), (10) or (11) of this subsection, is not funded with grant assistance from the fund; provided that school district funds used for a project that was initiated after September 1, 2002 when the statewide adequacy standards were adopted, but before September 1, 2004 when the standards were first used as the basis for determining the state and school district share of a project, may be applied to the school district portion required for that project;

(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 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.

**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.

## ANNOTATIONS

**Cross references.** — For PL 874 funds, *see* 20 USCS § 7701 et seq.

**The 2018 amendment,** effective May 16, 2018, changed the capital outlay funding formula for determination of state-local matches, and made stylistic and conforming changes; in Subsection B, Subparagraph B(2)(b), after "identified in Section", deleted "3 of this 2015 act" and added "22-24-4.6 NMSA 1978", in Paragraph B(5), in the

introductory clause, deleted "except as provided in Paragraph (6), (8), (9) or (10) of this subsection, the state share of a project approved and ranked by the council shall be funded within available resources pursuant to the provisions of this paragraph", and after "calendar year", deleted "a value" and added "the phase one formula"; in Subparagraph B(5)(p), after "Paragraph (6)", deleted "(8), (9) or" and after "(10)", added "(11) or (12)"; added new Paragraphs B(7) and B(8) and redesignated former Paragraphs B(7) through B(11) as Paragraphs B(9) through B(13), respectively; in Subparagraph B(13)(e), after "Paragraph (5), (6)", deleted "(8) or (9)" and added "(10) or (11)"; and in Subsection I, after "recommendation of the", deleted "public school facilities".

**The 2015 amendment,** effective July 1, 2015, authorized the public school capital outlay council to award grants to school districts for the purpose of repairing, renovating or replacing public school building systems; added Subsection B, Paragraph (2)(b) and redesignated the succeeding subparagraphs accordingly; and in Subsection B, Paragraph (6)(a), after "public education department that the", added "school".

**The 2014 amendment,** effective March 6, 2014, permitted the public school outlay council to adjust the amount of the local share if it determines that a school district has made a good-faith effort to use all of its local resources; in Subsection B, Paragraph (6), Subparagraph (a), after "2) the total shall exclude any", deleted "educational" and added "education"; in Subsection B, Paragraph (9), in the introductory sentence, after "school district has", deleted "used" and added "made a good-faith effort to use"; and in Subsection C, in the second sentence, after "and the need for", deleted "technological" and added "education technology".

**The 2012 amendment,** effective May 16, 2012, made the school for the blind and visually impaired and the school for the deaf, including facilities that are necessary for their educational missions, eligible for public school capital outlay funding; permitted the council to waive local matching if the schools have insufficient or no local resources available; and in Subsection B, in Paragraph (2), added Subparagraph (b); in Paragraph (5), in the first sentence, after the paragraph number "(9)", added "or (10)"; in Paragraph (5), in Subparagraph (p), after the paragraph number "(9)", added "or (10)"; in Paragraph (6), deleted former Subparagraph (b), which required that the amount to be distributed for a project be reduced by the amount of federal money received by the school district for nonoperating purposes; in Paragraph (6), deleted former Subparagraph (c), which required that the amount to be distributed for a project be reduced by the amount of state appropriations to the school district for nonoperating purposes; and added Paragraph (10).

**Laws 2010, ch. 104, § 2,** effective March 9, 2010, would have amended 22-24-5 NMSA 1978 as follows: in Subsection B(5), after "Paragraph (6), (8), (9)", added "or (11)"; in Subsection B(5)(p), after "Paragraph (6), (8), (9)", added "or (11)"; and added Subsection B(11), including Subparagraphs (a) and (b). These changes were line-item vetoed by the governor.

**The 2009 amendment,** effective April 8, 2009, in Paragraph (5) of Subsection B, added the reference to Paragraph (11); in Subparagraph (p) of Paragraph (5) of Subsection B, added the reference to Paragraph (11); added Subparagraphs (b) and (c) of Paragraph (6) of Subsection B; added Paragraph (11) of Subsection B; in Paragraph (1) of Subsection D, after "awarded unless the council", deleted "finds that, prior to the purchase of" and added "determines that, at the time of exercising the option to purchase"; and in Subsection F, after "prohibits a school district from using" changed "local funds to exceed" to "other funds available to the district to exceed".

**The 2008 amendment,** effective May 14, 2008, added the reference to Paragraph (9) of Subsection B in Paragraph (5), Subparagraph (p) of Paragraph (5) and Subparagraph (e) of Paragraph (10) of Subsection B; added item 5) of Subparagraph (a) of Paragraph (6) of Subsection B; and added Subparagraph (a) of Paragraph (7) and Paragraph (8) of Subsection B.

**The 2007 amendment,** effective July 1, 2007, amended Subsection B to: add Subparagraph (c) of Paragraph (3); add item (3) of Subparagraph (q) of Paragraph (5) of Subsection B to define "value calculated for the subject school district"; and add items (2) through (5) of Subparagraph (a) of Paragraph (6); and, added new Subsections D and E.

**The 2006 amendment,** effective March 6, 2006, deleted the provision in Subsection A that provided an order of priority and funding of projects in the two years beginning July 1, 2004; in Subsection B, deleted the reference to Subsection A of this section; in Subparagraph (p) of Paragraph (5) of Subsection B, added the exception in Section 22-24-5.7 NMSA 1978 and deleted the provision that provided for a formula to determine the distribution for calendar year 2005; and in Subparagraph (b) of Paragraph (7) of Subsection B, deleted "fortieth" before "eightieth".

**The 2005 amendment,** effective April 6, 2005, changed "three years" to "two years" and changed "projects" to "specific projects" in Subsection A; provided in Subsection A that the order of projects that were partially funded shall exclude any expansion of the scope of the projects; changed the statutory reference in Subsection B and revised the funding priorities in Subsection B.

**The 2004 amendment,** effective May 19, 2004, replaced Subsections A and B with new Subsection A; designated former Subsection C as the last sentence of new Subsection A and added new language prior to Paragraph (1) of former Subsection C, now Subsection B; redesignated former Subsection D as Subsection C; redesignated former Subsections E through I as Subsections D through H; amended Subsection G to add the requirement of recommendation of the authority at the beginning of the subsection; and in Subsection H, changed "state board" to "public education commission" and deleted "each member of" preceding "the legislature".

**The 2003 amendment,** effective April 4, 2003, inserted Paragraph B(2) and redesignated former Paragraph B(2) as B(3); rewrote Paragraph C(5); inserted present

Paragraphs C(6) and C(7), and redesignated the remaining paragraphs accordingly; substituted "that has been approved by the council pursuant to Section 22-24-5.3 NMSA 1978 and that is followed by" for "to which the school adheres for" in Subparagraph C(9)(d); substituted "(6) or (8) of this subsection" for "established by law" in Subparagraph C(9)(e); and in Subsection D, deleted "no later than September 1, 2002"; inserted "and regularly review and update" preceding "statewide adequacy standards" in the first sentence and substituted "December 15" for "December 1" in Subsection I.

**The 2001 amendment,** effective April 5, 2001, rewrote the section.

**The 2000 amendment,** effective April 12, 2000, inserted "school" at the beginning of Subsection A(4) and in the second sentence of Subsection B; in Subsection A(6), added "unless a determination and certification have been made pursuant to Subsection D of this section" to the preliminary language, designated the exisitng provisions of the subsection as Subparagraph (a) and added Subparagraph (b); in Subsection B, added Subsection B(1) and designated part of former Subsection B as Paragraph (2); and added Subsections D and E.

**The 1994 amendment,** effective May 18, 1994, deleted "all" preceding "available resources" in Paragraph A(2) and added Paragraphs A(6) and A(7), making related stylistic changes.

## 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.

**ANNOTATIONS**

**Repeal.** — Laws 2004, ch. 125, § 20 repealed 22-24-5.2 NMSA 1978, as enacted by Laws 2001, ch. 328, § 3, relating to effect upon school district indebtedness requirement, effective May 19, 2004. For provisions of former section, *see* the 2003 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**The 2005 amendment,** effective April 6, 2005, added Subsections B(1) through (3) to provide that the council shall develop, implement and maintain a uniform web-based facility information management system; and added Subsection D(2) to provide that a school district shall not be eligible for funding unless, if applicable, the school district is participating in the implementation of the facility information management system.

## 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 public school facilities 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 (10) 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 (10) 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.

**ANNOTATIONS**

**The 2008 amendment,** effective May 14, 2008, changed the reference from Paragraph (9) to Paragraph (10) of Subsection B of Section 22-24-5 NMSA 1978 in Subparagraph (b) of Paragraph (3) of Subsection A and in Paragraph (2) of Subsection C.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 274, § 20 made the act effective April 6, 2005.

## 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.

**ANNOTATIONS**

**The 2012 amendment,** effective May 16, 2012, included the school for the blind and visually impaired and the school for the deaf in the defined term "constitutional special schools"; in Subsection A, after "deficiencies at the", deleted "New Mexico school for the blind and visually impaired and the New Mexico school for the deaf" and added "constitutional special schools"; in Subsection D, after "deficiencies at the", deleted "New Mexico school for the blind and visually impaired and the New Mexico school for the deaf" and added "constitutional special schools"; and deleted former Subsection E, which defined "school district" for purposes of Sections 22-24-5.1, 22-24-5.3, 22-24-5.5, and Paragraph (10) of 22-24-5 NMSA 1978 to be the school for the blind and visually impaired and the school for the deaf.

**The 2009 amendment,** effective March 31, 2009, in Subsection B, deleted "To the extent that money has been appropriated for such purposes"; in Subsection D, changed "handicapped" to "impaired"; and added Subsection E.

## 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 Paragraphs (5) and (6) of 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:

(a) 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:

(a) 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.

**ANNOTATIONS**

**Emergency clause.** — Laws 2006, ch. 95, § 15 contained an emergency clause and was approved March 6, 2006.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2012, ch. 53 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2012, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 1994 amendment,** effective May 18, 1994, substituted "state superintendent" for "superintendent of public instruction" in Paragraph A(2), deleted "of education" following "state board" in Paragraph A(6), and added Paragraphs A(8) and (9), making related stylistic changes.

**The 1993 amendment,** effective July 1, 1993, in Subsection A, added "or his designee" at the end of Paragraphs (1), (2) and (5) and deleted "state" preceding "superintendent" at the beginning of Paragraph (2).

**The 1988 amendment,** effective May 18, 1988, substituted "the governor or his designee" for "director of the public school finance division" in Subsection A(3); made a minor stylistic change in Subsection A(4); substituted "regulation and licensing department" for "commerce and industry department" in Subsection A(5); added Subsections A(6) and (7); inserted "shall" in Subsection B; and substituted "department of education" for "council shall employ a staff director who" in Subsection D.

## 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:

A. the portion of the cost of the project to be paid from the fund shall be calculated pursuant to Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978 using data from the school district in which the state-chartered charter school is located;

B. in calculating a reduction pursuant to Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978:

(1) the amount to be used in Subparagraph (a) of that paragraph shall equal the total of all legislative appropriations made after January 1, 2007 for nonoperating expenses either directly to the charter school or to another governmental entity for the purpose of passing the money through directly to the charter school, regardless of whether the charter school was a state-chartered charter school at the time of the appropriation or later opted to become a state-chartered charter school, except that the total shall not include any such appropriation if, before the charter school became a state-chartered charter school, the appropriation was previously used to calculate a reduction pursuant to Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978; and

(2) the amount to be used in Subparagraph (b) of that paragraph shall equal the total of all federal money received by the charter school for nonoperating purposes pursuant to Title XIV of the American Recovery and Reinvestment Act of 2009, regardless of whether the charter school was a state-chartered charter school at the time of receiving the federal money or later opted to become a state-chartered charter school, except that the total shall not include any such federal money if, before the charter school became a state-chartered charter school, the money was previously used to calculate a reduction pursuant to Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978; and

C. if the council determines that the state-chartered charter school does not have the resources to pay all or a portion of the total cost of the capital outlay project that is not funded with grant assistance from the fund, to the extent that money is available in the charter school capital outlay fund, the council shall make an award from that fund for the remaining amount necessary to pay for the project. The council may establish, by rule, a procedure for determining the amount of resources available to the charter school and the amount needed from the charter school capital outlay fund.

History: Laws 2007, ch. 214, § 1; 2009, ch. 258, § 6.

**ANNOTATIONS**

**The 2009 amendment,** effective April 8, 2009, added Paragraph (2) of Subsection B.

## 22-24-6.2. Repealed.

**History:** Laws 2007, ch. 214, § 2; repealed by Laws 2007, ch. 214, § 4.

**ANNOTATIONS**

**Repeals.** — Laws 2007, ch. 214, § 4 repealed 22-24-6.2 NMSA 1978, as enacted by Laws 2007, ch. 214, § 2, relating to public facilities for charter schools, effective July 1, 2012. For provisions of former section, *see* the 2011 NMSA 1978 on *NMOneSource.com*.

## 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 through 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.

## ANNOTATIONS

**Cross references.** — For PL 874 funds, *see* 20 USCS § 7701 et seq.

**Temporary provisions.** — Laws 2010, ch. 104, § 5 provided that during calendar year 2010, the public school capital outlay oversight task force shall continue the working group studying issues relating to performance-based procurement for public school capital outlay projects, and shall report its findings and recommendations no later than December 15, 2010 to the governor and the legislature.

**The 2008 amendment,** effective May 14, 2008, in Subsection A, changed the number of members from twenty-six to twenty five and deleted the state investment officer or the state investment officer's designee.

**The 2007 amendment,** effective July 1, 2007, changed the number of members of the public school capital outlay oversight task force to twenty-six and added Paragraph (10)

of Subsection A to provide new legislative members representing PL 874 school districts.

**The 2005 amendment,** effective April 6, 2005, changed the name of the task force to the public school capital outlay oversight task force and the number of members from twenty to twenty four in Subsection A; deleted the dean of the university of New Mexico school of law or the dean's designee as a member in Subsection A; added in Subsections A(3), (4) and (9) respectively, the speaker of the house of representatives or the speaker's designee, the president pro tempore of the senate or the president pro tempore's designee, and a member of the interim legislative committee charged with the oversight of Indian affairs as members of the task force; provided in Subsection A(9) that the member who is a member of the committee charged with Indian affairs shall rotate annually between a senate member and a house of representatives member; deleted the former requirement in Subsection A(10) that three members be public members who have expertise in education and finance; provided in Subsection A(12) that two of the public members must reside in school districts that receive federal grants as assistance to areas affected by federal activity; provided in Subsection A(13) that two superintendents must be from school districts that receive federal grants as assistance to areas affected by federal activity; provided in Subsection B that the task force shall meet no more than four times per calendar year; deleted the former provision of Subsection C that members shall serve through June 30, 2005 and that the task force is terminated on July 1, 2005; and provided in Subsection C that non-ex-officio members shall serve at the pleasure of their appointing authorities.

## 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.

**ANNOTATIONS**

**Temporary provisions.** — Laws 2009, ch. 37, § 2 provided that during calendar year 2009, the public school capital outlay oversight task force shall study reasonable alternatives for determining the local matching funds to be required from the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf for a grant award pursuant to the Public School Capital Outlay Act and shall report its findings and recommendations to the second session of the forty-ninth legislature.

**The 2005 amendment,** effective April 6, 2005, added Subsection A to provide that the task force shall monitor the progress of bringing public schools up to the statewide adequacy standards; deleted the former requirement in Subsection B that the task force review the condition index and the methodology used for ranking projects; provided in Subsection C that the task force monitor revenue streams to ensure that they remain adequate; provided in Subsection D that the task force oversee the work of the council and the authority; added Subsection E to provide that the task force appoint an advisory committee to study the feasibility of a long-range planning process to facilitate interaction between charter schools and school districts.

## 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 through 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.

**ANNOTATIONS**

**The 2010 amendment,** effective March 9, 2010, added Paragraph (13) of Subsection B and renumbered succeeding paragraphs.

**The 2006 amendment,** effective March 6, 2006, in Subsection A, added all other employees of the authority and deleted the provision that subjected all other employees to the Personnel Act after July 1, 2006.

**The 2005 amendment,** effective April 6, 2005, provided in Subsection A that the hiring of deputies is subject to the budgetary constrains set out in Subsection G of Section 22-24-4 NMSA 1978 and that the after July 1, 2006, all other employees shall be subject to the Personnel Act; and added Subsection B(11) to provide that the authority shall account for all distributions of grant assistance from the fund awarded after July 1, 2004 and make annual reports to the specified agencies or officers.

**The 2004 amendment,** effective May 19, 2004, amended Subsection A to delete "public school capital outlay" preceding "council", amended Subsection B to add new Paragraph (5), redesignated former Paragraphs (6) through (11) of Subsection B as Paragraphs (7) through (12), amended Paragraph (8) to delete "where appropriate" before "require" and amended Paragraph (10) to delete "of education, develop" following "education" and insert in its place "recommend", to add "to the council" after "facilities", to replace "those" with "building" preceding "standards" and to insert "adopted by the council at the end of the paragraph, amended Subsection C to substitute "secretary of public education" for "state superintendent", and added Subsection D.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 274, § 20 makes the act effective April 6, 2005.

## 22-24-11. Recompiled.

**History:** Laws 2006, ch. 95, § 3; recompiled by Laws 2007, ch. 366, § 25.

**ANNOTATIONS**

**Recompilations.** — Laws 2007, ch. 366, § 25, effective July 1, 2007, recompiled former 22-24-11 NMSA 1978 as 22-8-48 NMSA 1978.

# 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.

**ANNOTATIONS**

**Cross references.** — For public school finances generally, *see* 22-8-1 NMSA 1978 et seq.

For public school emergency capital outlays, *see* 22-24-1 NMSA 1978 et seq.

**The 2007 amendment,** effective July 1, 2007, changed the statutory reference to the act.

**Revenues not to be used for teacher housing.** — Revenues generated by school district general obligation bonds or pursuant to the Public School Capital Improvements Act may not be spent to construct teacher housing. 1981 Op. Att'y Gen. No. 81-01.

For article, "No Cake For Zuni: The Constitutionality of New Mexico's Public School Capital Finance System," see 37 N.M.L. Rev. 307 (2007).

## 22-25-2. Definitions.

As used in the Public School Capital Improvements Act:

A. "program unit" means the product of the program element multiplied by the applicable cost differential factor, as defined in Section 22-8-2 NMSA 1978; and

B. "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:

(1) erecting, remodeling, making additions to, providing equipment for or furnishing public school buildings;

(2) purchasing or improving public school grounds;

(3) maintenance of public school buildings or public school 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;

(4) purchasing activity vehicles for transporting students to extracurricular school activities;

(5) purchasing computer software and hardware for student use in public school classrooms; and

(6) 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 which may also include:

(a) 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

(b) 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 paragraph.

**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.

## ANNOTATIONS

**The 2017 amendment,** effective June 16, 2017, expanded allowable expenditures to include purchasing and installing education technology improvements, excluding salary expenses of school district employees, but including certain tools used in the educational process; in Subsection B, at the end of Paragraph B(4), deleted "or", at the end of Paragraph B(5), added "and", and added Paragraph B(6).

**The 2009 amendment,** effective April 8, 2009, in Subsection B, added the reference to the Public School Lease Purchase Act; deleted former Paragraph (2) of Subsection B, which excluded lease payments on a lease with option to purchase; and in Paragraph (3) of Subsection B, added the language between "public school grounds" and "including payments under contracts", and after "including payments under contracts", added "with regional education cooperatives".

**The 2007 amendment,** effective July 1, 2007, added Paragraph (2) of Subsection B to include within the definition of "capital improvements" payments made for lease purchases.

**The 2006 amendment,** effective March 6, 2006, in Paragraph (3) of Subsection B, included payments under contracts for maintenance support services.

**The 2004 amendment,** effective May 19, 2004, in Paragraph (3) of Subsection B, deleted "exclusive of" preceding "salary expenses" and added "including expenditures for technical training and certification for maintenance and facilities management personnel, but excluding".

**The 1999 amendment,** effective March 19, 1999, substituted the language beginning "including payments" and ending "any other" for "exclusive of any" in Subsection B.

**The 1996 amendment,** effective May 15, 1996, added Paragraph B(5).

**The 1989 amendment,** effective June 16, 1989, added Subsection B(4).

## 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 through 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) 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

(4) limit the imposition of the proposed tax to no more than six property tax years.

B. On or after July 1, 2009, 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 timely provides the necessary information to the school district for inclusion in the resolution that identifies the capital improvements of the charter school for which the revenue proposed to be produced will be used.

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.

**ANNOTATIONS**

**The 2009 amendment,** effective April 8, 2009, added Subsection B.

**The 2003 amendment,** effective April 4, 2003, substituted "six property tax years" for "four property tax years" at the end of Subsection D.

**The 1997 amendment,** effective June 20, 1997, substituted "four" for "three" in Subsection D.

## 22-25-4. Authorizing resolution; time limitation.

The resolution authorized under Section 3 [22-25-3 NMSA 1978] of the Public School Capital Improvements Act shall be adopted no later than May 15 in the year in which the tax is proposed to be imposed.

**History:** 1953 Comp., § 77-25-4, enacted by Laws 1975 (S.S.), ch. 5, § 4.

## 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 held as prescribed in the Local Election Act [Chapter 1, Article 22 NMSA 1978].

B. The proclamation required to be published as notice of the election under Section 1-22-11 NMSA 1978 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.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, provided that elections on the question of imposing a tax under the Public School Capital Improvements Act shall be held as prescribed in the Local Election Act, and made technical and conforming changes; in Subsection A, after "Public School Capital Improvements Act", deleted "may" and added "shall", after "be held", deleted "in conjunction with a regular school district election or may be conducted as or held in conjunction with a special school district election, but the election shall be held prior to July 1 of the property tax year in which the tax is proposed to be imposed. Conduct of the election shall be", and after "as prescribed in the", deleted "School Election Law for regular and special school district elections" and added "Local Election Act"; and in Subsection B, after "under Section", deleted "1-22-4 or 1-22-5" and added "1-22-11".

**Temporary provisions.** — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

**The 2003 amendment,** effective April 4, 2003, substituted "proclamation" for "resolution" and "six years" for "four years" in Subsection B.

**The 1997 amendment,** effective June 20, 1997, substituted "four years" for "three years" in Subsection B.

## 22-25-6. Election results; certification.

The certification of the results of an election held on the question of imposition of a public school capital improvements tax shall be made in accordance with Section 22-6-16 NMSA 1978 [repealed] and a copy of the certificate of results shall be mailed immediately to the director.

**History:** 1953 Comp., § 77-25-6, enacted by Laws 1975 (S.S.), ch. 5, § 6; 1977, ch. 246, § 66.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

Laws 1985, ch. 168, § 22 repealed former 22-6-16 NMSA 1978, referred to in this section, effective June 16, 1985

## 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 through 38 NMSA 1978].

B. The revenue produced by the tax and, except as provided in Subsection F, G or H 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. For resolutions approved by the electors on or after July 1, 2009, 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 fortieth day of the prior school year is to the total such enrollment in the school district; provided that no distribution shall be made to an approved charter school that had not commenced classroom instruction in the prior school year and, provided further, that, in determining a school district's total enrollment, students attending a state-chartered charter school within that

school district shall be included. 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.

**ANNOTATIONS**

**The 2009 amendment,** effective April 8, 2009, in Subsection B, added the reference to Subsections G and H; and added Subsection C.

**The 2004 amendment,** effective May 19, 2004, added "except as provided in Subsection F of Section 22-25-9 NMSA 1978," after "The revenue produced by the tax and,".

**The "tax rate imposed in the district" under the Public School Capital Improvements Act** is that rate certified in accordance with this section which incorporates Section 7-37-7.1 NMSA 1978. This certified rate must be that which the voters approve unless the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 requires a lower rate, in which case the lower rate must be certified. 1987 Op. Att'y Gen. No. 87-52.

## 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 commencing with the property tax year in which the election was held. 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.

**ANNOTATIONS**

**The 2003 amendment,** effective April 4, substituted "six years" for "four years" in the section heading; substituted "a specified number of property tax years not exceeding six years" for "one, two, three or four years" in the first sentence, and substituted "any property tax year" for "the first or second year of the levy" in the second sentence.

**The 1997 amendment,** effective June 20, 1997, substituted "four years" for "three years" in the section heading and "two, three or four years" for "two or three years" in the first sentence.

## 22-25-9. State distribution to school district imposing tax under certain circumstances.

A. Except as provided in Subsection C or G of this section, the secretary shall distribute to any school district that has imposed a tax under the Public School Capital Improvements Act an amount from the public school capital improvements fund that is equal to the amount by which the revenue estimated to be received from the imposed tax, using prior year valuations, at the rate certified by the department of finance and administration in accordance with Section 22-25-7 NMSA 1978, assuming a one hundred percent collection rate, is less than an amount calculated by multiplying an average of the school district's prior year second and third reporting dates' total program units by the amount specified in Subsection B of this section and further multiplying the product obtained by the tax rate approved by the qualified electors in the most recent election on the question of imposing a tax under the Public School Capital Improvements Act. The distribution shall be made each year that the tax is imposed in accordance with Section 22-25-7 NMSA 1978; provided that no state distribution from the public school capital improvements fund may be used for capital improvements to any administration building of a school district. In the event that sufficient funds are not available in the public school capital improvements fund to make the state distribution provided for in this section, the dollar per program unit figure shall be reduced as necessary.

B. In calculating the state distribution pursuant to Subsection A of this section, the following amounts shall be used:

(1) the amount calculated pursuant to Subsection D of this section per program unit; and

(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 [Chapter 22, Article 24 NMSA 1978] 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. For any fiscal year notwithstanding the amount calculated to be distributed pursuant to Subsections A and B of this section, except as provided in Subsection G of

this section, a school district, the voters of which have approved a tax pursuant to Section 22-25-3 NMSA 1978, shall not receive a distribution less than the amount calculated pursuant to Subsection E of this section multiplied by the average of the school district's prior year second and third reporting dates' total program units and further multiplying the product obtained by the approved tax rate.

D. For purposes of calculating the distribution pursuant to Subsection B of this section, the amount used in Paragraph (1) of that subsection shall equal seventy dollars ($70.00) in fiscal year 2008 and in each subsequent fiscal year shall equal 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.

E. For purposes of calculating the minimum distribution pursuant to Subsection C of this section, the amount used in that subsection shall equal five dollars ($5.00) through fiscal year 2005 and in each subsequent fiscal year shall equal 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.

F. 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:

(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.

G. If a serious deficiency in a roof of a public school facility has been corrected pursuant to Section 22-24-4.4 NMSA 1978 and the school district has refused to pay its share of the cost as determined by that section, until the public school capital outlay fund is reimbursed in full for the share attributed to the district, the distribution calculated pursuant to this section shall not be made to the school district but shall be made to the public school capital outlay fund.

H. A portion of each distribution made by the state pursuant to this section on or after July 1, 2009 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 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 F of this section.

I. In determining a school district's total program units pursuant to Subsections A and C of this section and a school district's total enrollment pursuant to Subsection H of this section, students attending a state-chartered charter school within the school district shall be included.

J. 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.

**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.

## ANNOTATIONS

**The 2018 amendment,** effective July 1, 2018, amended the Public School Capital Improvements Act to require the Public Education Department to use prior year data for determination of distribution amounts to school districts; in Subsection A, after "the imposed tax,", added "using prior year valuations", after "calculated by multiplying", added "an average of", and after "the school district's", deleted "first forty days'" and added "prior years second and third reporting dates'"; in Subsection C, after "multiplied by the", added "average of the", after "school district's", deleted "first forty days'" and added "prior year second and third reporting dates'"; and in Subsection H, after "charter school on the", deleted "fortieth day" and added "second and third reporting dates".

**The 2009 amendment,** effective April 8, 2009, in Subsection F, in the first sentence, after "school districts", added "and charter schools", and after "payments under contracts", added "with regional education cooperatives"; in the second sentence, deleted "for the school district portion of", and added "and charter schools as follows"; in

Paragraphs (1) and (2) of Subsection F, at the beginning of each sentence, added "for the school district portion of"; and added Subsections H and I.

**The 2007 amendment,** effective July 1, 2007, changed the amount used in Paragraph (1) of Subsection B from sixty dollars ($60.00) in fiscal year 2006 to seventy dollars ($70.00) in fiscal year 2008 and added Paragraph (2) of Subsection F relating to payments made by a district for leases until an option to purchase.

**The 2006 amendment,** effective March 6, 2006, in Paragraph (2) of Subsection B, deleted "for fiscal year 2006 and thereafter" at the beginning of the sentence and changed "June 1, 2005 and each June thereafter" to "June 1 of each year"; in Subsection C, changed "fiscal year 2004 and thereafter" to "any fiscal year"; in Subsection D, deleted the amount of fifty dollars through fiscal year 2005; and in Subsection F, included payments under contracts for maintenance support services.

**The 2005 amendment,** effective April 6, 2005, added the exception in Subsection G in Subsection A; added the exception in Subsection G in Subsection C; added the amount of $60 for fiscal year 2006 in Subsection D; provided in Subsection F that distributions may be expended by school districts for the school district portion of the total project cost for roof repair or replacement; and added Subsection G to provide that if a roof deficiency has been corrected and the school district refuses to pay its share of the cost, until the school district reimbursed the capital outlay fund for its share of the cost, the distribution shall not be made to the school district but shall be made to the capital outlay fund.

**The 2004 amendment,** effective May 19, 2004, amended Subsection A to substitute "secretary of public education" for "state superintendent", amended Subsection B to substitute in Paragraph (1) "the amount calculated pursuant to Subsection D of this subsection" for "fifty dollars ($50.00)" and to substitute in Paragraph (2) "secretary of public education" for "state superintendent", amended Subsection C to substitute "an amount equal to five dollars ($5.00)" for "the amount calculated pursuant to Subsection E of this section", added new Subsections D through F, redesignated former Subsection C as Subsection G and substituted "secretary of public education" for "state superintendent" and "secretary" for "state superintendent".

**The 2003 amendment,** effective April 4, 2003, inserted Subsection C.

**The 2001 amendment,** effective April 5, 2001, redesignated the former section as Subsection A; inserted the exception at the beginning of Subsection A; substituted "by the dollar amount specified in Subsection B of this section" for "times thirty-five dollars"; and added Subsections B and D.

As vetoed by the governor April 5, 2001, Subsection C read: "Notwithstanding the amount calculated to be distributed pursuant to Subsections A and B of this section, no school district, the voters of which have approved a tax pursuant to Section 22-25-3 NMSA 1978, shall receive a distribution less than an amount equal to five dollars

($5.00) multiplied by the school district's first forty days' total program units and further multiplying the product obtained by the approved tax rate."

**The 1988 amendments,** effective March 8, 1988, substituted "approved by the qualified electors in the most recent election on the question of imposing a tax" for "imposed in the district" near the end of the first sentence; deleted "by December 1" preceding "of each year" in the second sentence; and inserted the proviso at the end of the second sentence.

**The "tax rate imposed in the district" under the Public School Capital Improvements Act** is that rate certified in accordance with Section 22-25-7 NMSA 1978 which incorporates Section 7-37-7.1 NMSA 1978. This certified rate must be that which the voters approve unless the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 requires a lower rate, in which case the lower rate must be certified. 1987 Op. Att'y Gen. No. 87-52.

**Administrative charge not to be used to reduce revenue estimate. —** The school district, not the state's public school capital improvements fund, must absorb the two percent (now one percent) administrative charge authorized by Section 7-38-38.1 NMSA 1978, and such fee may not be used to reduce the revenue estimate that this section requires. 1987 Op. Att'y Gen. No. 87-52 (rendered prior to 1988 amendment).

## 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.

**ANNOTATIONS**

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 11 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

**ANNOTATIONS**

# 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.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, changed the statutory reference to the act.

For article, "No Cake For Zuni: The Constitutionality of New Mexico's Public School Capital Finance System," see 37 N.M.L. Rev. 307 (2007).

## 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;

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 which 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.

## ANNOTATIONS

**The 2017 amendment,** effective June 16, 2017, expanded allowable expenditures to include purchasing and installing education technology improvements, excluding salary expenses of school district employees, but including certain tools used in the educational process; at the end of Subsection D, deleted "or"; at the end of Subsection E, added "and"; and added Subsection F.

**The 2009 amendment,** effective June 19, 2009, added Subsection D.

**The 2007 amendment,** effective July 1, 2007, added Subsections B and D.

**The 1999 amendment,** effective March 19, 1999, substituted the language beginning "including payments" and ending "any other" for "exclusive of any" in the introductory language.

## 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 through 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) 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

(4) limit the imposition of the proposed tax to no more than six property tax years.

B. After July 1, 2007, 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 timely provides the necessary information to the school district for inclusion on the resolution that identifies the capital improvements of the charter school for which the revenue proposed to be produced will be used; 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.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2007, added Paragraph (1) of Subsection A to require bond resolutions to identify the capital improvements and added Subsection B.

## 22-26-4. Authorizing resolution; time limitation.

The resolution authorized under Section 3 [22-26-3 NMSA 1978] of the Public School Buildings Act shall be adopted no later than May 15 in the year in which the tax is proposed to be imposed.

**History:** Laws 1983, ch. 163, § 4.

## 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 required to be published as notice of the election under Section 1-22-11 NMSA 1978 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.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, provided that elections on the question of imposing a tax under the Public School Buildings Act shall be held as prescribed in the Local Election Act, and made technical and conforming changes; in Subsection A, after "Public School Buildings Act", deleted "may" and added "shall", after "be held", deleted "in conjunction with a regular school district election or may be conducted as or held in conjunction with a special school district election, but the election shall be held prior to July 1 of the property tax year in which the tax is proposed to be imposed. Conduct of the election shall be", and after "as prescribed in the", deleted "School Election Law for regular and special school district elections" and added "Local Election Act"; and in Subsection B, after "under Section", deleted "1-22-4 or 1-22-5" and added "1-22-11".

**Temporary provisions.** — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

**The 2007 amendment,** effective July 1, 2007, changed the maximum number of property tax years for imposing the tax from five to six years.

## 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 made in accordance with the School Election Law [1-22-1 through 1-22-19 NMSA 1978], and a copy of the certificate of results shall be mailed immediately to the state superintendent [secretary].

**History:** Laws 1983, ch. 163, § 6; 1993, ch. 226, § 52.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, substituted "the School Election Law" for "Section 22-6-16 NMSA 1978" and "state superintendent" for "director of public school finance".

## 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 through 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.

**ANNOTATIONS**

**The 1996 amendment,** effective May 15, 1996, substituted "fifteen dollars ($15.00)" for "ten dollars ($10.00)" throughout the section.

## 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 commencing with the property tax year in which the election was held. 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.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1. 2007, changed the maximum number of property tax years for imposing the tax from five to six years.

## 22-26-9. Charter schools; receipt of local property tax revenue.

If, in an election held after July 1, 2007, 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.

**ANNOTATIONS**

**The 2010 amendment,** effective May 19, 2010, in the first sentence, after "enrollment of the charter school on the", deleted "fortieth day" and added "first reporting date" and after "subject to adjustment after the", deleted "fortieth day" and added "first reporting date".

**Temporary provisions.** — Laws 2010, ch. 116, § 9 provided that references in the Public School Code pertaining to the fortieth-day or forty-day report of public school membership or enrollment shall be deemed to be references to the first reporting date, which is the second Wednesday in October; references pertaining to the eightieth-day or eighty-day report of public school membership or enrollment shall be deemed to be references to the second reporting date, which is the second Wednesday in December; and references pertaining to the one-hundred twentieth-day or one-hundred twenty-day report of public school membership or enrollment shall be deemed to be references to the third reporting date, which is the second Wednesday in February.

As the public schools transition from former reporting dates to new reporting dates, the public education department may use any combination of former and new reporting dates as necessary to develop membership and cost projections and budgets for the 2010-2011 school year.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 11 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

**ANNOTATIONS**

# 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.

**ANNOTATIONS**

**The 2009 amendment,** effective June 19, 2009, changed the reference to the act to the article and chapter of NMSA 1978.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 173 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, clarified the definition of "governing body" in the Public School Lease Purchase Act to include the governing structure of a charter school and a local school board; in Subsection A, after the semicolon, added "and"; deleted former Subsections B and C, relating to the meaning of "local school board" and "school district"; and added new Subsection B.

## 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.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, amended the Public School Lease Purchase Act to require a governing body of a charter school or school district to give the public education department notice of a lease purchase agreement when the governing body determines that a lease purchase arrangement is in the best interest of the school district or charter school and requires the governing body to obtain approval from the public education department prior to entering into a lease purchase arrangement; in Subsection A, after "When a", deleted "local school board" and added "governing body", after "best interest of the school district", added "or the charter school", after the third occurrence of "the", deleted "board" and added "governing body", and after "source of funds that the", deleted "local school board" and added "governing body"; and in Subsection B, after "A", deleted "local school board" and added "governing body".

**The 2009 amendment,** effective June 19, 2009, in Subsection A, at the beginning of the sentence, deleted former language, which provided that when a school district contemplates entering into a lease purchase arrangement for a building or other real property payable from ad valorem taxes, the local school board was required to give a copy of the proposed lease to the department; and added the new language.

## 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 through 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.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, amended the Public School Lease Purchase Act to provide the governing body of a charter school or school district with the authority to set terms of lease purchase arrangements and provided for certain terms relating to charter schools that must be included in lease purchase arrangements; after "school district", added "or charter school" throughout the section; in Subsection A, after "determined by the", deleted "local school board" and added "governing body"; in Subsection B, after "at the option of the", deleted "local school board" and added "governing body", and after "determined by the", deleted "local school board" and added "governing body"; in Subsection E, after "between the", deleted "local school board" and added "governing body"; in the introductory paragraph of Subsection H, after "state", deleted "or"; in Subsection K, deleted "if the lessee is a charter school" and added "and with all of the rights and benefits of its predecessor in interest being transferred to the assignee", and after "to:", added the designation for Paragraph (1) of Subsection K, and after "a", deleted "locally chartered or state-chartered school district or", after "charter school; or", added the designation for Paragraph (2) of Subsection K, and after "political subdivisions", deleted "The assignee shall acquire all rights and benefits of its predecessor in interest under the terms and conditions of the lease purchase arrangement".

**The 2009 amendment,** effective June 19, 2009, in Subsection A, after "payable", deleted "at intervals or at maturity as may be" and added the phrase "annually or more frequently as"; in Subsection C, after "payment date", deleted "or mature at any time or times" and after "exceeding", deleted "twenty" and added the word "thirty"; deleted former Subsection D, which provided for payment at one time or in installments; deleted former Subsection E, which provided for pricing at or below par; deleted former Subsection F, which provided for acquisition by public bid, negotiated sale or placement; and added Subsections D through H, K and L.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 132 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 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.

## ANNOTATIONS

**The 2015 amendment,** effective July 1, 2015, amended the Public School Lease Purchase Act to authorize a local school board to adopt a resolution to be presented to the voters for approval of the imposition of a property tax to acquire a building or other real property through a lease purchase arrangement; in Subsection A, after "If a", deleted "local school board" and added "governing body"; in the introductory sentence of Subsection B, after "purchase arrangement, a", deleted "local school board" and added "governing body"; in Paragraph (6) of Subsection B, after "if the", deleted "board" and added "governing body", and after "the school district", added "or charter school"; in Subsection C, after "purchase arrangement, the", deleted "local school board" and added "governing body"; in Subsection D, after "If", deleted "the" and added "a", after "funds needed for", deleted "the" and added "a", after "the board may", deleted "also", and after "22-26A-8 NMSA 1978", deleted "provided that"; added the designation

Subsection E and a new introductory paragraph of Subsection E, making former Paragraph (1) of Subsection D into Paragraph (1) of Subsection E; deleted the language in Paragraph (1) of Subsection E and deleted the subparagraph designation of Subparagraph E(1)(a) and added the language from former Subparagraph (a) to Paragraph (1) of Subsection E; in Paragraph (1) of Subsection E, after "resolution if the", deleted "charter school is a locally chartered or sate-chartered charter school whose" and added "school's"; redesignated former Subparagraph D(1)(b) as Paragraph (2) of Subsection E; in Paragraph (2) of Subsection E, after "may", deleted "in its discretion", and after "term.", deleted "and"; deleted "if the tax revenue for a charter school is included in the resolution" from former Paragraph (2) of Subsection D and redesignated the remaining language as Subsection F; in Subsection F, added "If a local school board adopts a resolution that includes tax revenue for a charter school"; and redesignated former Subsection E as Subsection G.

**The 2009 amendment,** effective June 19, 2009, in Subsection A, at the end of the sentence, added "and the provisions of the Open Meetings Act"; in Subsection D, after "provided that:", deleted language that required the local school board to consider requests by a charter school for funds needed for a lease purchase agreement entered into by the charter school; added Paragraph (1) of Subsection D; in Paragraph (2) of Subsection D, at the beginning of the sentence, added "if the tax revenue for a charter school is included in the resolution and"; and in Subsection E, changed "twenty" to "thirty".

## 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.

**ANNOTATIONS**

**Cross references.** — For PL 874 funds, *see* 20 USCS § 7701 et seq.

**The 2015 amendment,** effective July 1, 2015, amended the Public School Lease Purchase Act to authorize charter schools to apply any legally available funds to acquire or improve buildings or other real property subject to a lease purchase arrangement; in the introductory sentence of the section, after "A school district", added "or charter school"; in Subsection A, after "school district's", added "or charter school's"; in Subsection E, after "school district", added "or charter school".

**The 2009 amendment,** effective June 19, 2009, in the introductory sentence, after "funds to", deleted "the payments due on or any prepayment premium payable in connection with lease purchase arrangements as they become due" and added the remainder of the sentence; in Subsection C, after "proceeds from taxes imposed", deleted "to pay school district general obligation bonds or" and after "Building Act;", deleted "or the Educational Technology Equipment Act"; deleted Subsection D, which included revenue from bonds or notes pursuant to the School Revenue Bond Act or the School District Anticipation Notes Act; and added Subsection J.

## 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 through 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.

**ANNOTATIONS**

**The 2009 amendment,** effective June 19, 2009, in Subsection A after "specify the", added "maximum" and in Subsection C, changed "twenty" to "thirty".

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 173 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 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 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.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, provided that elections 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, and made technical and conforming changes; in Subsection A, after "Section 22-26A-12 NMSA 1978", deleted "may" and added "shall", after "be held", deleted "in conjunction with a regular school district election or may be conducted as or held in conjunction with a special school district election, but the election shall be held prior to July 1 of the property tax year in which the tax is proposed to be imposed. Conduct of the election shall be", and after "as prescribed in the", deleted "School Election Law for regular and special school district elections" and added "Local Election Act"; and in Subsection B, after "under Section", deleted "1-22-4 or 1-22-5" and added "1-22-11".

**Temporary provisions.** — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

**The 2009 amendment,** effective June 19, 2009, in Subsection B, changed "twenty" to "thirty".

## 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.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, provided that elections held on the question of imposition of a lease purchase tax shall be made in accordance with the Local Election Act, and made conforming changes; and changed "School Election Law" to "Local Election Act".

**Temporary provisions.** — Laws 2018, ch. 79, § 174 provided that references in law to the Municipal Election Code and to the School Election Law shall be deemed to be references to the Local Election Act.

## 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 through 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.

**ANNOTATIONS**

**The 2009 amendment,** effective June 19, 2009, after "authorizing resolution", added "or at a lower rate directed by the local school board".

## 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.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, amended the Public School Lease Purchase Act to require the governing body of a charter school or school district to publish notice of the adoption of a resolution approving a lease purchase arrangement; in Subsection A, after "arrangement, the", deleted "local school board" and added "governing body", and after "circulation in the school district", added "in which the governing body’s school is located"; and in Subsection B, after "taken by the", deleted "local school board" and added "governing body".

## 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.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, amended the Public School Lease Purchase Act to authorize charter schools to enter into lease purchase arrangements for the purpose of refunding or refinancing any outstanding lease purchase arrangements; after "School districts", added "and charter schools", after "in the discretion of the", deleted "school board" and added "governing body", after "investments thereof may be returned to the", deleted "local school board" and added "governing body", after "tax imposed pursuant to Section", deleted "8 through 12 of the Public School Lease Purchase Act" and added "22-26A-8 through 22-26A-12 NMSA 1978".

## 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.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, amended the Public School Lease Purchase Act to include charter schools in the "Agreement of the State", which provides 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 in any way impair the rights and remedies of the holders of lease purchase arrangements; after "vested in school districts", added "or charter schools", and after "School districts", added "and charter schools".

**The 2009 amendment,** effective June 19, 2009, after the first occurrence of "purchase arrangement", added "certificates of participation or other partial interest in a lease purchase arrangement"; after the second occurrence of "purchase arrangement", added "or related sublease arrangement"; after the third occurrence of "purchase arrangements", added "certificates of participation or other partial interests in lease purchase arrangements"; and after the fourth occurrence of "purchase arrangement", added "or related sublease arrangement".

## 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.

**ANNOTATIONS**

**The 2009 amendment,** effective June 19, 2009, after "Purchase Act", added "including certificates of participation and other partial interests in such lease purchase arrangements".

## 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.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, amended the Public School Lease Purchase Act to include charter schools in the state's covenant that lease purchase arrangements will be free from taxation by the state, except for estate or gift taxes and taxes on transfers; after "arrangements entered into by", deleted "local school boards" and added "governing bodies".

## 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.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, amended the Public School Lease Purchase Act to provide that this act provides complete authority for acquiring buildings and other real property through lease purchase arrangements, and that the governing body of a charter school or school district need not comply with the requirements of any other law applicable to the issuance of debt; after "arrangements, and the", deleted "local school board" and added "governing body".

## 22-26A-19. Repealed.

**History:** Laws 2007, ch. 173, § 19; 2009, ch. 132, § 14; repealed by Laws 2015, ch. 106, § 11.

**ANNOTATIONS**

**Repeals.** — Laws 2015, ch. 106, § 11 repealed 22-26A-19 NMSA 1978, as enacted by Laws 2007, ch. 173, § 19, relating to lease purchase arrangements for charter schools,

effective July 1, 2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com*.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 173 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

# 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.

**ANNOTATIONS**

**Severability.** — Laws 1995, ch. 72, § 4 provided that if any part or application of the Meditation in Public School Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

# 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.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Compiler's notes. —** The phrase "this act" as used in this section means Laws 1997, ch. 233, which enacted the provisions of this article.

**Cross references. —** For the state transportation division of the department of education, *see* 22-16-2 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**Compiler's notes.** — The phrase "this act" as used in this section means Laws 1997, ch. 233, which enacted the provisions of this article and amended 22-1-2 and 22-16-2 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

## 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

# 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.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1986, ch. 94, § 1 repealed former 22-2-6.1 NMSA 1978, as enacted by Laws 1985, ch. 237, § 1, relating to group insurance for public schools, and enacted a new section.

**The 2005 amendment,** effective April 6, 2005, added the statutory reference to the act.

**The Public School Insurance Authority** is a state agency for purposes of the state budget laws. 1990 Op. Att'y Gen. No. 90-23.

**Am. Jur. 2d, A.L.R. and C.J.S. references. —** 78 C.J.S. Schools and School Districts § 401.

## 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.

**ANNOTATIONS**

**The 2008 amendment,** effective July 1, 2008, provided that the purpose of the act includes reimbursement coverage for the costs of providing due process to students with disabilities.

## 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.

**ANNOTATIONS**

**Cross references.** — For the federal Individuals with Disabilities Education Improvement Act, *see* 20 U.S.C., § 1400.

**2007 Multiple Amendments.** — Laws 2007, ch. 41, § 1 and Laws 2007, ch. 236, § 1 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2007, ch. 236, § 1, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2007, ch. 41, § 1 and Laws 2007, ch. 236, § 1 are described below. To view the session laws in their entirety, *see* the 2007 session laws on *NMOneSource.com*.

Laws 2007, ch. 236, § 1, effective July 1, 2008, added Subsection E defining "due process reimbursement".

Laws 2007, ch. 41, § 1, effective July 1, 2007, amended the definition of "educational entities" to include nonprofit organizations dedicated to the improvement of public education and whose membership is composed exclusively of public school employees, public schools or school districts.

**The 2001 amendment,** effective June 15, 2001, added "and regional education cooperatives" to the end of Subsection E and made stylistic changes throughout.

**The 1999 amendment,** effective June 18, 1999, added Subsection C, redesignated former Subsections C to H as Subsections D to I, in Subsection H, substituted "workers' compensation" for "workmen's compensation", and substituted "Subsection K" for "Subsection J" in Subsection I.

**The 1991 amendment,** effective June 14, 1991, added present Subsection C; redesignated former Subsections C to G as Subsections D to H; and inserted "state" preceding "diploma" in Subsection D.

## 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.

**ANNOTATIONS**

**The 2007 amendment,** effective July 1, 2008, added due process reimbursement.

## 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 through 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.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, in Subsection A, deleted "public" preceding "education" in Paragraph (1), added the proviso at the end of Paragraph (5); deleted former Paragraph (6) which read "one member to be selected by the New Mexico association of educational retirees", added the language beginning "and three members" at the end of Paragraph (6) and made a related stylistic change; added "for a term not to exceed three years" at the end of the first sentence in Subsection B; and inserted "hire a director and" near the beginning of the first sentence in Subsection C.

**The 1989 amendment,** effective June 16, 1989, rewrote Subsection A(1), which formerly read "the state superintendent or his designee"; substituted "school business official" for "member" in Subsection A(2); in Subsection B deleted "Except for the state superintendent who serves by virtue of his office," at the beginning of the first sentence, and added the present second sentence; and in Subsection C added the second, third and fourth sentences.

**The 1988 amendment,** effective May 18, 1988, substituted "state superintendent or his designee" for "director of the office of education of the department of finance and administration" in Subsection A(1), "educational retirees" for "retired educators" in Subsection A(6), and "state superintendent" for "director of the office of education" in the first sentence in Subsection B.

## 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.

## ANNOTATIONS

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. *See* 9-24-15 NMSA 1978.

**The 1999 amendment,** effective June 18, 1999, substituted "Any money remaining in the fund" for "Any funds remaining" in the last sentence of Subsection A, deleted "of funds" following "All appropriations" in Subsection C, and added the references to charter schools in Subsections D and E.

**The 1991 amendment,** effective June 14, 1991, deleted "deposited in a segregated account and invested in securities eligible for investment by the educational retirement board pursuant to Section 22-11-13 NMSA 1978" at the end of the first sentence in Subsection A; added Subsections B and F; and redesignated former Subsections B to D as Subsections C to E.

**The 1989 amendment,** effective June 16, 1989, in Subsection B substituted "department of education" for "office of education" and "state budget division" for "budget division"; in Subsection C substituted "fund" for "public school insurance fund" in the second sentence; and substituted all of the present language of Subsection D beginning with "school" for "districts on a pro rata basis".

**"Budget review"** as used in Subsection B (now Subsection C) means approval of the public school insurance authority's proposed budget. 1990 Op. Att'y Gen. No. 90-23.

## 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 through 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.

## ANNOTATIONS

**The 2011 amendment,** effective June 17, 2011, granted the authority the power to provide public liability coverage for health care student interns.

**The 2009 amendment,** effective July 1, 2010, added Subsections D through G.

**The 2003 amendment,** effective July 1, 2003, deleted former Subsection A which read: "employ the services of the state fiscal agent or select its own fiscal agent pursuant to regulations adopted by the board; provided that for the purposes of disbursing all money other than that in the fund, the secretary of finance and administration shall be the fiscal

agent for the authority;" and redesignated former Subsections B to H as present Subsections A to G; in present Subsection B, inserted "money and" near the beginning, and deleted "and disburse money in" near the end.

**The 1997 amendment,** effective July 1, 1997, inserted "provisions of the Health Care Purchasing Act and the" following "procure lines of insurance coverage in compliance with the" in Subsection G and deleted the remainder of the Subsection after "purchase, renovate, equip and furnish a building for the board" in Subsection H.

**The 1994 amendment,** effective March 4, 1994, added the language beginning "provided that" in Subsection G.

**The 1991 amendment,** effective June 14, 1991, added the proviso at the end of Subsection A; rewrote Subsection C which read "collect, invest and disburse funds"; and deleted "the authority is authorized to" at the beginning of Subsection I.

**The 1990 amendment,** effective February 13, 1990, added "and" at the end of Subsections G and H and, in Subsection I, substituted "seventy-eighth fiscal year" for "seventy-seventh fiscal year" in the first sentence and "seventy-ninth fiscal year" for "seventy-eighth fiscal year" at the end of the second sentence.

**The 1989 amendment,** effective June 16, 1989, added Subsections H and I.

**Contract action not barred by sovereign immunity.** — Receiving a premium, providing insurance coverage, and denying benefits indicated the existence of a valid, written, enforceable insurance contract under the Public School Insurance Authority Act between the New Mexico public schools insurance authority and a school district regarding the authority's first-party insurance obligation; therefore, the school district stated a claim for breach of contract which was not barred by sovereign immunity. *Moriarty Mun. Schs. v. N.M. Pub. Schs. Ins. Auth.*, 2001-NMCA-096, 131 N.M. 180, 34 P.3d 124.

## 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.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

Laws 2003, ch. 153, § 72 recompiled former 22-2-6.6 NMSA 1978 as 22-29-6 NMSA 1978, effective April 4, 2003.

**The 1991 amendment,** effective June 14, 1991, in Subsection A, substituted the first two sentences for a sentence which read "All premiums and other money collected by the authority shall be received and disbursed directly by the authority, but receipts and disbursements are subject to audit by the state auditor", added the exception at the beginning of the third sentence and added the final sentence and, in Subsection B, added the exception at the beginning.

## 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.

## ANNOTATIONS

**The 1999 amendment,** effective June 18, 1999, added references to charter schools throughout the section, and substituted "workers' compensation" for "workmen's compensation" in the first sentence of Subsection D.

**The 1989 amendment,** effective June 16, 1989, in Subsection B substituted "proposals" for "proposal" in the second and third sentences; added the third sentence of Subsection C; and in Subsection G substituted all of the present language preceding

"may provide" for "Whenever appropriate, the local school districts", and inserted "or brokers".

**Duty to defend lawsuit until exclusion proven.** — The authority had the duty to defend a federal lawsuit against a school district until it could establish that the claims for discrimination and civil rights violations were factually supported only by acts connected with sexual misconduct, such acts being excluded from the insurance policy. *Lopez v. N.M. Pub. Sch. Ins. Auth.*, 1994-NMSC-017, 117 N.M. 207, 870 P.2d 745.

## 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 seventy-five percent of the cost of the insurance of an employee whose annual salary is less than fifteen thousand dollars ($15,000);

(2) at least seventy percent of the cost of the insurance of an employee whose annual salary is fifteen thousand dollars ($15,000) or more but less than twenty thousand dollars ($20,000);

(3) at least sixty-five percent of the cost of the insurance of an employee whose annual salary is twenty thousand dollars ($20,000) or more but less than twenty-five thousand dollars ($25,000); or

(4) at least sixty percent of the cost of the insurance of an employee whose annual salary is twenty-five thousand dollars ($25,000) or more.

B. Within available revenue, school districts, charter schools and participating entities in the authority may contribute up to eighty 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.

**ANNOTATIONS**

**The 2004 amendments,** effective May 19, 2004, in Subsection A, inserted "at least" at the beginning of Paragraphs (1) through (4); added a new Subsection B; and redesignated former Subsection B as Subsection C.

**The 1999 amendment,** effective June 18, 1999, inserted references to charter schools throughout the section, and deleted "public school insurance" or "public schools insurance" preceding "authority" in the introductory language of Subsection A and the first and second sentences of Subsection B.

## 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 through 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 274, § 20 made Laws 2005, ch. 274, § 18 effective April 6, 2005.

## 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.

**ANNOTATIONS**

**The 2008 amendment,** effective July 1, 2008, decreased the maximum single due process reimbursement from $300,000 to $100,000 and added the last paragraph.

# 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.

**ANNOTATIONS**

**Bracketed material. —** The bracketed material was inserted by the compiler and is not part of the law.

Laws 2007, ch. 292, § 11 and Laws 2007, ch. 293, § 11, recompiled former 22-13-27 NMSA 1978 into the Statewide Cyber Academy Act as 22-30-7 NMSA 1978.

**Compiler's notes. —** Laws 2007, ch. 292, § 1 and Laws 2007, ch. 293, § 1 enacted identical new sections, effective June 15, 2007.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 292, § 2 and Laws 2007, ch. 293, § 2 enacted identical new sections, effective June 15, 2007.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 292, § 3 and Laws 2007, ch. 293, § 3 enacted identical new sections, effective June 15, 2007.

The Statewide Cyber Academy Act was enacted as part of the Public School Code, 22-1-1 NMSA 1978. The department referred to in the Statewide Cyber Academy Act means the public education department, 22-1-2 NMSA 1978.

**Cross references.** — For the public education department, *see* 9-24-4 NMSA 1978.

For the higher education department, *see* 9-25-1 NMSA 1978.

## 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.

**ANNOTATIONS**

**Compiler’s notes.** — Laws 2007, ch. 292, § 4 and Laws 2007, ch. 293, § 4 enacted identical new sections, effective June 15, 2007.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 292, § 5 and Laws 2007, ch. 293, § 5 enacted identical new sections, effective June 15, 2007.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 292, § 6 and Laws 2007, ch. 293, § 6 enacted identical new sections, effective June 15, 2007.

## 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.

**ANNOTATIONS**

**Recompilations.** — Laws 2007, ch. 292, § 11 and Laws 2007, ch. 293, § 11 recompiled former 22-13-27 NMSA 1978 into the Statewide Cyber Academy Act as 22-30-7 NMSA 1978, effective June 15, 2007.

## 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.

**ANNOTATIONS**

**Compiler's notes.** — Laws 2007, ch. 292, § 7 and Laws 2007, ch. 293, § 7 enacted identical new sections, effective June 15, 2007.

# ARTICLE 31
# School Athletics Equity

## 22-31-1. Short title.

This act [22-31-1 through 22-31-6 NMSA 1978] may be cited as the "School Athletics Equity Act".

History: Laws 2009, ch. 178 , § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 178 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**The 2012 amendment,** effective May 16, 2012, eliminated certain reporting requirements for school athletics programs in grades seven and eight, and at the beginning of the first sentence, added "Except as provided in Subsections C, D and E of Section 22-31-3 NMSA 1978,".

## 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.

## ANNOTATIONS

**The 2012 amendment,** effective May 16, 2012, eliminated certain reporting requirements for school athletics programs in grades seven and eight and clarified other reporting requirements; in Subsection A, in Paragraph (1), after "average of enrollment at the", deleted "eighteen and one hundred twentieth days of the school year" and added "second and third reporting dates"; in Subsection B, in the introductory sentence, after "directors and coaches", deleted "and other school personnel"; in Paragraph (1), after "athletic director", added "and other athletic program staff"; and in Paragraph (2), after "team’s coaches", deleted "and other team personnel"; in Subsection C, after "athletics programs", added "in grades nine through twelve" and after "and to which", deleted "teams" and added "programs"; in Subsection D, in the introductory sentence, after "regarding expenses", added "for athletics programs in grades nine through

twelve"; and in Paragraph (2), after "athletics programs", deleted "and (3) the expenditure for individual teams" and after "expenses incurred by each"; deleted "team" and added "athletic program"; and in Subsection E, in the introductory sentence, after "services to each", deleted "team" and added "athletic program in grades nine through twelve"; in Paragraph (1), after "schedules for", deleted "equipment" and after "uniforms", deleted "and supplies"; in Paragraph (3), at the beginning of the sentence, deleted "access to"; and deleted former Paragraph (4), which required a statement of assistance in obtaining scholarships.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 178 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 178 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 178 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

# 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.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, changed "This act" to "Chapter 22, Article 32" NMSA 1978".

## 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 of the whole student; to partner federal, state and local entities with private community-based organizations to improve the coordination, delivery, effectiveness and efficiency of

services provided to children and families; and to coordinate resources, in order to align and leverage community resources and integrate funding streams.

**History:** Laws 2013, ch. 16, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2013, ch. 16 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

## 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.

B. A community schools initiative shall include the following core set of strategies and opportunities to strengthen behavior for all students:

(1) extended learning programs, including after-school programs and summer programs;

(2) school-based or school-linked health care;

(3) opportunities for families to acquire skills to promote early learning and childhood development;

(4) school and community-resource partnerships with an integrated focus on academics and other social, health and familial support;

(5) social, health, nutrition and mental health services and support for children, family members and community members; and

(6) case management for students in need of comprehensive support in academics, attendance and behavior.

C. 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 assessment of community resources informed by students, families and community and school leaders that relates to the effective delivery of core services on site; and

(3) the implementation of an independently evaluated, evidence-based or results-based model of integrated student services and comprehensive supports that is proven to increase student achievement.

**History:** Laws 2013, ch. 16, § 3; 2017, ch. 66, § 2.

**ANNOTATIONS**

**The 2017 amendment,** effective June 16, 2017, required a community schools initiative to include opportunities to strengthen behavior of students, expanded the core strategies requirement for strengthening the behavior of students, and required each community schools initiative to establish and implement an independently evaluated and evidence-based or results-based model of integrated student services and comprehensive supports proven to increase student achievement; in Subsection B, in the introductory clause, after "shall include", deleted "but not be limited to", and after "set of strategies", added "and opportunities to strengthen behavior for all students", in Paragraph B(1), after "including", deleted "before- and", and after "after-school programs", deleted "as well as" and added "and", deleted former Paragraph B(3) and added new Paragraphs B(3) through B(6); in Subsection C, Paragraph C(1), after "including", deleted "but not limited to", in Paragraph C(3), after the first occurrence of "the", deleted "establishment of an evaluation process that measures both the quality and quantity of outcomes", and added the remainder of the paragraph.

## 22-32-4. Community schools initiatives; administrative costs; grants; school district, group of public schools or public school duties; requirements.

A. A school district shall bear any administrative 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 public school that has demonstrated partnerships with any lead agency and local, private and public agencies for the purpose of establishing, operating and sustaining community schools and that meets department eligibility requirements.

C. Applications for grants for community schools initiatives 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 community schools initiative;

(2) goals and expected outcomes of the initiative;

(3) services and activities to be provided by the initiative;

(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 initiative, including staffing requirements and the expected availability of staff;

(6) days and hours of operation;

(7) strategies for dissemination of information about the initiative to potential users;

(8) training and professional development plans;

(9) letters of endorsement and commitment from community agencies and organizations and local governments; and

(10) any other information the department requires.

D. A school district, a group of public schools or a public school that uses funds under this section to transform a school into a research- and 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 to staff that:

(a) aligns with the school's instructional program;

(b) facilitates effective teaching and learning; and

(c) supports the implementation of school reform strategies; and

(3) give the school sufficient operational flexibility in programming, staffing, budgeting and scheduling so that the school can fully implement a comprehensive strategy designed to focus on improving school climate, student achievement and growth in reading and mathematics, attendance, behavior, parental engagement and, for high schools, graduation rates and readiness for college or a career.

**History:** Laws 2013, ch. 16, § 4; 2017, ch. 66, § 3.

## ANNOTATIONS

**The 2017 amendment,** effective June 16, 2017, required a school district, a group of public schools or a public school that uses funds under the Community Schools Act to

use an evidence-based evaluation system to assess the effectiveness of the implementation of the community schools initiative; and in Subsection D, Paragraph D(1), after "transparent", deleted "and", and after "equitable", added "and evidence-based".

# ARTICLE 33
# Emergency Medication In Schools

## 22-33-1. Short title.

Sections 1 through 4 [22-33-1 through 22-33-4 NMSA 1978] of this act may be cited as the "Emergency Medication in Schools Act".

History: Laws 2014, ch. 50, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2014, ch. 50 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 21, 2014, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2014, ch. 50 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 21, 2014, 90 days after the adjournment of the legislature.

## 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.

**ANNOTATIONS**

**Effective dates.** — Laws 2014, ch. 50 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 21, 2014, 90 days after the adjournment of the legislature.

## 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.

## ANNOTATIONS

**Effective dates.** — Laws 2014, ch. 50 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 21, 2014, 90 days after the adjournment of the legislature.