

# CHAPTER 22

## PUBLIC SCHOOLS

### ARTICLE 1

### GENERAL PROVISIONS

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

Chapter 22 NMSA 1978 [except 22-2-17, 22-2-18, 22-4-16, 22-9-7 to 22-9-16 NMSA 1978 and Articles 8A, 13A, 18A and 27 NMSA 1978] 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.

#### ANNOTATIONS

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

As to legislative school study committee, see 2-10-1 NMSA 1978 et seq.

**Temporary provisions.** - Laws 1992, ch. 89, §§ 1-7, effective March 9, 1992, make legislative findings, create the select education review and recodification committee, provide for the appointment of members and for duties of the committee, provide for subcommittees, provide for a report, and provide for committee staff.

**Compiler's note.** - Laws 1967, ch. 16, § 300, provided that the Public School Code, which Laws 1967, ch. 16, enacted, should be liberally construed to carry out its provisions and purposes. For disposition of Laws 1967, ch. 16, in NMSA 1978, see the Table of Disposition of Acts.

**Public School Code.** - This section, as it appeared in 1953 Comp., provided that "Chapter 77 NMSA 1953 may be cited as the 'Public School Code.' " When the New Mexico Statutes Annotated were recompiled in 1978, sections in former Chapter 77 were renumbered as present Chapter 22 (excluding 22-4-16, 22-9-7 to 22-9-16 and Articles 13A and 18A NMSA 1978) and present 11-8-1 to 11-8-11 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 1 to 274.

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.

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

As used in the Public School Code:

- A. "state board" means the state board of education;
- B. "state superintendent" means the superintendent of public instruction;
- C. "department of education" means the state department of public education;
- D. "certified school instructor" means any person holding a valid certificate authorizing the person to teach, supervise an instructional program, counsel or provide special instructional services in the public schools of the state;
- E. "certified school administrator" means any person holding a valid certificate authorizing the person to administer in the public schools of the state;
- F. "certified school employee" or "certified school personnel" means any employee who is either a certified school instructor or a certified school administrator or both;
- G. "non-certified school employee" means any employee who is not a certified school employee;
- H. "certificate" means a certificate issued by the state board authorizing a person to teach, supervise an instructional program, counsel, provide special instructional services or administer in the public schools of the state;
- I. "chief" or "director" means the state superintendent or his designee unless the context clearly indicates otherwise;
- J. "private school" means a school offering on-site programs of instruction not under the control, supervision or management of a local school board, exclusive of home instruction offered by the parent, guardian or one having custody of the student;
- K. "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;
- L. "local school board" means the governing body of a school district;
- M. "public school" means that part of a school district that is a single attendance center where instruction is offered by a certified school instructor or a group of certified school instructors and is discernible as a building or group of buildings generally recognized as either an elementary, secondary, junior high or high school or any combination thereof;

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

O. "consolidation" means the combination of part or all of the geographical area of an existing school district with part or all of the geographical area of one or more contiguous existing school districts;

P. "consolidated school district" means a school district created by order of the state board by combining part or all of the geographical area of an existing school district with part or all of the geographical area of one or more contiguous existing school districts;

Q. "state institution" means the New Mexico military institute, the New Mexico school for the visually handicapped, the New Mexico school for the deaf, the New Mexico boys' school, the New Mexico youth diagnostic and development center, the Los Lunas medical center, the Fort Stanton hospital, the Las Vegas medical center or the Carrie Tingley crippled children's hospital;

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

S. "forty-day report" means the report of qualified student membership of each school district and of those eligible to be qualified students but enrolled in a private school or a home school for the first forty days of school;

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

U. "school-age person" means any 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 persons who are classified as special education membership as defined in Section 22-8-2 NMSA 1978 or as residents of state institutions;

V. "home school" means the operation by a parent, guardian or other person having custody of a school-age person who instructs a home study program that provides a basic academic educational program, including but not limited to reading, language arts, mathematics, social studies and science;

W. "school building" means a public school, an administration building and related school structure or facilities, including teacher housing, as may be owned, acquired or constructed by the local school board and as necessary to carry out the powers and duties of the local school board;

X. "commercial advertiser" means a person who advertises a product or service for profit or not for profit and has a permitted advertisement; and

Y. "school bus private owner" means a person who owns a school bus other than a local school district, the department of education, the state or any other political subdivision of the state.

**History:** 1953 Comp., § 77-1-2, enacted by Laws 1967, ch. 16, § 2; 1969, ch. 180, § 1; 1971, ch. 263, § 1; 1975, ch. 332, § 1; 1977, ch. 246, § 60; 1978, ch. 211, § 6; 1985, ch. 21, § 1; 1987, ch. 42, § 1; 1988, ch. 64, § 10; 1988, ch. 66, § 1; 1990, ch. 94, § 1; 1991, ch. 137, § 1; 1991, ch. 187, § 1; 1993, ch. 62, § 1; 1997, ch. 233, § 1.

## ANNOTATIONS

**Cross-references.** - As to state board of education generally, see 22-2-1 NMSA 1978 et seq.

As to local school boards generally, see 22-5-1 NMSA 1978 et seq.

As to state superintendent generally, see N.M. Const., art. XII, § 6 and 22-2-4 to 22-2-7 NMSA 1978.

As to state department of education, see N.M. Const., art. XII, § 6 and 22-2-5 and 22-2-6 NMSA 1978.

For enumeration of state educational institutions, see N.M. Const., art. XII, § 11.

**The 1988 amendments.** - Laws 1988, ch. 64, § 10, effective March 8, 1988, substituting "state superintendent or his designee" for "director of the office of education" in Subsection H and inserting "and development" in Subsection P, was approved March 4, 1988. However, Laws 1988, ch. 66, § 1, effecting the same changes but also deleting "provided however, that for purposes of the Public School Capital Improvements Act, an administrative building shall not be considered a 'school building'" from the end of Subsection V, was approved March 9, 1988. The section is set out as amended by Laws 1988, ch. 66, § 1. See 12-1-8 NMSA 1978.

**The 1990 amendment,** effective May 16, 1990, deleted "regular and handicapped" following "qualified" in Subsection R and "average daily" following "special education" in the second sentence of Subsection T.

**1991 amendments.** - Laws 1991, ch. 137, § 1, effective April 3, 1991, adding "or college-preparatory, residential, bureau of Indian affairs contract schools" at the end of Subsection I, was approved on April 3, 1991. However, Laws 1991, ch. 187, § 1, effective June 14, 1991, rewriting Subsection F which read " 'certified school personnel' means certified school instructors and certified school administrators", adding Subsections G and H, and redesignating former Subsections G to V as Subsections I to W, was approved on April 4, 1991. The section is set out as amended by Laws 1991, ch. 187, § 1. See 12-1-8 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, inserted "on-site" near the beginning of Subsection J and substituted "person who instructs" for "person of" near the beginning of Subsection V.

**The 1997 amendment** added Subsections X and Y. Laws 1997, ch. 233 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

**School districts are "state agencies"** covered by the Conflict of Interest Act. 1989 Op. Att'y Gen. No. 89-34.

**Limitations on legislator's contracts to school districts.** - The limitations on a legislator's contracts imposed under N.M. Const., art., IV, § 28 apply to contracts with the state, municipalities and school districts, but do not apply to counties. 1989 Op. Att'y Gen. No. 89-34.

**Compulsory school attendance law must bear rational relation to legitimate state interest.** - In the application of equal protection principles, the standard for reviewing the compulsory school attendance law is whether it bears some rational relation to a legitimate state interest. *State v. Edgington*, 99 N.M. 715, 663 P.2d 374 (Ct. App.), cert. denied, 464 U.S. 940, 104 S. Ct. 354, 78 L. Ed. 2d 318 (1983).

**And state may constitutionally prohibit home instruction by parent, guardian or custodian.** - 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*, 99 N.M. 715, 663 P.2d 374 (Ct. App.), cert. denied, 464 U.S. 940, 104 S. Ct. 354, 78 L. Ed. 2d 318 (1983).

**No distinction between "private" and family schools.** - The state legislature has not set teacher or curriculum standards for determining what qualifies an educational entity as a "private school", defined in Subsection I, as opposed to a family school. *Strosnider v. Strosnider*, 101 N.M. 639, 686 P.2d 981 (Ct. App. 1984).

**Certified school instructor.** - School districts which have included speech-language pathologists within the meaning of "certified school instructor" contained in Laws 1986, ch. 33, § 34 for purposes of granting a \$2,200 salary increase to those instructors are not in violation of law, provided all requirements of the Public School Finance Act [22-8-1 to 22-8-42 NMSA 1978] were met. 1987 Op. Att'y Gen. No. 87-70.

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

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

A. notify the superintendent of schools of the school district in which the person is a resident of the establishment of a home school within thirty days of its establishment and notify the superintendent of schools of the school district on or before April 1 of each subsequent year of operation;

B. maintain records of student attendance and disease immunization and furnish such records to the superintendent of schools of the school district;

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

D. test students annually to assess student achievement according to the statewide and local school district testing programs as determined by the state superintendent. The home school child shall take such achievement tests at a time and place and in a manner consistent with the procedures established by the state superintendent.

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

### **ANNOTATIONS**

**1993 amendments.** - Laws 1993, ch. 62, § 2, effective June 18, 1993, which substituted "high school diploma or its equivalent; and" for "baccalaureate degree, which requirement may be waived by the state superintendent upon a determination that such waiver is in the child's best interest" at the end of Subsection C, was approved March 19, 1993. However Laws 1993, ch. 226, § 1, effective July 1, 1993, also amending this section by rewriting Subsection C, which formerly read "provide instruction by a person possessing at least a baccalaureate degree, which requirement may be waived by the state superintendent upon a determination that such waiver is in the child's best interest", and inserting "and" at the end of Subsection C, but not giving effect to the changes made by the first 1993 amendment was approved April 6, 1993. The section is set out as amended by Laws 1993, ch. 226, § 1. See 12-1-8 NMSA 1978.

### **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, 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, 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 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 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**

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

#### **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 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 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 [22-12-1 to 22-12-7 NMSA 1978], may withdraw from a public school at any time.

D. In adopting and promulgating regulations 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 and local school district testing programs as determined by the state superintendent or both.

E. A local school board shall adopt and promulgate regulations governing enrollment and re-enrollment at schools within the district. These regulations shall include:

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



(2) for each school, definition of the boundaries of areas outside the district boundary or within the district but outside the school's attendance area, and within a distance of the 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, persons residing within the district and within the attendance area of a school;

(b) second, persons who previously attended the school; and

(c) third, all other applicants; and

(4) establishment of maximum allowable class size if smaller than that permitted by law and ratification and description of the maximum class size in the charter of all charter schools within the district.

F. As long as the maximum allowable class size established by law, by regulation of a local school board or in the charter of a charter school, whichever is lower, is not met or exceeded in a school by enrollment of first-priority persons, the school shall enroll other persons applying in the priorities stated in the district regulations adopted pursuant to Subsection E of this section. If the maximum would be exceeded by enrollment of an applicant in the second or third priority, the 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.

## ANNOTATIONS

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

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

**The 1997 amendment** added the second sentence in Subsection D. Laws 1997, ch. 127 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**The 1998 amendment** 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. Laws 1998, ch. 62, contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

## **22-1-5. Recompiled.**

### **ANNOTATIONS**

**Recompilations.** - Laws 1986, ch. 33, § 10 recompiles 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. Annual school district accountability report required.**

A. School districts shall be required to publish an annual school district accountability report to provide district-wide data for the previous school year. The state board shall establish the format for the accountability reports and ensure that the relevant data is provided annually to parents, students, educators, policymakers, legislators, the governor and business and economic development organizations. The department of education shall establish the following five indices through which public school performance shall be measured and reported to school districts:

- (1) student achievement as measured by a nationally norm-referenced test approved by the department of education or through a performance-based instrument to measure proficiency;
- (2) school safety;
- (3) the drop-out rate;
- (4) attendance; and
- (5) parent and community involvement.

The department of education shall establish the methodology for measuring each of the five indices.

B. School districts shall set two-, four- and six-year benchmarks in each of the five indices for each public school. Local school boards may establish additional indices, if reviewed by the department of education, through which to measure the school district's performance in other areas.

C. The annual accountability report shall also include the results of a survey of parents' views of the quality of their children's school. The survey shall be conducted each year in time to include the results in the annual accountability report. The survey shall compile the results of a written questionnaire that shall be sent home with the students to be given to their parents. The survey may be completed anonymously. The survey shall be no more than one page, shall be clearly and concisely written and shall include not more than twenty questions that shall be answered with options of a simple sliding scale ranging from "strongly agree" to "strongly disagree" and shall include the optional response "don't know". The survey shall also include a request for optional written comments, which may be written on the back of the questionnaire form. The questionnaire shall include questions in the following areas:

- (1) parent-teacher-school relationship and communication;
- (2) quality of educational and extracurricular programs;
- (3) instructional practices and techniques;
- (4) resources;
- (5) school personnel, including the school principal; and
- (6) parents' view of teaching staff expectations for the students.

The state board shall develop no more than ten of the questions which shall be reviewed by the legislative education study committee prior to implementation. No more than five questions shall be developed by the local school board and no more than five questions shall be developed by the staffs of each individual school site, provided that at least half of those questions are developed by teachers rather than administrators, in order to gather information that is specific to the particular community surveyed. The questionnaires shall indicate the public school site and shall be tabulated by the department of education within thirty days of receipt and shall be returned to the respective schools to be disseminated to all parents.

D. The annual accountability report for each school district shall be adopted by the local school board, may be published no later than November 15 of each year and may be published at least once each school year in a newspaper of general circulation in the county where the school district is located. In publication, the report shall be titled "the school district report card" and disseminated in accordance with guidelines established by the state board to ensure effective communication with parents, students, educators, local policymakers and business and community organizations.

E. The department of education shall create an accountability data system through which data from each public school and each school district may be compiled and reviewed. The department of education shall provide the resources to train school district personnel in the use of the accountability data system.

F. The department of education shall verify data submitted by the school districts.

G. The state board shall measure the performance of every public school in New Mexico. Public schools achieving the highest level of performance shall be eligible for supplemental incentive funding. The state board shall establish the corrective actions and interventions necessary for public schools whose performance level is low.

**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.

## **ANNOTATIONS**

**The 1990 (1st S.S.) amendment**, effective June 18, 1990, added all of the language at the end of Subsection A beginning "to provide district-wide data for the previous school year", added the present Subsection B designation, rewriting that Subsection, and redesignated former Subsection B as present Subsection C, inserting therein "no later than November 15 of each year and shall be published" in the last sentence.

**The 1991 amendment, effective June 14, 1991**, added present Subsection C; redesignated former Subsection C as Subsection D; and made minor stylistic changes throughout the section.

**The first 1997 amendment**, effective July 1, 1997, in the first sentence of Subsection B, inserted "a summary of services provided for students receiving services through the additional at-risk program units" and made a stylistic change.

**The second 1997 amendment**, effective July 1, 1998, rewrote Subsections A and B, added the last sentence in Subsection C, rewrote Subsection D, and added Subsections E, F and G.

### **22-1-7. Public schools; violence; vandalism; reporting.**

A. Any public school administrator, teacher or other employee of a local school board who observes or has direct knowledge from a participant or victim of an act of violence upon a public school administrator, teacher or other employee of a local school board in the lawful discharge of his duties or vandalism to public school property shall file a report describing the incident pursuant to procedures established by the state department of public education.

B. Any person who files an incident report pursuant to this section shall not be discriminated against in any manner or discharged by a local school board because he has filed that report.

C. The state department of public education shall establish uniform reporting procedures for incidents of violence or vandalism described in Subsection A of this section. The procedures shall include requirements for:

(1) incidents to be reported, incident description and report on action taken in response to the reported incident;

(2) annual reports by local school superintendents of all reported incidents to local school boards;

(3) annual reports by local school boards of all reported incidents to the superintendent of public instruction; and

(4) annual reports by the superintendent of public instruction of all reported incidents to the state board of education. The report filed with that board shall be summarized and submitted to an appropriate interim committee of the legislature with recommendations to decrease the incidence of violence and vandalism in the public schools.

**History:** Laws 1989, ch. 344, § 2.

## **22-1-8. 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; 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.

## **ARTICLE 2 STATE BOARD OF EDUCATION**

## **22-2-1. State board; powers.**

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

B. The state board may promulgate, publish and enforce regulations to exercise its authority granted pursuant to the Public School Code.

C. The state board may apply to the district court for an injunction, writ of mandamus or other appropriate relief to enforce the provisions of the Public School Code or any of its regulations promulgated pursuant to the Public School Code.

D. The state board may 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.

### **ANNOTATIONS**

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

**Repeals and reenactments.** - Laws 1990 (1st S.S.), ch. 9, § 10 repeals former 22-2-1 NMSA 1978, as amended by Laws 1990, ch. 52, § 1, and enacts the above section, effective June 18, 1990. For provisions of former section, see 1990 Session Laws.

**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.

**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.

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

**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, if the state board's constitutional authority is so limited, then it would necessarily follow that the legislature

may also divest the state board of duties previously defined. As the courts have construed it, 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. 77-6.

**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*, 102 N.M. 234, 693 P.2d 1266 (Ct. App. 1984).

**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*, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982).

**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. State board; duties.**

Without limiting those powers granted to the state board pursuant to Section 22-2-1 NMSA 1978, the state board shall perform the following duties:

- A. properly and uniformly enforce the provisions of the Public School Code;
- B. determine policy for the operation of all public schools and vocational education programs in the state;
- C. appoint a state superintendent;
- D. purchase and loan instructional material to students pursuant to the Instructional Material Law and adopt regulations relating to the use and operation of instructional material depositories in the instructional material distribution process;
- E. designate courses of instruction to be taught in all public schools in the state;
- F. assess and evaluate all state institutions and those private schools that desire state accreditation;
- G. determine the qualifications for and issue a certificate to any person teaching, assisting teachers, supervising an instructional program, counseling, providing special instructional services or administering in public schools, according to law and according to a system of classification adopted and published by the state board;

H. suspend or revoke a certificate held by a certified school instructor or certified school administrator, according to law, for incompetency, immorality or for any other good and just cause;

I. make full and complete reports on consolidation of school districts to the legislature;

J. prescribe courses of instruction, 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 New Mexico military institute;

K. adopt regulations for the administration of all public schools and bylaws for its own administration;

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

M. authorize adult educational programs to be conducted in schools under its jurisdiction and adopt and promulgate regulations governing all such adult educational programs;

N. require any 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. require all accrediting agencies for public schools in the state to act with its approval;

P. accept and receive all grants of money from the federal government or any other agency for public school purposes and disburse the money in the manner and for the purpose specified in the grant;

Q. require prior approval for any educational program in a public school that is to be conducted, sponsored, carried on or caused to be carried on by a private organization or agency;

R. approve or disapprove all rules or regulations promulgated by any association or organization attempting to regulate any public school activity and invalidate any rule or regulation in conflict with any regulation promulgated by the state board. The state board shall require any association or organization attempting to regulate any 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 of the Public Records Act. The state board may require performance and financial audits of any association or organization attempting to regulate any public school activity. The state board shall have no power or control over the rules or regulations or the bylaws governing the administration of the internal organization of the association or organization;



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

T. 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 state;

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

V. assess and evaluate for accreditation purposes at least one-third of all public schools each year through visits by department of education personnel to investigate the adequacy of pupil gain in standard required subject matter, adequacy of pupil activities, functional feasibility of public school and school district organization, adequacy of staff preparation and other matters bearing upon the education of the students;

W. provide for management and other necessary personnel to operate any public school or school district that has failed to meet requirements of law, state board standards or state board regulations; provided that the operation of the public school or school district shall not include any consolidation or reorganization without the approval of the local board of that school district. Until such time as requirements of law, standards or regulations have been met and compliance is assured, the powers and duties of the local school board shall be suspended;

X. establish and implement a plan that provides for technical assistance to local school boards through workshops and other in-service training methods; provided, however, that no plan shall require mandatory attendance by any member of a local school board;

Y. submit a plan applying for funds available under Public Law 94-142 and disburse these funds in the manner and for the purposes specified in the plan; and

Z. enforce requirements for home schools. Upon finding that a home school is not in compliance with law, the state board shall have authority to order that a student attend a public school or a private school.

**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.

## ANNOTATIONS

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

As to duties with respect to federal aid, see 22-9-1 NMSA 1978 et seq.

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

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

As to duty to regulate establishment of part-time schools, see 22-13-9 NMSA 1978.

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

As to approval of buildings erected near highways, see 22-20-2 NMSA 1978.

As to approval of certain school construction projects, see 22-20-3 NMSA 1978.

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

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

**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.

**The 1996 amendment**, added "other than New Mexico military institute" at the end of Subsection J. Laws 1996, ch. 65 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**The 1997 amendment**, substituted "adopt and promulgate regulations" for "promulgate and publish regulations" in Subsection M and added the second sentence in Subsection R. Laws 1997, ch. 19 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Compiler's note.** - Public Law 94-142, referred to in Subsection Y, which is the federal Education for All Handicapped Children Act of 1975, appears mainly as 20 U.S.C. §§ 1411 to 1420.

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

**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, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982).

**And 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, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982).

**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.** - 68 Am. Jur. 2d Schools §§ 50 to 55.

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.

### **22-2-3. Compensation.**

A. Each member of the state board shall be entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], and shall receive no other compensation, perquisite or allowance.

B. Per diem and mileage shall be paid to members of the state board by the department of education out of funds appropriated and budgeted for that purpose.

**History:** 1953 Comp., § 77-2-3, enacted by Laws 1967, ch. 16, § 6.

### **ANNOTATIONS**

**Payment for time spent away from duties with district.** - 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.

### **22-2-4. Officers; meetings; proceedings; restrictions.**

A. From among its members, the state board shall elect a president, vice president and secretary. The secretary of the state board shall have authority to administer oaths to persons appearing as witnesses before the state board.

B. Meetings of the state board shall be held in Santa Fe and at other sites within the state at the direction of the state board.

C. The state superintendent shall keep a record of all proceedings of the state board.

D. No member of the state board shall be appointed state superintendent or be employed by the department of education on either a full- or part-time basis.

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

### **22-2-5. Delegation of administrative functions; duty of state superintendent.**

A. The state board may delegate administrative functions to the department of education.

B. Subject to the policies of the state board, the state superintendent shall be the chief administrative officer of the state board and shall supervise and direct the operation of the department of education.

**History:** 1953 Comp., § 77-2-5, enacted by Laws 1967, ch. 16, § 8.

### **ANNOTATIONS**

**Cross-references.** - As to bond of state superintendent, see 22-2-7 NMSA 1978.

## **22-2-6. Department of education; duties.**

Subject to the policies of the state board and the supervision and direction of the state superintendent, the department of education shall have the following duties:

- A. supervise all schools and school officials coming under the jurisdiction of the state board;
- B. advise boards of regents of state educational institutions on matters concerning the Public School Code;
- C. prescribe, print and distribute forms to carry out the duties of the state board pursuant to the Public School Code;
- D. 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;
- E. keep accurate records of all money received by the state superintendent or the department of education;
- F. publish and distribute copies of the Public School Code and regulations promulgated by the state board to local school boards in the state;
- G. confer with local school boards and certified school personnel on matters concerning education in the state;
- H. prepare and distribute patriotic material to schools in the state; and
- I. evaluate all educational programs in state institutions under the authority of the secretary of the health and environment department.

**History:** 1953 Comp., § 77-2-6, enacted by Laws 1967, ch. 16, § 9; 1978, ch. 211, § 9.

### **ANNOTATIONS**

**Cross-references.** - As to Indian education division of department, see 22-2-11 NMSA 1978 et seq.

As to vocational rehabilitation division of department, see 22-14-7 NMSA 1978 et seq.

**Temporary provisions.** - Laws 1994, ch. 106, § 1, effective May 18, 1994, provides for the establishment by the state department of public education of a task force on the delivery of transition services to students with special needs who transfer from secondary to post-secondary educational institutions. The task force shall report the

results of its study to the state board of education, the commission on higher education and the legislative education study committee prior to November 1, 1994.

**Appropriations.** - Laws 1993, ch. 366, § 2S, effective June 18, 1993, appropriates \$50,000 from the computer systems enhancement fund to the state department of public education for expenditure in the eighty-second fiscal year to design and begin implementation of a student tracking system which will gather appropriate information from preschool to higher education or job placement.

Subsections TT and ZZ of Laws 1993, ch. 366, § 3, effective June 18, 1993, appropriate \$70,000 and \$100,000, respectively, from the general fund to the state department of public education for expenditure in the eighty-first and eighty-second fiscal years to acquire interactive television equipment for the Roy municipal schools, and to provide supplemental operational funding for a high school that offers alternative educational opportunities to students in need of drug and alcohol rehabilitation programs in Bernalillo county. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Subsections OO, VV, and YY of Laws 1993, ch. 366, § 4, effective June 18, 1993, appropriate various amounts from the general fund operating reserve and the general fund to the state department of public education for expenditure in the eighty-second fiscal year for various purposes including establishing a computer-based language arts program, meeting capital outlay needs, and establishing a computer pilot program in Albuquerque public schools. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

Laws 1994, ch. 147, § 2EE, effective March 9, 1994, appropriates \$3,000,000 from the computer systems enhancement fund to the state department of public education for expenditure in the eighty-second and eighty-third fiscal years to be distributed to elementary schools for computer-based language arts literacy programs.

Subsections W, X, FF, and GG of Laws 1994, ch. 147, § 3, effective March 9, 1994, appropriate various amounts from the general fund to the state department of public education for expenditure in the eighty-second and eighty-third fiscal years for various purposes.

Subsections NNNNNN to PPPPPP, UUUUUUU to YYYYYYY, and AAAAAAAA to PPPPPPPP of Laws 1994, ch. 147, § 6, effective March 9, 1994, appropriate various amounts from the general fund to the state department of public education for expenditure in the eighty-second through eighty-fifth fiscal years for various purposes.

Laws 1994, ch. 147, § 7II, effective March 9, 1994, appropriates various amounts from the general fund to the state department of public education for expenditure in the eighty-second and eighty-third fiscal years for various purposes.

Laws 1994, ch. 148, § 2A, effective March 9, 1994, appropriates \$100,000 from the general fund to the state department of public education for expenditure in the eighty-second and eighty-third fiscal years to administer capital outlay and other miscellaneous projects authorized by acts of the second session of the forty-first legislature.

Laws 1994, ch. 148, § 50B, effective March 9, 1994, appropriates various amounts from the general fund to the state department of public education for expenditure in the eighty-second and eighty-third fiscal years for various purposes.

Laws 1995, ch. 2, § 1, effective February 6, 1995, appropriates \$5,000,000 from the general fund to the state department of public education for expenditure in fiscal years 1995 through 1998 for the purpose of meeting capital outlay needs and making capital improvements in the Gadsden independent school district in Dona Ana county.

Laws 1995, ch. 218, § 24, effective April 7, 1995, provides that the period of time for expenditure of the general fund appropriation to the state department of education to study the feasibility of creating a county-wide high school in San Juan county is extended through fiscal year 1999.

Laws 1995, ch. 222, § 33, effective April 7, 1995, appropriates \$9,444,260 from the general fund to the state department of education for expenditure in fiscal years 1995 through 1999 for various purposes. Of this amount, \$50,000 appropriated to study or plan the construction of the Polk middle school swimming pool in Bernalillo county is contingent upon donation of land for the pool by the Albuquerque public school system with the maintenance and administration of the pool being provided by Bernalillo county.

Laws 1996 (1st S.S.), ch. 4, § 23, effective April 1, 1997, appropriates \$3,017,500 from the general fund to the state department of public education for expenditure in fiscal years 1997 and 1998 for various purposes.

Laws 1996 (1st S.S.), ch. 5, § 1 appropriates \$5,500,000 from the general fund to the state department of public education for fiscal year 1997 and thirty-six and thirty-six hundredths percent of the appropriation is designated to the public school capital outlay fund contingent upon consideration of applications for grant assistance from the Rio Rancho school district and the Pecos school district.

Laws 1997, ch. 13, § 1, effective March 17, 1997, provides that the balance of the general fund appropriation made to the state department of public education, pursuant to Laws 1995, ch. 222, § 33K, for the purpose of refurbishing the cafeteria at Jackson middle school in Bernalillo county shall not be expended for its original purpose but is appropriated to develop a student commons area at Jackson middle school in Bernalillo county.

Laws 1997, ch. 164, § 1, effective June 20, 1997, provides that the general fund appropriation in Subsection VVV of Laws 1995, ch. 222, § 33 for the Eubank elementary school shall be used to make improvements to the northwest parking lot at the Eubank elementary school in Albuquerque in Bernalillo county.

**Education Appropriation Act of 1995.** - Section 4 of Laws 1995, ch. 13, the Education Appropriation Act of 1995, effective June 16, 1995, appropriates for expenditure in fiscal year 1996: \$1,275,476,000 from the general fund and \$1,527,000 from other state funds for public school support; \$8,180,000 from the general fund, \$93,000,400 from internal service funds and interagency transfers, and \$4,749,000,900 in federal funds including \$217,000 from federal Mineral Lands Leasing Act receipts for administration of the state department of education; \$3,200,000 from the general fund for special projects; \$600,000 from the general fund for apprenticeship assistance; and \$5,346,700 from all sources to regional educational cooperatives.

Section 5 of Laws 1995, ch. 13, the Education Appropriation Act of 1995, effective June 16, 1995, appropriates \$225,000 from the general fund to the state department of education for expenditure in fiscal year 1996 for year-round or double session school costs, and appropriates \$7,000,000 from the general fund to the public school capital improvements fund for expenditure in fiscal year 1996.

Laws 1995, ch. 13, § 6, effective June 16, 1995, provides that if any part or application of that act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**Education Appropriation Act of 1997.** - Laws 1997, ch. 32, the Education Appropriation Act of 1997, effective March 19, 1997, appropriates for expenditure in fiscal year 1998: \$1,379,517,900 from the general fund and \$3,053,400 from other state funds for public school support; \$7,957,800 from the general fund, \$165,000 from internal service funds and interagency transfers, and \$5,613,000 in federal funds including \$200,000 from federal Mineral Lands Leasing Act receipts for administration of the state department of education; \$3,914,000 from the general fund for special projects; \$600,000 from the general fund for apprenticeship assistance; and \$9,374,600 from all sources to regional educational cooperatives.

Laws 1997, ch. 32, the Education Appropriation Act of 1997, effective March 19, 1997, appropriates \$375,000 from the general fund to the state department of education for expenditure in fiscal year 1998 for the accountability data system, appropriates \$60,000 from the general fund for the educator background check program, and appropriates \$150,000 from the general fund to the state commission on higher education for expenditure in fiscal year 1998 for the advanced placement program.

Laws 1997, ch. 32, § 5, effective March 19, 1997, provides that if any part or application of that act is held invalid, the remainder or its application to other situations or persons shall not be affected.



**Change of purpose.** - Laws 1996, ch. 14, § 36, effective March 4, 1996, provides that the general fund appropriation to the state department of public education to plan or design a multipurpose auditorium for the Moriarty public school district pursuant to Laws 1995, ch. 222, § 33TT, shall be expanded to include renovation of an existing structure or the purchase and construction of a building for use as a multipurpose auditorium in the school district.

Laws 1998, ch. 7, § 47, effective February 17, 1998, provides that the proceeds from the general fund appropriation to the state department of public education of \$350,000 for equipment purchases and capital improvements at the Bloomfield alternative school in San Juan county pursuant to Laws 1996 (1st S.S.), ch. 4, § 23JJ shall not be expended for that purpose but are appropriated for energy conservation and renovation projects at Rio Vista middle school and Mesa Alta junior high school in San Juan county.

Laws 1998, ch. 7, § 52, effective February 17, 1998, provides that the balance of the general fund appropriation made by 1995, ch. 222, § 33U to install grass at the Monte Vista elementary school in Albuquerque in Bernalillo county is appropriated to the state department of public education for its original purpose and shall also be expended for site improvements at Monte Vista elementary school in Albuquerque in Bernalillo county.

Laws 1998, ch. 7, § 58, effective February 17, 1998, provides that the proceeds from the general fund appropriation to the state department of public education of \$350,000 for equipment purchases and capital improvements at the Bloomfield alternative school in San Juan county pursuant to Laws 1996 (1st S.S.), ch. 4, § 23JJ shall not be expended for that purpose but are appropriated for energy conservation and renovation projects at Rio Vista middle school and Mesa Alta junior high school in San Juan county.

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

**Health and environment department.** - Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment.

### **22-2-6.1. Short title.**

This act [22-2-6.1 to 22-2-6.10 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.

## ANNOTATIONS

**Repeals and reenactments.** - Laws 1986, ch. 94, § 1 repeals former 22-2-6.1 NMSA 1978, as enacted by Laws 1985, ch. 237, § 1, relating to group insurance for public schools, and enacts the above section. For provisions of former section, see 1985 Cumulative Supplement to Pamphlet 40.

**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.** - 68 Am. Jur. 2d Schools § 98.

78 C.J.S. Schools and School Districts § 401.

### **22-2-6.2. Purpose of act.**

The purpose of the Public School Insurance Authority Act [22-2-6.1 to 22-2-6.10 NMSA 1978] is to provide comprehensive core insurance programs 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.

### **22-2-6.3. Definitions.**

As used in the Public School Insurance Authority Act [22-2-6.1 to 22-2-6.10 NMSA 1978]:

- A. "authority" means the public school insurance authority;
- B. "board" means the board of directors of the public school insurance authority;
- C. "director" means the director of the public school insurance authority;
- D. "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;
- E. "fund" means the public school insurance fund;
- F. "group health insurance" means coverage which includes but is not limited to life insurance, accidental death and dismemberment, medical care and treatment, dental care, eye care and other coverages as determined by the authority;

G. "risk-related coverage" means coverage which includes but is not limited to property and casualty, general liability, auto and fleet, workmen's compensation and other casualty insurance; and

H. "school district" means a school district as defined in Subsection J [K] 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.

### ANNOTATIONS

**Bracketed material.** - The bracketed reference to Subsection K of 22-1-2 NMSA 1978 in Subsection H of this section was inserted by the compiler to correct an erroneous reference, in light of the 1991 amendment of 22-1-2 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

**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.

### 22-2-6.4. Authority created.

There is created the "public school insurance authority" which is established to provide for group health insurance and other risk-related coverage 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.

### ANNOTATIONS

**Temporary provisions.** - Laws 1994, ch. 62, § 26, effective March 4, 1994, provides that the department of insurance, the risk management division of the general services department, the public school insurance authority and the retiree health care authority shall review the benefits of forming a pool to purchase health insurance or health services coverage for their employees. The section details the issues to be reviewed, provides that the department of insurance shall coordinate the review, and provides that the group shall report its findings and recommendations to the legislative health care task force by September 1, 1994.

**Appropriations.** - Laws 1995, ch. 222, § 46, effective April 7, 1995, appropriates \$66,100 from the public school insurance fund to the public school insurance authority for expenditure in fiscal years 1996 and 1997 to renovate and make improvements to its administrative offices in Santa Fe, in order to comply with the Americans with

Disabilities Act of 1990. Any unexpended or unencumbered balance remaining at the end of fiscal year 1997 shall not revert.

**Compiler's note.** - The effective date of the Public School Insurance Authority Act, referred to above, is May 21, 1986.

### **22-2-6.5. 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 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 [22-2-6.1 to 22-2-6.10 NMSA 1978]. The board has the authority to provide for its full- and part-time employees, as it deems necessary, employee benefits insurance on the same basis as a member public school district may provide such employee benefits. In addition, the board has the authority to provide to members of the board and the employees risk coverages of the same scope

and limitations as are allowed its member school districts to be provided to their local school boards. The board has the authority to provide employees an irrevocable option of qualifying for coverage under either the Educational Retirement Act [Chapter 22, Article 11 NMSA 1978] or the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978].

D. The members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

**History:** 1978 Comp., § 22-2-6.5, enacted by Laws 1986, ch. 94, § 5; 1988, ch. 64, § 11; 1989, ch. 373, § 1; 1991, ch. 142, § 2.

### ANNOTATIONS

**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.

**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 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.

### **22-2-6.6. 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 [22-2-6.1 to 22-2-6.10 NMSA 1978]. Any funds remaining 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.

C. All appropriations of funds shall be subject to budget review through the department of education, 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 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 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.

## ANNOTATIONS

**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".

**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.

**"Budget review"** as used in Subsection B means approval of the Public School Insurance Authority's proposed budget. 1990 Op. Att'y Gen. No. 90-23.

### **22-2-6.7. Authority; duties.**

In order to effectuate the purposes of the Public School Insurance Authority Act [22-2-6.1 to 22-2-6.10 NMSA 1978], the authority has the power to:

A. 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;

B. enter into professional services and consulting contracts or agreements as necessary;

C. collect, provide for the investment of and disburse money in the fund;

D. collect all current and historical claims and financial information necessary for effective procurement of lines of insurance coverage;

E. promulgate necessary rules, regulations and procedures for implementation of the Public School Insurance Authority Act;

F. 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 wholly self-insure a particular line of coverage, the authority may do so;

G. procure lines of insurance coverage in compliance with the provisions of the Health Care Purchasing Act [13-7-1 to 13-7-4 NMSA 1978] and the competitive sealed proposal process of the Procurement Code; 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;

H. 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.

## ANNOTATIONS

**The 1989 amendment**, effective June 16, 1989, added Subsections H and 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 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 1994 amendment**, effective March 4, 1994, added the language beginning "provided that" in Subsection G.

**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.

**Procurement Code.** - See 13-1-28 NMSA 1978 and notes thereto.

### **22-2-6.8. 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, 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, 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.

### **ANNOTATIONS**

**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.

### **22-2-6.9. Participation; waivers.**



A. A school district shall participate in the authority unless the school district 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 at the time the request for proposals for the desired line of coverage is issued. Any school district 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 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 regarding the benefit and financial standards established by the board. The board shall grant a waiver to a school district 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 shall be granted a waiver for the entire term of the contract.

C. Any school district 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 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 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 granted a waiver of participation for workmen's 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 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 may separately provide for coverage additional to that offered by the authority.

G. The local school districts 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.

## ANNOTATIONS

**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. New Mexico Pub. Sch. Ins. Auth.*, 117 N.M. 207, 870 P.2d 745 (1994).

**Appropriation act allowing participation.** - The language in Laws 1988, ch. 13, § 4 (p. 235), part of the 1988 General Appropriation Act, which allows Albuquerque public schools to participate in the public school insurance authority, clearly violates N.M. Const., art. IV, § 16, which restricts the contents of general appropriation acts. 1988 Op. Att'y Gen. No. 88-58.

### **22-2-6.10. Group insurance contributions.**

A. Group insurance contributions for school districts and participating entities in the public school insurance authority shall be made as follows:

(1) seventy-five percent of the cost of the insurance of an employee whose annual salary is less than fifteen thousand dollars (\$15,000);

(2) 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) 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) sixty percent of the cost of the insurance of an employee whose annual salary is twenty-five thousand dollars (\$25,000) or more.

B. Whenever a school district or participating entity in the public school insurance authority offers to its employees alternative health plan benefit options including but not limited to health maintenance organizations, preferred provider organizations or panel doctor plans, the school district 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 organizations plans or panel doctor plans, regardless of the percentage limitations in the Public School Insurance Authority Act [22-2-6.1 to 22-2-6.10 NMSA 1978]. School districts and participating entities in the public schools insurance 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.

### **22-2-7. Surety bonds.**

The state board may require that the state superintendent and designated employees of the department of education obtain an official bond prior to assuming the duties of office. The bonds obtained shall be payable to the state and conditioned upon the faithful performance of their duties during their term of office. The bonds shall be executed by a corporate surety company authorized to do business in this state. The amount of the bonds shall be fixed by the state board. The state board may elect to obtain a schedule or blanket corporate surety bond covering members of the state board, the state superintendent and employees of the department of education for any period not exceeding four years. The cost of a bond obtained pursuant to this section shall be paid from the administrative fund of the department of education. Any bond obtained shall be approved by the state board and filed with the secretary of state.

**History:** 1953 Comp., § 77-2-7, enacted by Laws 1967, ch. 16, § 10.

### **ANNOTATIONS**

**Requiring excess bonds.** - The state board of education may not, pursuant to the terms of this section, require that the state superintendent of public instruction and designated employees of the state department of education obtain bonds in excess of those obtained pursuant to the Surety Bond Act, 10-2-13 et seq. NMSA 1978. 1987 Op. Att'y Gen. No. 87-42.

### **22-2-8. Educational standards.**

The state board shall prescribe minimum educational standards for all public schools in the state. A copy of these educational standards shall be furnished by the department of education to each local school board. The educational standards shall include minimum standards for the following areas:

A. curriculum;

- B. organization and administration of education;
- C. the keeping of records, other than financial records prescribed by the chief;
- 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.

### **ANNOTATIONS**

**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. Length of school day; minimum.**

A. Regular students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

(1) kindergarten, two and one-half hours per day or four hundred fifty 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. Nothing in this section precludes a local school board from setting length of school days in excess of the minimum requirements established by Subsection A of this section.

C. The state superintendent may waive the minimum length of school days in those districts where such minimums would create undue hardships as defined by the state board.

**History:** 1978 Comp., § 22-2-8.1, enacted by Laws 1986, ch. 33, § 2; 1993, ch. 226, § 4.

### **ANNOTATIONS**

**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. 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 instructional 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 instructional assistant.

C. Effective with the 1994-95 school year, 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. The state superintendent 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:

(1) no portable classrooms are available;

(2) no other available sources of funding exist to meet its need for additional classrooms;

(3) the 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.

G. If a waiver is granted pursuant to Subsection F 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.

H. Each school district shall report to the department of education 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.

I. The department of education 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.

J. Notwithstanding the provisions of Subsection F of this section, the state board 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 of education shall evaluate the impact of each alternative curricular plan annually. Annual reports shall be made to the legislative education study committee.

K. Effective with the 1987-88 school year, certified school instructors shall not be required to perform noninstructional duties except in emergency situations as defined by the state board. 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.

## ANNOTATIONS

**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.

**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 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 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.

**1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 226, § 5, approved April 6, 1993 and effective July 1, 1993, and Laws 1993, ch. 228, § 1, approved April 7, 1993 and effective June 18, 1993, which 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 section is set out above as amended by Laws 1993, ch. 228, § 1. See 12-1-8 NMSA 1978.

**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.

**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.

### **22-2-8.3. Subject areas; minimum instructional areas required; accreditation.**

A. The state board shall require instruction in specific subject areas as provided in Subsections B through F of this section. Any public school or school district failing to meet these minimum requirements shall not be accredited by the state board.

B. All first and second grade classes shall provide daily instruction in language arts skills, including phonics, and mathematics.

C. All third grade classes shall provide daily instruction in language arts skills and mathematics.

D. All fourth, fifth and sixth grade classes shall provide instruction in language arts skills, with an emphasis on writing and editing; mathematics; science; and social studies, including geography. The following subject areas shall be offered in the remaining instructional time: art; music; physical education; health; and computer literacy, including a general familiarization with computers and support in the areas of mathematics and writing through word processing.

E. All seventh grade classes shall provide instruction in English, with an emphasis on grammar and writing; communication skills or science; New Mexico history and geography; mathematics; and physical fitness. Remaining instructional time may be used for electives listed in Subsection G of this section.



F. All eighth grade classes shall provide instruction in English, mathematics, United States history and science. Remaining instructional time may be used for electives listed in Subsection G of this section.

G. The electives authorized in Subsections E and F of this section are art, industrial arts, chorus, band, home economics, typing, creative writing, speech, drama, Spanish, computer literacy, American sign language and other electives approved by the state board.

**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.

### ANNOTATIONS

**The 1990 (1st S.S.) amendment**, effective July 1, 1990, rewrote Subsections A to D; deleted former Subsection E, relating to the classes of instruction for those sixth grade classes not included in an elementary school; and redesignated former Subsections F to I as present Subsections E to H.

**The 1993 amendment**, effective July 1, 1993, deleted former Subsection H, which read "The provisions of this section shall be effective with the 1987-88 school year."

**The 1997 amendment** inserted "American sign language" at the end of Subsection G. Laws 1997, ch. 234 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **22-2-8.4. Graduation requirements.**

A. At the end of the eighth grade or during the ninth grade, each student shall prepare an individual program of study for grades nine through twelve. The program of study shall be signed by a student's parent or guardian.

B. Beginning with students entering the ninth grade in the 1986-87 school year, successful completion of a minimum of twenty-three units 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;

(3) two units in science, 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 fitness;

(6) one unit in communication skills, with major emphasis on writing and speaking, which may include a language other than English; and

(7) nine elective units. Only the following elective units shall be counted toward meeting the requirements for graduation: fine arts, i.e., music, band, chorus and art; practical arts; physical education; languages other than English; speech; drama; vocational education; mathematics; science; English; R.O.T.C.; social science; computer science; health education; American sign language; and other electives approved by the state board.

With the approval of the local school board, participation on an athletic team or in an athletic sport during the school day may count toward fulfillment of the physical education required unit.

C. Final examinations shall be administered to all students in all classes offered for credit.

D. Beginning with students entering the ninth grade in the 1986-87 school year, no student shall receive a high school diploma who has not passed a state competency examination in the subject areas of reading, English, math, science and social science. Beginning with the 1996-97 school year, the state competency examinations 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 competency examination, he 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 he takes and passes the state competency examination, he may receive a high school diploma.

E. The state board 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.

## ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, inserted "or during the ninth grade" in Subsection A and added Subsection E.

**The 1989 amendment**, effective June 16, 1989, added "which may include a language other than English" at the end of Subsection B(6).

**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.

**1993 amendments.** - Laws 1993, ch. 68, § 3, effective July 1, 1994, inserting "defensive driving" near the end of Paragraph (7) and adding Subsection F, was approved March 19, 1993. Laws 1993, ch. 92, § 1, effective March 31, 1993 rewriting Subsection D and adding Subsection E, was approved March 31, 1993. Laws 1993, ch. 226, § 7 effective July 1, 1993, deleting "Beginning with students entering the ninth grade in the 1986-87 school year" at the beginning of Subsections B and D and deleting "Effective with the 1987-88 school year" at the beginning of Subsection C, was approved April 7, 1993. However, Laws 1993, ch. 230, § 1, effective June 18, 1993, also amending this section by adding the final sentence of Subsection D, was approved April 7, 1993. The section is set out as amended by Laws 1993, ch. 230, § 1. See 12-1-8 NMSA 1978.

**1995 amendments.** - Laws 1995, ch. 174, § 1, effective June 16, 1995, deleting "Effective with the 1987-88 school year" from the beginning of Subsection C, and adding "Beginning with the 1996-97 school year, the state competency examinations on social science shall include a section on the United States constitution and the constitution of New Mexico" as the second sentence of Subsection D, was approved April 6, 1995. However, Laws 1995, ch. 180, § 1, effective June 16, 1995, also amending this section by adding the last sentence in Subsection B and deleting the first part of Subsection C which read "Effective with the 1987-88 school year", but not giving effect to the changes made by the first 1995 amendment, was approved April 6, 1995. The section is set out as amended by Laws 1995, ch. 180, § 1. See 12-1-8 NMSA 1978.

**The 1997 amendment** inserted "American sign language" following "health education" near the end of Paragraph B(7), and inserted the second sentence in Subsection D. Laws 1997, ch. 234 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

### **22-2-8.5. Additional statewide testing.**

A. The state board shall expand the program of educational accountability established through its educational standards by adding reading assessments and writing production tests to its existing uniform statewide system of assessment to determine pupil status, progress and degree of achievement of basic skills and of essential educational competencies.

B. The department of education shall involve local school district personnel, especially certified elementary reading specialists, in the development of methods on a statewide basis to measure student reading performance in order to assist school districts in the assessment of student problem areas in the first and second grades.

C. The department of education shall involve local school district personnel, especially certified school instructors in the fourth and sixth grades, in the development or selection of a uniform statewide writing production test for school districts, which shall be administered in grades four and six to measure student writing performance in order to assist school districts in the assessment of student problem areas.

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

## ANNOTATIONS

**Cross-references.** - As to annual report card, see 22-1-6 NMSA 1978.

**The 1989 amendment,** effective April 6, 1989, in Subsection B, substituted the present language beginning with "of methods on a statewide basis" for "or selection of a statewide, nationally normed reading assessment instrument for school districts, which shall be administered in the spring of the first and second grades to measure student reading performance in order to assist school districts in the assessment of student problem areas".

**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."

### **22-2-8.6. Essential competencies; remediation programs; promotion policies; exception.**

A. The state board shall identify measurable essential competencies and determine the criteria for mastery of the essential competencies as established in the state educational standards.

B. Local school boards shall develop remediation programs to provide special instructional assistance to students in grades one through eight who fail to master the essential competencies as established by the state board. Remediation programs may include but not be limited to tutoring or summer programs. The cost of school district-approved remediation programs shall be borne by the school district. Remediation plans shall be filed with the state board.

C. The cost of summer and after-school remediation programs offered in grades nine through twelve shall be borne by the parent or guardian; however, where parents are determined to be indigent according to guidelines established by the state board, the local school board shall bear those costs.

D. Diagnosis of weaknesses identified by the reading assessment instrument administered pursuant to Section 22-2-8.5 NMSA 1978 shall serve as a criterion in assessing the need for remedial programs or retention.

E. At the end of grades one through eight, there are three options available, dependent on a student's mastery of essential competencies:

(1) the student has mastered the essential competencies and shall enter the next higher grade;

(2) the student has not mastered the essential competencies and may participate in remediation. Upon certification by the school district that the student has successfully mastered his areas of deficiency, he shall enter the next higher grade; or

(3) the student has not mastered the essential competencies and upon the recommendation of the certified school instructor and school principal shall be retained in the same grade for no more than one school year in order to have an additional opportunity to master the essential competencies, at which time the student shall enter the next higher grade.

F. Any student who has participated in remediation programs pursuant to Paragraph (2) of Subsection E of this section and for whom retention is recommended shall be afforded an opportunity for a parent-teacher conference for the purpose of outlining the options available for the student and explaining the grounds for the recommendation of retention. A parent or guardian who refuses to allow his child to be retained pursuant to Paragraph (3) of Subsection E of this section shall sign a waiver indicating that the child's promotion is against the specific advice and recommendation of the certified school instructor and the school principal.

G. Any student who fails to master the essential competencies for two successive school years shall be referred to an alternative program designed by the school district. Alternative program plans shall be filed with the state board.

**History:** 1978 Comp., § 22-2-8.6, enacted by Laws 1986, ch. 33, § 7; 1987, ch. 320, § 3; 1993, ch. 226, § 9.

## ANNOTATIONS

**Cross-references.** - For Tutor-Scholars Program Act, see ch. 22, art. 2A.

**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.

### **22-2-8.7. Certification requirements.**

A. The state board shall require any person seeking certification in elementary and secondary education to complete the following minimum requirements in the college of arts and sciences:

- (1) twelve hours in English;
- (2) twelve hours in history, including American history and western civilization;
- (3) six hours in mathematics;
- (4) six hours in government, economics or sociology;
- (5) twelve hours in science, including biology, chemistry, physics, geology, zoology and botany; and
- (6) six hours in fine arts.

B. The state board shall require, prior to certification, no less than fourteen 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 certified school instructor and a portion of which shall occur in the student's senior year with the student teacher being directly responsible for the classroom.

C. Nothing in this section shall preclude the state board from establishing or accepting equivalent requirements for purposes of reciprocal certification or minimum requirements for alternative certification.

D. The requirements in Subsections A and B of this section shall apply to students first entering a college or university beginning in the fall of 1986.

E. Vocational teacher preparatory programs may be exempt from Subsections A and B of this section upon a determination by the state board that other certification 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.

### **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.

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

## **ANNOTATIONS**

**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).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Patriotic ritual, such as oath of allegiance or salute the flag, power to require performance of, by pupils, 110 A.L.R. 383, 120 A.L.R. 655, 127 A.L.R. 1502, 141 A.L.R. 1030, 147 A.L.R. 698.

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

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

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

### **22-2-11. Indian education section [division] created.**

The "Indian education division" is created within the state department of education.

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

### **22-2-12. Appointment of division head.**

The superintendent shall appoint an assistant for Indian education.

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

### **22-2-13. Duties and responsibilities.**

The Indian education division shall:

- A. provide direct assistance to meet the educational needs of Indian students;
- B. provide direct assistance to local school districts in the planning, development, implementation and evaluation of curricula designed for Indian students; and

C. establish an advisory council consisting of not more than seven Indian educators and others to assist in evaluating, consolidating and coordinating all activities relating to education of Indian students. Members of the council shall 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:** 1953 Comp., § 77-2-13, enacted by Laws 1975 (1st S.S.), ch. 8, § 3.

## **22-2-14. Education requirements; enforcement; 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 regulations as prescribed by the state board. The state superintendent shall give written notification to a local school board 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 state superintendent shall disapprove instructional units or administrative functions which he 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 shall:

- (1) comply with the specific and attendant requirements in order to remove the cause for disapproval; or
- (2) submit plans satisfactory to the state superintendent to meet requirements and remove the cause for disapproval.

C. The state board shall suspend from authority and responsibility any local school board which has had notice of disapproval and fails to comply with procedures of Subsection B of this section. The state superintendent shall act in lieu of the suspended local school board until the state board removes the suspension.

D. To suspend a local school board, the state board 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 state board, at which the local school board may appear and show cause why it should not be suspended. Within five days after the hearing, the state board shall make permanent, modify or withdraw the alternative order.

E. The state superintendent may suspend a local school board pending a hearing before the state board when the local school board has been notified of disapproval and when the state superintendent has sufficient reason to believe that the educational process in the school district has been severely impaired or halted as a result of



deficiencies so severe as to warrant disapproved status before the question of suspension can be presented to the state board for a hearing.

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

G. The provisions of this section shall be invoked at any time the state superintendent finds the school district has failed to attain and maintain the requirements of law or state board standards and regulations.

**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.

### ANNOTATIONS

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

**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. Hearings; suspension continuance and discontinuance.**

A. Within ten days after suspension, or within a reasonable time as the suspended local school board may request, the state board shall give a hearing to the local school board. At this hearing the local school board may appear and show cause why suspension should not be continued. The state board employees who conducted evaluations upon which the suspension was based shall appear and give testimony.

B. After the hearing the state board shall continue or discontinue the suspension of the local school board.

C. Any local school board aggrieved by the decision of the state board of education may within thirty days from the date of the decision appeal such decision to the court of appeals. If the court finds that the decision of the state board was prejudicial to the school district because the state board's findings, inferences or conclusions are:

(1) in violation of the constitution;

(2) in excess of statutory authority;

(3) made upon unlawful procedure; or

(4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion,

it shall remand the proceedings to the state board for the taking and consideration of further evidence or testimony, or it shall reverse the decision of the state board and terminate the suspension.

**History:** 1953 Comp., § 77-6-10.1, enacted by Laws 1969, ch. 180, § 8; reenacted by 1978, ch. 129, § 2.

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

The state superintendent shall report all actions taken under provisions of Sections 22-2-14 and 22-2-15 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.

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

### **22-2-17. Legislative findings.**

The legislature finds that a high percentage of students continues to drop out of school prior to earning a high school diploma. The legislature finds that many of these students could be identified as at-risk students, who with additional assistance or through the use of alternative educational programs might be retained in the education system. The legislature also finds that keeping at-risk students in school may result in such students becoming more productive citizens, less likely to eventually rely on state assistance programs.

**History:** Laws 1993, ch. 168, § 1.

## **ANNOTATIONS**

**Compiler's note.** - This section was not enacted as a part of the Public School Code by the legislature, and is compiled at this location for the convenience of the user.

### **22-2-18. Program development.**

The department shall develop a program by which to contract for services with the appropriate private, nonprofit entities who apply to the department and who meet guidelines determined by the department for the purpose of providing alternative

education opportunities to at-risk students. The department shall consider the involvement and advice of community educational advancement organizations and geographic diversity in determining the best disbursement of the funds. The department shall also monitor and evaluate the results of these programs. Based on the results obtained, the department may recommend to the legislature possible amendments to the Public School Finance Act [22-8-1 through 22-8-42 NMSA 1978] to eventually incorporate funding of alternative education opportunities for at-risk students. For the purpose of this appropriation, "at-risk student" means a student who has failed at least three classes in his ninth grade year.

**History:** Laws 1993, ch. 168, § 2.

### **ANNOTATIONS**

**Compiler's note.** - This section was not enacted as a part of the Public School Code by the legislature, and is compiled at this location for the convenience of the user. The term "department" as used in this section is therefore undefined, but probably refers to the state department of public education.

## **ARTICLE 2A TUTOR-SCHOLARS PROGRAM**

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

**22-2A-1 to 22-2A-8. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1991, ch. 126, § 9 repeals 22-2A-1 to 22-2A-8 NMSA 1978, as enacted by Laws 1991, ch. 126, §§ 1 to 8, relating to tutors-scholars program, effective June 30, 1994. For provisions of former sections, see 1993 Replacement Pamphlet.

## **ARTICLE 2B REGIONAL COOPERATIVE EDUCATION**

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

Sections 1 through 6 [22-2B-1 to 22-2B-6 NMSA 1978] of this act may be cited as the "Regional Cooperative Education Act".

**History:** Laws 1993, ch. 232, § 1.

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

As used in the Regional Cooperative Education Act [22-2B-1 to 22-2B-6 NMSA 1978]:

- A. "council" means a regional education coordinating council;
- B. "cooperative" means a regional education cooperative; and
- C. "fund" means an educational cooperative fund.

**History:** Laws 1993, ch. 232, § 2.

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

A. The state board may authorize the existence and operation of regional education cooperatives. Upon authorization by the state board, local school boards may join with other local school boards or other state-supported educational institutions to form cooperatives for the purpose of providing education-related services to qualified school-age residents of participating educational entities. Regional education cooperatives shall be deemed individual state agencies administratively attached to the department of education.

B. The state board shall, by regulation, establish minimum criteria for the establishment and operation of cooperatives. The state board shall also establish procedures for oversight of cooperatives to ensure compliance with state board regulation. Regional education cooperatives shall be exempt from the provisions of the Personnel Act [10-9-1 to 10-9-25 NMSA 1978].

**History:** Laws 1993, ch. 232, § 3.

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

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

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

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

**History:** Laws 1993, ch. 232, § 4.

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

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

- (1) education-related services to all entities participating in the cooperative;
- (2) technical assistance and staff development opportunities to all entities participating in the cooperative;
- (3) cooperative purchasing capabilities and fiscal management opportunities to all entities participating in the cooperative; or
- (4) such additional services to participating entities as may be determined by the council to be appropriate.

B. Pursuant to regulation of the state board, 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.

### **22-2B-6. Educational cooperative funds created.**

"Educational cooperative funds" are established in the state treasury. The state treasurer shall establish individual educational cooperative funds for each cooperative authorized by the state board. Money in each fund is appropriated to the individual council for the purpose of carrying out the provisions of the Regional Cooperative Education Act [22-2B-1 to 22-2B-6 NMSA 1978]. Money in each fund may be distributed on warrants issued by the department of finance and administration pursuant to vouchers signed by the director of the cooperative or his designee. Any unencumbered or unexpended balance remaining in the funds at the end of each fiscal year shall not revert to the general fund.

**History:** Laws 1993, ch. 232, § 6.

## **ARTICLE 3 EDUCATIONAL APPORTIONMENT**

**22-3-1 to 22-3-16. Repealed.**

**ANNOTATIONS**

**Repeals.** - Laws 1983, ch. 65, § 16, repeals 22-3-1 to 22-3-16 NMSA 1978, as enacted by Laws 1972, ch. 24, §§ 1 to 16, relating to educational apportionment, effective June 17, 1983. For provisions of former sections, see 1981 replacement pamphlet. For present provisions, see 22-3-37 to 22-3-54 NMSA 1978.

### **22-3-17 to 22-3-30. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1991 (1st S.S.), ch. 4 § 19 repeals 22-3-17 to 22-3-30 and 22-3-32 to 22-3-36 NMSA 1978, as enacted by Laws 1983, ch. 65, §§ 3 and 5 to 14 and Laws 1987, ch. 99, §§ 2 and 4 to 8, and as amended by Laws 1987, ch 99, §§ 1 and 3, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former sections, see 1993 Replacement Pamphlet.

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

#### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 99, § 9 repeals 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. For provisions of former section, see 1986 replacement pamphlet. For present provisions, see 22-3-37 to 22-3-54 NMSA 1978.

### **22-3-32 to 22-3-36. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1991 (1st S.S.), ch. 4 § 19 repeals 22-3-17 to 22-3-30 and 22-3-32 to 22-3-36 NMSA 1978, as enacted by Laws 1983, ch. 65, §§ 3 and 5 to 14 and Laws 1987, ch. 99, §§ 2 and 4 to 8, and as amended by Laws 1987, ch 99, §§ 1 and 3, relating to the Educational Apportionment Act, effective December 18, 1991. For provisions of former sections, see 1993 Replacement Pamphlet.

### **22-3-37. Short title.**

This act [22-3-37 to 22-3-54 NMSA 1978] may be cited as the "1991 Educational Redistricting Act".

**History:** Laws 1991 (1st S.S.), ch. 4, § 1.

### **22-3-38. Precincts.**

A. Precinct designations and boundaries used in the 1991 Educational Redistricting Act [22-3-37 to 22-3-54 NMSA 1978] are those precinct designations and boundaries

established pursuant to the Precinct Boundary Adjustment Act [1-3-10 to 1-3-14 NMSA 1978] and revised and approved pursuant to that act by the secretary of state as of August 16, 1991.

B. The boards of county commissioners shall not create any precinct that lies in more than one state board of education district, nor shall the boards of county commissioners divide any precinct so that the divided parts of the precinct are situated in two or more state board of education districts. Votes cast in any general, primary or other statewide election from precincts created or divided in violation of this subsection shall be invalid and shall not be counted or canvassed.

**History:** Laws 1991 (1st S.S.), ch. 4, § 2.

### **22-3-39. State board of education; membership.**

The state board of education is composed of ten elected members and five appointed members, one member elected from each elective board of education district and one member appointed from each of five appointive districts.

**History:** Laws 1991 (1st S.S.), ch. 4, § 3.

### **22-3-40. Board of education district one.**

Board of education district one is composed of Bernalillo county precincts number 1, 2, 3, 4, 5, 7, 8, 11, 12, 13, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 61, 62, 63, 64, 65, 66, 67, 71, 72, 73, 74, 75, 76, 77, 80, 81, 82, 83, 84, 85, 88, 89, 90, 91, 92, 94, 95, 96, 97, 98, 99, 104, 105, 106, 107, 121, 122, 123, 124, 134, 135, 151, 152, 153, 154, 161, 162, 163, 164, 165, 166, 181, 182, 183, 184, 185, 186, 187, 191, 192, 193, 194, 195, 196, 197 and 226.

**History:** Laws 1991 (1st S.S.), ch. 4, § 4.

### **22-3-41. Board of education district two.**

Board of education district two is composed of Bernalillo county precincts number 289, 290, 294, 295, 296, 297, 298, 299, 301, 302, 303, 304, 305, 306, 307, 308, 330, 331, 332, 333, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 411, 412, 413, 414, 415, 416, 417, 419, 420, 421, 428, 429, 430, 439, 440, 451, 452, 453, 454, 461, 462, 463, 464, 465, 466, 467, 471, 472, 473, 474, 480, 481, 482, 483, 484, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 538, 540, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 557, 561, 562, 563, 564, 565, 566 and 568.

**History:** Laws 1991 (1st S.S.), ch. 4, § 5.

### **22-3-42. Board of education district three.**

Board of education district three is composed of Bernalillo county precincts number 6, 9, 10, 14, 15, 16, 18, 86, 101, 102, 103, 125, 131, 132, 133, 211, 212, 213, 214, 215, 216, 217, 221, 222, 223, 224, 225, 241, 242, 243, 244, 245, 246, 251, 252, 253, 254, 255, 256, 257, 258, 271, 272, 273, 274, 275, 276, 277, 278, 280, 281, 282, 283, 284, 285, 286, 287, 291, 292, 293, 300, 311, 312, 313, 314, 315, 316, 317, 318, 319, 321, 322, 323, 324, 325, 326, 327, 328, 329, 341, 342, 343, 344, 345, 346, 347, 351, 352, 353, 354, 355, 356, 357, 358, 371, 372, 373, 374, 375, 381, 382, 383, 384, 385, 386, 387, 410, 418, 422, 423, 424, 425, 431, 432, 433, 434, 435, 436, 437, 438, 441, 442, 443, 444, 445, 446, 475, 476, 477, 478, 485, 486, 510, 541, 542 and 543.

**History:** Laws 1991 (1st S.S.), ch. 4, § 6.

### **22-3-43. Board of education district four.**

Board of education district four is composed of Bernalillo county precincts number 426, 427, 537, 539, 556, 567 and 569; Sandoval county precincts number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50; and Santa Fe county precincts number 8, 9, 10, 11, 12, 13, 14, 15, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 60, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77 and 78.

**History:** Laws 1991 (1st S.S.), ch. 4, § 7.

### **22-3-44. Board of education district five.**

Board of education district five is composed of McKinley county; Sandoval county precincts number 21, 22, 23, 24, 25 and 26; and San Juan county precincts number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 56, 57, 58, 61, 68, 69, 70, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 83.

**History:** Laws 1991 (1st S.S.), ch. 4, § 8.

### **22-3-45. Board of education district six.**

Board of education district six is composed of Catron, Cibola, Grant, Hidalgo, Luna, Socorro and Valencia counties; Bernalillo county precincts number 31 and 93; and Torrance county precincts number 1, 2, 3, 4, 7, 8, 9 and 10.

**History:** Laws 1991 (1st S.S.), ch. 4, § 9.

### **22-3-46. Board of education district seven.**



Board of education district seven is composed of Dona Ana and Sierra counties; and Otero county precinct number 1.

**History:** Laws 1991 (1st S.S.), ch. 4, § 10.

### **22-3-47. Board of education district eight.**

Board of education district eight is composed of Chaves, De Baca and Lincoln counties; Eddy county precincts number 1, 2, 3, 4, 5, 6, 7, 8, 39, 40, 41, 42 and 43; Guadalupe county precinct number 4; Otero county precincts number 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37; Roosevelt county precinct number 5; Santa Fe county precincts number 16, 17, 18, 19 and 73; and Torrance county precincts number 5, 6, 11, 12 and 13.

**History:** Laws 1991 (1st S.S.), ch. 4, § 11.

### **22-3-48. Board of education district nine.**

Board of education district nine is composed of Curry, Lea and Quay counties; Eddy county precincts number 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 44; and Roosevelt county precincts number 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18.

**History:** Laws 1991 (1st S.S.), ch. 4, § 12.

### **22-3-49. Board of education district ten.**

Board of education district ten is composed of Colfax, Harding, Los Alamos, Mora, Rio Arriba, San Miguel, Taos and Union counties; Guadalupe county precincts number 1, 2, 3 and 5; Sandoval county precinct number 51; San Juan county precincts number 60, 62, 63, 64, 65, 66, 67, 71 and 72; and Santa Fe county precincts number 1, 2, 3, 4, 5, 6, 7, 58, 59, 61 and 79.

**History:** Laws 1991 (1st S.S.), ch. 4, § 13.

### **22-3-50. Appointive board of education districts.**

For the purposes of appointing members of the state board of education, five districts are created as follows:

- A. appointive district A consists of state board of education districts two and four;
- B. appointive district B consists of state board of education districts one and three;
- C. appointive district C consists of state board of education districts five and ten;

D. appointive district D consists of state board of education districts six and seven; and

E. appointive district E consists of state board of education districts eight and nine.

**History:** Laws 1991 (1st S.S.), ch. 4, § 14.

### **22-3-51. Residence.**

Any candidate for the office of state board of education member shall reside in the district for which he files a declaration of candidacy at the time of such filing. If any elected or appointed board member permanently removes his residence from or maintains no residence in the district from which he was elected or appointed, he shall be deemed to have resigned and his successor shall be selected as provided in Sections 16 and 17 [22-3-52 and 22-3-53 NMSA 1978] of the 1991 Educational Redistricting Act.

**History:** Laws 1991 (1st S.S.), ch. 4, § 15.

### **22-3-52. Elected members; staggered terms.**

A. Elected members of the state board of education shall be elected for staggered terms of four years.

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

C. Board members from districts one, four, eight, nine and ten shall be elected at the general election in 1992 for terms that expire in 1996.

D. Board members from districts two, three, five, six and seven shall be elected at the general election in 1994 for terms that expire in 1998.

E. The governor shall by appointment fill a vacancy in the office of an elected member of the state board of education. All appointments to fill such a vacancy shall be for a term ending on January 1 subsequent to the next general election at which election a person shall be elected to fill any remainder of the unexpired term.

**History:** Laws 1991 (1st S.S.), ch. 4, § 16.

### **22-3-53. Appointed members; staggered terms.**

A. One member of the state board of education shall be appointed by the governor by and with the consent of the senate from each of the five state board of education appointive districts.

B. Appointed members shall be appointed for staggered terms of four years.

C. Terms of appointed members shall expire on the first day of January.

D. If a vacancy occurs in the office of an appointed member of the state board of education, it shall be filled by appointment of the governor by and with the consent of the senate for the remainder of the term of the member creating the vacancy.

**History:** Laws 1991 (1st S.S.), ch. 4, § 17.

### **22-3-54. Temporary provision; current terms.**

It is the intent of the legislature that appointed and elected members of the state board of education currently serving on the board shall serve the entirety of their remaining terms, pursuant to the provisions of Sections 22-3-17 through 22-3-30 and 22-3-22 [22-3-32] through 22-3-36 NMSA 1978.

**History:** Laws 1991 (1st S.S.), ch. 4, § 18.

#### **ANNOTATIONS**

**Bracketed material.** - The bracketed reference in this section was inserted by the compiler to correct an apparently erroneous reference. The bracketed material was not enacted by the legislature and is not part of the law.

## **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**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Constitutionality of statute which leaves to determination of private individuals the boundaries of territory to be erected into school district, 70 A.L.R. 1062.

Separate independent political unit within rule permitting separate computation of constitutional debt limit notwithstanding overlapping or identical boundaries, school district as, 171 A.L.R. 732.

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

A. The state board 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 and upon a determination by the state board 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, the state board 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; 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**

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

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

As to 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.

**Temporary provisions.** - Laws 1993, ch. 233, § 1, effective June 18, 1993, provides that, effective July 1, 1993, the state board of education shall study the feasibility of dividing the Albuquerque public school district into five or less separate school districts and describes the determinations to be made and the manner of conducting the study.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Constitutionality of statute for formation of school districts as affected by objection that it confers nondelegable powers or imposes nonjudicial functions upon courts, 69 A.L.R. 288.

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

A. The state board 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 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 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; 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 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 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 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 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 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

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

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

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

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

**Constitutionality of Subsection B.** - See State ex rel. Apodaca v. New Mexico State Bd. of Educ., 82 N.M. 558, 484 P.2d 1268 (1971).

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

#### **22-4-4. [Consolidation of district without junior or senior high schools; governing board.]**

Where consolidation is ordered under Subsection B hereof [22-4-3 B 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 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 22-4-10 to 22-4-14 NMSA 1978 were inapplicable. State ex rel. Apodaca v. New Mexico State Bd. of Educ., 82 N.M. 558, 484 P.2d 1268 (1971).

#### **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.**

A. Upon receipt of a request from a local school board, the state board 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.

**History:** 1953 Comp., § 77-3-5, enacted by Laws 1967, ch. 16, § 18.

#### **22-4-7. Alternate method; survey committee.**

To make a school district survey to determine the feasibility of a consolidation, the school district survey committee shall consist of the following members:

A. one person designated by the state transportation director from the state transportation division;

B. one person appointed by the state board for each school district affected by the survey. Each person appointed by the state board shall reside outside of every school district affected by the school district survey; and

C. one person appointed by each local school board of a school district affected by the school district survey.

**History:** 1953 Comp., § 77-3-6, enacted by Laws 1967, ch. 16, § 19.

#### **22-4-8. Alternate method; survey committee; compensation.**

Members of a school district survey committee shall serve without compensation but shall be entitled to reimbursement of expenses incurred in the performance of committee duties out of funds of the department of education.

**History:** 1953 Comp., § 77-3-7, enacted by Laws 1967, ch. 16, § 20.

#### **22-4-9. Alternate method; standards for consolidation.**

The state board 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**

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

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

### **22-4-10. Order of state board.**

A. Any order of the state board 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 shall be kept on permanent file with the department of education.

C. One certified copy of the order of the state board 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 [director of public school finance], 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 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.

**History:** 1953 Comp., § 77-3-9, enacted by Laws 1967, ch. 16, § 22.

## ANNOTATIONS

**Bracketed material.** - The bracketed material in Subsection C was inserted by the compiler. 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.

**Executive branch reorganization.** - 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.

### **22-4-11. [Publication of order; actions attacking order.]**

After adoption of an order of the state board for creation of a new school district or for consolidation of school districts, the state superintendent 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 shall be an indispensable party thereto.

**History:** 1953 Comp., § 77-3-9.1, enacted by Laws 1970, ch. 4, § 3.

### **22-4-12. Interim local school board; special election.**

A. The interim local school board of a newly created or consolidated school district has all the powers and duties of a local school board. The interim local school board shall hold office only until the local school board is elected and qualified.

B. For the purpose of electing five members to the local school board of a newly created or consolidated school district, the interim local school board shall call a special school district election to be held not less than forty-five days nor more than ninety days from the date of the issuance of the order of the state board 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**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Indebtedness and property of individual districts as affected by unionization, centralization, or consolidation of school districts, 121 A.L.R. 826.

#### **22-4-16. [Existing school districts validated.]**

That the organization, existence or consolidation of all school districts heretofore ordered by the state board 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

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

### **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 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 [director of public school finance]. The chief 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 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

**Executive branch reorganization.** - 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.

## **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 [22-4A-1 to 22-4A-3 NMSA 1978] 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 [22-4A-1 to 22-4A-3 NMSA 1978] 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.** - As to 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.

As to 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.

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

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

### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 226, § 54 repeals 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 1989 Replacement Pamphlet.

### **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 a special school district election. One new member shall be elected to serve until the second regular school board election following the special school district election. The second new member shall be elected to serve until the third regular school board election following such special school district 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.

## **ANNOTATIONS**

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

**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 board of that district to be composed of five qualified electors of the state who reside within the 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 six-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 six-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 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 board to five members.

D. 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 decreasing the membership of the local school board in that 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.

#### **22-5-4. Local school boards; powers; duties.**

A local school board shall have the following powers or duties:

A. subject to the regulations of the state board, supervise and control all public schools within the school district and all property belonging to or in the possession of the school district;

B. employ a superintendent of schools for the school district and fix his salary;

C. delegate administrative and supervisory functions of the local school board to the superintendent of schools;

D. subject to the provisions of law, approve or disapprove the employment, termination or discharge of all employees and certified school personnel of the school district upon a recommendation of employment, termination or discharge by the superintendent of schools; provided that any employment relationship shall continue until final decision of the board. Any employment, termination or discharge without the prior recommendation of the superintendent is void;

E. apply to the state board for a waiver of certain provisions of the Public School Code 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 school;

F. fix the salaries of all employees and certified school personnel of the school district;

G. contract, lease, purchase and sell for the school district;

H. acquire and dispose of property;

I. have the capacity to sue and be sued;

J. acquire property by eminent domain as pursuant to the procedures provided in the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978];

K. issue general obligation bonds of the school district;

L. repair and maintain all property belonging to the school district;

M. 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 boards;

N. except for expenditures for salaries, contract for the expenditure of money according to the provisions of the Procurement Code [13-1-28 to 13-1-117 and 13-1-118 to 13-1-199 NMSA 1978];

O. adopt regulations pertaining to the administration of all powers or duties of the local school board;

P. 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; and

Q. 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 regulations that shall be promulgated by the department of education.

**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.

## ANNOTATIONS

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

As to reemployment or termination of certified school instructors, see 22-10-12 NMSA 1978 et seq.

As to request for operation under variable school calendar, see 22-22-4 NMSA 1978.

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

As to lease of state lands, see 19-7-55 NMSA 1978.

**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.

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

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

**Procurement Code.** - See 13-1-28 NMSA 1978 and notes thereto.

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

**Authority of local board over personnel.** - A local board is the only entity with power to terminate employees; the purpose of 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., 120 N.M. 97, 898 P.2d 1235 (1995).

**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.

**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 (opinion rendered under former law).

**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 (opinion rendered under former law).

**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 (opinion rendered under former law).

**Procurement Code exemptions applicable to school boards.** - The provision of Subsection N 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 13-1-98 NMSA 1978, apply to school district contracts. *Morningstar Water Users Ass'n v. Farmington Mun. Sch. Dist. No. 5*, 120 N.M. 307, 901 P.2d 725 (1995).

**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 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 (opinion rendered under former law).

**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.

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.

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.

**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.*, 117 N.M. 492, 873 P.2d 238 (1994).

**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.

**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.*, 117 N.M. 717, 876 P.2d 232 (1994).

**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.*, 119 N.M. 401, 891 P.2d 542 (1995).

**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.

**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.*, 120 N.M. 97, 898 P.2d 1235 (1995).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 15 to 21, 23, 24.

Power to require construction or repair of school buildings, 1 A.L.R. 1559.

Comfort and convenience of teachers and pupils, extent of power of school district to provide for, 7 A.L.R. 791, 52 A.L.R. 249.

Regulations as to use of foreign languages in schools, 7 A.L.R. 1695, 29 A.L.R. 1452.

Necessity, sufficiency and effect of minutes or record of meeting of school board, 12 A.L.R. 235.

Power of school authorities to employ physicians, nurses, oculists, and dentists, 12 A.L.R. 922.

Interruption of school session as affecting contract other than with teacher, 15 A.L.R. 725.

Free textbooks and other school supplies for individual use of pupils, 17 A.L.R. 299, 67 A.L.R. 1196.

"Schoolhouse" as a public building, 19 A.L.R. 545.

Regulations forbidding leaving school grounds during school hours, 32 A.L.R. 1342, 48 A.L.R. 659.

Suspension or expulsion of pupil for smoking, 33 A.L.R. 1180.

Negligence or incompetency, 49 A.L.R. 482.

Eating place, operation of, by school authorities, 63 A.L.R. 100.

Transportation of school pupils at expense of public, 63 A.L.R. 413, 118 A.L.R. 806, 146 A.L.R. 625.

Discretion of administrative officers as to changing boundaries of school district, 65 A.L.R. 1523, 135 A.L.R. 1096.

Gymnasium or athletic field and equipment for same, power of school authorities to provide, 69 A.L.R. 871.

Hiring or leasing schoolhouse to private person for occasional use, 86 A.L.R. 1175.

Right of school district as to challenging acts or proceedings by which its boundaries are affected, 86 A.L.R. 1376.

Misapportionment of school money, right of school district to maintain action based on, 105 A.L.R. 1273.

Right of legislature or school authorities to prescribe and enforce oath of allegiance, "salute to flag" or other ritual of a patriotic character, 110 A.L.R. 383, 120 A.L.R. 655, 127 A.L.R. 1502, 141 A.L.R. 1030, 147 A.L.R. 698.



Lease of school property, power of school or local authorities as to grant of, 111 A.L.R. 1051.

Right of school district to enforce against other party contract which was in excess of former's powers or which did not comply with the conditions of its power in that regard, 122 A.L.R. 1370.

Constitutionality of statute providing school-bus service for pupils of parochial or private schools, 168 A.L.R. 1434.

Absence of member of board or commission from hearing on removal or discharge as affecting validity thereof, 171 A.L.R. 175.

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.

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 repeals 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 1989 Replacement Pamphlet.

### **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. 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, 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**

**Compiler's note.** - 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.**

A. Local school boards shall establish student discipline policies and shall file them with the department of education. 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 district or on a district-wide basis for those 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 corporal punishment, in-school suspension, school service, suspension or expulsion.

C. An individual school within a 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 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 his efforts to enforce any part of the policy.

**History:** 1978 Comp., § 22-5-4.3, enacted by Laws 1986, ch. 33, § 9; 1993, ch. 226, § 13.

## **ANNOTATIONS**

**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.

### **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 1978 Comp., § 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.

**History:** 1978 Comp., § 22-5-4.5, enacted by Laws 1986, ch. 33, § 11.

### **22-5-4.6. Collaborative school improvement programs.**

A. A local school board may approve an individual school's plan to implement a collaborative school improvement program upon a finding that the plan is in the best interest of the school and is supported by the participating teaching staff.

B. The input and concerns of parents, students, school personnel 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 school board may apply to the state board for a waiver of Public School Code 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 school board 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 school board shall provide the state board with a program budget that shows the type and number of students served, the type and number of personnel 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 to comment on the local school board's waiver request if he communicated his opinion in writing to the local school board at the time the local school board approved implementation of the program.

**History:** 1978 Comp., § 22-5-4.6, enacted by Laws 1990, ch. 52, § 3; 1993, ch. 226, § 14.

### **ANNOTATIONS**

**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.

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

### **22-5-4.7. Additional student discipline policies; weapon-free schools.**

A. In addition to other student discipline policies, each school district shall adopt a policy providing for the expulsion from school, for a period of not less than one year, of any student who is determined to have knowingly brought a weapon to a school under the jurisdiction of the local board. The local school board or the superintendent of the school district may modify the expulsion requirement on a case-by-case basis.

B. Student discipline policies shall also provide for placement in an alternative educational setting, for not more than forty-five days, of any student with a disability who is determined to have knowingly brought a weapon to a school under the jurisdiction of the local board. If a parent or guardian of the student requests a due process hearing, then the student shall remain in the alternative educational setting during the pendency

of any proceeding, unless the parent or guardian and the school district agree otherwise.

C. For the purposes of this section, "weapon" means:

(1) any firearm that is designed to, may readily be converted to or will expel a projectile by the action of an explosion; and

(2) any destructive device that is an explosive or incendiary device, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter-ounce, mine or similar device.

**History:** 1978 Comp., § 22-5-4.7, enacted by Laws 1995, ch. 47, § 1.

### **ANNOTATIONS**

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

### **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. No local school board shall 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 or daughter-in-law of a member of such local school board.

B. Nothing in this section shall prohibit the continued employment of a person employed on or before March 1, 1981.



**History:** 1953 Comp., § 77-4-3.1, enacted by Laws 1971, ch. 199, § 1; 1981, ch. 86, § 1.

## ANNOTATIONS

**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. *New Mexico State Bd. of Educ. v. Board of Educ.*, 95 N.M. 588, 624 P.2d 530 (1981)(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 and filed with the secretary of finance and administration.

**History:** 1953 Comp., § 77-4-4, enacted by Laws 1967, ch. 16, § 30; 1977, ch. 247, § 202; 1980, ch. 151, § 45.

### **22-5-8. Term of office.**

A. The full term of office of a member of a local school board shall be four years from March 1 succeeding his election to office at a regular school district election.

B. Any member of a local school board whose term of office has expired shall continue in that office until his 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.

### **ANNOTATIONS**

**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. See also 22-5-3 NMSA 1978.

### **22-5-8.1. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 226, § 54 repeals 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 1989 Replacement Pamphlet.

### **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 person to fill the vacancy.

B. A qualified person 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 person is not appointed to fill the vacancy within forty-five days from the date the vacancy occurred, the state board shall appoint a qualified person 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 state board shall appoint qualified persons to fill the vacancies. Those

persons appointed shall hold office until the next regular or special 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.

### **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.** - As to publication of notice generally, see 14-11-1 NMSA 1978 et seq.

### **22-5-11. Local school boards; salary schedule.**

A. Prior to the beginning of each school year, each local school board shall file with the department of education a district salary schedule, which salary schedule shall incorporate any salary increases or compensation measures specifically mandated by the legislature.

B. No local school board shall reduce the district salary schedule established pursuant to Subsection A of this section without the prior written approval of the state superintendent. The state superintendent shall give written notice to the legislative finance committee and the department of finance and administration of any approved reduction of any school district's salary schedule, 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.

## **ANNOTATIONS**

**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.

**Compiler's note.** - Laws 1979, ch. 54, § 1, repealed former 22-5-11 NMSA 1978, relating to annual reports by local school boards to the department of education. For provisions of former section, see 1978 original pamphlet.

## **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 1978 Comp., § 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.

## **ARTICLE 6**

### **SCHOOL DISTRICT ELECTIONS**

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

#### **22-6-1 to 22-6-4. Repealed.**

##### **ANNOTATIONS**

**Repeals.** - Laws 1985, ch. 168, § 22 repeals 22-6-1 to 22-6-4 NMSA 1978, as enacted by Laws 1967, ch. 16, § 35 and amended by Laws 1971, ch. 314, §§ 1 to 3, relating to regular and special school district elections, precincts and polling places, effective June 14, 1985. For provisions of former sections, see 1981 Replacement Pamphlet. 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 repeals 22-6-5 NMSA 1978, as enacted by Laws 1967, ch. 16, § 39, setting forth the qualifications for a candidate for membership on a local school board, effective July 1, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

#### **22-6-6 to 22-6-34. Repealed.**

##### **ANNOTATIONS**

**Repeals.** - Laws 1985, ch. 168, § 22 repeals 22-6-6 to 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 provisions of former sections, see 1981 Replacement Pamphlet. 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.**

This act [22-7-1 to 22-7-16 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.

## ANNOTATIONS

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

**Compiler's note.** - 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.

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

The purpose of the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978] 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.

### **22-7-3. Definitions.**

As used in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978]:

- 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 situated 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 situated.

**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 [22-7-1 to 22-7-16 NMSA 1978].

**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 [22-7-1 to 22-7-16 NMSA 1978].

**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	Address
as City Date	As registered	Registered

2.

.....  
 .....

Usual signature	Name printed	Address
as City Date	As registered	Registered

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.** - As to signatures on petition, see 22-7-10 NMSA 1978.

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



**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.

**Voting Rights Act of 1965.** - The federal Voting Rights Act of 1965 appears mainly as 42 U.S.C. §§ 1973 to 1973bb-1.

### **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**

**Voting Rights Act of 1965.** - The federal Voting Rights Act of 1965 appears mainly as 42 U.S.C. §§ 1973 to 1973bb-1.

**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 revelant 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*, 113 N.M. 729, 832 P.2d 790 (1992).

### **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

**Exclusion of names on list by superintendent.** - Superintendent 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 22-7-6 NMSA 1978, was inconsistent with the purpose of 22-7-10D NMSA 1978 and was, therefore, improper. State ex rel. Citizens for Quality Educ. v. Gallagher, 102 N.M. 516, 697 P.2d 935 (1985).

**Name withdrawal petitions valid before final action on petition.** - Where superintendent received name withdrawal petitions after receiving clerk's certification of signatures, but before taking final action on petition, superintendent properly refused to count names to those persons who submitted name withdrawal petitions. State ex rel. Citizens for Quality Educ. v. Gallagher, 102 N.M. 516, 697 P.2d 935 (1985).

### 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

**When no appeal as of right, statute governs.** - Since the state has no constitutional appeal as of right from a suppression order, the time for filing such an appeal is governed by the ten-day limit set forth in Subsection (B)(2) of 39-3-3 NMSA 1978 and not the thirty-day limit provided for in Paragraph A of Rule 12-201 NMRA 1997. *State v. Alvarez*, 113 N.M. 82, 823 P.2d 324 (Ct. App. 1991).

**Late filing of appeal.** - Because timely filing of an appeal is a mandatory precondition rather than an absolute jurisdictional requirement, a trial court may, under unusual circumstances, use its discretion and entertain an appeal even though it is not timely filed. The decision to dismiss an appeal is extreme and must be determined on a case-by-case basis. *Trujillo v. Serrano*, 117 N.M. 273, 871 P.2d 369 (1994).

**Court error may excuse late appeal.** - One unusual circumstance which would warrant permitting an untimely appeal is if the delay is a result of judicial error. To deny a party the constitutional right to an appeal because of a mistake on the part of the court runs against the most basic precepts of justice and fairness. *Trujillo v. Serrano*, 117 N.M. 273, 871 P.2d 369 (1994).

## **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 [22-7-1 to 22-7-16 NMSA 1978].

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.** - As to 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, 102 N.M. 516, 697 P.2d 935 (1985).

**Signer of petition has right to withdraw his name** before the superintendent has taken final action. State ex rel. Citizens for Quality Educ. v. Gallagher, 102 N.M. 516, 697 P.2d 935 (1985).

**Effect of incomplete lines on petition.** - Superintendent 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*, 102 N.M. 516, 697 P.2d 935 (1985).

## **22-7-11. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1979, ch. 277, § 4, repeals 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. For provisions of former section, see 1978 original pamphlet.

## **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 [22-7-1 to 22-7-16 NMSA 1978] 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**

**When no appeal as of right, statute governs.** - Since the state has no constitutional appeal as of right from a suppression order, the time for filing such an appeal is

governed by the ten-day limit set forth in Subsection (B)(2) of 39-3-3 NMSA 1978 and not the thirty-day limit provided for in Paragraph A of Rule 12-201 NMRA. *State v. Alvarez*, 113 N.M. 82, 823 P.2d 324 (Ct. App. 1991).

**Late filing of appeal.** - Because timely filing of an appeal is a mandatory precondition rather than an absolute jurisdictional requirement, a trial court may, under unusual circumstances, use its discretion and entertain an appeal even though it is not timely filed. The decision to dismiss an appeal is extreme and must be determined on a case-by-case basis. *Trujillo v. Serrano*, 117 N.M. 273, 871 P.2d 369 (1994).

**Court error may excuse late appeal.** - One unusual circumstance which would warrant permitting an untimely appeal is if the delay is a result of judicial error. To deny a party the constitutional right to an appeal because of a mistake on the part of the court runs against the most basic precepts of justice and fairness. *Trujillo v. Serrano*, 117 N.M. 273, 871 P.2d 369 (1994).

### **22-7-13. Special recall election.**

A. The date of the special recall election shall be set no later than ninety days after the date of the determination by the county clerk.

B. The question to be submitted to the voters at the special recall election shall be whether or not the named member shall be recalled.

C. A special recall election may be held in conjunction with a regular or a special school district election.

D. Whenever a special recall election is called, the county clerk shall give public notice of the special recall election by publishing information regarding the election once each week for four consecutive weeks. The first publication of the information shall be made between forty-five and sixty days before the date of the special recall election.

Information regarding the election shall be in compliance with the federal Voting Rights Act of 1965, as amended, and shall include the date when the special recall election will be held, the question to be submitted to the voters, a brief description of the boundaries of each precinct, the location of each polling place, the hours each polling place will be open and the date and time of the closing of the registration books by the county clerk as required by law.

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".

F. All special recall elections shall be held in compliance with the federal Voting Rights Act of 1965, as amended.

G. Except as otherwise provided in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978], special recall elections in a school district shall be conducted as provided in the Election Code.

**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.

### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, substituted "the Election Code" for "Sections 22-6-1 through 22-6-34 NMSA 1978" at the end of Subsection G.

**Voting Rights Act of 1965.** - The federal Voting Rights Act of 1965 appears mainly as 42 U.S.C. §§ 1973 to 1973bb-1.

### **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 [22-7-1 to 22-7-16 NMSA 1978], 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.** - As to 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

**Severability clauses.** - Laws 1977, ch. 308, § 17, provides for the severability of the act if any part or application thereof is held invalid.

## ARTICLE 8 PUBLIC SCHOOL FINANCE

### 22-8-1. Short title.

Sections 22-8-1 through 22-8-42 NMSA 1978 may be cited as the "Public School Finance Act".

**History:** 1953 Comp., § 77-6-1, enacted by Laws 1967, ch. 16, § 55.

## ANNOTATIONS

**Cross-references.** - As to general obligation bonds of school districts, see 22-18-1 NMSA 1978 et seq.

As to school revenue bonds, see 22-19-1 NMSA 1978 et seq.

As to public school emergency capital outlay, see 22-24-1 NMSA 1978 et seq.

As to public school capital improvements, see 22-25-1 NMSA 1978 et seq.

**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 ex rel. Rubio v. Carlsbad Mun. School Dist.*, 106 N.M. 446, 744 P.2d 919 (Ct. App. 1987).

**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 [22-8-1 to 22-8-42 NMSA 1978]:

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;

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 state department of public education;

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;

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 but not limited to 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 local school board or officer or employee of a local school board 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 state board for public school students; and

(3) is at least five years of age prior to 12:01 a.m. on September 1 of the school year; or

(4) 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 state board; or

(5) has not reached his twenty-second birthday on the first day of the school year and is receiving special education services pursuant to regulation of the state board; and

N. "state superintendent" means the superintendent of public instruction or his designee.

**History:** 1953 Comp., § 77-6-2, enacted by Laws 1967, ch. 16, § 56; Laws 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 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.

## ANNOTATIONS

**Cross-references.** - For definition of "state board," see 22-1-2 NMSA 1978.

**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.

**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 1997 amendment**, effective July 1, 1997, made a stylistic change in Subsection B.

### **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.

**History:** 1978 Comp., § 22-8-3, enacted by Laws 1988, ch. 64, § 14.

#### **ANNOTATIONS**

**Cross-references.** - As to creation of the state department of public education, see N.M. Const., Art. XII, § 6.

**Repeals and reenactments.** - Laws 1988, ch. 64, § 14 repeals former 22-8-3 NMSA 1978, relating to creation of the office of education, as amended by Laws 1983, ch. 301, § 69 and enacts the above section, effective May 18, 1988. For provisions of former section, see 1986 Replacement Pamphlet.

**Temporary provisions.** - Laws 1988, ch. 64, § 45, effective May 18, 1988, provides that on May 18, 1988, all money held by or to the credit of the office of education and all personnel, records, equipment, supplies and other property of any kind belonging to the office of education are transferred to the department of public education.

**"Effective date of this act".** - 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. Manual of accounting and budgeting.**

A. The department shall compile and publish a manual prescribing detailed regulations for a uniform system of accounting and budgeting of funds for all public schools and school districts of the state. The manual of regulations and any revision or amendments thereto shall become effective only upon approval by the state board of education and the legislative finance committee, 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 regulations prescribed in the manual of accounting and budgeting 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 but not limited to 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 state department of public education 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.

### **ANNOTATIONS**

**Cross-references.** - As to filing with records center, see 14-4-4 NMSA 1978.

**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.

## **22-8-6. Budgets; submission; failure to submit.**

A. Prior to April 15 of each year, each local school board shall submit to the department an estimated budget for the school district for the ensuing fiscal year. Upon written approval of the state superintendent, the date for the submission of the estimated

budget as required by this section may be extended to a later date fixed by the state superintendent.

B. The estimated 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 estimated budget required by this section shall include a proposed breakdown for charter schools in the local school district, by individual 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 estimated 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 the manual of accounting and budgeting 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.

## ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" and "state superintendent" for "chief" throughout the section.

**1993 amendments.** - Laws 1993, ch. 224, § 2, effective June 18, 1993, adding a new Subsection C which read "In each local school district with a total membership of greater than thirty thousand, the estimated budget required by this section may include a school-district-wide breakdown, by individual school, of the membership projected for each individual school, the total program units generated at an individual school and anticipated disbursements and expenditures at each school." and redesignated former Subsection C as Subsection D, was approved April 6, 1993. However, Laws 1993, ch. 227, § 9, effective June 18, 1993, also amending this section by adding a new Subsection C and redesignating former Subsection C as Subsection D, but not giving effect to the changes made by the first 1993 amendment, was approved April 6, 1993. The section is set out as amended by Laws 1993, ch. 227, § 9.

**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. 75-3.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Insurance on school buildings, availability of proceeds of, for purpose other than restoring or replacing building damaged or destroyed, 65 A.L.R. 1124.

Right or duty to carry insurance on school property, 100 A.L.R. 600.

### **22-8-6.1. Certain school district budgets.**

In those school districts with authorized charter schools, each charter school shall submit to the local school board a school-based budget. The budget shall be based upon the projected total MEM at that school and the projected number of program units generated by students at that individual school. The budget shall be submitted to the local school board for approval or amendment. Upon final approval of the budget by the local school board, the individual school budget shall be included in the budget submission to the department of education required pursuant to the Public School Finance Act [22-8-1 to 22-8-42 NMSA 1978] and required pursuant to the Charter Schools Act [22-8A-1 to 22-8A-7 NMSA 1978].

**History:** Laws 1993, ch. 227, § 8.

### **22-8-7. Budgets; form.**

All budgets submitted to the division by a school district shall be in a form specified by the manual of accounting and budgeting of the division.

**History:** 1953 Comp., § 77-6-7, enacted by Laws 1967, ch. 16, § 61; 1969, ch. 180, § 5.

### **22-8-7.1. Certain school district budgets.**

A. The local school board of a school district with a total MEM of greater than thirty thousand shall develop a school-based budgeting plan for all schools in the district for presentation to the legislative education study committee by October 15, 1993. The plan shall describe the means by which teachers, parents and administrators will participate in the development of school-based budgets.

B. In those school districts with a total MEM of greater than thirty thousand each individual school may voluntarily submit to the local school board a school-based budget based upon the projected total MEM at that school and the projected number of program units generated by students at that school. If an individual school submits such a budget, the local school board may include it in the budget submission to the department required pursuant to the Public School Finance Act [22-8-1 to 22-8-42 NMSA 1978].

**History:** Laws 1993, ch. 224, § 1.

### **22-8-8. Budgets; minimum student membership.**

Without prior approval of the state superintendent, 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**

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "chief".

### **22-8-9. Budgets; minimum requirements.**

A. No budget for a school district shall be approved by the department that does not provide for:

(1) a school year consisting of at least one hundred eighty full instructional days or the equivalent thereof, exclusive of any release time for in-service training; or

(2) a variable school year consisting of a minimum number of instructional hours established by the state board; and

(3) a pupil-teacher ratio or class or teaching load as provided in Section 22-2-8.2 NMSA 1978.

B. The state board shall, by regulation, establish the requirements for a teaching day, the standards for an instructional hour and the standards for a full-time certified classroom instructor and for the equivalent thereof.

C. The local school board shall submit a plan for the implementation of an alternate school year to the state superintendent for his approval.

D. 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.

**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; Laws 1994, ch. 68, § 1; 1996, ch. 62, § 1; 1997, ch. 136, § 1.

#### **ANNOTATIONS**



**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.

**1993 amendments.** - Laws 1993, ch. 223, § 1, effective July 1, 1995, deleting "effective with the 1987-88 school year" following "in-service training" in Paragraph (1), deleting the paragraph designation "(2)", redesignating former Paragraph (3) as Paragraph (2) and adding Paragraph (3) of Subsection A and substituting "Paragraph (1)" for "Paragraph (2)" and "a MEM" for "an ADM" in Subsection D was approved April 6, 1993. However, Laws 1993, ch. 226, § 19 effective July 1, 1993, also amending this section by deleting "effective with the 1987-88 school year" following "in-service training" in Paragraph (1) of Subsection A, substituting "a MEM" for "an ADM" in Subsection D and making a minor stylistic change, but not including all the changes made by the first 1993 amendment, was approved April 6, 1993. The section is set out as amended by Laws 1993, ch. 226, § 19. See 12-1-8 NMSA 1978.

**The 1996 amendment**, added Paragraph A(4) and made a stylistic change in Subsection D. Laws 1996, ch. 71 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**The 1997 amendment** 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". Laws 1997, ch. 136 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Compiler's note.** - Laws 1996, ch. 62, § 2 provides that the version of 22-8-9 NMSA 1978 as amended by Laws 1993, ch. 223, § 1 that is to become effective on July 1, 1995, is repealed.

Laws 1996, ch. 62, § 3 provides that the version of 22-8-9 NMSA 1978 as amended by Laws 1994, ch. 68, § 1, as that act is amended by Laws 1995, ch. 151, § 1 to become effective July 1, 1996, is repealed.

## **22-8-10. Budgets; fixing the estimated 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 estimated budget for the school district for the ensuing fiscal year. At the discretion of the state superintendent or the local school board, the department may participate in the public hearing.

B. Prior to the public hearing held to fix the estimated 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.

## ANNOTATIONS

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "chief".

**The 1989 amendment,** effective June 16, 1989, deleted "and the department" preceding "shall" in the first sentence, and added the second sentence.

**The 1993 amendment,** effective March 17, 1993, designated the formerly undesignated provisions as Subsection A and added Subsection B.

### **22-8-11. Budgets; temporary; final.**

A. The department shall:

(1) on or before July 1 of each year, approve and certify to each local school board a temporary operating budget for use by the local school board pending approval by the department of a final budget;

(2) make corrections, revisions and amendments to the estimated budgets fixed by the local school boards and the state superintendent to conform the budgets to the requirements of law and to the manual of accounting and budgeting; and

(3) before the first Monday of September of each year, approve and certify to each local school board and to the board of county commissioners of the county in which the school district is situated a final budget for use by the local school board, based upon the estimated budget fixed by the local school board and the state superintendent.

B. No school board or officer or employee of a school district shall make any expenditure or incur any obligation for the expenditure of public funds unless that expenditure or contractual obligation is made in accordance with an operating budget approved by the department but does not prohibit the transfer of funds between line items within series of a budget.

C. The department shall not approve and certify a temporary operating budget of any school district 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.

## ANNOTATIONS

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "division" and "state superintendent" for "director" throughout the section and made minor stylistic changes.

**The 1993 amendment,** effective March 17, 1993, added Subsection C.

### **22-8-12. Final budgets; alterations or amendments.**

Final 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 any local school board, the state superintendent 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 any local school board, the state superintendent, in conformance with the regulations 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 state superintendent shall make a written report to the legislative finance committee of any such budget increase;

C. upon written request of any local school board, the state superintendent may authorize an increase in a budget of not more than one thousand dollars (\$1,000); or

D. upon written request of any local school board, the state superintendent, 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 which 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.

**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.

## ANNOTATIONS

**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. Budget requests.**

A. Each local school board 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 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 manual of accounting and budgeting published by the department.

C. The department shall:

(1) review the financial needs of each school district 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 state board 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.

## ANNOTATIONS

**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".

**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.

### **22-8-12.2. Budgets; earnings from investments; operational funds.**

Each local school board shall budget an amount to be expended for capital outlay at least equal to the amount the school district earns from investments of operational funds.

**History:** 1978 Comp., § 22-8-12.2, enacted by Laws 1978, ch. 149, § 1.

### **22-8-13. Reports.**

A. Each local school board shall require each public school in its school district to keep accurate records concerning membership in the public school. The superintendent of each school district shall maintain the following reports for each twenty-day 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.

B. The superintendent of each school district shall furnish to the department reports of the information required in Paragraphs (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 state board shall be furnished within five days of the close of the reporting period.

C. 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 and shall be subject to inspection and audit at any reasonable time.

D. The department shall withhold allotments of funds to any school district where the superintendent has failed to comply until the superintendent complies with and agrees to continue complying with requirements of this section.

E. The provisions of this section may be modified or suspended by the department for any school district or school operating under the Variable School Calendar Act [22-22-1 to 22-22-6 NMSA 1978]. The department shall require MEM reports consistent with the calendar of operations of such school district or school and shall calculate an equivalent MEM for use in projecting school district 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 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.

## ANNOTATIONS

**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.

**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".

**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.

### 22-8-14. Public school fund.

A. The "public school fund" is created.

B. This fund shall be distributed to school districts in the following parts:

(1) state equalization guarantee distribution;

(2) transportation distribution; and

(3) supplemental distributions:

(a) out-of-state tuition;

(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.

## ANNOTATIONS

**Cross-references.** - As to state equalization guarantee distributions, see 22-8-25 NMSA 1978.

As to transportation distributions, see 22-8-26 to 22-8-29 NMSA 1978.

As to supplemental distributions, see 22-8-30 NMSA 1978.

As to transfer of unencumbered balances in current school fund to public school fund, see 22-8-32 NMSA 1978.

As to transfer of federal mineral leasing funds to public school fund, see 22-8-34 NMSA 1978.

**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. 77-4.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 85 to 98.

Misapportionment of school money, right of school district to maintain action based on, 105 A.L.R. 1273.

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 from each of the distributions of the public school fund, subject to the limits established by law.

B. The local school board, in each local school district with authorized charter schools, shall allocate the appropriate distributions of the public school fund to individual charter schools pursuant to each charter school's school-based budget approved by the local school board and the department. The local school board may retain an amount not to exceed the school district's administrative cost relevant to that charter school.

C. 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 disbursements for each charter school.

**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.

#### **ANNOTATIONS**

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "chief".

**1993 amendments.** - Laws 1993, ch. 224, § 3, effective June 18, 1993, designating the existing provisions as Subsection A and adding Subsection B, was approved April 6, 1993. However, Laws 1993, ch. 227, § 10, effective June 18, 1993, also amending this section by designating the formerly undesignated provision as Subsection A and adding Subsections B and C, was approved April 6, 1993. The section is set out as amended by Laws 1993, ch. 227, § 10. See 12-1-8 NMSA 1978.

### **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 shall be determined by the department in accordance with the provisions of the Public School Finance Act [22-8-1 to 22-8-42 NMSA 1978].

B. The department is authorized to require from each school district the information necessary to make an accurate determination of the district's program cost.

**History:** Laws 1969, ch. 180, § 13; 1953 Comp., § 77-6-18; reenacted by Laws 1974, ch. 8, § 7; 1988, ch. 64, § 28.

### **ANNOTATIONS**

**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 school board responsibility.**

A. The total program units for the purpose of computing the program cost shall be calculated by multiplying the sum of the program units itemized as Paragraphs (1) through (4) in this subsection by the instruction staff training and experience index and adding the program units itemized as Paragraphs (5) through (8) 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) size adjustment;

(6) at-risk program;

(7) enrollment growth or new district adjustment; and

(8) special education units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers.

B. The total program cost calculated as prescribed in Subsection A of this section includes the cost of early childhood, special, bilingual multicultural and vocational education and other remedial or enrichment programs. It is the responsibility of the local school board to determine its priorities in terms of the needs of the community served by that board. Funds generated under the Public School Finance Act [22-8-1 to 22-8-42 NMSA 1978] are discretionary to local school boards, provided that the special program needs as enumerated in this section are met.

**History:** Laws 1969, ch. 180, § 14; 1953 Comp., § 77-6-18.1, enacted by Laws 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.

#### ANNOTATIONS

**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".

**The 1993 amendment,** effective June 18, 1993, added "or new district adjustment" at the end of Paragraph (6) of Subsection A.

**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.

**Temporary provisions.** - Laws 1997, ch. 40, § 9 provides that in the event the program units of 22-8-18 NMSA 1978 are not fully funded, no school district shall receive less than its previous year's total program cost due to the change in the program cost calculation with the program cost adjusted for the establishment of a high school in Rio Rancho.

#### **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. No early

childhood education student shall be counted for more than 0.5 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:** Laws 1969, ch. 180, § 15; 1953 Comp., § 77-6-18.2; reenacted by Laws 1974, ch. 8, § 9; 1976 (S.S.), ch. 32, § 3; 1990 (1st S.S.), ch. 3, § 5; 1997, ch. 40, § 4.

### **ANNOTATIONS**

**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".

**The 1997 amendment**, effective July 1, 1997, added the Subsection A designation and added Subsection B.

#### **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, through the office of child development, shall distribute any appropriation for this purpose to local entities upon approval by the children, youth and families 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 department of education. 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 office of child development 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.

**ANNOTATIONS**

**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
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, 22; 1993, ch. 228, §§ 2, 3.

**ANNOTATIONS**

**Repeals and reenactments.** - Laws 1991, ch. 85, § 3 repeals former 22-8-20 NMSA 1978, as amended by Laws 1991, ch. 85, § 2, and enacts the above section, effective July 1, 1992.

**1993 amendments.** - Laws 1993, ch. 2, § 1, effective June 18, 1993, substituting "1.26" for "1.42" as the Cost Differential Factor for Grade 1, was approved January 28, 1993. However, identical amendments to this section were enacted by Laws 1993, ch. 226, § 21, effective July 1, 1993, approved April 6, 1993, and Laws 1993, ch. 228, § 2, effective June 18, 1993, approved April 7, 1993, 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. The section is set out above as amended by Laws 1993, ch. 228, § 2. See 12-1-8 NMSA 1978.

Identical amendments to this section were enacted by Laws 1993, ch. 226, § 22, approved April 6, 1993, and Laws 1993, ch. 228, § 3, approved April 7, 1993, both effective July 1, 1994, substituting "1.045" for "1.0" under the column "Cost Differential Factor" for grades 4 through 6. This section is set out as amended by Laws 1993, ch. 228, § 3. See 12-1-8 NMSA 1978.

**Temporary provisions.** - Laws 1993, ch. 2, § 2, effective June 18, 1993, provides that, notwithstanding the provisions of § 22-8-20 NMSA 1978, it is the intent of the legislature for the eighty-first fiscal year that the state superintendent of public instruction shall calculate the state equalization guarantee distribution and adjust incremental distributions as necessary to achieve a total program cost that includes basic program units for grade one calculated using a cost differential factor not to exceed 1.26.

## **22-8-21. Special education program units.**

A. For the purpose of the Public School Finance Act [22-8-1 to 22-8-42 NMSA 1978], 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;
- (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:** Laws 1969, ch. 180, § 17; 1953 Comp., § 77-6-18.4; Laws 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

**1992 amendments.** - Identical amendments to this section were enacted by Laws 1992, ch. 75, § 1 and Laws 1992, ch. 84, § 1, both effective May 20, 1992, which

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). The section is set out as amended by Laws 1992, ch. 84, § 1. See 12-1-8 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.

## **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 [22-23-1 to 22-23-6 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 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".

**The 1992 amendment**, effective May 20, 1992, substituted ".425" for "0.45" near the end of the section.

**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.

## **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

$$\frac{200 - \text{MEM}}{200} \times 2.0 \times \text{MEM} = \text{Units}$$

or,

Senior High Units

$$\frac{400 - \text{MEM}}{400} \times 1.6 \times \text{MEM} = \text{Units}$$

whichever calculation for senior high units is higher, where MEM is equal to the membership of an approved senior high school excluding membership in class C and class D programs.

B. 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 district is entitled under this subsection is the number of district units computed in the following manner:

District Units

$$\frac{4000 - \text{MEM}}{4000} \times 0.15 \times \text{MEM} = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time-equivalent membership.



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:

$$\frac{4000 - \text{MEM}}{\text{Senior High Schools}} \times 0.50 = \text{Units}$$

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 district.

**History:** Laws 1974, ch. 8, § 14; 1953 Comp., § 77-6-18.7; 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.

### ANNOTATIONS

**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.

**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 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 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.

### **22-8-23.1. Enrollment growth program units.**

A school district 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:

$$\frac{(\text{Current Year MEM} - \text{Previous Year MEM})}{\text{Previous Year MEM}} \times 100 = \text{Percent Increase}$$

The number of additional program units to which an eligible district is entitled under this subsection is the number of units computed in the following manner:

$$(\text{MEM for current year} - \text{MEM for prior year}) \times .50 = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

**History:** 1978 Comp., § 22-8-23.1, enacted by Laws 1990 (1st S.S.), ch. 3, § 7; 1990 (1st S.S.), ch. 3, § 8.

### ANNOTATIONS

**The 1990 (1st S.S.) amendment**, effective July 1, 1991, substituted ".50" for ".25" in the equation in the last paragraph.

#### **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:

$$(\text{MEM for current year}) \times .147 = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

B. A school district whose membership decreases as a result of the establishment of a newly created school district is eligible for additional program units. The number of additional program units to which that district is entitled under this

subsection is the number of units computed in the following manner:

$$\text{Units} = (\text{MEM for prior year} - \text{MEM for current year}) \times .17 =$$

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 state-board-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 in its annual accountability report pursuant to Section 22-1-6 NMSA 1978. The number of additional units to which a district is entitled under this section is computed in the following manner:

$$\text{At-Risk Index} \times \text{MEM} = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education, full-time-equivalent membership and special education membership, and where the at-risk index is calculated in the following manner:

$$\text{Refined At-Risk Cluster} \times 0.015 = \text{At-Risk Index.}$$

B. To calculate the refined at-risk cluster, the department shall rank order each school district in the state on the basis of the district's percentage of membership used to determine its Title I allocation, the percentage of membership classified as limited English proficient using criteria established by the federal office of civil rights, the percentage of student mobility and the percentage of dropouts in the school district. Using this data, the department shall initially group districts into nine clusters using a neural network computer analysis. Each school district shall be assigned a whole number from one to nine reflecting its initial cluster assignment, with higher need districts receiving a higher number and lower need districts receiving a lower number. This number shall be modified on the basis of a school district's relative position in the cluster and further refined through the use of a second neural network computer analysis, a back propagation. Using the results of this analysis, the department shall refine the cluster assignment and the number assigned to each school district. The number obtained from this calculation is the refined at-risk cluster.

C. The department shall recalculate the at-risk index for each school district every two years.

**History:** 1978 Comp., § 22-8-23.3, enacted by Laws 1997, ch. 40, § 7.

**ANNOTATIONS**

**Effective dates.** - Laws 1997, ch. 40, § 11 makes the act effective on July 1, 1997.

**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
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. 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

**1993 amendments.** - Laws 1993, ch. 91, § 1, effective June 18, 1993, substituting "state superintendent" for "chief" in the first sentence of Subsection C and substituting "1.0" for ".95" in two places in Subsection D, was approved March 31, 1993. However, Laws 1993, ch. 237, § 3, effective June 18, 1993, also amending this section by substituting "1.0" for ".95" in two places in Subsection D and adding Subsection E was approved April 6, 1993. This section is set out as amended by Laws 1993, ch. 237, § 3. See 12-1-8 NMSA 1978.

**Executive branch reorganization.** - 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.

### **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 the school district's operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost.

B. "Local revenue", as used in this section, means ninety-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 [7-32-1 to 7-32-28 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 [7-34-1 to 7-34-20 NMSA 1978].

C. "Federal revenue", as used in this section, means ninety-five percent of receipts to the school district, excluding amounts which, 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) the school district's share of forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978; and

(2) grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Sections 236 through 240 of Title 20 of the United States Code (commonly known as "PL 874 funds") or an amount equal to the revenue the district was entitled to receive if no application was made for such funds but deducting from those grants the additional amounts to which school districts would be entitled because of the provisions of Subparagraph (D) of Paragraph (2) of Subsection (d) of Section 238 of Title 20 of the United States Code.

D. To determine the amount of the state equalization guarantee distribution, the state superintendent shall:

(1) calculate the number of program units to which each school district is entitled using the 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; or

(2) calculate the number of program units to which a school district operating under an approved year-round school calendar is entitled using the basic program membership on an appropriate date established by the state board; or

(3) calculate the number of program units to which a school district with a basic program MEM of 200 or less is entitled by using the basic program membership on the fortieth day of either the prior or the current year, whichever is greater; provided that special education program units shall be calculated using the membership in special education programs on December 1 of either the prior or the current year; and

(4) using the results of the calculations in Paragraph (1), (2) or (3) of this subsection and the instructional staff training and experience index from the October report of the prior school year, establish a total program cost of the school district;

(5) 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; and

(7) deduct the total amount of guaranteed energy savings contract payments that the state superintendent determines will be made to the school district from the public school energy efficiency fund during the fiscal year for which the state equalization guarantee distribution is being computed.

E. 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) and (7) of Subsection D of this section.

F. 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 district has received more state equalization guarantee funds than its entitlement, a refund shall be made by the district to the state general fund.

G. Notwithstanding the methods of calculating the state equalization guarantee distribution in this section and Laws 1974, Chapter 8, Section 22, if a school district received funds under Section 2391 of Title 42 USCA and if the federal government takes into consideration grants authorized by Sections 236 through 240 of Title 20 of the United States Code and all other revenues available to the school district in determining the level of federal support for the school district for the sixty-fourth and succeeding fiscal years, the state equalization guarantee distribution for school districts receiving funds under this subsection shall be computed as follows:

plus special education funding in accordance with Paragraphs (1), (2) or (3) and (4) of Subsection D of this section and Section 22-8-21 NMSA 1978 plus an amount that would be produced by applying a rate of eight dollars forty-two and one-half cents (\$8.425) to each one thousand dollars (\$1,000) of net taxable value of property as defined in the Property Tax Code for property taxation purposes in the school district and to each one thousand dollars (\$1,000) of the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act and then reduced by the total amount of guaranteed energy savings contract payments, if any, that the state superintendent determines will be made to the school district from the public school energy efficiency fund during the fiscal year for which the state equalization guarantee distribution is being computed, equals the fiscal year state equalization guarantee distribution for the year for which the state equalization guarantee distribution is being computed.

If at any time grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Sections 236 through 240 of Title 20 of the United States Code (commonly known as "PL 874 funds") are reduced or are no longer available, the state equalization guarantee distribution shall be computed by the formula contained in this subsection plus an increase by fifty percent of the amount the prior year's PL 874 funds exceed PL 874 funds for the year for which the state equalization guarantee distribution is being computed.

**History:** Laws 1969, ch. 180, § 19; 1953 Comp., § 77-6-19; Laws 1971, ch. 263, § 9; 1972, ch. 90, § 1; reenacted by 1974, ch. 8, § 16; 1975, ch. 119, § 3; 1979, ch. 268, § 2; 1979, ch. 278, § 1; reenacted by 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.

## ANNOTATIONS



**Cross-references.** - As to state-support reserve fund, see 22-8-31 NMSA 1978.

**The 1988 amendments.** - Laws 1988, ch. 63, § 1, effective July 1, 1988, inserting new language at the end of Subsection C(2) beginning with "but deducting from", was approved on March 8, 1988. However, Laws 1988, ch. 64, § 29, effective July 1, 1988, making the same change but also adding "and" at the end of Subsection C(1), adding the language beginning "but deducting from those grants" at the end of Subsection C(2); deleting Subsection C(3) regarding grants from the federal government to public secondary schools; and substituting "state superintendent" for "director of the office of education" in Subsection D, was approved later on March 8, 1988. The section is set out as amended by Laws 1988, Chapter 64, § 29. See 12-1-8 NMSA 1978.

**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 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.

**1993 amendments.** - Laws 1993, ch. 226, § 23, effective July 1, 1993, substituting "variable" for "year-round" in Paragraph (2) of Subsection D, and making minor stylistic changes in Subsections A and C, was approved April 6, 1993. However, Laws 1993, ch. 231, § 14, effective June 18, 1993, which substituted "ensure" for "insure" in Subsection A; added Paragraph (6) in Subsection D and made accompanying stylistic changes; 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, but not giving effect to the changes made in the first 1993 amendment, was approved April 6, 1993. The section is set out as amended by Laws 1993, ch. 231, § 14. See 12-1-8 NMSA 1978.

**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.

**Teacher salary adjustment.** - Laws 1994, ch. 6, § 9, effective May 18, 1994, appropriates \$1,134,400 from the general fund to the state equalization guarantee distribution in the eighty-third fiscal year to bring the average cost-of-living salary increase for public schools teachers to six percent in the eighty-third fiscal year.

**Nonseverability clauses.** - Laws 1981, ch. 176, § 8, provides that if any part or application of the act is held invalid, the remainder, or its application to other situations or persons, shall be likewise invalid. The provisions of this act are not severable.

**Compiler's notes.** - Laws 1981, ch. 37, § 84, as originally enacted, provided for an amendment to this section; however, § 84 was vetoed by the governor.

**Save harmless distribution.** - Laws 1974, ch. 8, § 22, referred to in Subsection G, provides: "A. The save harmless distribution is the sum appropriated by the legislature in amounts necessary to save harmless any school district from a decrease in available funds computed on a per average daily membership basis between the amount available to a district during the sixty-second fiscal year and the sixty-third fiscal year.

"B. For the save harmless distribution the chief (now director of public school finance) shall compute the sum of revenues received during the sixty-second fiscal year from the production of the district school tax based upon 2.225 mills, the county school tax of 6.7 mills allocated on the ADM percentage basis, the motor vehicle license fees allocated on the ADM percentage basis, P.L. 874, forest reserve and federal vocational allocations in addition to state distributions for basic program support and all supplemental distributions excluding out-of-state, emergency and program enrichment.

"C. The chief (now director of public school finance) shall take credit for ninety-five percent of the local and federal sources and one hundred percent of the state distributions designated. The result of the computations will be divided by each school district's forty-day certified ADM exclusive of special and early childhood education for the sixty-second fiscal year to determine the per ADM revenue available from these sources.

"D. The per ADM revenue available will be compared to the sixty-third fiscal year's applicable estimated revenue per ADM using the estimated ADM exclusive of special and early childhood education, computed in accordance with the Public School Finance Act to determine the difference between the sixty-second and sixty-third fiscal year's revenue available per ADM.

"E. If the sixty-third fiscal year's revenue per ADM is less than the sixty-second, an amount equal to the difference on a per ADM basis will be multiplied by the estimated

ADM for the sixty-third fiscal year to determine the tentative save harmless allocation for budget purposes.

"F. After receipt of the actual ADM for the sixty-third fiscal year, the chief (now director of public school finance) shall recalculate the save harmless and adjust the save harmless distribution to insure that the correct revenue per ADM available is no less than one hundred percent of the appropriate prior year's revenue available per ADM.

"G. The save harmless assistance shall continue to be reduced each year in the same manner so that no save harmless will be allowed under this section for the sixty-ninth fiscal year."

**Subsection G held not to unconstitutionally conflict with Atomic Energy Community Act.** *Los Alamos Sch. Bd. v. Wugalter*, 557 F.2d 709 (10th Cir.), cert. denied, 434 U.S. 968, 98 S. Ct. 512, 54 L. Ed. 2d 455 (1977) (decided under prior law).

### **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.** - As to 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 for the to and from school transportation costs of students in grades kindergarten through twelve attending public school within the school district and of three- and four-year-old children who meet the state board 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 transportation allocation exceeds the amount required to meet obligations to provide to and from transportation, three- and four-year-old developmentally disabled transportation and vocation education transportation, the district shall revert remaining transportation funds to the transportation distribution in the department.

C. In the event the sum of the proposed transportation allocations to each school district exceeds the amounts in the transportation distribution, the allocation to each school district shall be reduced in the proportion that the local school district allocation bears to the total statewide transportation distribution.

D. Local school boards, with the approval of the state transportation director, may provide additional transportation services pursuant to Section 22-16-2 NMSA 1978 to meet established program needs.

**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.

## ANNOTATIONS

**Cross-references.** - As to transportation of students generally, see 22-16-1 NMSA 1978 et seq.

**The 1988 amendment,** effective May 18, 1988, deleted "of instruction" following "superintendent" at the end of Subsection C.

**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.

**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 state superintendent 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 state superintendent shall provide for the replacement of school buses on a twelve-year cycle. School districts requiring additional buses to accommodate growth in the district or to meet other special needs may petition the state superintendent for additional buses. Under exceptional circumstances, districts may also petition the state superintendent for permission to replace buses prior to the completion of a twelve-year cycle or to utilize buses in excess of twelve years contingent upon satisfactory annual safety inspections.

C. In establishing a system for the utilization of contractor-owned buses by school districts, the state superintendent shall establish a schedule for the payment of rental fees for the use of contractor-owned buses. As with school-district-owned operations, the state superintendent 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 district or to meet other special needs may petition the state superintendent for additional buses. Under exceptional circumstances, districts may also petition the state superintendent for permission to replace buses prior to the completion of a twelve-year cycle or to utilize buses in excess of twelve years contingent upon satisfactory annual safety inspections. Effective with the 1995-96 school year, 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, the state superintendent 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 local 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.

**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.

## ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "chief" in Subsection 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 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.

## **22-8-28. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1995, ch. 208, § 16 repeals 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 1993 Replacement Pamphlet.

## **22-8-29. Transportation distributions; reports; payments.**

A. Prior to November 15 of each year, each local school board of a school district shall report to the state transportation director, upon forms furnished by the state transportation director, the following information concerning the district's operation on the fortieth day of school:

- (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 transported on the fortieth day of school;
- (4) the projected number of students to be transported in the next school year;
- (5) the percentage of unpaved or unimproved roads utilized by school buses in the school district; and
- (6) the seating capacity, age and mileage of each bus utilized in the district for student transportation.

B. Each local school board of a school district 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 state superintendent that the allocations from the transportation distributions to each school district are based upon the transportation distribution formula established in the Public School Code. The allocations for the first six months of a school year shall be based upon the tentative transportation budget of the school district for the current fiscal year. Allocations to a school district for the remainder of the school year shall adjust the amount received by the school district so that it equals the amount the school district is entitled to receive for

the entire school year based upon the November 15 report and subject to audit and verification.

D. The department shall make periodic installment payments to school districts 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.

## ANNOTATIONS

**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.

**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.

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

### **22-8-29.1. Calculation of transportation allocation.**

A. The department of education shall calculate the transportation allocation for each school district in the following manner:

- (1) group local school districts on the basis of the average square miles served per student transported in the prior year;
- (2) in each group, calculate the prior year's average operational expenditure per student transported in each district;
- (3) calculate the average for the group by taking the total prior year's expenditure for the group and dividing it by the number of students in the group;

(4) multiply the group average operational expenditure per student by the number of students transported on the fortieth day of the current year. Designate the product "A";

(5) add "A" to the mileage supplement. The sum of A and the mileage supplement is "B";

(6) for the 1995-96 and the 1996-97 school years, "B" shall not be less than ninety-five percent or more than one hundred fifteen percent of the district's previous year's operational allocation, provided that if "B" is less than ninety-five percent, "B" is deemed to equal ninety-five percent and if B is greater than one hundred fifteen percent, "B" is deemed equal to one hundred fifteen percent. Calculate "B" accordingly; and

(7) multiply B by the transportation distribution adjustment factor.

B. For the 1997-98, 1998-99 and 1999-2000 school years, the transportation allocation for each school district shall not be less than ninety-five percent or more than one hundred fifteen percent of the 1996-97 school year's transportation allocation.

C. For districts transporting less than seventy-five students, the department of education may utilize alternative calculation methods to determine the transportation allocation pursuant to regulation of the state board.

**History:** Laws 1995, ch. 208, § 10.

### **22-8-29.2. Grouping of districts; calculation of average square miles served per student transported.**

A. The department of education shall group school districts into not more than twelve groups. Groupings shall be made on the basis of the average square miles served per student transported in the district in the prior year on the fortieth day of school; provided, districts transporting less than seventy-five students may be excluded from the groupings regardless of the average square miles per student transported.

B. The average square miles served per student transported shall be calculated by dividing the total square mileage served by the district by the total number of students transported on the fortieth day of school in the following manner:

"average square miles per student transported = total square miles served by the district ÷ the total students transported in the prior year on the fortieth day of school".

**History:** Laws 1995, ch. 208, § 11.

### **22-8-29.3. Calculation of average operational expenditure per student.**



The department of education shall determine the average operational expenditure per student. The average operational expenditure per student shall be determined by dividing a district's prior year's operational expenditure less the prior year's total mileage supplement by the total number of students transported in the prior year in the district in the following manner:

"(total district transportation operational expenditure - prior year mileage supplement) ÷ number of students transported in the district = average operational expenditure per student".

**History:** Laws 1995, ch. 208, § 12.

#### **22-8-29.4. Transportation distribution adjustment factor.**

A. The state superintendent shall establish a transportation distribution adjustment factor. The adjustment factor shall be calculated as follows:

(1) calculate the unadjusted transportation allocation for each district, previously designated as "B";

(2) the sum total of "B" in all districts added together equals "C"; and

(3) subtract "C" from the total operational transportation distribution for the current year and divide the result by "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.

#### **22-8-29.5. Mileage supplement.**

The department of education shall calculate a mileage supplement for each local school district. The mileage supplement shall be calculated in the following manner:

A. (1) determine the percentage of miles traveled over unpaved roads in relation to the total miles traveled in the area served by the district; and

(2) multiply the percentage of total miles traveled over unpaved roads by one-fourth and multiply that product by the average operational expenditure per student in the district as calculated in Section 12 [22-8-29.3 NMSA 1978] of this act;

B. (1) determine the percentage of miles traveled over unimproved roads in relation to the total miles traveled in the area served by the district; and

(2) multiply the percentage of total miles traveled over unimproved roads by one-half and multiply that product by the average operational expenditure per student in the district; and

C. add the total obtained in Subsection A of this section to the total obtained in Subsection B of this section and multiply that product by the number of students transported in the district on the fortieth day of school. This is the mileage supplement.

**History:** Laws 1995, ch. 208, § 14.

### **22-8-29.6. Transportation reserve fund.**

A. The "transportation reserve fund" is created in the state treasury. Money in the fund is appropriated to the department for the purpose of supplementing disbursements from the transportation distribution in order to ensure, to the extent of the amount undistributed in the fund, that the maximum figures for such distribution shall not be reduced.

B. At least thirty days before the money is needed, the state superintendent shall notify the state treasurer in writing of the amount that will be needed for distribution.

C. Distribution from the fund shall be in same manner and on the same basis as the transportation distribution.

**History:** Laws 1995, ch. 208, § 15.

### **22-8-30. Supplemental distributions.**

A. The state superintendent 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 [22-12-1 to 22-12-7 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 in financial need, but no money shall be distributed to any school district having cash and invested reserves, or other resources or any combination thereof, equaling five percent or more of the school district's operational budget;

(3) to make program enrichment distributions in the amount of actual program expense to school districts 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 state board 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 that have experienced an unexpected capital outlay emergency demanding immediate attention.

B. The state superintendent 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 state superintendent 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:** Laws 1967, ch. 16, § 83; 1953 Comp., § 77-6-29; Laws 1969, ch. 180, § 22; 1971, ch. 263, § 12; reenacted by 1974, ch. 8, § 17; 1978, ch. 148, § 1; 1988, ch. 64, § 34.

## ANNOTATIONS

**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. Adult basic education fund created.**

The "adult basic education fund" is created in the state treasury. Money in the fund is appropriated to the department of education for the purpose of funding adult basic education programs for educationally disadvantaged adults. Money in the fund shall be distributed by the department of education pursuant to an equitable formula established by the state board in consultation with representatives from the adult basic education administrative sites and with the approval of the commission on higher education as provided by law. Any unexpended or unencumbered balance remaining in the fund at the end of each fiscal year shall revert to the general fund.

**History:** Laws 1995, ch. 56, § 1.

## **22-8-30.2. Adult basic education; distribution of money; objective formula; state board adoption of formula; commission on higher education approval.**

The state board in consultation with representatives of adult basic education administrative sites shall, by regulation, establish an equitable formula for the distribution of money in the adult basic education fund. In establishing an equitable formula, the state board shall consider the types of programs conducted, the cost of service delivery and the socio-economic profiles of the adult receiving services. The state board shall submit the proposed formula to the commission on higher education for approval prior to adoption.

**History:** Laws 1995, ch. 56, § 2.

## **22-8-31. State-support reserve fund.**

A. The "state-support reserve fund" is created.

B. The state-support reserve fund shall be used only to augment the appropriations for the state equalization guarantee distribution in order to ensure, to the extent of the amount undistributed in the fund, that the maximum figures for such distribution established by law shall not be reduced.

C. The undistributed money in the state-support reserve fund shall be invested by the state treasurer in interest-bearing securities of the United States government or in certificates of deposit in qualified banks, and in savings and 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 [director of public school finance] 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

**Cross-references.** - As to state equalization guarantee distribution generally, see 22-8-25 NMSA 1978.

**Severability clauses.** - Laws 1976 (S.S), ch. 32, § 11, provides for the severability of the act if any part or application thereof is held invalid.

**Appropriations.** - Laws 1992, ch. 94, § 8, effective March 10, 1992, transfers \$3,700,000 from the operating reserve fund to the public school state support reserve fund in the eighty-first fiscal year.

**Executive branch reorganization.** - 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.

### **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.** - As to 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.**

Except for an annual appropriation to the free textbook fund [instructional material fund] and to the bureau of mines and mineral resources of the New Mexico institute of mining and technology, all other money received by the state pursuant to the provisions of the act of congress approved February 25, 1920 entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain" as amended and compiled in 30 United States Code, Sections 181 through 214, is appropriated for the use and benefit of the public schools of this state for instructional purposes. The state treasurer shall credit all money received under this federal act, less the appropriations to the free textbook fund [instructional material fund] and to the bureau of mines and mineral resources, to the public school fund.

**History:** 1953 Comp., § 77-6-36, enacted by Laws 1967, ch. 16, § 90; 1974, ch. 8, § 19.

## ANNOTATIONS

**Cross-references.** - As to public school fund generally, see 22-8-14 NMSA 1978.

As to instructional material fund generally, see 22-15-5 NMSA 1978 et seq.

As to New Mexico institute of mining and technology generally, see 21-11-1 NMSA 1978 et seq.

**Compiler's note.** - Laws 1975, ch. 270, § 5, amended 77-13-5, 1953 Comp., compiled as 22-15-5 NMSA 1978, by substituting references to the instructional material fund for references to the free textbook fund.

**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 [director of public school finance] 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 [director] 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**

**Cross-references.** - As to general obligation bonds of school districts, see 22-18-1 NMSA 1978 et seq.

As to school revenue bonds, see 22-19-1 NMSA 1978 et seq.

As to public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

As to public school capital improvements, see 22-25-1 NMSA 1978 et seq.

**Executive branch reorganization.** - 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.

### **22-8-36. Certification of allocations; fund accounts.**

The chief [director of public school finance] shall certify periodically to each county treasurer the allocations of funds to each school district in the county. The chief [director] 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**

**Executive branch reorganization.** - 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.

### **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 [22-8-1 to 22-8-42 NMSA 1978]. 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.**

Upon written application to and approval of the state superintendent, any local school board may be designated a board of finance for public school funds of the school district. Any local school board designated 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 state superintendent shall designate a local school board as a board of finance if:

- A. the local school board shows to the satisfaction of the state superintendent that it has personnel properly trained to keep accurate and complete fiscal records;
- B. the local school board agrees to consult with the state superintendent 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;
- C. the persons handling these funds are adequately bonded to protect the funds entrusted to them from loss; and
- D. the local school board making application has not been suspended and not reinstated as a board of finance within the past year.

**History:** 1953 Comp., § 77-6-42, enacted by Laws 1967, ch. 16, § 96; 1988, ch. 64, § 35.

## ANNOTATIONS

**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 state superintendent may at any time suspend a local school board from acting as a board of finance if he reasonably believes there is mismanagement, improper recording or improper reporting of public school funds under its control. When a local school board is suspended from acting as a board of finance, the state superintendent shall:

- A. immediately take control of all public school funds under the control of the local school board acting as a board of finance;
- B. immediately have an audit made of all funds under the control of the local school board acting as a board of finance and charge the cost of the audit to the school district;
- C. act as a fiscal agent for the school district and take any action necessary to conform the fiscal management of funds of the school district 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 until he determines that the local school board is capable of acting as a board of finance, or until he determines that the county treasurer should act as fiscal agent for the school district; and
- F. inform the local school board in writing of his determination as to who is to act as board of finance or fiscal agent for the school district, and also inform the county treasurer in writing if he determines that the county treasurer should act as fiscal agent for the school district.

**History:** 1953 Comp., § 77-6-43, enacted by Laws 1967, ch. 16, § 97; 1988, ch. 64, § 36.

### **ANNOTATIONS**

**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 local school boards which 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 local school district 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 local school district 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 local school district which 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 local 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 local 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 local school district.

H. The board of finance of the school district may temporarily invest money held in demand deposits and not immediately needed for the operation of the school district. Such temporary investments shall be made only in securities which are issued by the state or by the United States government, or by their departments or agencies, and which 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 local school boards 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.

## ANNOTATIONS

**Cross-references.** - As to state board of finance generally, see 6-1-1 NMSA 1978 et seq.

**Internal Revenue Code.** - Section 103 of the Internal Revenue Code, referred to in the second paragraph of Subsection F, appears as 26 U.S.C. § 103.

### **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. No school district shall 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 state superintendent 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 district's current operations.

B. A school district 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 state superintendent.

C. In addition to the emergency account, school districts 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 state superintendent. The state superintendent shall notify the legislative finance committee in writing of his approval of such proposed expenditures.

**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.

## ANNOTATIONS

**Cross-references.** - As to public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

As to public school capital improvements, see 22-25-1 NMSA 1978 et seq.

As to the legislative finance committee, see 2-5-1 NMSA 1978.

**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 [22-8-1 to 22-8-42 NMSA 1978] 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.

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.

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

**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, 94 N.M. 431, 612 P.2d 223 (1980).

**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, 94 N.M. 431, 612 P.2d 223 (1980).

## ARTICLE 8A CHARTER SCHOOLS

**22-8A-1. Short title.**

Sections 1 through 7 [22-8A-1 to 22-8A-7 NMSA 1978] of this act may be cited as the "Charter Schools Act".

**History:** Laws 1993, ch. 227, § 1.

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

As used in the Charter Schools Act [22-8A-1 to 22-8A-7 NMSA 1978]:

A. "charter school" means an individual school within a school district, authorized by the state board to develop and implement an alternative educational curriculum and authorized by law to develop and utilize a school-based budget; and

B. "state board" means the state board of education.

**History:** Laws 1993, ch. 227, § 2.

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

The purpose of the Charter Schools Act [22-8A-1 to 22-8A-7 NMSA 1978] is to enable individual schools to restructure their educational curriculum to encourage the use of different and innovative teaching methods and to enable individual schools to be responsible for site-based budgeting and expenditures.

**History:** Laws 1993, ch. 227, § 3.

### **22-8A-4. Charter schools authorized.**

A. The state board may authorize any school within local school districts to become a charter school.

B. The state board may authorize the existence of a charter school for a period not to exceed five years. At the end of five years, a charter school may reapply to the state board to continue operation of the charter school.

C. The state board shall not authorize the existence of more than five charter schools in the state.

**History:** Laws 1993, ch. 227, § 4.

### **22-8A-5. Charter schools created.**

A. Individual schools wishing to become charter schools shall apply through their local school board to the state board for authorization to become charter schools. In

transmitting the application to the state board, the local school board may include a recommendation regarding the establishment of that charter school.

B. The state board may authorize the existence of a charter school upon a finding that:

(1) not less than sixty-five percent of the teachers in the school have signed a petition in support of that school becoming a charter school;

(2) parents of children in the proposed charter school have had substantial involvement in the development of the charter school proposal and support the establishment of the charter school;

(3) the school proposing to become a charter school has submitted to the state board a comprehensive plan for implementing alternative education curricula at the school; and

(4) the school proposing to become a charter school shall provide a detailed proposed budget to meet anticipated educational and administrative costs of the charter school.

**History:** Laws 1993, ch. 227, § 5.

### **22-8A-6. Charter schools; compliance with public school code.**

A charter school shall comply with all provisions of the Public School Code [this chapter, except 22-2-17, 22-2-18, 22-4-16, 22-9-7 to 22-9-16 NMSA 1978 and Articles 8A, 13A and 18A NMSA 1978]; provided that the charter school may request and the state board may grant a waiver of certain provisions of the Public School Code for the purpose of operating the charter school. The state board may grant waivers to a charter school for the purpose of providing class size and structure flexibility, alternative curriculum opportunities and alternative budget opportunities.

**History:** Laws 1993, ch. 227, § 6.

### **22-8A-7. State board regulations.**

The state board shall adopt and publish rules to provide for the implementation of the Charter Schools Act [22-8A-1 to 22-8A-7 NMSA 1978].

**History:** Laws 1993, ch. 227, § 7.

## **ARTICLE 9 FEDERAL AID TO EDUCATION**

### **22-9-1. Gifts and grants for education.**



The state board, the state superintendent and the department of education are authorized to accept any gifts or grants from the federal government in aid of education, school construction or school lunch programs in the state.

**History:** 1953 Comp., § 77-7-1, enacted by Laws 1967, ch. 16, § 101.

### **ANNOTATIONS**

**Cross-references.** - As to school lunch programs generally, see 22-13-13 NMSA 1978.

### **22-9-2. Federal aid to education; state educational agency.**

The state board 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 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.

### **ANNOTATIONS**

**Cross-references.** - As to designation of state superintendent and state librarian as state educational authorities for administration of federal grants, see 22-9-8 NMSA 1978.

As to designation of board of educational finance to administer funds furnished under acts of congress to state educational institutions, see 21-1-26 NMSA 1978.

### **22-9-3. State educational agency; powers; duties.**

Whenever the state board 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 state board 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.

### **ANNOTATIONS**

**Cross-references.** - As to designation of agency for submission of state plan for federal grants under Public Law 93-380, see 22-9-6 NMSA 1978.

#### **22-9-4. Limitation on accepting grants and gifts.**

Federal funds, gifts or grants relating to aid for education, school construction or school 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.

#### **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 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 state board shall be budgeted, accounted for and disbursed as provided by law, and by the regulations of the department of finance and administration.

**History:** 1953 Comp., § 77-7-5, enacted by Laws 1967, ch. 16, § 105.

### **ANNOTATIONS**

**Cross-references.** - As to boards of finance for public school funds for school districts, see 22-8-38 to 22-8-40.1.

As to disbursements for rural library services, see 22-9-7 NMSA 1978.

## **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 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.** - As to state equalization guarantee distributions generally, see 22-8-25 NMSA 1978.

**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".

**Federal act.** - Section 842 of Public Law 93-380, referred to in this section, appears as 20 U.S.C. § 246.

## **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.

### **ANNOTATIONS**

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

## **22-9-8. State educational authorities for federal grant administration.**

The superintendent of public instruction 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.** - As to designation and powers of state board 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.

As to designation of board of educational finance to administer funds furnished under acts of congress to state educational institutions, see 21-1-26 NMSA 1978.

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

**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. 5344. See also 1951-52 Op. Att'y Gen. No. 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 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.** - As to powers of state board of education 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.

As to disbursement by state librarian of federal funds for rural library services, see 22-9-7 NMSA 1978.

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

### 22-9-10. Reports to federal agencies.

Whenever required by any act of congress authorizing federal aid to education or any rules or regulations issued pursuant thereto:

A. the superintendent of public instruction 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

B. 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.

**History:** Laws 1939, ch. 162, § 5; 1941 Comp., § 55-522; 1953 Comp., § 73-6-35; Laws 1961, ch. 126, § 11.

### ANNOTATIONS

**Cross-references.** - As to powers of state board of education 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.

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

### 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 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**

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

**Federal act.** - Sections 1 and 2 of the congressional act of August 30, 1935, as amended, referred to in this section, appear as 40 U.S.C. §§ 276a and 276a-1.

### **22-9-12. Official notice of acceptance of federal acts for education and library service.**

The superintendent of public instruction 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**

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

### **22-9-13. [Superintendent of public instruction declared sole agency for administration of federal aid to education.]**

The superintendent of public instruction 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

**Cross-references.** - As to designation of state board of education as sole educational agency for administration of state plans established for funds received pursuant to federal statutes, see 22-9-2 NMSA 1978.

As to enforcement of labor standards relating to school facility construction grants-in-aid, see 22-9-11 NMSA 1978.

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

### **22-9-14. [Promulgation of standards and procedures; sale of obligations; purposes for which payments may be used.]**

Said superintendent 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

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.



## **22-9-15. [Accounting, budgeting and other fiscal methods to be prescribed by superintendent.]**

Said superintendent 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**

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

## **22-9-16. [Reports.]**

Said superintendent 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**

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

## **ARTICLE 10 CERTIFIED SCHOOL PERSONNEL**

### **22-10-1. Short title.**

Chapter 22, Article 10 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.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1975, ch. 306, § 1, repeals 77-8-1, 1953 Comp., as enacted by Laws 1967, ch. 16, § 106, relating to requirements for certificates, and enacts the above 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 is to protect the public against incompetent teachers and to insure proper educational qualifications, personal fitness and a high standard of teaching performance. *New Mexico State Bd. of Educ. v. Stoudt*, 91 N.M. 183, 571 P.2d 1186 (1977).

The purpose of the Certified School Personnel Act is to promote a sound public policy of retaining in the public school system teachers who have become increasingly valuable by reason of their experience. By statute, these public servants are assured an indefinite tenure of position during satisfactory performance of their duties. *Atencio v. Board of Educ.*, 99 N.M. 168, 655 P.2d 1012 (1982).

**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.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Unlicensed teacher's right to recover for services, 30 A.L.R. 893, 42 A.L.R. 1226, 118 A.L.R. 646.

Matters proper for consideration in appointment of teachers, 94 A.L.R. 1484.

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.

## **22-10-2. Definitions.**

As used in the School Personnel Act [this article]:

- 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. "state agency" means any state institution or state agency providing an educational program requiring the employment of certified school instructors;
- C. "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;
- D. "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 non-certified school employee, the act of severing the employment relationship with the employee;
- E. "working day" means every calendar day, excluding Saturday, Sunday or legal holiday; and
- F. "just cause" means a reason that is rationally related to an employee's competence or turpitude or the proper performance of his 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.

### **ANNOTATIONS**

**Cross-references.** - As to sabbatical leave programs generally, see 22-10-23 to 22-10-26 NMSA 1978.

**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.

**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 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."

**22-10-3. Certificate requirement; types of certificates; forfeiture of claim; exception; administrator apprenticeship.**

A. Any person teaching, supervising an instructional program, counseling or providing special instructional services in a public school or state agency, any person administering in a public school and any person providing health care and administering medication or performing medical procedures shall hold a valid certificate authorizing the person to perform that function.

B. All certificates issued by the state board shall be standard certificates except that the state board may issue substandard and substitute certificates under certain circumstances. If a local school board or the governing authority of a state agency certifies to the state board that an emergency exists in the hiring of a qualified person, the state board may issue a substandard certificate to a person not meeting the requirements for a standard certificate. The state board may also issue a substitute certificate to a person not meeting the requirements for a standard certificate to enable the person to perform the functions of a substitute teacher pursuant to the regulations of the state board. All substandard and substitute certificates issued shall be effective for only one school year. No person under the age of eighteen years shall hold a valid certificate, whether a standard, substandard or substitute.

C. Any person teaching, supervising an instructional program, counseling or providing special instructional services in a public school or state agency and any person administering in a public school without a valid certificate after the first three months of the school year shall thereafter forfeit all claim to compensation for services rendered.

D. This section shall not apply to a person performing the functions of a practice teacher as defined in the regulations of the state board.

E. Any school nurse certified by the department of education shall also be licensed by the state board of nursing.

F. Notwithstanding any existing requirements, any person seeking certification as an administrator shall be required to serve a one-year apprenticeship. The state board shall develop criteria and regulations to implement the provisions of this subsection.

**History:** 1953 Comp., § 77-8-1.2, enacted by Laws 1975, ch. 306, § 3; 1986, ch. 33, § 17; 1993, ch. 223, § 2.

## ANNOTATIONS

**The 1993 amendment**, effective July 1, 1995, inserted "and any person providing health care and administering medication or performing medical procedures and made a minor stylistic change in Subsection A; added current Subsection E; and redesignated former Subsection E as Subsection F.

**No discharge where certificate lacking because of state delay.** - Failure by a teacher to timely present a certificate of recertification did not provide a basis for discharge, where the teacher's inability to obtain a valid teaching certificate was due to

the delay of the state department of education in processing the certificate of recertification. Board of Educ. v. Singleton, 103 N.M. 722, 712 P.2d 1384 (Ct. App. 1985).

### **22-10-3.1. Certified school administrators; evaluation; improvement training.**

A. The state board shall adopt criteria and minimum statewide performance standards for the evaluation of all certified school administrators. Evaluation by the staff shall be one component of any evaluation tool developed.

B. Certified school administrators shall attend a training program approved by the department of education to improve their administrative skills and instructional leadership at least every two years.

**History:** 1978 Comp., § 22-10-3.1, enacted by Laws 1986, ch. 33, § 18; 1987, ch. 320, § 4; 1988, ch. 105, § 3.

#### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, substituted "Evaluation by the staff" for "The ability to evaluate staff" in the second sentence of Subsection A.

### **22-10-3.2. Certified school personnel and school nurses; required training program.**

A. All certified school personnel and school nurses shall be required to complete training in the detection and reporting of child abuse and neglect and substance abuse. This requirement shall be completed within the person's first year of employment by a school district in the state.

B. Pursuant to the policy and regulations adopted by the state board, the department of education 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 in the state. The department of education shall coordinate the development of the program with appropriate staff at the human services department and the department of health.

C. The training program developed pursuant to this section shall be made available by the department of education to the deans of every college of education in New Mexico for use in providing such training to students seeking elementary and secondary education certification.

**History:** Laws 1988, ch. 48, § 1; 1993, ch. 226, § 25.

## ANNOTATIONS

**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.

### **22-10-3.3. Background checks.**

A. An applicant for initial certification shall be fingerprinted and shall provide two fingerprint cards or the equivalent electronic fingerprints to the department of education 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 to 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 certificate for good and just cause. Records and any related information shall be privileged and shall not be disclosed to a person not directly involved in the certification or employment decisions affecting the specific applicant. The applicant for initial certification shall pay for the cost of obtaining the federal bureau of investigation record.

B. Local school boards 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. An applicant for employment who has been initially certified within twelve months of applying for employment with a local school board shall not be required to submit to another background check if the department of education has copies of his 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 shall provide two fingerprint cards or the equivalent electronic fingerprints to the local school board to obtain his federal bureau of investigation record. The applicant who has been offered employment, contractor or contractor's employee may be required to pay for the cost of obtaining a background check. At the request of a local school board, the department of education is authorized to release copies of federal bureau of investigation records that are on file with the department of education and that are not more than twelve 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 [28-2-1 to 28-2-6 NMSA 1978]; 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 any 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.

C. The department of education shall implement the provisions of Subsection A of this section on or before July 1, 1998.

**History:** Laws 1997, ch. 238, § 1; 1998, ch. 60, § 1.

#### **ANNOTATIONS**

**The 1998 amendment** rewrote this section to the extent that a detailed comparison is impracticable. Laws 1998, ch. 60 contains no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, is effective May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Effective dates.** - Laws 1997, ch. 238 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

#### **22-10-3.4. Known conviction; reporting requirement; limited immunity from liability; penalty for failure to report.**

A. A school district superintendent shall report to the department of education any known conviction of a felony or misdemeanor involving moral turpitude of a certified school employee that results in any type of action against the school employee.

B. The state board may suspend or revoke a certificate held by a certified school administrator who fails to report a criminal conviction involving moral turpitude of a certified school employee in accordance with Subsection A of this section.

C. An individual who in good faith reports any known conviction of a felony or misdemeanor involving moral turpitude of a school employee shall not be held liable for civil damages as a result of the report; provided that 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, § 2.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1997, ch. 238 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

#### **22-10-4. Certificate fees.**

The state board shall charge a reasonable fee for each application for or the renewal of a certificate. This fee may be waived if the applicant meets a standard of indigency as established by the department of education.

**History:** 1953 Comp., § 77-8-2, enacted by Laws 1967, ch. 16, § 107; 1997, ch. 238, § 3.

## ANNOTATIONS

**The 1997 amendment** rewrote the last sentence, and made a minor stylistic change. Laws 1997, ch. 238 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **22-10-4.1. Educator certification fund; distribution; appropriation.**

A. The "educator certification fund" is created in the state treasury and shall be administered by the state department of public education. The fund shall consist of money collected from application fees for certification or for renewal of certification by the state board of education.

B. Money in the fund is appropriated to the state department of public education for the purpose of funding the educator background check program. 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.

## ANNOTATIONS

**Effective dates.** - Laws 1997, ch. 238 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **22-10-5. Certified school personnel; duties.**

Each certified school instructor in a public school or state agency and each certified school administrator in a public school shall:

A. present a valid certificate to the local school board or to the governing authority of the state agency within three months after the beginning of the school year;

B. enforce all laws and regulations applicable to his public school and school district or to the educational program of the state agency;



C. if instructing, teach the courses of instruction prescribed;

D. 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

E. furnish reports as may be required.

**History:** 1953 Comp., § 77-8-3, enacted by Laws 1967, ch. 16, § 108; 1975, ch. 306, § 4.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 128 to 130, 132 to 136, 138 to 163, 166 to 172, 174, 180, 183, 185, 186, 188, 197, 200, 204, 208 to 212, 214.

Duty of teacher to perform services other than those which pertain to instruction, 38 A.L.R. 1414.

Instruction in physical education or coaching of athletic sports as within duties assumed by, or that may be assigned to, teacher, or among the subjects in respect of which teacher applicants must qualify, 119 A.L.R. 819.

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.

Criminal liability for excessive or improper punishment inflicted on child by parent, teacher or one in loco parentis, 89 A.L.R.2d 396.

Liability of university, college, or other school for failure to protect student from crime, 1 A.L.R.4th 1099.

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

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.

78 C.J.S. Schools and School Districts §§ 351, 352.

**22-10-6. School principals; additional duties.**

The position of school principal is hereby recognized. In addition to other duties prescribed by law, a public school principal shall be responsible for:

A. assuming administrative responsibility and instructional leadership, under the supervision of the local superintendent of schools, with regard to the discipline of students and the planning, operation, supervision and evaluation of the educational program of the school to which he is assigned;

B. submitting recommendations to the local superintendent concerning evaluation, promotion, transfer and dismissal of all personnel assigned to the school to which he is assigned; and

C. performing any other duties assigned him by the local superintendent pursuant to local school board policies.

Nothing in this section shall be construed as a limitation on the powers, duties and obligations of a local school board.

**History:** 1953 Comp., § 77-8-3.1, enacted by Laws 1973, ch. 135, § 1.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Tort liability of public schools and institutions of higher learning for educational malpractice, 1 A.L.R.4th 1139.

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.

#### **22-10-7. Certified school personnel; salary.**

All certified school personnel shall be paid at least once a month during a school year. The salary may be paid at least once a month during a twelve-month period although services are to be performed during a period less than the twelve months.

**History:** 1953 Comp., § 77-8-4, enacted by Laws 1967, ch. 16, § 109.

#### **ANNOTATIONS**

**Semimonthly wages.** - A school district is not required to pay wages semimonthly to its non-certified school personnel; but it may do so if it wishes. 1988 Op. Att'y Gen. No. 88-72.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 144 to 148.

Right of teacher to compensation while school is closed, 6 A.L.R. 742, 17 A.L.R. 1224, 21 A.L.R. 741.

Tenure teacher, compensation of, 154 A.L.R. 148.

Salary: services included in computing period of service for purpose of, 2 A.L.R.2d 1033.

78 C.J.S. Schools and School Districts § 315 et seq.

### **22-10-8. Compensation for educational meetings.**

Local school boards and governing authorities of state agencies may pay certified school personnel according to their employment contracts on evidence of attendance at any professional meeting connected with their profession as educators or associated with the courses of instruction in which they specialize.

**History:** 1953 Comp., § 77-8-5, enacted by Laws 1967, ch. 16, § 110; 1975, ch. 306, § 5.

### **22-10-9. Professional status.**

Teaching, supervising an instructional program, counseling or providing special instructional services in a public school or state agency or administering in a public school is recognized as a profession with all the rights, responsibilities and privileges accorded professions having their first responsibility to the public they serve. The primary responsibilities of this profession shall be to educate the children of this state and to improve the professional practices and ethical conduct of its members.

**History:** 1953 Comp., § 77-8-6, enacted by Laws 1967, ch. 16, § 111; 1975, ch. 306, § 6.

### **22-10-10. Communicable diseases; prohibited employment; penalty.**

A. No person afflicted with a communicable disease in a transmissible state dangerous to the health of students shall be employed in a public or private school in this state.

B. The department of health after consultation with the state board shall adopt and issue regulations designating those communicable diseases in a transmissible stage that are dangerous to the health of students.

C. Each person employed in a public or private school, including bus drivers, shall present to the governing authority of the school where employed, upon initial employment, a certificate from a licensed physician stating that the person is free from all communicable diseases in a transmissible stage dangerous to the health of students.

D. The certificate from a licensed physician shall be according to a form prescribed by the department of health and approved by the state board. The certificate must be obtained from a licensed physician not more than ninety days prior to the date of employment.

E. Any person violating the provisions of this section by not obtaining a certificate from a licensed physician as required is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 77-8-7, enacted by Laws 1967, ch. 16, § 112; 1977, ch. 45, § 1; 1993, ch. 226, § 26.

### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, substituted "department of health" for "health and social services department" in Subsections B and D and substituted "transmissible stage" for "transmissible state" near the end of Subsection C.

### **22-10-11. 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. 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 two 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 [this article].

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.

## ANNOTATIONS

**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, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982).

**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, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982).

**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. 1988 Op. Att'y Gen. No. 88-55.

**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. New Mexico State Bd. of Educ. v. Stoudt, 91 N.M. 183, 571 P.2d 1186 (1977).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools § 141.

Power of school board to make contract extending beyond its own term, 70 A.L.R. 802, 149 A.L.R. 336.

Teachers' association or other organization, right to make membership or nonmembership in, a condition of employment as teacher, 72 A.L.R. 1225.

Power of school authorities to transfer teacher from one school or district to another, 103 A.L.R. 1382.

## **22-10-12. 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.

### **ANNOTATIONS**

**Cross-references.** - As to grounds and procedure for refusal of reemployment of certified school instructors with tenure rights, see 22-10-14 NMSA 1978.

As to applicability of provisions of section, see 22-10-16 NMSA 1978.

**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.

**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*, 111 N.M. 578, 808 P.2d 28 (1991).

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 (Ct. App. 1997).

**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 (Ct. App. 1997).

**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.*, 117 N.M. 492, 873 P.2d 238 (1994).

**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 §§ 161 to 163, 167, 170 to 172, 174, 185.

Temporary inability of teacher without fault of school authorities to perform duty as justifying termination of contract or removal, 72 A.L.R. 283.

Marriage of teacher as grounds for dismissal, 81 A.L.R. 1033, 118 A.L.R. 1092.

Reinstatement of teacher as restoration of original status as regards incidental rights or privileges, 89 A.L.R. 687.

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.

## **22-10-13. 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.

### **ANNOTATIONS**

**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 22-10-12 NMSA 1978, complied with the law. *Giangreco v. Murlless*, 1997-NMCA-061, 123 N.M. 498, 943 P.2d 532 (Ct. App. 1997).

**Necessity for acceptance.** - Where if teacher did not receive notice of termination of employment, and such would constitute an offer of reemployment, but teacher did not deliver an acceptance to school board within statutory period, there was no binding contract of employment. *Hyde v. Taos Mun. School*, 84 N.M. 206, 501 P.2d 194 (1972).



**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*, 111 N.M. 578, 808 P.2d 28 (1991).

## **22-10-14. 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 [this article].

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 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.

## ANNOTATIONS

- I. General Consideration.
- II. Tenure Rights.
  - A. Generally.
  - B. Procedure for Refusal to Reemploy.
  - C. Hearings.

### I. GENERAL CONSIDERATION.

**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.

**The 1991 amendment**, effective June 14, 1991, rewrote this section to the extent that a detailed comparison would be impracticable.

**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 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.

**Constitutionality.** - The procedures in this section, 22-10-14.1, 22-10-17, and 22-10-17.1 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.

**Effect of 1994 amendment.** - The 1994 amendment to this section and 22-10-14.1 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 (Ct. App. 1996).

**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.

## 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, which provides that, except as provided in 22-10-12 NMSA 1978, no person employed by contract pursuant to 22-10-11 NMSA 1978 shall have a legitimate objective expectancy of reemployment, and Subsection F of this section.

**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 (rendered under former law).

**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*, 91 N.M. 770, 581 P.2d 458 (1978).

**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).

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.*, 117 N.M. 492, 873 P.2d 238 (1994).

The legislature purposely excluded school administrators from the protections afforded certified school instructors. *Naranjo v. Board of Educ.*, 119 N.M. 401, 891 P.2d 542 (1995).

**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*, 91 N.M. 770, 581 P.2d 458 (1978).

**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. School Dist. No. 4 v. Lucero*, 86 N.M. 683, 526 P.2d 825 (Ct. App. 1974)(decided prior to 1983 amendment).

**"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.

**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.*, 99 N.M. 168, 655 P.2d 1012 (1982)(decided prior to 1983 amendment adding last sentence of Subsection B).

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.*, 99 N.M. 168, 655 P.2d 1012 (1982)(decided prior to 1983 amendment).

**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. *New Mexico State Bd. of Educ. v. Abeyta*, 107 N.M. 1, 751 P.2d 685 (1988).

**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 (Ct. App. 1997).

## B. PROCEDURE FOR REFUSAL TO REEMPLOY.

**Compiler's notes.** - The cases cited in the notes below were decided under former 22-10-15 NMSA 1978, repealed in 1986.

**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. New Mexico State Bd. of Educ.*, 81 N.M. 319, 466 P.2d 885 (Ct. App. 1970).

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*, 75 N.M. 386, 405 P.2d 229 (1965).

**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. School Dist. No. 4 v. Lucero*, 86 N.M. 683, 526 P.2d 825 (Ct. App. 1974).

Absent grounds personal to the teacher, to terminate her services it was necessary to show affirmatively that there was no position available which tenured teacher was qualified to teach. *Fort Sumner Mun. School Bd. v. Parsons*, 82 N.M. 610, 485 P.2d 366 (Ct. App.), cert. denied, 82 N.M. 601, 485 P.2d 357 (1971).

### C. HEARINGS.

**Compiler's notes.** - The cases cited in the notes below were decided under former 22-10-19 NMSA 1978, repealed in 1986.

**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.*, 81 N.M. 585, 470 P.2d 306 (1970).

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.*, 81 N.M. 671, 472 P.2d 385 (Ct. App.), cert. denied, 81 N.M. 668, 472 P.2d 382 (1970).

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 School Dirs.*, 55 N.M. 195, 230 P.2d 231 (1951).

**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. New Mexico State Bd. of Educ.*, 83 N.M. 106, 488 P.2d 1210 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971).

**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. New Mexico State Bd. of Educ.*, 82 N.M. 731, 487 P.2d 159 (Ct. App. 1971).

### **22-10-14.1. 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 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 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, 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 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.

## ANNOTATIONS

**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" and substituted "may appeal the decision to an arbitrator" for "may request an appeal to an independent arbitrator" in the first sentence, 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", substituted "appeal" and "the appeal" for "request" and "his request" in the third and fourth sentences, and deleted "request for" before "appeal" the first time the word appears in the fourth sentence; 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; inserted "local school" preceding "board's" in the second sentence of Subsection J and in Subsection K; 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.

**The 1991 amendment**, effective June 14, 1991, rewrote this section to the extent that a detailed comparison would be impracticable.

**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.

**Constitutionality.** - The procedures in 22-10-14, this section, 22-10-17, and 22-10-17.1 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.

**Effect of 1994 amendment.** - The 1994 amendment to this section and 22-10-14 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 (Ct. App. 1996).

**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 (decided under former 22-10-20 NMSA 1978). Board of Educ. v. New Mexico State Bd. of Educ., 106 N.M. 129, 740 P.2d 123 (Ct. App. 1987).

**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 (decided under former 22-10-20 NMSA 1978). Board of Educ. v. New Mexico State Bd. of Educ., 106 N.M. 129, 740 P.2d 123 (Ct. App. 1987).

**Appeals to state board under former 22-10-20 NMSA 1978.** - See Board of Educ. v. State Bd. of Educ., 79 N.M. 332, 443 P.2d 502 (Ct. App. 1968); Morgan v. State Bd. of Educ., 80 N.M. 754, 461 P.2d 236 (Ct. App. 1969), cert. denied, 81 N.M. 41, 462 P.2d 626 (1970); Wickersham v. New Mexico State Bd. of Educ., 81 N.M. 188, 464 P.2d 918 (Ct. App. 1970); Shepard v. Board of Educ., 81 N.M. 585, 470 P.2d 306 (1970); Quintana v. State Bd. of Educ., 81 N.M. 671, 472 P.2d 385 (Ct. App.), cert. denied, 81 N.M. 668, 472 P.2d 382 (1970); Fort Sumner Mun. School Bd. v. Parsons, 82 N.M. 610, 485 P.2d 366 (Ct. App.), cert. denied, 82 N.M. 601, 485 P.2d 357 (1971); McAlister v. New Mexico State Bd. of Educ., 82 N.M. 731, 487 P.2d 159 (Ct. App. 1971); Brown v. New Mexico State Bd. of Educ., 83 N.M. 99, 488 P.2d 734 (1971); Morgan v. New Mexico State Bd. of Educ., 83 N.M. 106, 488 P.2d 1210 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971); Board of Educ. v. New Mexico State Bd. of Educ., 88 N.M. 10, 536 P.2d 274 (Ct. App. 1975); Bertrand v. New Mexico State Bd. of Educ., 88 N.M. 611, 544 P.2d 1176 (Ct. App. 1975), cert. denied, 89 N.M. 5, 546 P.2d 70 (1976); New Mexico State Bd. of Educ. v. Stoudt, 91 N.M. 183, 571 P.2d 1186 (1977); Board of Educ. v. Jennings, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982) (specially concurring opinion); Redman v. Board of Regents, 102 N.M. 234, 693 P.2d 1266 (Ct. App. 1984).

## **22-10-15. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1986, ch. 33, § 33 repeals former 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 provisions of former section, see 1984 Replacement Pamphlet. For present comparable provisions, see 22-10-14 and 22-10-14.1 NMSA 1978.

Laws 1986, ch. 33 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 21, 1986.

## **22-10-16. Excepted from provisions.**

Sections 22-10-12 through 22-10-14.1 NMSA 1978 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.

### **ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, substituted "seventy years" for "sixty-five years" in Subsection C.

**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 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".

**Compiler's note.** - Section 22-10-15 NMSA 1978, referred to in the introductory language, was repealed in 1986.

**Former subsection excepting administrators construed.** - See *Penasco Indep. School Dist. No. 4 v. Lucero*, 86 N.M. 683, 526 P.2d 825 (Ct. App. 1974); *Atencio v. Board of Educ.*, 99 N.M. 168, 655 P.2d 1012 (1982).

**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.*, 117 N.M. 492, 873 P.2d 238 (1994).

## **22-10-17. 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.

## ANNOTATIONS

- I. General Consideration.
- II. Discharge Procedure.

### I. GENERAL CONSIDERATION.

**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.

**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 1991 amendment**, effective June 14, 1991, rewrote this section to the extent that a detailed comparison would be impracticable.

**Constitutionality.** - The procedures in 22-10-14, 22-10-14.1, this section, and 22-10-17.1 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.

**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. v. Harrell, 118 N.M. 470, 882 P.2d 511 (1994).

**"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, 103 N.M. 722, 712 P.2d 1384 (Ct. App. 1985).

**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 §§ 147 to 193.

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.

## II. DISCHARGE PROCEDURE.

**Compiler's notes.** - The cases cited in the notes below were decided under this section as it existed prior to the 1986 reenactment.

**Construction of this section and 22-10-21 NMSA 1978.** See *Morgan v. New Mexico State Bd. of Educ.*, 83 N.M. 106, 488 P.2d 1210 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971).

**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.*, 87 N.M. 45, 529 P.2d 271 (1974).

**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.*, 70 N.M. 166, 372 P.2d 121 (1962).

**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.*, 117 N.M. 717, 876 P.2d 232 (1994).

**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.*, 70 N.M. 166, 372 P.2d 121 (1962).

**Insubordination.** See *McAlister v. New Mexico State Bd. of Educ.*, 82 N.M. 731, 487 P.2d 159 (Ct. App. 1971).

**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*, 103 N.M. 722, 712 P.2d 1384 (Ct. App. 1985).

**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*, 103 N.M. 722, 712 P.2d 1384 (Ct. App. 1985).

**22-10-17.1. 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 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, 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.

## ANNOTATIONS

**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.

**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.

**Constitutionality.** - The procedures in 22-10-14, 22-10-14.1, 22-10-17, and this section 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.

**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. v. Harrell, 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. v. Harrell, 118 N.M. 470, 882 P.2d 511 (1994), (but see, 1988 Op. Att'y Gen. No. 88-05).

## **22-10-18. 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.

### **ANNOTATIONS**

**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. v. Harrell, 118 N.M. 470, 882 P.2d 511 (1994).

**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, 102 N.M. 762, 701 P.2d 361 (1985).

## **22-10-19, 22-10-20. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1986, ch. 33, § 33 repeals former 22-10-19 and 22-10-20 NMSA 1978, as amended by Laws 1975, ch. 306, § 14 and Laws 1983, ch. 166, § 1, respectively, giving the state board authority to promulgate regulations for the conduct of hearings before local school boards and governing authorities of state agencies and relating to

appeals to the state board, effective May 21, 1986. For provisions of former sections, see 1984 Replacement Pamphlet. For present comparable provisions, see 22-10-14 and 22-10-14.1 NMSA 1978.

## **22-10-21. Supervision and correction procedures.**

The state board 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.

### **ANNOTATIONS**

**Section is consistent with 22-10-17 NMSA 1978.** - Under this section the notice of discharge provided for in 22-10-17 NMSA 1978 is not to be served until the procedures of the state board regulations have been followed. *Morgan v. New Mexico State Bd. of Educ.*, 83 N.M. 106, 488 P.2d 1210 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971) (decided prior to 1986 changes to this section and 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*, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982)(specially concurring opinion).

**Meaning of "unsatisfactory work performance".** See *Morgan v. New Mexico State Bd. of Educ.*, 83 N.M. 106, 488 P.2d 1210 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971).

**Sexual harassment** constitutes "unsatisfactory work performance," therefore requiring work conferences. *Board of Educ. v. Jennings*, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982).

**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.

**22-10-22. Suspension and revocation of certificates; appeal.  
(Effective September 1, 1998.)**

A. The state board may suspend or revoke a certificate held by a certified school instructor or administrator for incompetency, immorality or any other good and just cause.

B. A certificate may be suspended or revoked only according to the following procedure:

(1) the state board serving written notice of the suspension or revocation on the person holding the certificate in accordance with the law for service of process in civil actions. The notice of the suspension or revocation shall state the grounds for the suspension or revocation of the certificate. The notice of the suspension or revocation shall describe the rights of the person holding the certificate and include instructions for requesting a hearing before the state board. A hearing shall be requested within thirty days of receipt of the notice of suspension or revocation. If a hearing is requested, the hearing shall be held not more than ninety days from the date of the request for the hearing;

(2) the state board or its designated hearing officer conducting a hearing that provides the person holding the certificate, or his attorney, an opportunity to present evidence or arguments on all pertinent issues. A transcript shall be made of the entire hearing conducted by the state board or its designated hearing officer; and

(3) the state board rendering a written decision in accordance with the law and based upon evidence presented and admitted at the hearing. The written decision shall include findings of fact and conclusions of law and shall be based upon the findings of fact and the conclusions of law. A written copy of the decision of the state board shall be served upon the person holding the certificate within sixty days from the date of the hearing. Service of the written copy of the decision shall be in accordance with the law for service of process in civil actions or by certified mail to the person's address of record.

C. The secretary of the state board, with the approval of the state board or its designated hearing officer, may subpoena witnesses, require their attendance and giving of testimony and require the production of books, papers and records in connection with a hearing held pursuant to the provisions of Subsection B of this section. Also, the state board may apply to the district court for the issuance of subpoenas and subpoenas duces tecum in the name of and on behalf of the state board.

D. Any person aggrieved by a decision of the state board, after a hearing pursuant to this section, may appeal the decision to the district court pursuant to the provisions of Section 12-8A-1 [39-3-1.1] NMSA 1978.

**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.

## ANNOTATIONS

**Cross-references.** - For appeal of final decisions by agencies to district court, see 39-3-1.1 NMSA 1978.

As to service of process in civil actions generally, see Rule 1-004 NMRA 1997.

**Bracketed material.** - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

**The 1997 amendment** 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. Laws 1997, ch. 238 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**The 1998 amendment**, effective September 1, 1998, rewrote Subsection D and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools § 141.

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.

### **22-10-23. 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.

## ANNOTATIONS

**Cross-references.** - For definition of "sabbatical leave," see 22-10-2 NMSA 1978.

## **22-10-24. Approved program required for sabbatical leave.**

Sabbatical leave may be granted only upon the presentation and approval by the state department of education 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.

## **22-10-25. 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.



## **22-10-26. 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.

## **22-10-27. 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.

# **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".

**No state income tax on contributions.** - The state taxation and revenue department cannot lawfully levy and collect state income tax on contributions to the educational retirement fund. Vaughn v. State, Taxation & Revenue Dep't, 98 N.M. 362, 648 P.2d 820 (Ct. App. 1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity of statute or ordinance providing for pensions for teachers, 37 A.L.R. 1162.

78 C.J.S. Schools and School Districts § 338 et seq.

## **22-11-2. Definitions.**

As used in the Educational Retirement Act [this article]:

A. "member" means any employee, except for a participant coming within the provisions of the Educational Retirement Act;

B. "regular member" means:

(1) a person regularly employed as a teaching, nursing or administrative employee of 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 as a teaching, nursing or administrative employee of a junior college or community college created pursuant to Chapter 21, Article 13 NMSA 1978;

(3) a person regularly employed as a teaching, nursing or administrative employee of a technical and vocational institute created pursuant to the Technical and Vocational Institute Act [Chapter 21, Article 16 NMSA 1978];

(4) a person regularly employed as a teaching, nursing or administrative employee of the New Mexico boys' school, the New Mexico girls' school, the Los Lunas medical center or a school district or as a certified school instructor of a state institution or agency providing an educational program and holding a standard or substandard certificate issued by the state board;

(5) a person regularly employed by the department of education or the board holding a standard or substandard certificate issued by the state board at the time of commencement of such employment;

(6) a member classified as a regular member in accordance with the regulations of the board;

(7) a person regularly employed by the New Mexico activities association holding a standard certificate issued by the state board at the time of commencement of such employment; or

(8) a person regularly employed by a regional education cooperative holding a standard certificate issued by the state board at the time of commencement of such employment;

C. "provisional member" means a person 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;

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 his 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 he is accredited for the purpose of determining his 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 he 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 within the state or as provided in Subsection D of Section 22-11-36 NMSA 1978 either designated or employed by the board to examine and report on the physical 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 and western New Mexico university;

W. "participant" means:

(1) a person regularly employed as a faculty or professional employee of a qualifying state educational institution who first becomes employed with such an educational institution on or after July 1, 1991 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; and

Y. "alternative retirement plan" means the retirement plan provided for in Sections 22-11-47 through 22-11-52 NMSA 1978.

**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.

## ANNOTATIONS

**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.

**1993 amendments.** - Laws 1993, ch. 69, § 1, effective June 18, 1993, which, in subsection B, inserted "or community college" and substituted "Chapter 21, Article 13 NMSA 1978" for "the Junior College Act" in Paragraph (2), substituted "New Mexico girls' school" for "girls' welfare home" in Paragraph (4), and deleted "or the public school finance division" preceding "holding a standard" in Paragraph (5); substituted "medical condition" for "physical condition" in Subsection R; 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, was approved March 19, 1993. However Laws 1993, ch. 232, § 7, effective July 1, 1993, also amending this section by inserting "or community college" and substituting "Chapter 21, Article 13 NMSA 1978" for "the Junior College Act" in Paragraph (2) of Subsection B; substituting "New Mexico girls' school" for "girls' welfare home" and "Los Lunas medical center" for "Los Lunas mental hospital" in Paragraph (4) of Subsection B; deleting "or the public school finance division" following "or the board" in Paragraph (5) of Subsection B; adding Paragraph (8) of Subsection B; substituting "current" for "present" in Subsection T; substituting "22-11-47 through 22-11-52" for "22-11-46 through 22-11-51" in Subsection X; and making minor stylistic changes throughout the section, was approved April 6, 1993. The section is set out as amended by Laws 1993, ch. 232, § 7. See 12-1-8 NMSA 1978.

**The 1995 amendment**, effective July 1, 1995, added Subsection X and redesignated former Subsection X as Subsection Y.

**Junior College Act.** - See 21-13-1 NMSA 1978 and notes thereto.

**Public school finance division.** - The public school finance division of the department of finance and administration, referred to in Subsection B(3), was abolished by Laws 1983, ch. 301, § 14. Laws 1983, ch. 301, § 69, creates the office of education. See 9-6-3 and 22-8-3 NMSA 1978.

**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 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. 79-5.

**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 superintendent of public instruction;

(2) the state treasurer;

(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 New Mexico education association;

(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.

C. 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.

D. Vacancies occurring in the term 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.

## **ANNOTATIONS**

**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.

**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 (rendered under former law).

### **22-11-4. Board; regular and special meetings.**

A. The board shall hold regular meetings four times each year and may, by its bylaws, 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 chairman or 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.

**History:** 1953 Comp., § 77-9-4, enacted by Laws 1967, ch. 16, § 128.

### **22-11-5. Board; record; quorum; compensation.**

A. The board shall elect from its membership a chairman and a vice chairman.

B. A record shall be taken and preserved of all meetings of the board.

C. A quorum of the board shall be required for the transaction of any business. A majority of the members of the board constitute a quorum. Each member of the board shall have one vote and a proposal shall pass by the affirmative vote of a majority of the members present at the meeting.

D. While performing their duties, each member of the board shall be entitled to receive per diem and mileage as provided by the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], and shall receive no other compensation, perquisite or allowance.

**History:** 1953 Comp., § 77-9-5, enacted by Laws 1967, ch. 16, § 129.

### **22-11-6. Board; powers; duties.**

The board shall:

- A. properly and uniformly enforce the Educational Retirement Act [this article];
- B. hire employees and delegate administrative authority to these employees;
- C. make an actuarial report on the financial operation of the Educational Retirement Act to the legislature at each regular session every odd-numbered year;
- D. accept donations, gifts or bequests; and
- E. adopt regulations pursuant to the Educational Retirement Act.

**History:** 1953 Comp., § 77-9-6, enacted by Laws 1967, ch. 16, § 130.

### **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 [this article] and shall have those additional duties provided in the regulations 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 his duties during his 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 division 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.

### **22-11-8. Medical authority; fees.**

A. The board shall employ the services of a medical authority. The medical authority shall examine, make reports and certify the physical condition of applicants for and recipients of disability benefits pursuant to the Educational Retirement Act [this article].

B. The board shall pay the medical authority a reasonable fee for his professional services.

**History:** 1953 Comp., § 77-9-8, enacted by Laws 1967, ch. 16, § 132.

### **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 [this article]. 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 his professional services.

**History:** 1953 Comp., § 77-9-9, enacted by Laws 1967, ch. 16, § 133.

### **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.**

A. The educational retirement fund is created.

B. The state treasurer shall be the custodian of the fund and the board shall be the trustee of the fund.

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 fund.

**History:** 1953 Comp., § 77-9-11, enacted by Laws 1967, ch. 16, § 135.

## **ANNOTATIONS**

**Fund transfer.** - Laws 1987, ch. 136, § 1C transfers to the general fund \$5,000,000 on July 1, 1987, from the appropriations made in Laws 1981, Chapter 128 to the educational retirement fund for the purpose of providing a cost-of-living increase and \$3,073,886.27 on July 1 of each fiscal year subsequent to the seventy-sixth fiscal year through July 1 of the eightieth fiscal year.

Laws 1987, ch. 136, § 3 provides for the severability of the act if any part or application thereof is held invalid.

Laws 1987, ch. 136, § 4 makes the act effective immediately. Approved April 7, 1987.

## **22-11-12. Fund; disbursements.**

The state treasurer shall make disbursements from the 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 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.

### **ANNOTATIONS**

**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. Investment of the fund; indemnification of board.**

A. The board is authorized to invest or reinvest the fund and may invest the fund only in the following:

(1) obligations, including but not limited to bills, bonds or notes of the United States, United States government-sponsored enterprises or federal agency securities;

(2) obligations, including but not limited to bills, bonds and notes of governments other than the United States or their political subdivisions, agencies or instrumentalities, and these may be denominated in foreign currencies;

(3) obligations, including but not limited to bonds or notes of a municipality or political subdivision of the state that were issued pursuant to law; provided the issuer has not, within ten years prior to making the investment, been in default for more than three months in the payment of any part of the principal or interest on any debt evidenced by its bonds, notes or obligations; and provided the bonds are city or county utility, or utility-district revenue bonds with the revenue of such utility, other than for payment of operation and maintenance expenses, pledged wholly to payment of the interest on and the principal of such indebtedness, and the utility project has been completely self-supporting for a period of five years preceding the date of the investment;

(4) contracts for the present purchase and resale at a specified time in the future, not to exceed one year, of specific securities at specified prices at a price differential representing the interest income to be earned by the board. No such contract shall be entered into unless the contract is fully secured by obligations of the United States, or other securities backed by the United States, having a market value of at least one hundred two percent of the amount of the contract. The collateral required in this section shall be delivered to the state fiscal agent or his designee contemporaneously with the transfer of funds or delivery of the securities, at the earliest time industry practice

permits, but in all cases settlement shall be on a same-day basis. No such contract shall be entered into unless the contracting bank, brokerage firm or recognized institutional investor has a net worth in excess of five hundred million dollars (\$500,000,000);

(5) obligations, including but not limited to bonds, notes or commercial paper of any corporation organized within the United States; preferred stock or common stock of any corporation organized within the United States whose securities are listed on at least one national stock exchange or on the N.A.S.D. national market or American depository receipts of any corporation organized outside the United States whose securities are listed on at least one national stock exchange or on the N.A.S.D. national market; provided that the corporation shall have a minimum net worth of twenty-five million dollars (\$25,000,000); and provided that the fund shall not at any one time own more than ten percent of the voting stock of a company;

(6) prime bankers' acceptances issued by money center banks;

(7) obligations, including but not limited to bonds, notes or commercial paper of any corporation organized outside of the United States, and these may be denominated in foreign currencies; preferred stock or common stock of any corporation organized outside of the United States whose securities are listed on at least one national or foreign stock exchange, and these may be denominated in foreign currencies; provided that the corporation shall have a minimum net worth of twenty-five million dollars (\$25,000,000); and provided that the fund shall not at any one time own more than ten percent of the voting stock of a company;

(8) currency transactions, including spot or cash basis currency transactions, forward currency contracts and buying or selling options or futures on foreign currencies, but only for the purposes of hedging foreign currency risk and not for speculation;

(9) stocks or shares of a diversified investment company registered under the Investment Company Act of 1940, as amended, which invests primarily in United States or non-United States fixed income securities, equity securities or short-term debt instruments pursuant to Paragraphs (1), (2), (4), (5) and (7) of this subsection, provided that the investment company has total assets under management of at least one hundred million dollars (\$100,000,000); individual, common or collective trust funds of banks or trust companies, which invest primarily in United States or non-United States fixed income securities, equity securities or short-term debt instruments pursuant to Paragraphs (1), (2), (4), (5) and (7) of this subsection, provided that the investment manager has assets under management of at least one hundred million dollars (\$100,000,000); the board may allow reasonable administrative and investment expenses to be paid directly from the income or assets of these investments; or

(10) industrial revenue bonds issued pursuant to the Industrial Revenue Bond Act [3-32-1 through 3-32-16 NMSA 1978], where both the principal and interest of the bonds are fully and unconditionally guaranteed by a lease agreement executed by a corporation organized and operating within the United States and which has net assets of at least

twenty-five million dollars (\$25,000,000) and has issued securities traded on one or more national stock exchanges and where the senior securities of the guaranteeing corporation would have the equivalent of a BAA rating.

B. 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. No such contract shall 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 state fiscal agent 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.

C. Commissions paid for the purchase or sale of any securities pursuant to the provisions of the Educational Retirement Act [this article] shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice.

D. Investment of the fund shall be made with the exercise of that degree of judgment and care, under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived.

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 employ investment advisory services and pay reasonable compensation from the fund for the services. The board may also employ investment management services and pay reasonable compensation from the fund for the services to make investment decisions on behalf of the board, within the investment objectives, policies and operating guidelines as directed by the board to the investment manager.

G. Members of the board, 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 attorneys' 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.

### **ANNOTATIONS**

**Cross-references.** - As to applicability of insurance or banking laws to administration of article, see 22-11-43 NMSA 1978.

**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.

**The 1993 amendment,** effective June 18, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

### **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 [this article].

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.** - As to compensation of members of board, see 22-11-5 NMSA 1978.

As to 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 equal to seventy-five percent of the average rate earned by the fund during the five fiscal years preceding the fiscal year of refund, 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 [this article];  
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 1, 1971 and on deposit in the fund for a period of at least one fiscal year; provided that no such interest shall be allowed on refunds of contributions that were paid into the fund prior to July 1, 1971.

**History:** 1953 Comp., § 77-9-15, enacted by Laws 1967, ch. 16, § 139; 1971, ch. 12, § 1; 1984, ch. 19, § 1; 1993, ch. 69, § 4.

### **ANNOTATIONS**

**Cross-references.** - As to payment of benefits upon death during reemployment, see 22-11-26 NMSA 1978.

As to retirement benefit options, see 22-11-29 NMSA 1978.

As to disability benefits, see 22-11-35 to 22-11-40 NMSA 1978.

**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.

**No state income tax on contributions.** - The state taxation and revenue department cannot lawfully levy and collect state income tax on contributions to the educational retirement fund. Vaughn v. State, Taxation & Revenue Dep't, 98 N.M. 362, 648 P.2d 820 (Ct. App. 1982).

## **22-11-16. Regular membership.**

Except as otherwise provided in the Educational Retirement Act [this article], 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.** - As to 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 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. 79-5.

**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.

## **22-11-17. Provisional membership.**

A. A provisional member shall be covered by the provisions of the Educational Retirement Act [this article] but shall have the option to exempt himself from its coverage. A provisional member exempting himself from the provisions of the Educational Retirement Act shall not be entitled to the benefits or coverage under any other state retirement program except as otherwise provided in this section. This section shall not affect any rights a provisional member may have under the provisions of the federal Social Security Act. This option to exempt must be exercised within one year of employment according to the regulations adopted by the board. Any provisional

member exempting himself pursuant to this section shall be entitled to a refund of any contributions made pursuant to the Educational Retirement Act prior to the exercise of the exemption.

B. A provisional member not exempt from the coverage of the Educational Retirement Act shall have the right to earned service-credit for periods of employment subsequent to July 1, 1957 and prior to July 1, 1961, provided that all contributions at the rates in effect during that period of employment are paid. If a provisional member chooses to make the contributions for that period, the local administrative unit employing a member during that period shall pay the employer's contribution at the rate in effect during that period of employment. Contributions prior to July 1, 1961 by both the provisional member and the local administrative unit shall bear interest at the rate of three percent a year from July 1, 1961 until paid.

C. A provisional member exempt from the coverage of the provisions of the Educational Retirement Act shall have the right to revoke the exemption at any time; however, within the first two weeks following the beginning of each school year, such provisional member shall be informed in writing of his right to revoke the exemption and shall sign a statement to the effect that he does or does not wish to revoke the exemption. A copy of such statement shall be kept in the personnel file of the provisional member.

D. A provisional member employed by the board, the department of education, the New Mexico school for the deaf, the northern New Mexico state school, the New Mexico school for the visually handicapped, the New Mexico girls' school, the New Mexico boys' school or the Los Lunas mental hospital shall have the option of qualifying for coverage under either the Educational Retirement Act or the public employees retirement association of New Mexico. This option shall be exercised by filing a written election with both the educational retirement director and the director of the public employees retirement association of New Mexico. 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 subsection. 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.

## ANNOTATIONS

**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).



**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.

**Social Security Act.** - The Social Security Act, referred to in Subsection A, is compiled as 42 U.S.C. § 301 et seq.

**Suspension of benefits upon resumption of employment.** - An employee of the department of finance and administration, retired pursuant to the provisions of the Public Employee's 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 § 10-11-22).

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 § 10-11-8).

**Public Employee 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 § 10-11-22).

**"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. Provisional members employed after July 1, 1971.**

A provisional member that is employed after July 1, 1971, must be covered under the Educational Retirement Act [this article] and does not have the option granted under Section 22-11-17 NMSA 1978 to exempt himself from coverage except that if he is a provisional member employed by an administrative unit enumerated in Section 22-11-17D NMSA 1978, he shall have the option provided by that subsection.

**History:** 1953 Comp., § 77-9-17.1, enacted by Laws 1971, ch. 73, § 1.

## **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 [this article]. 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 [this article], effective July 1, 1979, except for those employees who have vested in the plan by that date.

**History:** Laws 1979, ch. 316, § 1.

### **ANNOTATIONS**

**Comprehensive Employment and Training Act.** - 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 [this article], 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 repeals 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 1989 Replacement Pamphlet.

## **22-11-21. Contributions; members; local administrative units.**

A. Each member shall make contributions to the fund in the amount of seven and six-tenths percent of his annual salary.

B. Until June 30, 1993, each local administrative unit shall make a yearly contribution to the fund of a sum equal to seven and six-tenths percent of the annual salary of each member employed by the local administrative unit.

C. Beginning July 1, 1993 and thereafter, each local administrative unit shall make a yearly contribution to the fund of a sum equal to eight and sixty-five hundredths percent of the annual salary of each member employed by the local administrative unit.

**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.

### **ANNOTATIONS**

**The 1991 amendment,** effective June 14, 1991, added "Until July 1, 1992" at the beginning of Subsection B and added Subsection C.

**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.

**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 [this article] 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**

**Internal Revenue Code.** - For the Internal Revenue Code, referred to in the second sentence, see 26 U.S.C. § 1 et seq. Section 414(h) of the code, referred to in the first sentence, appears as 26 U.S.C. § 414(h).

### **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 [this article] 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.

**History:** 1978 Comp., § 22-11-21.2, enacted by Laws 1995, ch. 148, § 2.

#### **ANNOTATIONS**

**Internal Revenue Code.** - Section 401 of the Internal Revenue Code of 1986 is codified as 26 U.S.C. § 401.

### **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, pick up, for the purposes specified in that section, member contributions permitted by 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; 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 [this Article] 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.

B. Commencing July 1, 1998, the educational retirement board may accept rollover contributions from other retirement funds solely for and subject to the restrictions set forth in Subsection B of Section 22-11-34 NMSA 1978 and applicable restrictions set forth in the Internal Revenue Code for pension plan qualification.

**History:** Laws 1998, ch. 38, § 1.

### **ANNOTATIONS**

**Effective dates.** - Laws 1998, ch. 38 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **22-11-22. Payment; records.**

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.

**History:** 1953 Comp., § 77-9-21, enacted by Laws 1967, ch. 16, § 145; 1984, ch. 19, § 3; 1993, ch. 69, § 6.

## ANNOTATIONS

**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.**

A. On and after July 1, 1984:

(1) a member shall be eligible for retirement benefits pursuant to the Educational Retirement Act [this article] when either of the following conditions occurs:

(a) the sum of the member's age and years of earned service-credit equals seventy-five; or

(b) upon completion of five years of earned service-credit and upon becoming sixty-five years of age;

(2) a member under sixty years of age eligible to retire under Paragraph (1) of this subsection may retire and receive retirement benefits pursuant to the Educational Retirement Act that he would be eligible to receive if he were to retire at the age of sixty years reduced by six-tenths of one percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member's sixtieth birthdate but after the fifty-fifth birthdate, and one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to age fifty-five; or

(3) a member under sixty years of age acquiring twenty-five or more years of earned and allowed service-credit may retire and receive retirement benefits pursuant to the Educational Retirement Act computed on the same basis as if the member were sixty years of age.

B. A member shall be subject to the provisions of Paragraphs (2) and (3) of Subsection A of this section as they existed at the beginning of his 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.

## ANNOTATIONS

**Cross-references.** - As to deferred retirement, see 22-11-27 NMSA 1978.

As to earned service-credit generally, see 22-11-33 NMSA 1978.

As to allowed service-credit generally, see 22-11-34 NMSA 1978.

As to entitlement to service-credit of certain persons covered under public employees retirement association, see 22-11-45 NMSA 1978.

As to reciprocal service credit under Public Employees Retirement Reciprocity Act, see 10-13A-4 NMSA 1978.

**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.

## **22-11-24. 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 [this article].

B. A member desiring to retire before having completed five years of contributory employment shall be limited to the maximum benefit he would have been entitled to receive under any statute repealed by the Educational Retirement Act. A member may acquire five years or less of contributory employment by contributing to the fund, for each year of contributory employment desired, a sum equal to the prevailing combined contributions of the member and the local administrative unit in effect at the time the contributory employment is acquired. This contribution shall be computed on the

member's average annual salary for the last five years of employment plus an additional sum as interest from the effective date of the Educational Retirement Act as fixed by the board, but not to exceed three percent a year.

C. Years of contributory employment purchased pursuant to this section shall not be considered as an addition to service actually performed in computing the sum of the member's retirement benefit.

D. The retirement benefits of members retired pursuant to the Educational Retirement Act prior to July 1, 1959 and who have acquired contributory employment years by purchase, shall be computed upon the basis of the amount paid therefor.

**History:** 1953 Comp., § 77-9-23, enacted by Laws 1967, ch. 16, § 147.

## **22-11-25. Retirement; reemployment.**

A. A member retired pursuant to the provisions of the Educational Retirement Act [this article] may remove himself 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 his reemployment. Except as provided in Subsection B of this section, the member shall not receive greater retirement benefits than he was receiving prior to his reemployment unless he has not less than five years of employment subsequent to July 1, 1957 with all contributions required by the Educational Retirement Act having been paid on the earnings derived through his employment.

B. A member retired pursuant to the provisions of the Educational Retirement Act returning to employment for not less than one year after July 1, 1957 and prior to July 1, 1963 shall be eligible for retirement benefits pursuant to this section if the following conditions occur:

(1) the member's contributions on the salary earned during that period of reemployment must be paid at the rate which was in effect at that time. If this contribution is made, the local administrative unit employing the member during that period shall pay the local administrative units [unit's] contribution at the rate in effect at that time; and

(2) the member shall have fulfilled the five-year contributory employment requirement specified in Section 22-11-24 NMSA 1978.

C. 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. A member qualified to retire pursuant to this section after having reentered employment after retiring prior to July 1, 1957 shall be eligible to retire under the options specified in Section 22-11-29 NMSA 1978.



**History:** 1953 Comp., § 77-9-24, enacted by Laws 1967, ch. 16, § 148.

## ANNOTATIONS

**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 § 10-11-8).

**The suspension provisions of the disbursing system** apply to the benefits granted pursuant to the 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.

### **22-11-26. Death during reemployment.**

If a member dies during a period of reemployment following retirement pursuant to the Educational Retirement Act [this article], 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 Section 22-11-29 NMSA 1978 at the time of first retirement, the member's beneficiary or estate shall receive 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; or

B. if a retirement benefit has been paid to the member pursuant to either Option B or Option C 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.

## ANNOTATIONS

**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 eligible for retirement may continue in employment and shall continue to pay contributions as provided by the Educational Retirement Act [this article].

B. A member may terminate his employment and retire at any time 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.

C. A member having five years or more of earned service-credit may terminate his employment and retire at any time after reaching the age of sixty-five years if the contributions he has made are left in the fund.

D. No member shall be on a retirement status while engaged in employment.

**History:** 1953 Comp., § 77-9-26, enacted by Laws 1967, ch. 16, § 150; 1971, ch. 12, § 3; 1974, ch. 5, § 3.

### **ANNOTATIONS**

**Cross-references.** - As to retirement eligibility generally, see 22-11-23 NMSA 1978.

## **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 [this article] 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 [this article], a member may elect, and such election shall be irrevocable, to receive the actuarial equivalent of his retirement benefit, as provided in Section 22-11-30 NMSA 1978, to be effective on his retirement in any one of the following optional forms:

(1) 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

(2) OPTION C. A reduced annuity payable during the member's life with the 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 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. 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 G of this section, be commenced effective on the first day of such month in accordance with the terms of Option B. 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 earned by the fund during the preceding fiscal year 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.

E. In the case of death of a retired member who did not elect either Option B or C and before the benefits paid to him have equaled the amount of his accumulated contributions to the fund, 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.

F. 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.

G. 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 C 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 earned by the fund during the preceding fiscal year 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. Any elections of either Option B or C of Subsection A of this section on file with the director by members who have not retired prior to June 30, 1984 are void.

**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.

## ANNOTATIONS

**Cross-references.** - As to payment of benefits upon death during reemployment, see 22-11-26 NMSA 1978.

As to disability benefits, see 22-11-35 to 22-11-40 NMSA 1978.

### **22-11-30. Retirement benefits.**

A. Retirement benefits for a member retired pursuant to the Educational Retirement Act [this article] 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 his date of last retirement was on or before June 30, 1967 or pursuant to Subsection B of this section if his 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 his 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 after June 30, 1987.

G. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act 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 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 beginning on or after July 1, 1991.

H. 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. Members shall begin receiving retirement benefits by age seventy 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.

## ANNOTATIONS

**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.

**The 1993 amendment,** effective June 18, 1993, added the second sentence of Subsection H.

**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.

### **22-11-31. Cost of living adjustment; 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 [this article] or the Retirement Reciprocity Act 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) "next preceding calendar year" means the full calendar year immediately prior to the preceding calendar year; and

(6) "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, each annuity shall be adjusted annually and cumulatively commencing on July 1 of the year in which a member attains the age of sixty-five or on July 1 following the year a member retires, whichever is later. The annuity shall be adjusted by applying an adjustment factor that results in either an adjustment equal to one-half of the percentage increase or decrease of the consumer price index between the next preceding calendar year and the preceding calendar year, except that the adjustment shall not exceed four percent, in absolute value, nor be less than two percent, in absolute value. In the event that the percentage increase or decrease of the consumer price index is less than two percent, in absolute value, the adjustment factor shall be the same as the percentage increase or decrease of the consumer price index. No negative adjustment in the retirement benefit shall reduce the member's benefit below that which he received upon the date of his retirement.

C. 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 his 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 he attains the age of sixty-five, when he shall have his annuity readjusted annually and cumulatively under the provisions of this section. A member who retires after attaining the age of sixty-five shall have his annuity adjusted annually and cumulatively commencing on July 1 of the year following his retirement.

D. A retired member who returns to work shall be subject to the provisions of this section as they exist at the time of his final retirement.

E. Benefits of a member who is on a disability status in accordance with Section 22-11-35 NMSA 1978 or a member whom the board certifies was 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.

F. The board shall adjust the benefits of each person receiving an annuity as of June 30, 1991. The adjustment shall be made on July 1, 1991 on the basis of an increase of two dollars (\$2.00) per month for each year since the member's last retirement plus an

increase of one dollar (\$1.00) per month for each year of credited service at the time of retirement.

**History:** 1953 Comp., § 77-9-30, enacted by Laws 1967, ch. 16, § 154; 1971, ch. 12, § 5; 1974, ch. 5, § 5; reenacted by 1979, ch. 333, § 2; 1981, ch. 293, § 3; 1984, ch. 19, § 6; 1987, ch. 86, § 3; 1991, ch. 140, § 3.

## ANNOTATIONS

**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.

**Retirement Reciprocity Act.** - The Retirement Reciprocity Act, referred to in Paragraph (2) of Subsection A, was repealed in 1993. Prior to its repeal it was compiled as 10-13-1 to 10-13-5 NMSA 1978. For present comparable provisions, see Chapter 10, Article 13A NMSA 1978.

### **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 [this article].

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.** - As to 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 he 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 earned by the fund during the five-year period immediately preceding the application for the earned service-credit. 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.

**History:** 1953 Comp., § 77-9-33, enacted by Laws 1967, ch. 16, § 156.

## **ANNOTATIONS**

**Cross-references.** - As to entitlement to service-credit of certain persons covered under public employees' retirement association, see 22-11-45 NMSA 1978.

As to reciprocal service credits under Public Employees Retirement Reciprocity Act, see 10-13A-4 NMSA 1978.

## **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 he was:

(1) employed prior to the effective date of the Educational Retirement Act [this article] 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 his employment in New Mexico if he returned to his 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 he was honorably discharged if he contributes to the fund a sum equal to ten and one-half percent of his average annual salary for that period of time for which he has acquired earned service credit pursuant to the Educational Retirement Act and subject to the federal Uniformed Services Employment and Reemployment Rights Act of 1994 for each year of service credit he desires to purchase. Average annual salary shall be determined in accordance with rules promulgated by the board but shall always be based on actual salaries earned by the member where the actual salaries can be ascertained by the board. The employer's contributions for service credit shall not be paid by the employer. The purchase of service credit provided in this section shall be carried out by the member within three years after the date of the member's employment following service; 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 the effective date of the Educational Retirement Act; or

(d) in a private school or institution of higher learning in New Mexico whose education program is accredited or approved by the state board at the time of employment.

B. 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. 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. Payment pursuant to Paragraph (4) of Subsection A of this section may be made in installments, at the discretion of the board, over a period not to exceed one year and, if the sum paid does not equal the amount required for any full year of allowed service credit, the member shall acquire allowed service credit for that period of time that is proportionate to the payment made. Half credit may be allowed without contribution for not more than ten years of the educational service described by Subparagraph (a) of Paragraph (4) of Subsection A of this section if that service was prior to June 13, 1953 and if the member was employed in New Mexico prior to June 13, 1953 in a position covered by the Educational Retirement Act or a law repealed thereby.

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. The provisions of this section are made applicable to the services described prior to as well as after the effective date of the Educational Retirement Act.

**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.

## ANNOTATIONS

**Cross-references.** - As to entitlement to service-credit of certain persons covered under public employees retirement association, see 22-11-45 NMSA 1978.

As to reciprocal service credits under Public Employees Retirement Reciprocity Act, see 10-13A-4 NMSA 1978.

**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.

**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 1997 amendment**, 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. Laws 1997, ch. 103 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**The 1998 amendment** 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. Laws 1998, ch. 38 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Effective date of Educational Retirement Act.** - 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, makes the Public School Code effective on July 1, 1967.

**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 he has acquired ten years or more of earned service-credit and the board certifies the member to be totally disabled to continue his employment and unable to obtain and retain other gainful employment commensurate with his 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 himself to a medical examination by the medical authority.

**History:** 1953 Comp., § 77-9-35, enacted by Laws 1967, ch. 16, § 158.

### **ANNOTATIONS**

**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. New Mexico Educ. Retirement Bd.*, 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; reexaminations.**

A. To continue to receive disability benefits, a member shall, on the anniversary date in each year of his being placed on a disability status, present himself to the medical authority for a medical reexamination. The medical authority shall certify to the director after each medical examination whether there is or is not a substantial betterment of the member's disability. 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 his 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 to a member of disability benefits shall be suspended if a certificate of medical reexamination by the medical authority is not filed with the director within thirty

days after the date upon which the member should have been reexamined where the failure to file the certificate was due to the unexcused failure or the refusal of the member to report for the medical reexamination. Payment of disability benefits shall be resumed only after the member has complied with the requirements of the Educational Retirement Act [this article]. A member shall have no right or claim for benefits withheld during a period of suspension.

C. The board may, in its discretion, require further or more frequent medical examinations of members having a disability status.

D. A member receiving disability benefits unable to report for a medical reexamination because of his physical condition or because he resides outside the state shall notify the director of this fact not later than fifteen days in advance of the date for the medical reexamination. The board shall designate a medical doctor or doctors in the vicinity of the residence of the member to make the medical reexamination and to report the findings to the board.

**History:** 1953 Comp., § 77-9-36, enacted by Laws 1967, ch. 16, § 159.

## **ANNOTATIONS**

**Cross-references.** - As to reports of improved health by members receiving disability benefits, see 22-11-39 NMSA 1978.

As to suspension of payments for failure to make reports, see 22-11-40 NMSA 1978.

### **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 [this article] 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 his disability within thirty days after he 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.

### **ANNOTATIONS**

**Cross-references.** - As to requirement of reports and examinations of members receiving disability benefits generally, see 22-11-36 NMSA 1978.

### **22-11-40. Reports; restoration to fund.**

A. The payment of disability benefits shall be suspended by the director upon notification by the board that the member has failed or refused to make any report required by the board to be made by him. Payment of disability benefits shall be resumed only after the required report is made. The member shall have no right or claim for benefits withheld during a period of suspension.

B. 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, he

shall forfeit his membership and receive no further benefits pursuant to the Educational Retirement Act [this article]. The director shall determine whether the former member's contributions to the fund exceed the total amount of disability or retirement benefits he 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 his 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.

### **ANNOTATIONS**

**Cross-references.** - As to suspension of benefits upon failure to file certificate of reexamination, see 22-11-36 NMSA 1978.

### **22-11-41. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 69, § 11 repeals 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 1989 Replacement Pamphlet.

### **22-11-42. Nonassignability; division of funds as community property; child support obligations.**

A. Except as specifically provided in the Educational Retirement Act [this article] 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.



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.

**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.

## ANNOTATIONS

**Cross-references.** - As to exemption from legal process for Public Employees Retirement Act benefits, see 10-11-135 NMSA 1978.

As to exemption from legal process for Judicial Retirement Act benefits, see 10-12B-7 NMSA 1978.

As to exemption from legal process for Magistrate Retirement Act benefits, see 10-12C-7 NMSA 1978.

As to exemption from legal process for interest from state police pension fund, see 29-4-10 NMSA 1978.

As to exemption from legal process for married persons or heads of households, see 42-10-1 NMSA 1978.

As to rules governing garnishment and writs of execution in the district, magistrate, and metropolitan courts, see Rules 1-065.1, 2-801, and 3-801, respectively.

As to form for claim of exemptions on executions, see Rule 4-803.

As to form for order on claim of exemption and order to pay in execution proceedings, see Rule 4-804.

As to form for application for writ of garnishment and affidavit, see Rule 4-805.

As to form for notice of right to claim exemptions from execution, see Rule 4-808A.

As to form for claim of exemption from garnishment, see Rule 4-809.

**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.

**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 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".

**Applicability.** - Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

**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, 98 N.M. 362, 648 P.2d 820 (Ct. App. 1982).

**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 (1995).

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 (1995).

**"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, irrevocable 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.

### **22-11-43. 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 [this article].

**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 [this article] 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 of New Mexico.

D. No person who was heretofore covered under the provisions of any statute repealed by the Educational Retirement Act shall be retired at a monthly benefit which is less than he would have received had his employment continued to be performed under such repealed provisions.

**History:** 1953 Comp., § 77-9-44, enacted by Laws 1967, ch. 16, § 167.

#### **22-11-44.1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 69, § 11 repeals 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 1989 Replacement Pamphlet.

## **22-11-45. Elections of the public employees retirement association; payment of contributions.**

Any person covered under the public employees retirement association of New Mexico on or subsequent to July 1, 1961 employed by a local administrative unit any time between July 1, 1957 and July 1, 1961 shall not be entitled to service-credit for this time either under the Educational Retirement Act [this article] or under the public employees retirement association of New Mexico unless he elects in writing with the public employees retirement association of New Mexico to be credited with the service-credit. If a person so elects, he shall pay the employee's contribution to the public employees retirement association of New Mexico in an amount which would have been deducted if he had been a member of the public employees retirement association of New Mexico during this period in which he was employed, together with interest at the rate of four percent a year. The local administrative unit shall then make the employers' contribution for the period involved to the public employees retirement association of New Mexico in a sum equal to the amount which would have been contributed by an employer if the person had been a member of the public employees retirement association of New Mexico during this period in which he was employed, together with interest at the rate of four percent a year. The election provided for by this section shall be made within one year from the person's subsequent date of employment in a position in which he is covered by the public employees retirement association of New Mexico. If the election is not made within this period, no further right to elect shall exist.

**History:** 1953 Comp., § 77-9-45, enacted by Laws 1967, ch. 16, § 168.

### **ANNOTATIONS**

**Cross-references.** - As to Public Employees Retirement Act, see 10-11-1 NMSA 1978 et seq.

As to reciprocal service credits under Public Employees Retirement Reciprocity Act, see 10-13A-4 NMSA 1978.

## **22-11-46. Reserved.**

## **22-11-47. Alternative retirement plan; election of coverage.**

A. Beginning October 1, 1991 any employee who is eligible to become a participant may make within ninety days of that date an irrevocable election to participate in the alternative retirement plan. 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 irrevocable election to participate in the alternative retirement plan. Any employee who makes the irrevocable election shall become a participant the first day of the first pay period following the election. Any employee who fails to make the irrevocable election within ninety days of October 1, 1991 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.

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.

**History:** 1978 Comp., § 22-11-47, enacted by Laws 1991, ch. 118, § 5.

### **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, 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.

### **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**

**Internal Revenue Code.** - Sections 401(a) and 403(a) of the Internal Revenue Code, referred to in this section, appear as 26 U.S.C. §§ 401(a) and 403(a), respectively.

### **22-11-51. Benefits.**

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 be paid in the form of a lifetime income and, except for death benefits, single sum cash payments shall not be permitted.

**History:** 1978 Comp., § 22-11-51, enacted by Laws 1991, ch. 118, § 9.

### **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 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 three 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;
- (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.

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.

### **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.

## **ANNOTATIONS**

**Effective dates.** - Laws 1998, ch. 38 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

## **ARTICLE 12**

# **COMPULSORY SCHOOL ATTENDANCE**

### **22-12-1. Short title.**

Sections 22-12-1 through 22-12-7 NMSA 1978 may be cited as the "Compulsory School Attendance Law".

**History:** 1953 Comp., § 77-10-1, enacted by Laws 1967, ch. 16, § 169.

### **ANNOTATIONS**

**Cross-references.** - For constitutional provision pertaining to compulsory school attendance, see N.M. Const., art. XII, § 5.

As to compulsory education of visually handicapped, see 21-5-5 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).

### **22-12-2. Compulsory school attendance; responsibility.**

A. Any qualified student and any person who because of his age is eligible to become a qualified student as defined by the Public School Finance Act [22-8-1 to 22-8-42 NMSA 1978] until attaining the age of majority shall attend a public school, a private school, a home school or a state institution. A person shall be excused from this requirement if:

- (1) the person is specifically exempted by law from the provisions of this section;
- (2) the person has graduated from a high school;
- (3) the person is at least sixteen years of age and has been excused by the local school board or its authorized representative upon a finding that the person will be employed in a gainful trade or occupation or engaged in an alternative form of education sufficient for the person's educational needs and the parent, guardian or other person having custody and control consents; or
- (4) with consent of the parent, guardian or person having custody and control of the person to be excused, the person is excused from the provisions of this section by the



superintendent of schools of the school district in which the person is a resident and the person is under eight years of age.

B. A person subject to the provisions of the Compulsory School Attendance Law [22-12-1 to 22-12-7 NMSA 1978] 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.

C. Any parent, guardian or person having custody and control of a person subject to the provisions of the Compulsory School Attendance Law is responsible for the school attendance of that person.

**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.

## ANNOTATIONS

**Cross-references.** - As to excusal of certain students from full-time school attendance, see 22-12-6 NMSA 1978.

As to age of majority, see 28-6-1 NMSA 1978.

**The 1997 amendment** 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). Laws 1997, ch. 194 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**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).

**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.

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.

**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*, 99 N.M. 715, 663 P.2d 374 (Ct. App.), cert. denied, 464 U.S. 940, 104 S. Ct. 354, 78 L. Ed. 2d 318 (1983) (decided prior to 1985 amendment, which inserted "a home school" in introductory language of Subsection A).

**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 §§ 227 to 231, 233.

Regulations forbidding pupils to leave school grounds during school hours, 32 A.L.R. 1342, 48 A.L.R. 659.

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

Personal liability of school authorities for dismissal or suspension of pupil, 42 A.L.R. 763.

Inmates of charitable institutions as residents entitled to school privileges, 48 A.L.R. 1098.

Expulsion or suspension from private school or college, 50 A.L.R. 1497.

Marriage or other domestic relations as ground for exclusion of pupil from public school, 63 A.L.R. 1164.

Failure of student to attain or maintain prescribed scholastic rating as grounds for dropping him, 86 A.L.R. 484.

Health measures, power of municipal school authorities to prescribe, as a condition of school attendance, 93 A.L.R. 1413.

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 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

**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.

**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 1997 amendments.** - Identical amendments to this section, enacted by Laws 1997, ch. 239, § 1 and Laws 1997, ch. 245, § 1, 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. This section is set out as amended by Laws 1997, ch. 245, § 1. See 12-1-8 NMSA 1978. Laws 1997, ch. 239 and Laws 1997, ch. 245 contain no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### 22-12-3. Religious instruction excusal.

Any student may, subject to the approval of the local school board, be excused from school to participate in religious instruction for not more than one class period each school day with the written consent of his parents at a time period not in conflict with the academic program of the school. The local school board and its 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.

## 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 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.

## **22-12-4. 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 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 of education.

**History:** 1953 Comp., § 77-10-3, enacted by Laws 1967, ch. 16, § 171; reenacted by 1978, ch. 211, § 10.

### **ANNOTATIONS**

**Secretary of health and environment.** - Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment.

**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 ex rel. Rubio v. Carlsbad Mun. School Dist.*, 106 N.M. 446, 744 P.2d 919 (Ct. App. 1987).

**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 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.** - Constitutionality, construction and effect of statutes in relation to admission of nonresident pupils to school privileges, 72 A.L.R. 499, 113 A.L.R. 177.

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. Certificates of employment.**

A. Any student subject to the provisions of the Compulsory School Attendance Law [22-12-1 to 22-12-7 NMSA 1978] attaining the age of fourteen may be excused from full-time school attendance by issuance of a certificate of employment by the superintendent of schools of the school district in which the student is a resident or is employed. The certificate of employment shall only be issued upon satisfactory assurance to the superintendent of schools that the student will be definitely employed in a gainful trade or occupation.

B. The certificate of employment shall contain the following information:

- (1) the name, age and residence of the person excused from full-time school attendance;
- (2) by whom the person is to be employed or is employed;
- (3) the last class grade attended by the person; and
- (4) a statement that the person is excused from full-time school attendance until the certificate is revoked.

**History:** 1953 Comp., § 77-10-6, enacted by Laws 1967, ch. 16, § 174.

## **ANNOTATIONS**

**Cross-references.** - As to excusal of persons from school attendance requirement generally, see 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).

### **22-12-7. Enforcement of attendance law; penalty.**

A. Each local school board and each governing authority of a private school shall initiate the enforcement of the provisions of the Compulsory School Attendance Law [22-12-1 to 22-12-7 NMSA 1978] for students enrolled in their respective schools.

B. To initiate enforcement of the provisions of the Compulsory School Attendance Law, a local school board or governing authority of a private school or its authorized representatives shall give written notice by certified mail to or by personal service on the parent, guardian or custodian of a student subject to and in noncompliance with the provisions of the Compulsory School Attendance Law.

C. If violations of the provisions of the Compulsory School Attendance Law continue after written notice 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 need of supervision and thus subject to the provisions of the Children's Code.

D. If after review by the juvenile probation office of the children's court division or by the district judge of the children's court division where the student resides, a determination and finding is made that the nonattendance by the student may have been caused by the parent, guardian or one having custody of the student then the matter will be referred by the juvenile probation office or by the children's court division of the district court 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.

E. A parent, guardian or one having custody 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, guardian or one having custody 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, guardian or one having custody 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 incarceration for a period not to exceed six months or both.

F. The provisions of this section shall apply beginning July 1, 1987.

**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.

## **ANNOTATIONS**

**Children's Code.** - See 32A-1-1 NMSA 1978 and notes thereto.

**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*, 99 N.M. 715, 663 P.2d 374 (Ct. App.), cert. denied, 464 U.S. 940, 104 S. Ct. 354, 78 L. Ed. 2d 318 (1983) (decided prior to 1985 amendment to 22-12-2 NMSA 1978, which inserted "a home school" in the introductory language of Subsection A).

**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. Notice of absence.**

Notwithstanding the provisions of Section 22-12-7 NMSA 1978, if a student is absent for three or more successive school days, the local school district shall contact by telephone or written notice the student's parents, legal guardian or custodian no later than the close of school on the school day next succeeding the three-day period. The provisions of this section do not apply to any absence if the parent, legal guardian or custodian, prior to the end of the three-day period, has contacted the school to explain the absence prior to the end of the three-day period.

**History:** 1978 Comp., § 22-12-8, enacted by Laws 1985, ch. 104, § 1.

## **ARTICLE 13 COURSES OF INSTRUCTION AND SCHOOL LUNCH PROGRAM**

## **22-13-1. Public schools; required courses of instruction.**

The state board shall, by regulation, prescribe courses of instruction to be taught in all public schools in the state, including courses in the history of New Mexico.

**History:** 1953 Comp., § 77-11-1, enacted by Laws 1967, ch. 16, § 180; 1969, ch. 200, § 1.

### **ANNOTATIONS**

**Cross-references.** - As to education and testing pertaining to sickle cell trait and sickle cell anemia, see 24-3-1 NMSA 1978.

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

### **ANNOTATIONS**

**Repeals.** - Laws 1979, ch. 54, § 1, repeals 22-13-2 NMSA 1978, relating to required course of instruction in drug abuse education in the public schools. For provisions of former section, see 1978 original pamphlet.

## **22-13-3. Early childhood education programs required.**

A. In accordance with state board regulations, every local school board shall establish and conduct early childhood education programs.

B. The state board 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**

**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.

**The 1993 amendment**, effective July 1, 1993, deleted "and may provide transportation for students attending those programs" at the end of Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Power and duty of school authorities to maintain kindergarten, 70 A.L.R. 1313.

79 C.J.S. Schools and School Districts § 484.

### **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. For provisions of former section, see 1978 original pamphlet.

### **22-13-5. Special education.**

School districts shall provide special education and related services appropriate to meet the needs of all children requiring special education and related services. Regulations and standards shall be developed and established by the state board 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 state board shall monitor and enforce the regulations 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 his child. If a child receiving services in the department of health's family, infant, toddler program has his third birthday during the school year, the child's parents shall have the option of having the child complete the school year in the family, infant, toddler program or enrolling the child in the public school's preschool program. A child with a disability who enrolls in the public school's preschool program and who has his third birthday during a school year may receive special education and related services from the beginning of that school year. 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 state board and providing parent education. The services may be provided by certified school personnel or

contracted for with other community agencies and shall be provided in age-appropriate, integrated settings, including home, daycare centers, headstart 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.

## ANNOTATIONS

**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".

**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".

### **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. *New Mexico Ass'n for Retarded Citizens v. New Mexico*, 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. *New Mexico Ass'n for Retarded Citizens v. New Mexico*, 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. *New Mexico Ass'n for Retarded Citizens v. New Mexico*, 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. *New Mexico Ass'n for Retarded Citizens v. New Mexico*, 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.

What services must federally assisted school provide for handicapped children under Education of the Handicapped Act (20 USCS §§ 1401 et seq.), 63 A.L.R. Fed. 856.

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.

## **22-13-6. Special education; definitions.**

As used in the Public School Code:

A. "special education" means the provision of services additional to, supplementary to or different from those provided in the regular school program by a systematic modification and adaptation of instructional techniques, materials and equipment to meet the needs of exceptional children;

B. "exceptional children" means school-age persons whose abilities render regular services of the public school to be inconsistent with their educational needs;

C. "children with disabilities" means those children who are classified as developmentally disabled according to the Developmental Disabilities Act [28-16A-1 to 28-16A-18 NMSA 1978]; and

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 state board pursuant to that section. Nothing in this section shall preclude a school district from offering additional gifted programs for students who fail to meet the eligibility criteria; however, the state shall only provide state funds for department of education approved gifted programs for those students who meet the established criteria.

**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.

## 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 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).

**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.

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

### 22-13-6.1. Gifted children; determination.

A. The state board 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 state board shall provide for the evaluation of selected school-age children by multidisciplinary teams of individuals from each child's local 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 offering a gifted education program shall create an advisory committee of parents, community members, students and school staff members. The membership of each advisory committee shall reflect the cultural diversity of that school's enrollment. 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.

### **22-13-7. Special education; responsibility.**

A. The state board shall make, adopt and keep current a state plan for special education policy, programs and standards.

B. The department of education with the approval of the state board 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 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 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.

**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.

**The 1993 amendment,** effective June 18, 1993, deleted "and environment" at the end of Subsection B and added Subsection D.

**Secretary of health and environment.** - Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment.

**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.**

A. The responsibility of school districts, institutions and the state to provide a free public education for exceptional children is not diminished by the availability of private schools and services. Whenever such schools or services are utilized, it continues to be a state responsibility to assure that all exceptional children receive the education to which the laws of the state entitle them.

B. A local school board may make an agreement with private, nonsectarian, nonprofit educational training centers for educating exceptional children and for providing for payment for such education. All financial agreements between local boards and private, nonsectarian, nonprofit educational training centers must be negotiated in accordance with regulations promulgated by the director. Payment for education and services under such agreements shall be made by the local board of education from funds available.

C. All agreements between local school boards and private, nonsectarian, nonprofit educational training centers must be approved by the state superintendent. All agreements must provide for diagnosis and an educational program for each child which meets state standards for such programs. The agreements must also acknowledge the authority and responsibility of the local board and the department of



education to conduct on-site evaluations of programs and pupil progress to insure meeting state standards.

D. Exceptional children attending a private, nonsectarian, nonprofit training center shall be counted in the special education membership of the school district as enrolled in the Class D special education program.

**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.

## **ANNOTATIONS**

**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. Part-time schools.**

A. When fifteen or more certificates of employment have been issued within a school district, the local school board of that school district shall establish a part-time school for students issued certificates of employment pursuant to the provisions of Section 22-12-6 NMSA 1978 unless excused from establishing the school for sufficient reasons by the state superintendent.

B. If a part-time school is established in a school district, all students issued certificates of employment shall attend the part-time school unless excused for sufficient reason by the superintendent of schools of the school district.

C. The state board shall adopt regulations concerning the establishment and operation of part-time schools; however, all part-time schools shall give instruction for not less than one hundred fifty hours a year.

**History:** 1953 Comp., § 77-11-4, enacted by Laws 1967, ch. 16, § 183.

### **22-13-10. Part-time schools; restriction on employment of students; penalty.**

A. Any person, business or corporation employing a person subject to the provisions of the Compulsory School Attendance Law [22-12-1 to 22-12-7 NMSA 1978] who has attained the age of fourteen years shall permit the person to attend a part-time school established in the school district where the person resides or is employed.

B. When the maximum number of hours of employment for a person having attained the age of fourteen years is established by state or federal law, the hours of attendance at a part-time school shall be computed as hours of employment under these laws. Nothing

in this section shall affect the right of an employer to reduce accordingly the compensation to be paid a person because of the time spent in a part-time school.

C. Any person, business or corporation violating the provisions of this section is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 77-11-5, enacted by Laws 1967, ch. 16, § 184.

### **22-13-11. Adult education classes.**

A. Pursuant to the standards and regulations of the state board, a local school board may establish an adult education class within the school district provided that the minimum enrollment for any adult education class shall be ten persons. The local school board has authority to employ a certified school instructor to teach in any adult education class established.

B. The state board shall establish standards and promulgate regulations for the establishment and operation of an adult education class.

**History:** 1953 Comp., § 77-11-6, enacted by Laws 1967, ch. 16, § 185.

### **22-13-12. Approved driver-education courses.**

A. The state board 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 as meeting the minimum standards for such a driver-education course adopted by the state board or its designated representative.

**History:** 1953 Comp., § 77-11-7, enacted by Laws 1967, ch. 16, § 186; 1973, ch. 381, § 4.

### **22-13-13. School lunch program.**

A. The state board shall prescribe standards and regulations for the establishment and operation of school lunch programs in the state. The department of education 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**

**Cross-references.** - As to designation of state board as 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.

### **22-13-14. Fire drills; requirement.**

A. A fire 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. 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 paid fire department is maintained, a member of the fire department shall be requested to be in attendance during the fire drills for the purpose of giving instruction and constructive criticism.

C. The state board 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.

### **ANNOTATIONS**

**Cross-references.** - For fire protection training programs, see 59A-52-6 NMSA 1978.

### **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

**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.

**Compiler's note.** - Sections 22-10-19 and 22-10-20 NMSA 1978, referred to in the second sentence in Subsection B, were repealed in 1986.

### **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. 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, 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.

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Instruction by correspondence schools as commerce, 26 A.L.R. 360, 47 A.L.R. 782.

78 C.J.S. Schools and School Districts §§ 58, 811.

## **22-13-17 to 22-13-24. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1979, ch. 54, § 1, repeals 22-13-17 to 22-13-24 NMSA 1978, enacted by Laws 1969, ch. 180, §§ 27 to 33 and Laws 1972, ch. 2, § 1, relating to education enrichment program and diesel mechanics program. For provisions of former sections, see 1978 original pamphlet.

## **ARTICLE 13A INCENTIVES FOR SCHOOL IMPROVEMENT**

### **22-13A-1. Short title.**

Chapter 22, Article 13A NMSA 1978 may be cited as the "Incentives for School Improvement Act".

**History:** Laws 1989, ch. 137, § 1; 1997, ch. 236, § 1.

### **ANNOTATIONS**

**The 1997 amendment** substituted "Chapter 22, Article 13A NMSA 1978" for "This act". Laws 1997, ch. 236 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Compiler's note.** - The Incentives for School Improvement Act is not a part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

### **22-13A-2. Purpose.**

The purpose of the Incentives for School Improvement Act [this article] is to provide financial incentives to individual schools that exceed expected academic performance.

**History:** Laws 1989, ch. 137, § 2; 1997, ch. 236, § 2.

### **ANNOTATIONS**

**The 1997 amendment** substituted "individual schools that exceed expected academic performance" for "school districts in order to improve the academic performance and school behavior of students" at the end of the section. Laws 1997, ch. 236 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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

As used in the Incentives for School Improvement Act [this article]:

- A. "department" means the state department of public education;
- B. "fund" means the incentives for school improvement fund;
- C. "program" means the incentives for school improvement program; and
- D. "state board" means the state board of education.

**History:** Laws 1989, ch. 137, § 3.

### **22-13A-4. Program created; administration; program approval.**

The "incentives for school improvement program" is created. The program shall be administered by the department. The department shall develop a standardized method to measure the progress of students enrolled in public schools in school districts throughout the state. The standardized method developed shall be reviewed and approved by the state board.

**History:** Laws 1989, ch. 137, § 4; 1997, ch. 236, § 3.

### **ANNOTATIONS**

**The 1997 amendment** substituted "public schools in school districts throughout the state" for "electing to participate in the program" at the end of the third sentence. Laws 1997, ch. 236 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **22-13A-5. Program implementation; measurement criteria.**

A. The department shall develop a formula by which to measure school achievement in the areas of academic performance with consideration of socioeconomic variables. The product of this formula shall take the form of a composite rating assigned to each school in every school district.

B. Academic performance shall be measured by:

- (1) nationally standardized test scores;
- (2) graduation competency scores; and
- (3) other factors deemed relevant by the department.

C. The socioeconomic variables shall be measured by:

- (1) the percentage of student mobility rates;
- (2) the percentage of limited English-proficient students using criteria established by the federal office of civil rights;
- (3) the percentage of students eligible for free and reduced-fee lunches; and
- (4) other factors deemed relevant by the department.

D. Annually, the department shall assign a new composite rating to each school. The department shall compare the new rating to the previous annual rating. Schools increasing their composite rating shall be ranked in order. The schools evidencing the greatest increase in rating shall receive monetary disbursements from the fund.

**History:** Laws 1989, ch. 137, § 5; 1997, ch. 236, § 4.

### **ANNOTATIONS**

**The 1997 amendment** rewrote this section to the extent that a detailed comparison would be impracticable. Laws 1997, ch. 236 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **22-13A-6. Fund created.**

A. There is created in the state treasury the "incentives for school improvement fund". The fund shall consist of any state money appropriated to the fund, any federal money allocated to the state for the purposes of the Incentives for School Improvement Act [this article], undistributed annual balances and earnings of the fund and any gifts or bequests made to the fund. The state treasurer shall invest the fund as other state funds are invested. The balance remaining in the fund at the end of the fiscal year shall not revert to the general fund.

B. The fund is appropriated to the department for the purpose of implementing and administering the Incentives for School Improvement Act. No more than three percent of the fund may be retained by the department for administrative purposes.

C. Money in the fund other than that used for administrative purposes shall be distributed directly to schools evidencing the greatest improvement as determined by the department. Disbursements shall be made only to that number of schools constituting not more than ten percent of the student membership in the state. Distributions shall be made proportionately to schools that qualify. Money received by a school from the fund shall not be used for salaries, salary increases or bonuses. Money

shall be used as determined by the school principal and teachers in cooperation with other school employees and the community.

**History:** Laws 1989, ch. 137, § 6; 1997, ch. 236, § 5.

### **ANNOTATIONS**

**The 1997 amendment**, in Subsection A, substituted "the Incentives for School Improvement Act" for "this act" near the middle of the second sentence, and rewrote Subsections B and C. Laws 1997, ch. 236 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, are effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

## **ARTICLE 13B TWENTY-FIRST CENTURY EDUCATION**

(Repealed by Laws 1993, ch. 286, § 1.)

**22-13B-1 to 22-13B-9. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1990 (1st S.S.), ch. 9, § 13, as amended by Laws 1993, ch. 286, § 1, repeals 22-13B-1 to 22-13B-9 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, §§ 1 to 9, effective July 1, 1998. For provisions of former sections, see 1993 Replacement Pamphlet.

## **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. "handicapped individual" means any individual under a physical or mental disability which constitutes a substantial handicap to employment but which is of such a nature that vocational rehabilitation may be reasonably expected to enable the individual to engage in a remunerative occupation;

C. "vocational rehabilitation" means services or training necessary to enable a handicapped individual 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.

### **ANNOTATIONS**

**Cross-references.** - As to technical and vocational institute districts, see 21-16-1 NMSA 1978 et seq.

As to area vocational schools, see 21-17-1 NMSA 1978 et seq.

As to development training, see 21-19-7 NMSA 1978 et seq.

**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.

### **22-14-2. Vocational education or vocational rehabilitation; state governing authority.**

A. The state board 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 or vocational rehabilitation, unless otherwise provided by law.

B. The state board shall be 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 vocational rehabilitation, or for any federal aid funds, except as may otherwise be provided by law.

**History:** 1953 Comp., § 77-12-2, enacted by Laws 1967, ch. 16, § 192.

## ANNOTATIONS

**Cross-references.** - For designation of state board as 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.

### **22-14-3. State agency for vocational education and vocational rehabilitation; authority.**

Whenever the state board is the sole agency of the state for the administration or for the supervision of the administration of any federal aid funds, the state board 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, 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 state board or to its representative 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:** 1953 Comp., § 77-12-3, enacted by Laws 1967, ch. 16, § 193.

## ANNOTATIONS

**Cross-references.** - For powers and duties of state board when designated as sole agency of state for administration or supervision of administration of federal aid funds generally, see 22-9-3 NMSA 1978.

### **22-14-4. Vocational education division; director.**

- A. The vocational education division is created within the department of education.

B. With approval of the state board, the state superintendent shall appoint a director of the vocational education division to be known as the director of vocational education.

C. The state board may delegate to the vocational education division its administrative functions relating to vocational education.

**History:** 1953 Comp., § 77-12-4, enacted by Laws 1967, ch. 16, § 194.

### **22-14-5. Vocational education division; powers; duties.**

Subject to the policies of the state board, the vocational education division of the department of education shall:

- A. provide vocational education to qualified individuals;
- B. act as the representative of the state board 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 regulations 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.

#### **ANNOTATIONS**

**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 repeals 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 1989 Replacement Pamphlet.

### **22-14-7. Vocational rehabilitation division; director.**

- A. The vocational rehabilitation division is created within the department of education.
- B. With approval of the state board, the state superintendent shall appoint a director of the vocational rehabilitation division to be known as the director of vocational rehabilitation.
- C. The state board may delegate to the vocational rehabilitation division its administrative functions relating to vocational rehabilitation.

**History:** 1953 Comp., § 77-12-6, enacted by Laws 1967, ch. 16, § 196.

### **22-14-8. Vocational rehabilitation division; powers; duties.**

Subject to the policies of the state board, the vocational rehabilitation division shall:

- A. provide vocational rehabilitation to qualified individuals;
- B. act as the representative of the state board in administering 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. adopt regulations for the administration of laws relating to vocational rehabilitation;  
and
- G. conduct research and compile statistics relating to vocational rehabilitation.

**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.

### **ANNOTATIONS**

**The 1989 amendment**, effective June 16, 1989, added Subsection H.

**1993 amendments.** - Laws 1993, ch. 226, § 31, effective July 1, 1993, inserting "of the department of education" in the introductory paragraph and substituting "enforce" for

"adopt" at the beginning of Subsection F, was approved April 7, 1993. However, Laws 1993, ch. 229, § 2, effective June 18, 1993, also amending this section by deleting 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 making related grammatical changes, but not giving effect to the changes made by the first 1993 amendment, was approved April 7, 1993. The section is set out as amended by Laws 1993, ch. 229, § 2. See 12-1-8 NMSA 1978.

**Appropriations.** - Laws 1993, ch. 366, § 3II, effective June 18, 1993, appropriates \$100,000 from the general fund to the division of vocational rehabilitation of the state department of public education for expenditure in the eighty-first and eighty-second fiscal years for independent living services operating in Bernalillo, Cibola, Sandoval and Valencia counties. Any unexpended or unencumbered balance remaining at the end of the eighty-second fiscal year shall revert to the general fund.

Laws 1993, ch. 366, § 5 provides for the severability of that act if any part or application thereof is held invalid.

## **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 regulations of the department of finance and administration. Such funds or grants shall be disbursed by warrants of the department of finance and administration on vouchers issued by the director of vocational education.

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 regulations of the department of finance and administration. Such funds or grants shall be disbursed by warrants of the department of finance and administration on vouchers issued by the director of vocational rehabilitation.

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.

### **ANNOTATIONS**

**Cross-references.** - For provisions relating to custody, budgeting and disbursement of federal aid funds generally, see 22-9-5 NMSA 1978.

## **22-14-10. Recompiled.**

### **ANNOTATIONS**

**Recompilations.** - Laws 1993, ch. 226, § 53B recompiles 22-14-10 NMSA 1978, as enacted by Laws 1971, ch. 324, § 4, relating to the division as the designated agency for federal funds, as 22-14-30 NMSA 1978, effective July 1, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

## **22-14-11. Vocational education or rehabilitation; eligibility.**

Vocational education or vocational rehabilitation shall be provided to any individual who:

A. is a resident of the state at the time of filing his application for vocational education or vocational rehabilitation; and

B. qualifies for eligibility under a vocational education or vocational rehabilitation program established by the state; or

C. qualifies for eligibility under the terms of an agreement which the state has with the federal government or with another state.

**History:** 1953 Comp., § 77-12-9, enacted by Laws 1967, ch. 16, § 199.

### **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 shall adopt regulations for the conduct of hearings pursuant to this section.

**History:** 1953 Comp., § 77-12-10, enacted by Laws 1967, ch. 16, § 200; 1983, ch. 60, § 2.

### **22-14-13. Nontransferable or nonassignable rights.**

The rights of any individual under the provisions of any state law relating to vocational rehabilitation are not transferable or assignable in law or in equity.

**History:** 1953 Comp., § 77-12-11, enacted by Laws 1967, ch. 16, § 201.

### **22-14-14. Limitations on political activities.**

No person engaged in administering any vocational education or vocational rehabilitation program pursuant to Sections 22-14-1 through 22-14-16 NMSA 1978 shall use his official authority or influence to permit the use of the vocational education or vocational rehabilitation program to interfere with any public election or partisan political campaign. Nor shall such person take any active part in the management of a political campaign, or participate in any political activity beyond the person's constitutional rights of voting and of free speech. Nor shall he be required to contribute or render service, assistance, subscription, assessment or contribution for any political purpose. Any person violating the provisions of this section shall be subject to discharge or suspension.

**History:** 1953 Comp., § 77-12-12, enacted by Laws 1967, ch. 16, § 202.

### **22-14-15. Repealed.**

## **ANNOTATIONS**

**Repeals.** - Laws 1983, ch. 60, § 4, repeals 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. For provisions of former section, see 1978 original pamphlet.

Laws 1983, ch. 60, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.

### **22-14-16. Admission to state educational institutions; exemption from certain fees.**

Upon written request of the state board, all state educational institutions shall accept for admission, without any charge for any fees except tuition charges, all handicapped individuals meeting the standards of the institution.

**History:** 1953 Comp., § 77-12-14, enacted by Laws 1967, ch. 16, § 204.

## ANNOTATIONS

**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 to 22-14-19. Repealed.**

## ANNOTATIONS

**Repeals.** - Laws 1983, ch. 156, § 3, repeals 22-14-17 to 22-14-19 NMSA 1978, as enacted by Laws 1976 (S.S.), ch. 30, §§ 1 to 3, relating to the northern New Mexico rehabilitation center, effective July 1, 1983. For provisions of former sections, see 1978 original pamphlet.

### **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 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 1978 Comp., § 22-14-20 by Laws 1983, ch. 60, § 3.

### **22-14-21. Products of clients of the commission for the blind; purchasing agent to determine value.**

It is the duty of the state purchasing agent to determine the fair market value of all products manufactured by clients of the commission for the blind and offered for sale to the state, or any other governmental agency or political subdivision thereof having its own purchasing agency, by the commission for the blind and approved for that use by the state purchasing agent, to revise the prices from time to time in accordance with changing market conditions and to make such rules and regulations regarding specifications, time of delivery and other relevant matters as are necessary to carry out the purpose of Sections 22-14-21 through 22-14-23 NMSA 1978.

**History:** 1941 Comp., § 6-410, enacted by Laws 1953, ch. 163, § 1; 1953 Comp., § 73-23-7; Laws 1977, ch. 159, § 1; 1978 Comp., § 21-5-9, recompiled as 1978 Comp., § 22-14-21 by Laws 1983, ch. 60, § 3; 1993, ch. 226, § 32.

## ANNOTATIONS



**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 1978 Comp., § 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 1978 Comp., § 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 § 47.

### 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 1978 Comp., § 22-14-24 by Laws 1983, ch. 60, § 3; 1986, ch. 108, § 10.

## ANNOTATIONS

**Cross-references.** - For employment of the handicapped, 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 1978 Comp., § 22-14-25 by Laws 1983, ch. 60, § 3; 1986, ch. 108, § 11.

## **22-14-26. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1986, ch. 108, § 16 repeals 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. For provisions of former section, see 1984 Replacement Pamphlet.

## **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 1978 Comp., § 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 1978 Comp., § 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 1978 Comp., § 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 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 1978 Comp., § 22-14-30 by Laws 1993, ch. 226, § 53.

## ANNOTATIONS

**Cross-references.** - As to designation of state agencies for administration or receipt of federal funds generally, see 22-9-2 NMSA 1978 et seq.

## 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.

## ANNOTATIONS

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 285 to 289, 303.

Free textbooks and other school supplies for individual use of pupils, 17 A.L.R. 299, 67 A.L.R. 1196.

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 to 22-15-14 NMSA 1978]:

A. "division" or "bureau" means the instructional material bureau in the department of education;

B. "director" or "chief" means the chief of the bureau;

C. "instructional material" means school textbooks and other educational media;

D. "multiple list" means a written list of those instructional materials approved by the state board;

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; and

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.

**History:** 1953 Comp., § 77-13-2, enacted by Laws 1967, ch. 16, § 206; 1975, ch. 270, § 2; 1993, ch. 226, § 35.

## ANNOTATIONS

**The 1993 amendment**, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

### **22-15-3. Bureau; chief.**

A. The "instructional material bureau" is created within the department of education.

B. With approval of the state board, the state superintendent 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**

**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 regulations of the state board, the bureau shall:

A. administer the provisions of the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978];

B. enforce regulations 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, private schools and adult basic education centers 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 regulations adopted pursuant thereto; and

D. enforce regulations relating to the use and operation of instructional material depositories in the instructional material distribution 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.

### **ANNOTATIONS**



**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.

**The 1997 amendment**, effective July 1, 1998, inserted "and instructional material funds" in Subsection B.

## **22-15-5. Instructional material fund.**

A. The state treasurer shall establish a fund to be known as the "instructional material fund".

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 [22-15-1 to 22-15-14 NMSA 1978]. Transportation charges for the delivery of instructional material to a school district, a state institution, a private school as agent or an adult basic education center 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 materials that appear 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.

### **ANNOTATIONS**

**Cross-references.** - As to payment of fines for violations of minimum hour laws into fund, see 50-4-18 NMSA 1978.

**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.

**The 1997 amendment**, effective July 1, 1998, made a stylistic change in Subsection B.

## **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.

**History:** 1953 Comp., § 77-13-6, enacted by Laws 1967, ch. 16, § 210; 1975, ch. 270, § 6; 1993, ch. 226, § 38.

## ANNOTATIONS

**The 1993 amendment**, effective July 1, 1993, substituted "department of education" for "director".

### **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 state board 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 state board is entitled to the free use of instructional material. Any student in an adult basic education program approved by the state board is entitled to the free use of instructional material.

B. Instructional material shall be distributed to school districts, state institutions, private schools and adult basic education centers as agents for the benefit of students entitled to the free use of the instructional material.

C. Any school district, state institution, private school as agent or adult basic education center receiving instructional material pursuant to the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978] is responsible for distribution of the instructional material for use by eligible students and for the safekeeping of the instructional material.

**History:** 1953 Comp., § 77-13-7, enacted by Laws 1967, ch. 16, § 211; 1975, ch. 270, § 7; 1977, ch. 99, § 1; 1993, ch. 226, § 39; 1997, ch. 100, § 3.

## ANNOTATIONS

**Cross-references.** - As to transfer of unused materials, see 22-15-10 NMSA 1978.

**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.<

**The 1997 amendment**, effective July 1, 1998, in Subsection C, made a stylistic change and substituted "by" for "of".

**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.**

A. The state board shall adopt a multiple list to be made available to students pursuant to the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978]. The state board 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, private school as agent or adult basic education center may select instructional material for the use of its students from the multiple list adopted by the state board. 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.

**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.

## ANNOTATIONS

**Cross-references.** - As to contracts with publishers for purchase and delivery of materials on list, see 22-15-13 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, inserted "and other community members" in the second sentences of Subsections A and B.

**The 1997 amendment,** effective July 1, 1998, made a stylistic change in Subsection B.

**Severability clauses.** - Laws 1986, ch. 33, § 35 provides for the severability of the act if any part or application thereof is held invalid.

**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.

### **22-15-9. Distribution of funds for instructional material.**

A. On or before July 1 of each year, the department of education shall allocate to each school district, state institution or private school 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. 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. For the purpose of this allocation, additional pupils shall be counted as four pupils.

B. On or before January 15 of each year, the department of education 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 thirty percent of the allocations attributed to each local school district, state institution or adult basic education center may be used for instructional material not included on the multiple list provided for in Section 22-15-8 NMSA 1978. Adult basic education centers may expend up to one hundred percent of their instructional material funds for items that are not on the multiple list.

D. The department of education shall establish procedures for the distribution of funds directly to local school districts, state institutions and adult basic education centers. The department of education shall distribute funds to private schools on a reimbursement basis for instructional material included on the multiple list provided for in Section 22-15-8 NMSA 1978.

E. A school district, state institution or adult basic education center 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 of education 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.

## ANNOTATIONS

**Cross-references.** - As to annual reports, see 22-15-12 NMSA 1978.

**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.

**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 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.

## **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, private school or adult basic education center pursuant to the Instructional Material Law may be sold at a price determined by officials of the school district, state institution, private school or adult basic education center. The selling price shall not exceed the cost of the instructional material to the state.

B. A school district, state institution, private school or adult basic education center may hold the parent, guardian 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, guardian or student has paid for the damage or loss. When a parent, guardian or student is unable to pay for 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 state board, the local school district shall bear the cost.

C. A school district, state institution or adult basic education center 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 [22-15-1 to 22-15-14 NMSA 1978] shall be sent to the department of education.

E. Upon order of the chief, a school district, state institution, private school or adult basic education center shall transfer to the department of education 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.

### **ANNOTATIONS**

**The 1989 amendment**, effective June 16, 1989, added the last three sentences in Subsection B and made minor stylistic changes.

**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 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.

### **22-15-11. Record of instructional material.**

Each school district, state institution, private school or adult basic education center shall keep accurate records of all instructional material, including cost records, on forms and by procedures prescribed by the division.

**History:** 1953 Comp., § 77-13-11, enacted by Laws 1967, ch. 16, § 215; 1975, ch. 270, § 11; 1997, ch. 100, § 7.

### **ANNOTATIONS**

**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".

### **22-15-12. Annual report.**

Annually, at a time specified by the department of education, each local school board of a school district and each governing authority of a state institution, private school or adult basic education center acquiring instructional material pursuant to the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978] shall file a report with the department of education.

**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.

## ANNOTATIONS

**The 1993 amendment,** effective July 1, 1993, substituted "department of education" for "division" in two places and deleted former Subsections A to C, pertaining to contents of the annual report.

**The 1997 amendment,** effective July 1, 1998, substituted "acquiring" for "receiving".

### **22-15-13. Contracts with publishers.**

A. The state board 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 state board.

B. Payment for instructional material purchased by the state board 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 state board 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 state board; 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.

**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.

## ANNOTATIONS

**1993 amendments.** - Laws 1993, ch. 156, § 6, effective June 18, 1993, adding a new Subsection D relating to the right of the department of education to transcribe and reproduce instructional material for the use of students with visual impairment, was approved April 2, 1993. However, Laws 1993, ch. 225, § 44, effective July 1, 1993, also amending this section by substituting "authorized agent" for "representative" in

Subsections A and C, but not giving effect to the changes made by the first 1993 amendment, was approved April 6, 1993. The section is set out as amended by Laws 1993, ch. 226, § 44. See 12-1-8 NMSA 1978.

**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 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 shall make reports to the state board concerning the administration and execution of the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978].

**History:** 1953 Comp., § 77-13-14, enacted by Laws 1967, ch. 16, § 218; 1975, ch. 270, § 14; 1993, ch. 226, § 45.

### **ANNOTATIONS**

**Cross-references.** - As to 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.

### **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. Short title.**

Sections 1 through 5 [22-15-21 to 22-15-25 NMSA 1978] of this act may be cited as the "Braille Literacy Act".

**History:** Laws 1993, ch. 156, § 1.

## **22-15-22. Definitions.**

As used in the Braille Literacy Act [22-15-21 to 22-15-25 NMSA 1978]:

- A. "braille" means the system of reading and writing through touch;
- B. "department" means the state department of public education;
- C. "individualized education program" means a written statement for each child with a disability that is developed and implemented in accordance with standards set forth by the state board;
- D. "literacy" means the mastery of school-based reading and writing skills that provide the foundation for continued learning and expanded literacy skills; and
- E. "state board" means the state board of education.

**History:** Laws 1993, ch. 156, § 2.

## **22-15-23. Braille instruction.**

The reading and writing of braille shall be taught to any student with visual impairment as defined by the state board when deemed appropriate by the individualized education program committee created pursuant to the provisions of the federal Individuals with Disabilities Education Act.

**History:** Laws 1993, ch. 156, § 3.

### **ANNOTATIONS**

**Individuals with Disabilities Education Act.** - The federal Individuals with Disabilities Education Act, referred to in the above section, appears throughout titles 20, 25, 29, and 42 of the United States Code.

## **22-15-24. Individualized planning and assessment.**

Each assessment and individualized education program for a student with visual impairment shall meet the standards set forth by the state board.

**History:** Laws 1993, ch. 156, § 4.

### **22-15-25. Personnel qualifications.**

Personnel who provide educational services to students with visual impairment shall meet the qualifications set forth by the state board.

**History:** Laws 1993, ch. 156, § 5.

## **ARTICLE 15A TECHNOLOGY FOR EDUCATION**

### **22-15A-1. Short title.**

This act [22-15A-1 to 22-15A-10 NMSA 1978] may be cited as the "Technology for Education Act".

**History:** Laws 1994, ch. 96, § 1.

### **22-15A-2. Definitions.**

As used in the Technology for Education Act [22-15A-1 to 22-15A-10 NMSA 1978]:

A. "bureau" means the education technology bureau in the department of education;

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 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.

### **22-15A-3. Bureau established; chief appointed.**

A. The "education technology bureau" is created within the department of education.

B. With the approval of the state board, the state superintendent shall appoint a chief of the bureau.

**History:** Laws 1994, ch. 96, § 3.

### **ANNOTATIONS**

**Appropriations.** - Laws 1994, ch. 147, § 3W, effective March 9, 1994, appropriates \$160,000 from the general fund to the state department of public education for expenditure in the eighty-second and eighty-third fiscal years for establishing the educational technology bureau including two permanent full-time equivalent positions. Any unexpended or unencumbered balance remaining at the end of the eighty-third fiscal year shall revert to the general fund.

#### **22-15A-4. Bureau duties.**

In accordance with the policies and regulations of the state board, the bureau shall:

A. administer the provisions of the Technology for Education Act [22-15A-1 to 22-15A-10 NMSA 1978];

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.

#### **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 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.

## **22-15A-6. Council membership.**

A. The council shall be composed of seventeen members. Members shall be appointed by the state board 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 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 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 to 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance.

**History:** Laws 1994, ch. 96, § 6.

### **22-15A-7. Council duties.**

The council shall:

A. advise the bureau on implementation of the provisions of the Technology for Education Act [22-15A-1 to 22-15A-10 NMSA 1978];

B. work with the bureau to conduct periodic assessments of the need for educational technology in the public school system and make recommendations to the state board on how to meet those needs;

C. promote the collaborative development and implementation of educational technologies, projects and practices to enhance instruction capabilities;

D. develop and recommend to the state board, a statewide plan to infuse educational technology into the public school system in support of state and national education goals; and

E. provide assistance to the bureau in review of school district technology plans.

**History:** Laws 1994, ch. 96, § 7.

### **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 for the purpose of implementing the provisions of the Technology for Education Act [22-15A-1 to 22-15A-10 NMSA 1978]. 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. 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**

**Appropriations.** - Laws 1994, ch. 147, § 2EE, effective March 9, 1994, appropriates \$3,000,000 from the computer systems enhancement fund to the state department of public education for expenditure in the eighty-second and eighty-third fiscal years to be distributed to elementary schools for computer-based language arts literacy programs.

Laws 1994, ch. 147, § 2FF, effective March 9, 1994, appropriates \$3,000,000 from the computer systems enhancement fund to the educational technology fund for

expenditure in the eighty-second and eighty-third fiscal years to implement the provisions of the Technology for Education Act.

### **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 district's estimated entitlement as determined by the projected membership for the school year. A school district's 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. On or before January 30 of each year, the bureau shall recompute each entitlement using the final funded membership for that year and shall allocate the balance of the annual appropriation adjusting for any over-or under-projection of membership.

D. Any school district receiving funding pursuant to the Technology for Education Act [22-15A-1 to 22-15A-10 NMSA 1978] is responsible for the purchase, distribution, use and maintenance of educational technology.

E. As used in this section, "membership" means the total enrollment of qualified students, as defined in the Public School Finance Act [22-8-1 to 22-8-42 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 re-entries 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.

### **22-15A-10. Annual report.**

Annually, at a time specified by the department of education, each local school district receiving distributions from the educational technology fund shall file a report with the department of education regarding distributions received, expenditures made and educational technology obtained by the district and such other related information as may be required by the department of education.

**History:** Laws 1994, ch. 96, § 10.

# ARTICLE 16

## TRANSPORTATION OF STUDENTS

### 22-16-1. State transportation division; director.

A. The "state transportation division" is created within the department of education.

B. The state superintendent shall appoint a director of the state transportation division to be known as the "state transportation director".

C. The state board may delegate to the state superintendent 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

**Cross-references.** - As to emergency transportation, see 22-17-1 NMSA 1978 et seq.

**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.

**Public school transportation task force.** - Laws 1994, ch. 120, §§ 1 to 7, effective March 8, 1994, create the joint interim public school transportation task force composed of twelve members. The task force shall examine the statutes, constitutional provisions, regulations and court decisions governing public school transportation in New Mexico, including those provisions related to transportation funding formula, the school bus inspection program, transportation costs and the administration of the public school transportation program, and shall recommend legislation or changes if any are found to be necessary to the first session of the forty-second legislature. The task force shall function from the date of its appointment until the first day of December prior to the first session of the forty-second legislature.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 234 to 239, 244, 300.

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, the state transportation division of the department of education 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 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 [Chapter 66, Articles 1 to 8, 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 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 Chapter 22, Article 28 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 66-7-365 NMSA 1978.

**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 exceptional 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"; redesignated 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.

**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 1997 amendment** added Subsection G. Laws 1997, ch. 233 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**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 (Ct. App. 1997).

### **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 state board.

C. In addition to approving the form of the contract, the state board shall, by regulation, 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, the buses owned by the operator that are used pursuant to his 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.

### ANNOTATIONS

**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.

**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.

### **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 D 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 of education with the approval of the state board, 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. Exceptional children whose handicaps require transportation and three- and four-year-old children who meet the state board 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.

#### **ANNOTATIONS**

**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.

**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.

#### **22-16-4.1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 226, § 54 repeals 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 1989 Replacement Pamphlet.

#### **22-16-5. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1995, ch. 208, § 16 repeals 22-16-5 NMSA 1978, amended by Laws 1975, ch. 342, § 5, 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 1993 Replacement Pamphlet.

## **22-16-6. Reimbursement of parents or guardians.**

A local school board may, subject to regulations adopted by the state board, 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**

**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.

**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 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."

**Purpose of reimbursement schedule.** - The reimbursement schedule provision to be established by the state transportation director with the consent and approval of the state board of education 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 repeals 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 1989 Replacement Pamphlet.

## **22-16-8. Cattleguards on school bus routes.**

The board of county commissioners of each county shall construct cattleguards where privately owned fences intersect school bus routes in the county when consent is obtained from each owner of real property upon which the cattleguards are to be constructed. The cost of constructing the cattleguards 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.

## **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 for school buses, a series of diagonal black stripes shall be painted on the rear of the motor vehicle. The stripes shall be at least three feet long, four inches wide, and shall be spaced not more than ten inches apart.

C. The provisions of this section shall apply to any school bus that is operated on any public street or highway, except for the purpose of taking it to a place to be painted or moving it to a place of storage.

**History:** 1953 Comp., § 77-14-9, enacted by Laws 1967, ch. 16, § 227.

## **22-16-10. Use of state or county equipment for snow removal.**

The state or any county may, in order to provide for the public health, safety and welfare, use its road equipment for snow removal on any school bus route.

**History:** 1953 Comp., § 77-14-10, enacted by Laws 1975, ch. 79, § 1.

## **22-16-11. Regulations relative to school buses.**

A. The state transportation director, appointed as provided in Section 22-16-1 NMSA 1978, shall adopt and enforce regulations adopted by the state board not inconsistent with the Motor Vehicle Code [Articles 1 to 8 of Chapter 66, except 66-7-102.1] 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 1978 Comp., § 22-16-11 by Laws 1993, ch. 226, § 53; 1995, ch. 208, § 9.

## ANNOTATIONS

**Cross-references.** - For duty of the state transportation division to establish standards pursuant to this section, see 22-16-2 NMSA 1978.

As to overtaking and passing a school bus, see 66-7-347 NMSA 1978.

As to 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 41-4-5 NMSA 1978 (liability of

government employees under Tort Claims Act). *Chee Owens v. Leavitts Freight Serv., Inc.*, 106 N.M. 512, 745 P.2d 1165 (Ct. App. 1987).

**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.

## **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. Corporation commission permits.**

A. Subject to the Emergency Transportation Act [22-17-1 to 22-17-4 NMSA 1978], the state corporation 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 of the state transportation division of the department of education and to the applicant within ten days of final determination by the commission.

**History:** 1953 Comp., § 77-14A-2, enacted by Laws 1974, ch. 38, § 2.

### **ANNOTATIONS**



**Cross-references.** - As to exemption of motor vehicles used pursuant to article from motor carrier regulations, see 65-2-126 NMSA 1978.

### **22-17-3. State transportation director; approval.**

A. Upon the receipt of approval of the permit application from the state corporation 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 [22-17-1 to 22-17-4 NMSA 1978].

B. The state transportation director, subject to the approval of the state superintendent 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 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 and the local school board concerned.

**History:** 1953 Comp., § 77-14A-3, enacted by Laws 1974, ch. 38, § 3.

### **22-17-4. Termination of permit.**

A permit issued pursuant to the Emergency Transportation Act [22-17-1 to 22-17-4 NMSA 1978] 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 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.

## **ARTICLE 18**

### **GENERAL OBLIGATION BONDS OF SCHOOL DISTRICTS**

#### **22-18-1. General obligation bonds; authority to issue.**

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 erecting, remodeling, making additions to and furnishing school buildings, purchasing or improving school grounds, purchasing computer software and hardware for student use in public schools or any combination of these purposes. The bonds shall be fully negotiable and constitute negotiable instruments within the meaning and for all purposes of the Uniform Commercial Code [Chapter 55 NMSA 1978].

**History:** 1953 Comp., § 77-15-1, enacted by Laws 1967, ch. 16, § 228; 1996, ch. 67, § 1.

#### **ANNOTATIONS**

**Cross-references.** - As to public school finances generally, see 22-8-1 NMSA 1978 et seq.

As to school revenue bonds, see 22-19-1 NMSA 1978 et seq.

As to school construction, see 22-20-1 NMSA 1978 et seq.

As to public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

As to 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.

As to issuance and sale of bonds by school districts generally, see 6-15-3 to 6-15-10 NMSA 1978.

As to issuance of refunding bonds by school districts generally, see 6-15-11 to 6-15-22 NMSA 1978.

As to bond elections generally, see 6-15-23 to 6-15-28 NMSA 1978.

**The 1996 amendment**, inserted "purchasing computer software and hardware for student use in public schools" near the end of the first sentence. Laws 1996, ch. 67 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**"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. 81-1.

**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. 81-1.

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. 81-1.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 122.

## **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 owning real estate in 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 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. The question shall be submitted to a vote at a general or special school 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 having paid a property tax on property in the school district for the preceding year, according to the latest completed tax rolls. 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 a regular or special school district election within ninety days from the date a properly signed petition is filed with them.

**History:** 1953 Comp., § 77-15-2, enacted by Laws 1967, ch. 16, § 229.

## ANNOTATIONS

**Cross-references.** - For requirement that persons be registered voters to vote in bond elections, see 22-18-4 NMSA 1978.

**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.*, 88 N.M. 548, 543 P.2d 1176 (1975).

**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.*, 88 N.M. 548, 543 P.2d 1176 (1975).

**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. Bond elections; notice; publication.**

A. Whenever a bond election for a school district is called, notice of the bond election shall be published once each week for two consecutive weeks. A local school board shall give public notice of the bond election by publishing a resolution adopted by the local school board. The first publication of the notice shall be made between fifteen and thirty days before the date of the bond election.

B. The notice published by the local school board shall state the date when the bond election will be held, the questions to be submitted to the voters, a brief description of the boundaries of each voting division, the location of each polling place and the hours each polling place will be open.

C. All publications, ballots, ballot labels and instructions for a bond election shall be printed in English and may also be printed in Spanish.

**History:** 1953 Comp., § 77-15-3, enacted by Laws 1967, ch. 16, § 230.

#### **ANNOTATIONS**

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

#### **22-18-4. Bond elections; conduct.**

A. A person is required to be a registered voter to vote in a bond election in a school district.

B. Except as otherwise provided in Sections 22-18-1 through 22-18-12 NMSA 1978, bond elections in a school district shall be conducted pursuant to Sections 22-6-1 through 22-6-20 NMSA 1978 and the Bond Election Act [6-15-23 to 6-15-28 NMSA 1978].

**History:** 1953 Comp., § 77-15-4, enacted by Laws 1967, ch. 16, § 231; 1970, ch. 6, § 7.

#### **ANNOTATIONS**

**Compiler's note.** - Sections 22-6-1 to 22-6-4, and 22-6-6 to 22-6-20, referred to in Subsection B, were repealed in 1985.

#### **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, 74 N.M. 469, 394 P.2d 985 (1964)(decided under prior law).

## **22-18-6. Canvass of returns; certificate of results.**

Within three days after the date of a bond election in a school district, the local school board of the school district shall:

- A. canvass the returns in the same manner as county election returns are canvassed;
- B. issue a certificate of results of the school district election;
- C. determine the total number of persons voting at the bond election; and
- D. enter the results of the bond election and the total number of persons voting at the bond election in the official minutes book of the school district.

**History:** 1953 Comp., § 77-15-6, enacted by Laws 1967, ch. 16, § 233.

### **ANNOTATIONS**

**Cross-references.** - As to election contests, see 22-18-10 NMSA 1978.

## **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 vote 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, except upon the presentation of a petition pursuant to Section 22-18-2 NMSA 1978 and after the expiration of at least six months from the date of the previous bond election on the question. If a majority of those persons voting on a question submitted to the voters in a bond election for a second time within two years vote against creating a debt by issuing general obligation bonds, no bond election shall then be held on the same question for a period of two years from the date of first bond election on the question.

**History:** 1953 Comp., § 77-15-8, enacted by Laws 1967, ch. 16, § 235.

### **ANNOTATIONS**

**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.** - As to 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 to 6-9-6 NMSA 1978].

**History:** 1953 Comp., § 77-15-11, enacted by Laws 1967, ch. 16, § 238; 1983, ch. 265, § 47.

## **22-18-12. Budgetary provisions; payment of principal and interest.**

A. A local school board shall establish adequate budgetary provisions, approved by the public school finance division [office of education], 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**

**Public school finance division.** - 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 1980, ch. 151, § 58, abolishes the educational finance and cultural affairs department, § 4 of that act creates the department of finance and administration and § 47 of that act creates the public school finance division of the department of finance and administration. Laws 1983, ch. 301, § 83, abolishes the public school finance division of the department of finance and administration and § 69 of that act creates the office of education of the department of finance and administration. Laws 1983, ch. 301, § 83, also provides that all references to the public school finance division shall be construed to mean the office of education of the department of finance and administration.

## **ARTICLE 18A SCHOOL DISTRICT LOANS**

### **22-18A-1. Short title.**

Sections 1 through 4 [22-18A-1 to 22-18A-4 NMSA 1978] of this act may be cited as the "School District Loan Act".



**History:** Laws 1989, ch. 134, § 1.

## **ANNOTATIONS**

**Compiler's note.** - The School District Loan Act is not a part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

### **22-18A-2. Purpose.**

The purpose of the School District Loan Act [22-18A-1 to 22-18A-4 NMSA 1978] 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 shall administer the fund and may make loans from the fund in accordance with the School District Loan Act [22-18A-1 to 22-18A-4 NMSA 1978]. 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 shall deposit in the fund all receipts from the repayment of loans made pursuant to the School District Loan Act.

C. Each July 1, balances in the public school district general obligation bonds loan fund in excess of one million dollars (\$1,000,000) shall be transferred to the state-support reserve fund.

**History:** Laws 1989, ch. 134, § 3.

### **22-18A-4. Loan program; duties of the state department of public education.**

A. The state department of public education shall adopt regulations to govern the application procedure and requirements for making loans under the School District Loan Act [22-18A-1 to 22-18A-4 NMSA 1978].

B. The state department of public education 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, 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 of public education. Loans shall be made by the state department of public education pursuant to this section only, with the prior approval of the state board of finance.

**History:** Laws 1989, ch. 134, § 4.

## **22-18A-5. Temporary transfer of funds.**

If it is determined by the state department of public education 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 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 shall use the amount transferred to the state public school district general obligation bonds loan fund to make the payment.

**History:** Laws 1989, ch. 134, § 5.

# **ARTICLE 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.** - As to public school finances generally, see 22-8-1 NMSA 1978 et seq.

As to general obligation bonds of school districts, see 22-18-1 NMSA 1978 et seq.

As to public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

As to 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.

As to issuance and sale of bonds by school districts generally, see 6-15-3 to 6-15-10 NMSA 1978.

As to issuance of refunding bonds by school districts generally, see 6-15-11 to 6-15-22 NMSA 1978.

As to 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 [22-19-1 to 22-19-16 NMSA 1978]:

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 [22-19-1 to 22-19-16 NMSA 1978].

**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 [22-19-1 to 22-19-16 NMSA 1978].

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.**

Prior to borrowing any money to finance an income project, a local school board shall furnish to the state board the following information:

- A. a detailed description of the income project;
- B. an explanation of the necessity for the income project;
- C. an estimate of the total cost of the income project;
- D. an estimate of the amount of income anticipated from the income project;
- E. an estimate of the amount of income from existing buildings, improvements or facilities that will be pledged to pay for the income project;
- F. an estimate of the yearly operating cost of the income project; and
- G. an estimate of the anticipated yearly net income from the income project.

**History:** 1953 Comp., § 77-16-6, enacted by Laws 1967, ch. 16, § 245.

### **22-19-7. State board approval; determination by state board.**

A. A local school board shall obtain written approval of the state board 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 [22-19-1 to 22-19-16 NMSA 1978].

B. Prior to giving written approval to an income project, the state board shall determine that the income project is necessary and that sufficient income will be produced by the income project to repay all money borrowed and to discharge any bonds or other special obligations issued for the repayment of the money borrowed.

**History:** 1953 Comp., § 77-16-7, enacted by Laws 1967, ch. 16, § 246.

### **22-19-8. Records; restriction on use of income.**

A. A local school board shall retain complete and accurate records of:

(1) the net income from the income project; and

(2) the operating costs of the income project.

B. All income from the income project shall be used solely for the following purposes:

(1) to pay the principal, interest and service charges on any bonds or other special obligations issued pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978]; 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 [22-19-1 to 22-19-16 NMSA 1978] 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.** - As to 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 [22-19-1 to 22-19-16 NMSA 1978] 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 [22-19-1 to 22-19-16 NMSA 1978] 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 [22-19-1 to 22-19-16 NMSA 1978], 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 [22-19-1 to 22-19-16 NMSA 1978] 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.** - As to 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 [22-19-1 to 22-19-16 NMSA 1978] 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 [22-19-1 to 22-19-16 NMSA 1978], 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 canceled. The exchange shall be made only at the request of the holder of the bond to be surrendered, and the local school board may require the holder of the bond to pay all expenses incurred in connection with the exchange, including those of authorization and issuance of the refunding bonds.

**History:** 1953 Comp., § 77-16-15, enacted by Laws 1967, ch. 16, § 254.

### **22-19-16. Tax exemption; no charge against state.**

A. Bonds or other special obligations issued pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978] 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 20**

### **SCHOOL CONSTRUCTION**

#### **22-20-1. School construction; approval of the state superintendent.**

A. Each local school board shall secure the approval of the state superintendent or his designee prior to the construction or letting of contracts for construction of any school

building or related school structure or before reopening an existing structure which was formerly used as a school building but which has not been used for that purpose during the previous year. It shall not be required to obtain approval from the state superintendent for enlarging an existing attendance center which is now in use unless the enlargement is for the purpose of changing the character of the attendance center from an elementary school to a secondary school or adding an elementary school to a secondary school or a secondary school to an elementary school. A written application shall be submitted to the state superintendent requesting approval of the construction. The state superintendent shall prescribe the form of the application which shall include the following:

- (1) a statement of need;
- (2) the anticipated number of students affected by the construction;
- (3) the estimated cost;
- (4) a description of the proposed construction or structure to be built; and
- (5) 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 but not limited to railroad tracks, rivers and limited-access highways.

B. The state superintendent or his designee shall give his approval to an application if he reasonably determines that:

- (1) the construction will not cause an unnecessary proliferation of school construction;
- (2) the construction is needed in the school district;
- (3) the construction is feasible;
- (4) the cost of the construction is reasonable; and
- (5) the school district is financially able to pay for the construction.

C. Within thirty days after the receipt of an application filed pursuant to this section, the state superintendent or his designee shall in writing notify the local school board making the application of his approval or disapproval of the application.

**History:** 1953 Comp., § 77-18-1, enacted by Laws 1967, ch. 16, § 270; 1988, ch. 64, § 41.

## **ANNOTATIONS**

**Cross-references.** - As to public works generally, see 13-4-1 NMSA 1978 et seq.

**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 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 state board.

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.

## **22-20-3. School construction; approval of state board.**

A. Each local school board shall secure approval of the state board for plans and specifications for the expending of twenty-five thousand dollars (\$25,000) or more on erecting, remodeling or making additions to any public school building or structure when state capital outlay funds have been awarded to the local school board to underwrite any of the project costs. When the project costs have been derived from locally authorized and issued general obligation bonds, the authority of the state board shall be that of review and recommendation concerning the plans and specifications. The state board shall only approve or review and recommend factors relating to educational aspects of the construction.

B. Any contract to expend money pursuant to plans and specifications not approved as provided by this section is void and constitutes no charge in law or equity against the local school board or the school district.

**History:** 1953 Comp., § 77-18-3, enacted by Laws 1967, ch. 16, § 272; 1974, ch. 16, § 2; 1975, ch. 166, § 1.

# **ARTICLE 21**

## **PROHIBITED SALES BY PERSONNEL**

### **22-21-1. Prohibiting sales to the department of education, to school districts and to school personnel; exception; penalty.**

A. A member of the state board, a member of a local school board, the state superintendent, an employee of the department of education, a certified school instructor or a certified school administrator 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 of education, school district or public school with which he 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 of education, school district or public school with which he is associated or employed.

B. The provisions of this section shall not apply to a person making a sale in the regular course of his business who complies with the provisions of Sections 13-1-1 through 13-1-26 NMSA 1978. The provisions of this section shall not apply in cases in which certified school instructors or certified school administrators contract to perform special services with the department of education, 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 or administration.

C. No member of the state board, member of a local school board, state superintendent, employee of the department of education, certified school instructor or certified school administrator 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 of education or any employee of the school district whom he 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 Insurance Code [Chapter 59A NMSA 1978].

D. No state employee who supervises or exercises control over local school districts, 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 over which he exercises supervision or control.

E. Any person violating any provision of this section is guilty of a fourth degree felony under the Criminal Code. The state board of education may suspend or revoke the certification of a certified school administrator or a certified school instructor 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.

## ANNOTATIONS

**Cross-references.** - As to Conflict of Interest Act, see Chapter 10, Article 16 NMSA 1978.

As to sales to and contracts with schools or educational institutions by boards, officers and employees, see 21-1-35 NMSA 1978.

As to sentencing for felonies, see 31-18-15 NMSA 1978.

**Compiler's note.** - Sections 13-1-1 through 13-1-26 NMSA 1978, referred to in Subsection B, were repealed by Laws 1984, ch. 65, § 175. For present comparable provisions, see 13-1-28 through 13-1-199 NMSA 1978, the Procurement Code.

**Criminal Code.** - See 30-1-1 NMSA 1978 and notes thereto.

**Purpose of this section and 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, 94 N.M. 431, 612 P.2d 223 (1980).

**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.

**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.

**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, 94 N.M. 431, 612 P.2d 223 (1980).

# **ARTICLE 22**

## **VARIABLE SCHOOL CALENDARS**

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

This act [22-22-1 to 22-22-6 NMSA 1978] may be cited as the "Variable School Calendar Act".

**History:** 1953 Comp., § 77-22-1, enacted by Laws 1972, ch. 16, § 1.

### **22-22-2. Definition.**

As used in the Variable School Calendar Act [22-22-1 to 22-22-6 NMSA 1978], "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 [22-22-1 to 22-22-6 NMSA 1978] 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; request.**

The local school board of any school district may adopt by resolution a request to the state board for approval to operate under a variable school calendar. The state board 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. The state board shall consider the request for approval at an open public hearing held in the school district making the request.

**History:** 1953 Comp., § 77-22-4, enacted by Laws 1972, ch. 16, § 4; 1993, ch. 24, § 1.

## **ANNOTATIONS**

**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 department and board.**

A. The state board shall make rules and regulations pursuant to the Variable School Calendar Act [22-22-1 to 22-22-6 NMSA 1978] necessary to establish procedures for making application, requiring reports and maintaining supervision of operations of a district under a variable school calendar. In addition, the state board may make rules and regulations necessary to implement the provisions of the Variable School Calendar Act.

B. The state board may suspend or modify existing rules and regulations pertaining to school district operations upon recommendation of the state superintendent, when those rules and regulations 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.

### **ANNOTATIONS**

**1993 amendments.** - Laws 1993, ch. 24, § 2, effective June 18, 1993, which deleted "department and" preceding "board" in the catchline; substituted "state board" and "board" for "department" and "department of education" in the first and second sentences of Subsection A; and made related and other minor stylistic changes, was approved March 15, 1993. However, Laws 1993, ch. 226, § 49, effective July 1, 1993, also amending this section by substituting "state board" and "board" for "department" and "department of education" in Subsection A, deleting "of education" following "state board" in Subsection B, and making minor stylistic changes was approved April 6, 1993. The section is set out as amended by Laws 1993, ch. 226, § 49. See 12-1-8 NMSA 1978.

## **22-22-6. Variable school calendar; effect of approval of request.**

Upon approval of the state board of the request of a local school board for operation under a variable school calendar, such calendar for that 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 school or school district upon the initiation of operations under a variable school calendar and the rules and regulations made pursuant thereto. The school or school district shall continue to operate under the approved variable school calendar until the local school board requests the state board by resolution for approval of the discontinuance of the variable school calendar and the request is approved by the state board.

**History:** 1953 Comp., § 77-22-6, enacted by Laws 1972, ch. 16, § 6; 1993, ch. 24, § 3.

### **ANNOTATIONS**

**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.**

This act [22-23-1 to 22-23-6 NMSA 1978] may be cited as the "Bilingual Multicultural Education Act".

**History:** 1953 Comp., § 77-23-1, enacted by Laws 1973, ch. 285, § 1.

### **ANNOTATIONS**

**Cross-references.** - As to 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.

**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).

#### **22-23-2. Definitions.**

As used in the Bilingual Multicultural Education Act [22-23-1 to 22-23-6 NMSA 1978]:

A. "program" means a program of education by which students learn through two languages to understand and participate in the cultures of their environment;

B. "chief" means chief of public school finance [director of the office of education];



C. "culturally and linguistically different" are those persons who are of a different cultural background than the majority culture of the state and whose native tongue is of a language other than the language of the majority culture within the state;

D. "department" means the state department of education;

E. "district" means a local school district; and

F. "school board" means a local school board.

**History:** 1953 Comp., § 77-23-2, enacted by Laws 1973, ch. 285, § 2.

### **ANNOTATIONS**

**Chief of public school finance.** - 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, abolishes the educational finance and cultural affairs department, § 4 of that act creates the department of finance and administration and § 47 of that act creates the public school finance division of the department of finance and administration. Laws 1983, ch. 301, § 83, abolishes the public school finance division of the department of finance and administration and § 69 of that act creates the office of education of the department of finance and administration and designates the administrative and executive head of the office of education as the director of the office of education. Laws 1983, ch. 301, § 83 also provides 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.

### **22-23-3. Purpose.**

A. The purpose of the Bilingual Multicultural Education Act [22-23-1 to 22-23-6 NMSA 1978] is to insure equal education opportunities for students in New Mexico.

B. Cognitive and affective development of the students in New Mexico is encouraged by:

(1) utilizing the cultural and linguistic backgrounds of the students in the curriculum;

(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:** 1953 Comp., § 77-23-3, enacted by Laws 1973, ch. 285, § 3.

#### **22-23-4. State board and department; powers; duties.**

A. The state board shall issue guidelines for the development and implementation of programs.

B. The department shall administer and enforce the provisions of the Bilingual Multicultural Education Act [22-23-1 to 22-23-6 NMSA 1978].

C. The department shall assist school boards in developing and evaluating programs.

D. In the development, implementation and administration of this program, the state board and the department shall give preference to New Mexico residents when hiring personnel.

**History:** 1953 Comp., § 77-23-4, enacted by Laws 1973, ch. 285, § 4.

#### **22-23-5. Program plan and evaluation.**

A. The school board may prepare and submit to the department a program plan in accordance with guidelines issued by the state board.

B. At regular intervals, the school board, the department and a parent advisory committee from the district shall review the goals and priorities of the plan and make appropriate recommendations to the state board.

C. Programs shall be located in the regular public schools of the district. Involvement of students in any programs shall not have the effect of segregating students by ethnic group, color or national origin.

**History:** 1953 Comp., § 77-23-5, enacted by Laws 1973, ch. 285, § 5; 1988, ch. 64, § 42.

### **ANNOTATIONS**

**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 instruction programs; eligibility for state financial support.**

A. To be eligible for state financial support, each 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 any public school or any combination of public schools 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 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 special training in bilingual education conducted through the use of two languages; and

(5) emphasize the history and cultures associated with the students' mother tongue.

B. Each program must meet each requirement of Subsection A of this section and be approved by the department, the state superintendent or his representative to be eligible for state financial support.

C. The provisions in Paragraph (1) of Subsection A of this section relating to grades seven through twelve shall be phased in as follows:

(1) grades seven and eight in the 1988-89 school year;

(2) grades nine and ten in the 1989-90 school year; and

(3) grades eleven and twelve in the 1990-91 school year.

**History:** 1953 Comp., § 77-23-6, enacted by Laws 1973, ch. 285, § 6; 1987, ch. 211, § 1.

## ANNOTATIONS

**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. Schools*, 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. 76-3.

**Law reviews.** - For note, "Bilingual Education: *Serna v. Portales Municipal Schools*," see 5 N.M.L. Rev. 321 (1975).

# ARTICLE 24

## PUBLIC SCHOOL CAPITAL OUTLAY

### 22-24-1. Short title.

Sections 22-24-1 through 22-24-6 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.

### ANNOTATIONS

**Cross-references.** - As to public school finances generally, see 22-8-1 NMSA 1978 et seq.

As to public school capital improvements, see 22-25-1 NMSA 1978 et seq.

### 22-24-2. Purpose of act.

The purpose of the Public School Capital Outlay Act [22-24-1 to 22-24-6 NMSA 1978] is to meet critical school district capital outlay needs which cannot be met by the school district after it has exhausted available sources.

**History:** 1953 Comp., § 77-24-10, enacted by Laws 1975, ch. 235, § 2; 1978, ch. 152, § 2; 1994, ch. 88, § 1.

### ANNOTATIONS

**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 [22-24-1 to 22-24-6 NMSA 1978]:

A. "council" means the public school capital outlay council; and

B. "fund" means the public school capital outlay fund.

**History:** 1953 Comp., § 77-24-11, enacted by Laws 1975, ch. 235, § 3; 1978, ch. 152, § 3.

### 22-24-4. Fund created; use.

A. There is created the "public school capital outlay fund". Balances remaining in the fund at the end of each fiscal year shall not revert.

B. Money in the fund may be used only for capital expenditures deemed by the council necessary for an adequate educational program.

C. The council may authorize the purchase by the property control division of the general services department of property to be loaned to school districts to meet a temporary requirement. Payment for these purchases shall be made from the fund. Title and custody to the property shall rest in the property control division. The council shall authorize the lending of the property 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 property while in the custody of the property control division shall be paid from the fund; expenses of maintenance and insurance of the property 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 property by the property control division with prior approval of the state board of finance.

D. Applications for assistance from the fund shall be made by local school districts to the council in accordance with requirements of the council.

E. The council shall review all requests for assistance from the fund and shall allocate funds only for those capital outlay projects that cannot be financed by the school district from other sources and that meet the criteria of the Public School Capital Outlay Act [22-24-1 to 22-24-6 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.

## ANNOTATIONS

**The 1993 amendment,** effective July 1, 1993, deleted "Annual" from the beginning of the fourth sentence of Subsection C.

**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.

**Appropriations.** - Laws 1994, ch. 147, § 3HH, effective March 9, 1994, appropriates \$10,000,000 from the general fund to the public school capital outlay fund for expenditure in the eighty-second and eighty-third fiscal years for carrying out the provisions of the Public School Capital Outlay Act.

Laws 1995, ch. 2, § 1, effective February 6, 1995, appropriates \$5,000,000 from the general fund to the state department of public education for expenditure in fiscal years 1995 through 1998 for the purpose of meeting capital outlay needs and making capital improvements in the Gadsden independent school district in Dona Ana county.

Laws 1996 (1st S.S.), ch. 5, § 1 appropriates \$5,500,000 from the general fund to the state department of public education for fiscal year 1997 and thirty-six and thirty-six hundredths percent of the appropriation is designated to the public school capital outlay fund contingent upon consideration of applications for grant assistance from the Rio Rancho school district and the Pecos school district.

Laws 1998 (1st S.S.), ch. 5, § 1, effective May 11, 1998, appropriates \$5,000,000 from the general fund to the public school capital outlay fund for expenditure in fiscal years 1998 through 2000 for allocation to public schools for critical capital outlay needs pursuant to the Public School Capital Outlay Act, and instructs the council to give preference to the capital needs of the Zuni school district in McKinley county. Any unexpended or unencumbered balances remaining at the end of fiscal year 2000 shall revert to the general fund.

**Compiler's note.** - The following acts have appropriated funds to the public school capital outlay fund in the specified amounts from the specified sources: Laws 1975, ch. 235, § 7, \$1,800,000 (general fund); Laws 1976, ch. 24, § 1, \$2,500,000 (general fund); Laws 1977, ch. 91, § 1C(19), \$4,000,000 (general fund); Laws 1978, ch. 152, § 7, \$4,000,000 (general fund); Laws 1979, ch. 248, § 1, \$9,000,000 (general fund); Laws 1980, ch. 29, § 1, \$10,000,000 (general fund); Laws 1981, ch. 164, § 1, \$10,000,000 (general fund); Laws 1982, ch. 46, § 1, \$15,000,000 (general fund); Laws 1983, ch. 287, § 1O, \$18,000,000 (proceeds from sev. tax bonds); Laws 1984, ch. 10, § 1O, \$14,000,000 (proceeds from sev. tax bonds); Laws 1985 (S.S.), ch. 15, § 2G, \$14,000,000 (general fund); Laws 1986, ch. 115, § 1L, \$6,000,000 (proceeds from sev. tax bonds); Laws 1987, ch. 354, § 1D(2), \$5,000,000 (proceeds from sev. tax bonds); Laws 1988 (S.S.), § 10A, \$5,000,000 (proceeds from gen. obl. bonds); Laws 1989, ch. 315, § 2S, \$4,750,000 (capital projects fund); Laws 1989, ch. 315, § 9E, \$1,800,000 (proceeds from sev. tax bonds); Laws 1990, ch. 133, § 10A(2), \$12,000,000 (proceeds from gen. obl. bonds); Laws 1991, ch. 261, § 8, \$9,000,000 (proceeds from sev. tax bonds); Laws 1992, ch. 103, § 11B(19), \$11,000,000 (proceeds from gen. obl. bonds); Laws 1993, ch. 367, § 37, \$8,000,000 (proceeds from sev. tax bonds); Laws 1994, ch. 142, § 10B(1), \$8,200,000 (proceeds from gen. obl. bonds); Laws 1994, ch. 147, § 3HH, \$10,000,000 (general fund).

**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. 80-5.

**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. 80-5.

**Veto power over gratis transfer.** - Section 13-6-2(C) NMSA 1978 gives the secretary of finance and administration or the state board of finance veto power over any gratis transfer of school property. 1980 Op. Att'y Gen. No. 80-5.

## **22-24-5. Fund; distribution.**

A. The council shall approve an application for grant assistance from the fund when the council determines that:

- (1) a critical need exists requiring action;
- (2) the residents of the school district have provided available resources to the district to meet its capital outlay requirements;
- (3) the school district has used its resources in a prudent manner;
- (4) the district is in a county or counties which have participated in a reappraisal program and the reappraised values are on the tax rolls or will be used for the tax year 1979 as certified by the property tax division of the taxation and revenue department;
- (5) the school district has provided insurance for buildings of the school district in accordance with the provisions of Section 13-5-3 NMSA 1978;
- (6) the school district is indebted at not less than seventy-five percent of the total debt authorized by law; and
- (7) the school district has submitted a five-year facilities plan that includes enrollment projections.

B. The council shall consider all applications for assistance from the fund and, after a public hearing, shall either approve or deny the application. Applications for grant assistance shall only be accepted by the council after a district has complied with the provisions of this section. The council shall list all applications in order of priority, and all allocations shall be made on a priority basis; provided, however, except in the case of an emergency, that the order of priority shall first reflect those projects which have been previously funded but are not as yet completed excluding expansion of those projects and contingent upon maintenance of the required local support.

C. 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 the application has been approved.

**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.

## ANNOTATIONS

**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.

### **22-24-6. 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 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 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

**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.

**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 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.

## ARTICLE 25 PUBLIC SCHOOL CAPITAL IMPROVEMENTS

### 22-25-1. Short title.

This act [22-25-1 to 22-25-10 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.

## ANNOTATIONS

**Cross-references.** - As to public school finances generally, see 22-8-1 NMSA 1978 et seq.

As to public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

**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. 81-1.

### 22-25-2. Definitions.

As used in the Public School Capital Improvements Act [22-25-1 to 22-25-10 NMSA 1978]:

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, exclusive of any 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, exclusive of salary expenses of school district employees;

(4) purchasing activity vehicles for transporting students to extracurricular school activities; and

(5) purchasing computer software and hardware for student use in public school classrooms.

**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.

## ANNOTATIONS

**The 1989 amendment**, effective June 16, 1989, added Subsection B(4).

**The 1996 amendment**, added Paragraph B(5). Laws 1996, ch. 67 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **22-25-3. Authorization for local school board to submit question of capital improvements tax imposition.**

Any 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 [Articles 35 to 38 of Chapter 7 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:

A. identify the capital improvements for which the revenue proposed to be produced will be used;

B. 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;

C. 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

D. limit the imposition of the proposed tax to no more than four property tax years.

**History:** 1953 Comp., § 77-25-3, enacted by Laws 1975 (S.S.), ch. 5, § 3; 1986, ch. 32, § 21; 1997, ch. 138, § 1.

### **ANNOTATIONS**

**The 1997 amendment** substituted "four" for "three" in Subsection D. Laws 1997, ch. 138 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment dates of Sessions of Legislature" table.

#### **22-25-4. Authorizing resolution; time limitation.**

The resolution authorized under Section 3 of the Public School Capital Improvements Act [22-25-3 NMSA 1978] 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 [22-25-1 to 22-25-10 NMSA 1978] may be held 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 as prescribed in the School Election Law for regular and special school district elections.

B. The resolution required to be published as notice of the election under Section 1-22-4 or 1-22-5 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 four 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.

#### **ANNOTATIONS**

**The 1997 amendment** substituted "four years" for "three years" in Subsection B. Laws 1997, ch. 138 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

#### **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 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**

**Compiler's note.** - Section 22-6-16 NMSA 1978, referred to in this section, was repealed by Laws 1985, ch. 168, § 22.

#### **22-25-7. Imposition of tax; limitation on expenditures.**

If as a result of an election held in accordance with the Public School Capital Improvements Act [22-25-1 to 22-25-10 NMSA 1978] a majority of the qualified electors voting on the question vote 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. The revenue produced by the tax and 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.

**History:** 1953 Comp., § 77-25-7, enacted by Laws 1975 (S.S.), ch. 5, § 7; 1986, ch. 32, § 23.

## ANNOTATIONS

**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 § 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 § 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 four years.**

A tax imposed in a school district as a result of an election under the Public School Capital Improvements Act [22-25-1 to 22-25-10 NMSA 1978] shall be imposed for one, two, three or four 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 the first or second year of the levy. 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.

## ANNOTATIONS

**The 1997 amendment** 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. Laws 1997, ch. 138 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **22-25-9. State distribution to district imposing tax under certain circumstances.**

The director shall distribute to any school district that has imposed a tax under the Public School Capital Improvements Act [22-25-1 to 22-25-10 NMSA 1978] 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, 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 the district's first forty-days' total program units times thirty-five dollars (\$35.00) 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.

**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.

## ANNOTATIONS

**The 1988 amendments.** - Laws 1988, ch. 64, § 44, effective May 18, 1988, substituting "state superintendent" for "director" in the first sentence and deleting "by December 1 of" preceding "each year" in the next-to-last sentence, was approved on March 8, 1988. However, Laws 1988, ch. 66, § 2, effective March 8, 1988, giving effect to the second change but not the first, and amending this section further by substituting "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, deleting "by December 1" preceding "of each year" in the second sentence and inserting the proviso at the end of the second sentence was approved later on March 8, 1988. The section is set out as amended by Laws 1988, ch. 66, § 2. See 12-1-8 NMSA 1978.

**The "tax rate imposed in the district" under the Public School Capital Improvements Act** is that rate certified in accordance with § 22-25-7 which incorporates § 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 § 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 administrative charge authorized by § 7-38-38.1 NMSA 1978, and such fee may not be used to reduce the revenue estimate that his 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

**Appropriations.** - Laws 1994, ch. 148, § 50C, effective March 9, 1994, appropriates \$9,600,000 from the general fund to the public school capital improvements fund for expenditure in the eighty-second and eighty-third fiscal years to carry out the provisions of the Public School Capital Improvements Act. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall not revert to the general fund.

Section 5 of Laws 1995, ch. 13, the Education Appropriation Act of 1995, effective June 16, 1995, appropriates \$7,000,000 from the general fund to the public school capital improvements fund for expenditure in fiscal year 1996.

Laws 1998, ch. 3, § 1, effective February 10, 1998, appropriates \$6,100,000 from the general fund to the public school capital improvements fund for expenditure in fiscal year 1998 and subsequent fiscal years for carrying out the provisions of the Public School Capital Improvements Act. Any unexpended or unencumbered balance remaining in the fund at the end of fiscal year 1998 shall not revert to the general fund.

**Compiler's note.** - The following acts have appropriated funds to the public school capital improvements fund in the specified amounts from the specified sources: Laws 1977, ch. 91, § 1C(19), \$5,100,000 (proceeds from sev. tax bonds); Laws 1980, ch. 31, § 1, \$8,700,000 (general fund); Laws 1983, ch. 287, § 1I(4), \$12,000,000 (proceeds from sev. tax bonds); Laws 1984, ch. 10, § 1O, \$14,000,000 (proceeds from sev. tax bonds); Laws 1985 (S.S.), ch. 15, § 1I, \$12,000,000 (proceeds from sev. tax bonds); Laws 1986, ch. 115, § 1K, \$10,000,000 (proceeds from sev. tax bonds); Laws 1987, ch. 354, § 1D(1), \$5,000,000 (proceeds from sev. tax bonds); Laws 1988 (S.S.), ch. 2, § 10A, \$15,000,000 (proceeds from gen. obl. bonds); Laws 1988 (S.S.), ch. 3, § 1F, \$3,054,000 (general fund); Laws 1989, ch. 315, § 2R, \$4,900,000 (capital projects fund); Laws 1990, ch. 133, § 10A(1), \$3,500,000 (proceeds from gen. obl. bonds); Laws 1991, ch. 261, § 7, \$6,500,000 (proceeds from sev. tax bonds); Laws 1992, ch. 103, § 11B(18), \$6,000,000 (proceeds from gen. obl. bonds); Laws 1993, ch. 367, § 25, \$6,000,000 (proceeds from sev. tax bonds); Laws 1994, ch. 148, § 22, \$590,000 (proceeds from sev. tax bonds); Laws 1994, ch. 148, § 50C, \$9,600,000 (general fund); Laws 1995, ch. 13, § 5, \$7,000,000 (general fund).

## **ARTICLE 26**

### **PUBLIC SCHOOL BUILDINGS**

#### **22-26-1. Short title.**

This act [22-26-1 to 22-26-8 NMSA 1978] may be cited as the "Public School Buildings Act".

**History:** Laws 1983, ch. 163, § 1.

#### **22-26-2. Definitions.**

As used in the Public School Buildings Act [22-26-1 to 22-26-8 NMSA 1978], "capital improvements" means expenditures, exclusive of any debt service expenses, for:

- A. erecting, remodeling, making additions to, providing equipment for or furnishing public school buildings; and
- B. purchasing or improving public school grounds.

**History:** Laws 1983, ch. 163, § 2.

### **22-26-3. Authorization for local school board to submit question of capital improvements tax imposition.**

Any 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 [Articles 35 to 38 of Chapter 7 NMSA 1978] for the purpose of capital improvements in the school district. The resolution shall:

- A. 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;
- 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 five property tax years.

**History:** Laws 1983, ch. 163, § 3; 1986, ch. 32, § 26.

### **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 [22-26-1 to 22-26-8 NMSA 1978] may be held 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 as prescribed in the School Election Law [1-22-1 to 1-22-19 NMSA 1978] for regular and special school district elections.

B. The resolution required to be published as notice of the election under Section 1-22-4 or 1-22-5 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 five 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.

### **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 to 1-22-19 NMSA 1978], and a copy of the certificate of results shall be mailed immediately to the state superintendent.

**History:** Laws 1983, ch. 163, § 6; 1993, ch. 226, § 52.

### **ANNOTATIONS**

**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 [22-26-1 to 22-26-8 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 any lower rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the rate specified in the authorizing resolution or at any rate lower than the rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 if directed by the local school board pursuant to Section 22-26-8 NMSA 1978, and the tax shall be imposed at the rate certified in accordance with the provisions of the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978]. If in any tax year the authorized tax rate under the Public School Buildings Act, when added to

the tax rates for servicing debt of the school district and for capital improvements pursuant to the Public School Capital Improvements Act [22-25-1 to 22-25-10 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**, substituted "fifteen dollars (\$15.00)" for "ten dollars (\$10.00)" throughout the section. Laws 1996, ch. 63 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **22-26-8. Tax to be imposed for a maximum of five years.**

A tax imposed in a school district as a result of an election under the Public School Buildings Act [22-26-1 to 22-26-8 NMSA 1978] shall be imposed for one, two, three, four or five 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.

## **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 [22-27-1 to 22-27-3 NMSA 1978] 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 clauses.** - Laws 1995, ch. 72, § 4 provides 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 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.

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 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

**Cross-references.** - For the state transportation division of the department of education, see 22-16-2 NMSA 1978.

**Effective dates.** - Laws 1997, ch. 233 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Compiler's note.** - 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.

### **22-28-2. 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 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 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**

**Effective dates.** - Laws 1997, ch. 233 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **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.

### **ANNOTATIONS**

**Effective dates.** - Laws 1997, ch. 233 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

## **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. 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**

**Effective dates.** - Laws 1997, ch. 233 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Temporary provisions.** - Laws 1997, ch. 233, § 9, provides that the state department of public education may request budget increases in fiscal year 1998 for the school bus advertising fund.

**Compiler's note.** - 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 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 on how the funds were used in the technology plans and for extracurricular activities.

**History:** Laws 1997, ch. 233, § 7.

### **ANNOTATIONS**

**Effective dates.** - Laws 1997, ch. 233 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

## **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.

**History:** Laws 1997, ch. 233, § 8.

### **ANNOTATIONS**

**Effective dates.** - Laws 1997, ch. 233 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.