

### Adopted Rule Abstract

1. **Agency:** Public Education Department
2. **Rule Citation:** 6.19.9 NMAC
3. **Rulemaking Action:** New Rule
4. **Register Issue and Date of Notice of Proposed Rulemaking:** Volume 29, Issue 6, March 27, 2018
5. **Register Issue and Date of Adoption:** Volume 29, Issue 14, July 24, 2018
6. **Effective Date:** July 24, 2018
7. **Specific Legal Authority:** Sections 22-2C-1 to 22-2C-13, specifically Section 22-2C-6, Subsection E of Section 22-1-1.2, Subsection D of Section 22-2-2, and Subsection B of Section 22-13-1 NMSA 1978.
8. **Purpose of Rule:** To support students in achieving reading proficiency; establish criteria for providing data-driven interventions for students; establish criteria for parent and family communication; provide parents with options to address student progress in reading, and standards for reading proficiency and promotion; and outline standards for identifying students who are not proficient in reading and the progress schools must follow for these students.
9. **Link to Permanent Agency Rulemaking Record:**  
[http://statenm.force.com/public/SSP\\_RuleHearingSearchPublic](http://statenm.force.com/public/SSP_RuleHearingSearchPublic)

## Summary of Adopted Rule

The July 24 issue of the *New Mexico Register* contained the final adoption of Part 9 of 6.19 NMAC, “Early Literacy Remediation, Interventions, and Family Engagement,” which outlines the supports and standards for early literacy intervention and retention for students in kindergarten through third grade. The adopted rule will require school districts and charter schools (LEAs) to administer a common, districtwide benchmark assessment for student literacy to kindergarten through third grade students, and to use the resulting student performance data to guide academic improvement plans, interventions and retention, and promotion decisions. See **Attachment 1, 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Family Engagement.**

## Analysis

The new rule outlines criteria for early literacy remediation and retention, provides mechanisms for notifying and engaging families and teachers, and, according to the Public Education Department (PED), establishes conditions for improving literacy outcomes for students. The requirements are mandatory for all public schools and state-supported educational institutions and programs serving students in

kindergarten through third grade, other than the New Mexico Military Institute. While there have been several significant changes from the draft proposed rule to the adopted rule to better align it with statute, the adopted rule still appears to exceed the authority granted to PED in some areas.

**Rulemaking Hearing.** LESC submitted a letter regarding the initial proposed rule as formal written comment on April 23 after staff presented on the proposed rulemaking at LESC’s April meeting. See **Attachment 2**. LESC was concerned PED had exceeded its statutory authority and that the proposed rule conflicted with statutory provisions in several areas. Specifically, LESC was concerned PED did not have the authority to:

- promulgate these rules to apply to kindergarten students;
- require LEAs to administer a PED-approved benchmark assessment for literacy to kindergarten through third-grade students and use the results to make remediation and retention decisions;
- require LEAs to make student remediation and retention decisions exclusively based on PED-determined cut scores on a PED-approved benchmark literacy assessment;
- specify and limit “good cause” exemptions from student retention;
- require LEAs to make accelerated instruction available to kindergarten through third grade students; and
- promulgate definitions in rule that conflict with statute.

**Public Comments Submitted to PED on Proposed Rule 6.19.9 NMAC** PED addressed some of the concerns raised by LESC in the final adopted rule; however, a number of the issues remain unaddressed.

Teacher	41
Nonprofit	17
Parent	12
Tribal Government	2
School District	5
Education Researcher	2
School Board Member	2
Legislative Committee	1
Legislator	82
Total	

PED held a public rulemaking hearing for the proposed rule on May 17, 2018. Although there were only about 10 people present at the hearing, there were 82 written public comments submitted to the department, and only five of these comments were supportive of the proposed rule. While it appears PED did address some of the issues in the proposed rule brought up in public comments, the adopted rule still contains conflicts with statutory authority brought up repeatedly.

**Changes from the Proposed Rulemaking**

Source: PED

**Applicability.** Kindergarten through third grade students would be subject to the provisions of the adopted rule. LESC, along with several others who provided public comment, was concerned PED was overstepping its statutory authority in the proposed rule in its applicability to kindergarten students. PED added several sections of statute to the statutory authority section in the adopted rule, specifically Subsection E of Section 22-1-1.2, Subsection D of Section 22-2-2, and Subsection B of Section 22-13-1 NMSA 1978. See **Attachment 3**. The addition of Subsection B of Section 22-13-1 NMSA 1978 provides PED the statutory authority to screen and monitor students in kindergarten for progress in reading and language arts skills, which was missing in the adopted rule. However, Subsection B of Section 22-2C-6 only provides local school boards the authority to develop remediation and academic improvement programs for students in first through eighth grade. It does

not appear that PED has the authority to promulgate intervention, promotion, and retention regulations for kindergarten students.

***Benchmark Literacy Assessment.*** The adopted rule requires LEAs to administer a district-adopted literacy benchmark assessment at the beginning, middle, and end of the year for students in kindergarten through third grade. Student performance on the district-adopted literacy benchmark assessment and other measures as determined by the student assistance team (SAT) will guide student remediation and retention decisions. PED removed the proposal to use a PED-adopted literacy benchmark assessment for remediation and retention decisions in the adopted rule, as suggested by LESC and many public comments. This change in the adopted rule is consistent with statutory requirements outlined in Section 22-2C-6 NMSA 1978, which note “remediation programs, academic improvement programs and promotion policies shall be aligned with school-district-determined results.”

***Student Remediation and Retention.*** Generally, LEAs will be required to communicate student progress to PED and parents throughout the year. If a student is not proficient in literacy as measured by the mid-year literacy benchmark assessment, the student’s teacher must notify the student’s parent or legal guardian in writing, and arrange for a parent-teacher conference. After this conference, the SAT will develop an academic improvement plan for the student that clearly outlines progress monitoring activities, associated timelines, and delegation of responsibilities for those interventions to ensure student progress towards literacy by the end of the year. If the end-of-year benchmark assessment does not show the student is proficient, the student’s parent or guardian may retain their student at the same grade level.

However, if the student’s parent or guardian decides not to retain the student, they will be required to sign a retention waiver expressing their desire for the student to be promoted to the next grade with an academic improvement plan to address the student’s specific literary deficiencies. If the student fails to reach literacy proficiency as measured by the benchmark assessment for literacy and other measures, the school must retain the student in the subsequent school year.

The addition of “other measures” to make retention decisions is a significant change from the proposed rule, which relied on a PED-approved assessment as the only metric to make decisions related to remediation and retention. However, Subsection F of Section 22-2C-6 NMSA 1978 indicates retention decisions should be based on more than a single test score: “Students failing to become academically proficient at the end of that year as measured by grades, performance on school district assessments and other measures identified by the school district shall be retained in the same grade for no more than one year in order to have additional time to achieve academic proficiency.” The changes to the adopted rule to allow school districts to set proficiency targets and use multiple measures to make retention decisions aligns the adopted rule with statute. LESC and several public comments indicated PED does not have the statutory authority to mandate a single assessment as the only metric to use to make remediation and retention decisions.

**Exemptions.** Schools will be able to exempt students from retention for “good cause.” Good cause exemptions are limited by the adopted rule to the following:

1. Students with disabilities who:
  - a. participate in the benchmark assessment for literacy;
  - b. have individualized education plans (IEPs) or Section 504 plans that reflect that they have received literacy interventions for more than two years;
  - c. have not reached proficiency in literacy; and
  - d. were previously retained in kindergarten or first, second, or third grade.
2. Students who have been previously retained in their current grade; or
3. Students identified as English learners who have had fewer than three years of instruction in U.S. schools.

It is unclear if PED has the authority to specify “good cause” exemptions included in the rule. Current statute allows school districts to make retention decisions based on “grades, performance on school district assessments, and other measures identified by the school district,” which appears to indicate local school districts are able to determine the metrics they want to use to make retention and promotion decisions. Several public comments on the proposed rule, along with LESC’s comments, suggested PED does not have the authority to promulgate “good cause” exemptions.

**Acceleration Options.** The adopted rule includes requirements for providing accelerated instruction for students in kindergarten through third grade who “have not already been identified as gifted,” language which is new to the adopted rule. LEAs must provide options for whole-grade promotion or subject-matter acceleration as well as additional options, including:

The draft version of the proposed rule required, at a minimum, whole-grade and mid-year promotion, subject-matter acceleration, and online instruction in personalized, higher grade level content. Additional options proposed in the draft proposed rule mirror those of the adopted rule, other than the requirement to provide telescoping curriculum, which was removed in the adopted rule.

1. Enriched science, technology, engineering, and mathematics;
2. Enrichment programs;
3. Flexible grouping;
4. Advanced academic courses;
5. Combined classes;
6. Self-paced instruction;
7. Curriculum compacting;
8. Advanced-content instruction; and
9. Online instruction in personalized, higher grade level content.

Another change from the proposed rule is LEAs are no longer required to provide mid-year promotion options.

While there were some changes to the accelerated instruction requirements in the adopted rule from the proposed rule, the overall requirement to provide accelerated instruction remains. The requirement for LEAs to make accelerated instruction available to kindergarten through third grade students appears to fall outside of PED’s statutory authority, as the associated statute makes no mention of accelerated instruction, as mentioned by the LESC and many public comments.

## New Mexico Register / Volume XXIX, Issue 14 / July 24, 2018

**TITLE 6            PRIMARY AND SECONDARY EDUCATION**  
**CHAPTER 19      PUBLIC SCHOOL ACCOUNTABILITY – ASSESSMENT AND ACCOUNTABILITY**  
**PART 9            EARLY LITERACY REMEDIATION, INTERVENTIONS, AND FAMILY**  
**ENGAGEMENT**

**6.19.9.1            ISSUING AGENCY:** Public Education Department, herein after the department.  
 [6.19.9.1 NMAC - N, 7/24/2018]

**6.19.9.2            SCOPE:** All public schools, state education institutions, and educational programs conducted in state institutions, other than the New Mexico military institute. If any part of application of this rule is held invalid, the remainder of the rule or its application in other situations shall not be affected.  
 [6.19.9.2 NMAC - N, 7/24/2018]

**6.19.9.3            STATUTORY AUTHORITY:** This regulation is adopted pursuant to Sections 22-2C-1 to 13, specifically Section 22-2C-6, Subsection E of Section 22-1-1.2, Subsection D of Section 22-2-2, and Subsection B of Section 22-13-1 NMSA 1978.  
 [6.19.9.3 NMAC - N, 7/24/2018]

**6.19.9.4            DURATION:** Permanent.  
 [6.19.9.4 NMAC - N, 7/24/2018]

**6.19.9.5            EFFECTIVE DATE:** July 24, 2018, unless a later date is cited at the end of a section.  
 [6.19.9.5 NMAC - N, 7/24/2018]

**6.19.9.6            OBJECTIVE:** This rule establishes the conditions for improving literacy outcomes for students by outlining interventions, providing mechanisms for notifying and engaging families and teachers, and notifying parents or legal guardians of all available options to improve student progress in literacy.  
 [6.19.9.6 NMAC - N, 7/24/2018]

**6.19.9.7            DEFINITIONS:**

**A.            “Academic improvement plan”** means a written document developed by the student assistance team that describes the specific content standards required for a certain grade level that a student has not achieved and that prescribes specific remediation programs such as summer school, extended day or week school and tutoring.

**B.            “Benchmark assessment for literacy”** means a common, districtwide assessment for student literacy that diagnoses and regularly measures the acquisition of reading skills, including phonemic awareness, letter knowledge, alphabetic decoding, vocabulary, spelling, comprehension and fluency to be given at the beginning of the year, middle of the year, and end of the year.

**C.            “English language learner”** means a student whose first or heritage language is not English and who is unable to read, write, speak, or understand English at a level comparable to grade-level English proficient peers and native English speakers.

**D.            “Individual student report”** means the report that indicates a student’s performance on the required state assessment using scale scores, performance levels, and performance indicators.

**E.            “Intervention”** means the intensive, targeted instruction of individual students or small groups of students, as determined by student performance on the benchmark assessment for literacy, and included as part of the academic improvement plan.

**F.            “Local education agency or “LEA”** means a school district or state-chartered charter school.

**G.            “Remediation”** means tutoring, extended school day or school week programs, summer programs, and other evidence-based interventions and proven models for student improvement.

**H.            “Student assistance team” or “SAT”** means a group consisting of a student’s:

- (1) teacher;
- (2) school counselor;
- (3) school administrator; and

- (4) parent or legal guardian.

[6.19.9.7 NMAC - N, 7/24/2018]

**6.19.9.8 GENERAL REQUIREMENTS FOR INTERVENTION, NOTIFICATION, AND REPORTING:**

**A.** For kindergarten and grades one through three, the benchmark assessment for literacy shall be administered at the beginning of year, middle of year, and end of year. Student progress shall be carefully monitored throughout the academic year and shall be clearly communicated to parents or legal guardians through parent notification letters. For English language learners, the assessment shall be grade-level appropriate and in the student's first language, if appropriate, and approved by the department.

**B.** Academic improvement plans shall be developed for students in need of early literacy intervention, as determined by performance on the benchmark assessment for literacy. School administrators shall ensure that academic improvement plans align with department guidance and evidence-based best practices. The department may request to review academic improvement plans at any time.

**C.** The determination of a student's literacy strengths and weaknesses, as measured by the benchmark assessment for literacy, shall serve as one of the criteria for offering parents or legal guardians the option for their student to receive an additional year of instruction in the same grade level. The benchmark assessment for literacy results shall also direct the use of daily intervention, remediation, or alternative programming.

**D.** For kindergarten and grades one through three, LEAs shall track and report student literacy data and information in accordance with department requirements. Student performance shall be measured by the benchmark assessment for literacy, as defined in 6.19.9.7 NMAC. The department may issue additional guidance or provide additional tools to facilitate the collection and reporting of literacy data and information.

(1) LEAs shall report the following data to the department by March 1 of each year:

(a) number of students not proficient in literacy, as determined by the middle of year benchmark assessment for literacy;

(b) number of student assistance teams convened for students not proficient in literacy; and

(c) number of parent notification letters sent regarding individual students not proficient in literacy, as determined by the middle of year benchmark assessment for literacy, pursuant to 6.19.9.9 NMAC.

(2) LEAs shall report the following data to the department by June 1 of each year:

(a) number of students not proficient in literacy, as determined by the end of year benchmark assessment for literacy; and

(b) number of retention waiver letters signed by parents or legal guardians of students not proficient in literacy, as determined by the end of year benchmark assessment for literacy.

(3) LEAs shall report the following data to the department by August 1 of each year:

(a) number of students retained as a result of not being proficient in literacy, as determined by the end of year benchmark assessment for literacy pursuant to 6.19.9.9 NMAC;

(b) number of students not proficient in literacy, as determined by the end of year benchmark assessment for literacy, promoted to the next grade;

(c) number of students at performance level one in English language arts, according to his or her grade three individual student report for the state assessment;

(d) explanation of final determinations of student retention and promotion for which student performance on the end of year benchmark assessment for literacy was not the deciding factor;

(e) copy of the LEA's retention waiver letter template;

(f) copies of all parent notification letters sent to parents or legal guardians regarding individual students not proficient in literacy, as determined by the middle of year benchmark assessment for literacy, pursuant to 6.19.9.9 NMAC; and

(g) copies of all retention waiver letters signed by parents or legal guardians for individual students not proficient in literacy, as determined by the end of year benchmark assessment for literacy.

[6.19.9.8 NMAC - N, 7/24/2018]

**6.19.9.9 PARENT OR LEGAL GUARDIAN NOTIFICATION AND ENGAGEMENT:**

**A.** If a student is not proficient in literacy, as determined by the middle of year benchmark assessment for literacy, the student's teacher shall notify the student's parent or legal guardian formally, in writing, and hold a parent-teacher conference.

- (1) Written notification shall include:
  - (a) student performance on the benchmark assessment for literacy and ongoing progress monitoring;
  - (b) specific interventions implemented to-date;
  - (c) strategies for parents or legal guardians to implement at home; and
  - (d) parent or legal guardian options including:
    - (i) daily intervention;
    - (ii) remediation; or
    - (iii) alternative programs.
- (2) During the parent-teacher conference, the teacher shall review:
  - (a) the student's performance in comparison to grade-level literacy standards;
  - (b) results that indicate the student is not proficient in literacy as determined by benchmark assessments for literacy;
  - (c) goals for student growth that will lead to proficiency in literacy by the end of the academic year; and
  - (d) whether or not the student is on track to be college and career ready as measured by the middle of the year benchmark assessment for literacy.

**B.** Following the middle of the year notification and parent conference, the SAT shall develop an academic improvement plan for any student not proficient in literacy, as determined by the middle of year benchmark assessment for literacy. The academic improvement plan shall clearly outline progress monitoring activities, associated timelines, and delegation of responsibilities for those interventions to ensure student progress toward proficiency in literacy by the end of the year.

**C.** If a student has not achieved grade-level literacy proficiency by the end of year benchmark assessment for literacy, the student's teacher shall notify the student's parent or legal guardian formally, in writing.

- (1) Written notification shall include:
  - (a) student performance on the benchmark assessment for literacy;
  - (b) specific interventions implemented to-date;
  - (c) strategies for parents or legal guardians to implement at home; and
  - (d) a retention option pursuant to Section 22-2C-6 NMSA 1978.
- (2) Retention shall ensure that a student receives an additional year of instruction in the same grade with an amended academic improvement plan. If a student's parent or legal guardian decides not to retain the student, the parent or legal guardian shall sign a retention waiver expressing their desire for the student to be promoted to the next higher grade with an academic improvement plan designed to address specific deficiencies, including those in early literacy. A retention waiver shall only prevent the student's retention for one school year. If the student fails to reach academic proficiency, as determined by the benchmark assessment for literacy and other measures, the school shall retain the student the following year.

**D.** Parents and legal guardians shall be notified of their students' results on required state assessments and provided with their individual student reports no later than 30 days following receipt by LEAs.

[6.19.9.9 NMAC - N, 7/24/2018]

**6.19.9.10 EXEMPTIONS:** Schools may only exempt students from retention for good cause or pursuant to the completion of a retention waiver letter provided by the LEA. A student who is promoted with an exemption shall continue to receive interventions prescribed in his or her academic improvement plan until proficiency in literacy has been met as determined by a benchmark assessment for literacy.

- A.** Good cause exemptions shall be limited to the following:
  - (1) students with disabilities whose individualized education programs (IEPs) indicate that participation in the benchmark assessment for literacy is not appropriate, pursuant to Subsection I of Section 22-2C-6 NMSA 1978, or other applicable state laws and regulations;
  - (2) students with disabilities who:
    - (a) participate in the benchmark assessment for literacy;
    - (b) have IEPs or section 504 plans that reflect that they have received literacy intervention for more than two years;
    - (c) have not reach proficiency in literacy; and
    - (d) were previously retained in kindergarten or grades one, two, or three.
  - (3) students who have been previously retained in their current grade; or

(4) students identified as English language learners who have had fewer than three years of instruction in schools in the United States.

**B.** Documentation to support any request for exemption shall be collected and submitted by the student's teacher(s) or case manager to the school principal indicating why promotion is appropriate. Documentation shall include:

- (1) the reason for exemption pursuant to Subsection A of 6.19.9.10 NMAC; and
- (2) an existing academic improvement plan or IEP.

**C.** The school principal shall review and discuss the recommendation with the SAT and determine whether or not the student qualifies for the requested exemption. If the school principal determines that, based on the provided documentation, the student qualifies for the requested exemption, the school principal shall make such a recommendation in writing to the superintendent or charter school administrator. The superintendent or charter school administrator shall accept or reject the school principal's recommendation in writing.  
[6.19.9.10 NMAC - N, 7/24/2018]

**6.19.9.11 ACCELERATION OPTIONS:** Academically challenging curriculum options that provide accelerated instruction shall be made available to public school students in kindergarten and grades one through three who have not already been identified as gifted.

**A.** At a minimum, each school shall offer the following options:

- (1) whole-grade promotion; and
- (2) subject-matter acceleration.

**B.** Additional options may include the following:

- (1) enriched science, technology, engineering, and mathematics;
- (2) enrichment programs;
- (3) flexible grouping;
- (4) advanced academic courses;
- (5) combined classes;
- (6) self-paced instruction;
- (7) curriculum compacting;
- (8) advanced-content instruction; and
- (9) online instruction in personalized, higher grade level content.

[6.19.9.11 NMAC - N, 7/24/2018]

**6.19.9.12 ELIGIBILITY AND PROCEDURAL REQUIREMENTS FOR ACCELERATION:**

**A.** LEAs shall establish student eligibility requirements and procedural requirements for any whole-grade promotion or subject-matter acceleration. Student eligibility requirements and procedural requirements established by the LEA shall be included in the LEA's comprehensive student progression plan.

**B.** School principals shall establish a process by which parents or legal guardians may request student participation in acceleration options offered at their school.

(1) Each principal shall inform parents or legal guardians and students of the options available at the school and the associated eligibility requirements for each option.

(2) If the parent or legal guardian selects one of these options, and the student meets the eligibility requirements established by the LEA, the student shall be provided the opportunity to participate in the acceleration option.

**C.** When establishing student eligibility requirements for acceleration, principals and LEAs shall consider, at a minimum:

- (1) the student's performance on a locally determined assessment;
- (2) the student's performance as indicated on his or her individual student report;
- (3) the student's grade point average;
- (4) the student's attendance record;
- (5) the student's conduct record;
- (6) recommendations from one or more of the student's teachers in core-curricula courses;
- (7) recommendations from a certified school counselor or social worker, if one is assigned to the school in which the student is enrolled; and
- (8) recommendations from the student's parent or legal guardian.

[6.19.9.12 NMAC - N, 7/24/2018]

**HISTORY OF 6.19.9 NMAC: [RESERVED]**



*State of New Mexico*  
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April 23, 2018

Christopher Ruszkowski  
 Secretary-Designate  
 New Mexico Public Education Department  
 300 Don Gaspar  
 Santa Fe, NM 87501

Dear Secretary-Designate Ruszkowski:

The Legislative Education Study Committee is submitting this letter as formal written comment to the department's proposed new rule, 6.19.9 NMAC, concerning early reading benchmark assessments, interventions, promotion, and retention. The rule in its current form, and based on the sections of statute the department cited as granting the department authority to promulgate the rule, exceeds the statutory authority granted to the department and conflicts with current statutory provisions, as follows:

- **Applicability to Kindergarten Students.** The proposed rule would apply to kindergarten through third-grade students; however, the provisions of Section 22-2C-6 NMSA 1978 only apply to first through 12th grade students. Kindergarten students are not mentioned in the Assessment and Accountability Act and as such, the Public Education Department (PED) does not have the authority to promulgate these rules to apply to kindergarten students.
- **PED-Approved Benchmark Assessment and PED-Designated Benchmarks for Kindergarten through Third Grade Students.** The proposed rule would require school districts and charter schools to administer a PED-approved benchmark assessment for literacy to kindergarten through third-grade students three times a year and use the results to make remediation and retention decisions. The Assessment and Accountability Act does not grant PED the authority to require school districts and charter schools to administer a PED-approved benchmark assessment for student literacy, nor does it grant the department the authority to establish the benchmarks that students must meet to be considered proficient. Subsection A of Section 22-2C-6 NMSA 1978 states, "Remediation programs, academic improvement programs and promotion policies shall

be aligned with school-district-determined assessment results and requirements of the state assessment and accountability program.” (The state assessment and accountability program referenced in this section refers only to standards-based assessments generally implemented pursuant to federal requirements).

- **Use of PED-Approved Benchmark Assessment for Remediation and Retention Decisions.** The proposed rule would require school districts and charter schools to make student remediation and retention decisions based on a PED-determined cut score on a PED-approved benchmark literacy assessment. Again, current law requires remediation programs, academic improvement programs, and promotion policies to “be aligned with school-district-determined assessment results...” Additionally, Subsection F of Section 22-2C-6 NMSA 1978 requires proficiency or lack thereof to be established through multiple measures, including “grades, performance on school district assessments and other measures identified by the school district.” This section does not give PED the statutory authority to approve or mandate a particular benchmark literacy assessment or to use a single assessment as the only metric to make remediation and retention decisions.
- **Good Cause Exemptions.** Because statute grants the authority to local school districts to make retention decisions based on locally identified multiple measures, PED does not appear to have the statutory authority to specify and limit “good cause” exemptions from student retention as identified in the proposed rule.
- **Accelerated Instruction.** The requirement for school districts and charter schools to make accelerated instruction available to kindergarten through third grade students also appears to fall outside of PED’s statutory authority; nowhere in the Assessment and Accountability Act is the idea of accelerated instruction contemplated.
- **Definitions.** The definitions of “academic improvement plan” and “student assistance team” are different than the definition of those terms in statute.

Pursuant to State Rules Act, no rule is valid or enforceable if it conflicts with statute and a conflict between a rule and a statute will be resolved in favor of the statute. The committee respectfully requests PED review the Assessment and Accountability Act and ensure the department is considering a rule that complies with current statutory requirements.

Thank you in advance for considering this request.

Sincerely,



Senator Mimi Stewart, Chair



Representative G. Andrés Romero, Vice Chair

## ARTICLE 2C

### Assessment and Accountability

#### Section

- 22-2C-1 Short title.
- 22-2C-2 Purposes.
- 22-2C-3 Academic content and performance standards; department powers and duties.
- 22-2C-4 Statewide assessment and accountability system; indicators; required assessments; alternative assessments; limits on alternatives to English language reading assessments.
- 22-2C-4.1 Statewide college and workplace readiness assessment system.
- 22-2C-5 Measuring and categorizing students' academic performance.
- 22-2C-6 Remediation programs; promotion policies; restrictions.
- 22-2C-7 Repealed.
- 22-2C-7.1 Repealed.
- 22-2C-8 State improving schools program.
- 22-2C-9 Incentives for school improvement fund; created; distributions.
- 22-2C-10 Schools in need of improvement fund; created.
- 22-2C-11 Assessment and accountability system reporting; parent survey; data system; fiscal information.
- 22-2C-12 Repealed.
- 22-2C-13 Reporting recommended changes to laws.

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

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

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

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

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

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

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

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

department are held accountable for ensuring student success.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) for grades three through eight and for grade eleven, standards-based assessments in mathematics, reading and language arts;

(2) for grades three through eight, a standards-based writing assessment with the writing assessment scoring criteria applied to the extended response writing portions of the language arts standards-based assessments; and

(3) for one of grades three through five and six through eight and for grade eleven, standards-based assessments in science by the 2007-2008 school year.

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

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

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

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

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

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

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

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

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

2003-2004 school year.

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

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

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

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

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

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

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

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

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

**The 2016 amendment**, effective May 18, 2016, eliminated higher education or career readiness assessment system requirements for students in grades nine and ten; in Subsection A, in the introductory paragraph, after "include," deleted "the following components:", deleted Paragraphs (1) and (2), the paragraph designation "(3)", and the word "in" and added "for", and redesignated former Subparagraphs (a) through (c) of Paragraph (3) as new Paragraphs (1) through (3) of Subsection A; in Subsection B, deleted "All", and after "Students", deleted "at the specified grade level"; and in Subsection C, deleted "The department shall ensure that results of performance on readiness assessments administered in grades nine and ten are reported to students, parents and public schools no later than four weeks following the date on which the assessments are administered, in a form that is easily understandable and useful in the next-step planning process."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. At the end of the eighth grade, a student who is not academically proficient shall be

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

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

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

J. For the purposes of this section:

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

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

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

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

(a) teacher;

(b) school counselor;

(c) school administrator; and

(d) parent.

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

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

**Compiler's notes.** — This section was compiled as Section 22-2-8.6 NMSA 1978 at the time of the

enactment of Laws 2003, ch. 143, § 2.

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

**The 2003 amendment**, effective April 4, 2003, recompiled former 22-2-8.6 NMSA 1978 as 22-2A-6 NMSA 1978 (relocated to 22-2C-6), and deleted "Educational content standards" at the beginning of the section heading; rewrote Subsection A to the extent that a detailed comparison is impracticable; in Subsection B substituted "adequate yearly progress" for "a level of proficiency established by the content standards" near the middle and deleted "of education" at the end.

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

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

## ANNOTATIONS

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

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

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

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

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

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

The department may institute a "state improving schools program" that measures public

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

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

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

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

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

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

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

C. Each public school's school council shall determine how the supplemental funding shall

be used. The money received by a public school shall not be used for salaries, salary increases or bonuses, but may be used to pay substitute teachers when teachers attend professional development activities.

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

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

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

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

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

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

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

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

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

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

A. The department shall:

- (1) issue a state identification number for each public school student for use in the

accountability data system;

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

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

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

- (a) Caucasian, non-Hispanic;
- (b) Hispanic;
- (c) African American;
- (d) American Indian or Alaska Native;
- (e) Native Hawaiian or other Pacific Islander;
- (f) Asian;
- (g) two or more races; and

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

(5) report cohort graduation data annually for the state, for each school district and for each state-chartered charter school and each public high school, based on information provided by all school districts and state-chartered charter schools according to procedures established by the department; provided that the report shall include the number and percentage of students in a cohort who:

- (a) have graduated by August 1 of the fourth year after entering the ninth grade;
- (b) have graduated in more than four years, but by August 1 of the fifth year after entering ninth grade;
- (c) have received a state certificate by exiting the school system at the end of grade twelve without having satisfied the requirements for a high school diploma as provided in Section 22-13-1.1 NMSA 1978 or completed all course requirements but have not passed the

graduation assessment or portfolio of standards-based indicators pursuant to Section 22-13-1.1 NMSA 1978;

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

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

(f) are still enrolled in public school;

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

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

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

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

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

(2) who have dropped out or whose status is unknown;

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

(4) who are still enrolled; and

(5) whose other educational outcomes are known to the school district.

D. The school district's or state-chartered charter school's annual accountability report shall be adopted by the local school board or governing body of the state-chartered charter school, shall be published no later than November 15 of each year and shall be published at least once each school year in a newspaper of general circulation in the county where the school district or state-chartered charter school is located as well as online on the website of the school district or state-chartered charter school. In publication, the report shall be titled "The School District

Report Card" or "The Charter School Report Card" and disseminated in accordance with guidelines established by the department to ensure effective communication with parents, students, educators, local policymakers and business and community organizations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**The 2010 amendment**, effective May 19, 2010, in Subsection A(3), in the first sentence, after "school districts", added "state-chartered charter schools" and added the second sentence; in Subsection A(4), after "school districts", added "state-chartered charter schools"; added Paragraphs (5), (6) and (7) of Subsection A; in Subsection B, after "Local school boards", added "and governing boards of charter schools" and after "school district's", added "or charter school's"; in Subsection C, in the first sentence, after "The school district's", added "or state-chartered charter school's"; after "include a report of" added "four- and five-year" and after "school district", added "or state-chartered charter school"; added the second sentence; and in the third sentence, after "the school district", added "or state-chartered charter school" and after "state-chartered charter school shall", deleted "indicate contributing factors to nongraduation such as transfer out of the school district, pregnancy, dropout and other factors as known" and added the remainder of the sentence; added Paragraphs (1), (2), (3), (4) and (5) of Subsection C; in Subsection D, in the first sentence, after "The school district's", added "or state-chartered charter school's"; in Subsection E, in the second sentence, after "local school board", added "or governing body of a state-chartered charter school"; in Subsection F, in the first sentence, after "The school district's", added "or state-chartered charter school"; after "local school board", added "or governing body of the state-chartered charter school"; and after "school district", added "or state-chartered charter school"; and in the second sentence, after "'The School District Report Card'", added "or 'The Charter School Report Card'"; in Subsection G, after "the names of those", added "members of the" and after "local school board", deleted "members" and added "or the governing body of the charter school"; in Subsection H, after "school district", added "or charter school"; in Subsection I, in the first sentence, after "school district", added "or state-chartered charter school" and in the second sentence, after "school district", added "and charter school"; in Subsection J, after "school districts", added "and state-chartered charter schools"; and added Subsection N.

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

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

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

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

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

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

History: Laws 2015, ch. 58, § 4.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The department shall:

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

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

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

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

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

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

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

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

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

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

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

L. approve or disapprove all rules promulgated by an association or organization attempting to regulate a public school activity and invalidate any rule in conflict with any rule promulgated

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

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

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

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

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

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

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

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

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

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

History: 1953 Comp., § 77-2-2, enacted by Laws 1967, ch. 16, § 5; 1969, ch. 180, § 2; 1971, ch. 263, § 2; 1975, ch. 332, § 2; 1978, ch. 211, § 8; 1979, ch. 51, § 1; 1984, ch. 39, § 1; 1985, ch. 21,

§ 3; 1987, ch. 77, § 1; 1993, ch. 226, § 3; 1996, ch. 65, § 1; 1997, ch. 19, § 1; 1999, ch. 279, § 1; 2000, ch. 74, § 1; 2001, ch. 286, § 1; 2001, ch. 299, § 5; 2003, ch. 143, § 2; 2003, ch. 153, § 5; 2003, ch. 394, § 2; 2004, ch. 27, § 15.

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

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

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

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

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

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

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

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

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

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

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

**The 2000 amendment**, effective July 1, 2000, added "including vocational programs that are part of a juvenile construction industries initiative for juveniles who are committed to the custody of the children, youth and families department" at the end of Subsection B.

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

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

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

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

## ANNOTATIONS

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

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

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

**Board decision will be upheld unless unreasonable.** — Deciding whether or not an administrator is fit to perform his duties is a question of policy, and the appellate court will not alter the state board's decision unless the court is convinced it is unreasonable, not supported by substantial evidence or not in accordance with law. *Board of Educ. v. Jennings*, 1982-NMCA-135, 98 N.M. 602, 651 P.2d 1037.

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

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

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

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

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

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

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

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

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

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

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

### 22-13-1. Subject areas; minimum instructional areas required; accreditation.

A. The department shall require public schools to address department-approved academic content and performance standards when instructing in specific department-required subject areas as provided in this section. A public school or school district failing to meet these minimum requirements shall not be accredited by the department.

B. All kindergarten through third grade classes shall provide daily instruction in reading and language arts skills, including phonemic awareness, phonics and comprehension, and in mathematics. Students in kindergarten and first grades shall be screened and monitored for progress in reading and language arts skills, and students in second grade shall take diagnostic tests on reading and language arts skills.

C. All first, second and third grade classes shall provide instruction in art, music and a language other than English, and instruction that meets content and performance standards shall be provided in science, social studies, physical education and health education.

D. In fourth through eighth grades, instruction that meets academic content and performance standards shall be provided in the following subject areas:

- (1) reading and language arts skills, with an emphasis on writing and editing for at least one year and an emphasis on grammar and writing for at least one year;
- (2) mathematics;
- (3) language other than English;
- (4) communication skills;
- (5) science;
- (6) art;
- (7) music;
- (8) social studies;
- (9) New Mexico history;
- (10) United States history;
- (11) geography;
- (12) physical education; and
- (13) health education.

E. Beginning with the 2008-2009 school year, in eighth grade, algebra 1 shall be offered in regular classroom settings or through online courses or agreements with high schools.

F. In fourth through eighth grades, school districts shall offer electives that contribute to academic growth and skill development and provide career and technical education. In sixth through eighth grades, media literacy may be offered as an elective.

G. In ninth through twelfth grades, instruction that meets academic content and performance standards shall be provided in health education.

H. All health education courses shall include:

(1) age-appropriate sexual abuse and assault awareness and prevention training that meets department standards developed in consultation with the federal centers for disease control and prevention that are based on evidence-based methods that have proven to be effective; and

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

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

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

History: 1978 Comp., § 22-13-1, enacted by Laws 2003, ch. 153, § 57; 2005, ch. 315, § 9; 2007, ch. 307, § 7; 2007, ch. 308, § 7; 2009, ch. 267, § 1; 2014, ch. 9, § 2; 2016, ch. 17, § 1; 2016, ch. 18, § 1.

**Repeals and reenactments.** — Laws 2003, ch. 153, § 57 repeals former 22-13-1 NMSA 1978, as enacted by Laws 1967, ch. 16, § 180, and enacted a new section, effective April 4, 2003.

**Compiler's notes.** — Laws 2003, ch. 143, § 3, would have repealed Article 13 of Chapter 22 NMSA 1978 effective July 1, 2004. The repeal of Article 13 of Chapter 22 was contingent upon the adoption of an amendment to Article 12, Section 6 of the constitution which was approved at a special election held September 23, 2003. However, the repeal of Article 13 of Chapter 22 did not take effect, as prior to the July 1, 2004 effective date of the repeal of Article 13, Laws 2004, ch. 27, § 29, effective May 19, 2004, repealed Laws 2003, ch. 143, § 3.

**The 2016 amendment,** effective May 18, 2016, required the public education department to add lifesaving skills training to health education courses and directed the secretary of the public education department to promulgate rules to implement the training; in Subsection H, after "shall include", added the paragraph designation "(1)", and added new Paragraph (2).

Laws 2016, ch. 17, § 1 and Laws 2016, ch. 18, § 1, both effective May 18, 2016, enacted identical amendments to this section. The section was set out as amended by Laws 2016, ch. 18, § 1. See 12-1-8 NMSA 1978.

**Applicability.** — Laws 2016, ch. 17, § 4 and Laws 2016, ch. 18, § 4 provided that lifesaving skills training pursuant to Paragraph (2) of Subsection H of Section 22-13-1 NMSA 1978 and Paragraph (2) of Subsection K of Section 22-13-1.1 NMSA 1978 shall not be required for students in grades nine through twelve who are enrolled in a virtual charter school.

**Temporary provisions.** — Laws 2016, ch. 17, § 3 and Laws 2016, ch. 18, § 3 provided that by December 31, 2016, the secretary of public education shall adopt and promulgate rules to implement the provisions of Laws 2016, ch. 17, §§ 1 and 2, and Laws 2016, ch. 18, §§ 1 and 2.

**The 2014 amendment,** effective May 21, 2014, required all health education courses to include age-appropriate sexual abuse and assault awareness and prevention training that meets federal standards; and added Subsection H.

**Applicability.** — Laws 2014, ch. 9, § 4 provided that the provisions of Laws 2014, ch. 9, §§ 1 through 3 apply to the 2014-2015 school year and subsequent school years.

**The 2009 amendment,** effective June 19, 2009, in Subsection F, added the last sentence.

**The 2007 amendment,** effective July 1, 2007, amended Subsection C to require that first, second and third grade classes provide instruction that meets content and performance standards in science and social studies; and added Subsection E.

Laws 2007, ch. 307, § 7 and Laws 2007, ch. 308, § 7 enacted identical amendments to this section. The section was set out as amended by Laws 2007, ch. 308, § 7. See 12-1-8 NMSA 1978.

**The 2005 amendment,** effective April 7, 2005, added kindergarten in Subsection B and provided in Subsection B that students shall be screened and monitored for progress in reading and language arts skills and students in second grade shall take diagnostic tests on reading and language arts skills; provided in Subsection C that classes shall provide instruction that meets content and performance standards shall be provided in physical education and health education; added health education in Subsection D(13); and added Subsection F to provide that in ninth through twelfth grades, instruction that meets academic content and performance standards shall be provided in health education.