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AN ACT

RELATING TO PUBLIC ASSISTANCE; ENACTING THE EDUCATION WORKS ACT;
DECLARING AN EMERGENCY.

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

Section 1. SHORT TITLE.--This act may be cited as the "Education Works Act".

Section 2. DEFINITIONS.--As used in the Education Works Act:

A. "benefit group" means a pregnant woman or a group of people that includes a dependent child, all of that dependent child's full, half, step- or adopted siblings living with the dependent child's parent or relative within the fifth degree of consanguinity and the parent with whom the children live;

B. "cash assistance" means cash payments funded by maintenance of effort funds appropriated to the department in compliance with the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, or its successor acts, and distributed by the department pursuant to the Education Works Act;

C. "department" means the human services department;

D. "dependent child" means a natural, adopted step-child or ward who is:

- (1) seventeen years of age or younger;
- (2) eighteen years of age and is enrolled in high school; or
- (3) between eighteen and twenty-two years of age and is receiving special education services regulated by the state board of education;

E. "director" means the director of the income support division of the department;

F. "earned income" means cash or payment in kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or

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1 property, production of goods, management of property or supervision of services; SB
2 G. "education works program" means the cash assistance, activities B
3 and services available to a recipient pursuant to the Education Works Act; 3
4 H. "federal act" means the federal Social Security Act and rules 6
5 promulgated pursuant to the Social Security Act; 0
6 I. "federal poverty guidelines" means the level of income defining P
7 poverty by family size published annually in the federal register by the United States a
8 department of health and human services; g
9 J. "parent" means natural parent, adoptive parent, stepparent or legal e
10 guardian; 2
11 K. "person" means an individual;
12 L. "recipient" means a person who receives cash assistance or
13 services or a member of a benefit group who has reached the age of majority;
14 M. "secretary" means the secretary of human services;
15 N. "services" means child-care assistance; payment for education- or
16 employment-related transportation costs; job search assistance; employment
17 counseling; employment, education and job training placement; an annual payment for
18 education-related costs; case management; or other activities whose purpose is to
19 assist transition into employment;
20 O. "unearned income" means old age, survivors and disability
21 insurance; railroad retirement benefits; veterans administration compensation or
22 pension; military retirement; pensions, annuities and retirement benefits; lodge or
23 fraternal benefits; shared shelter payments; settlement payments; individual Indian
24 money; child support; unemployment compensation benefits; union benefits paid in
25 cash; gifts and contributions; and real property income; and
P. "vehicle" means a conveyance for the transporting of persons to or
from employment or education for the activities of daily living or for the transportation
of goods; "vehicle" does not include boats, trailers or mobile homes used as a
principal place of residence.

1 Section 3. APPLICATION--RESOURCE PLANNING SESSION--INDIVIDUAL SB
2 EDUCATION PLAN--REVIEW PERIODS.--

3 A. Application for cash assistance or services shall be made to the 3
4 department's county office in the county or district in which an applicant resides. The 6
5 application shall be in writing or reduced to writing in the manner and on the form 0
6 prescribed by the department. The application shall be made under oath by an P
7 applicant with whom a dependent child resides and shall contain a statement of the a
8 age of the child, residence, a complete statement of the amount of property in which e
9 the applicant has an interest, a statement of all income that he and other benefit group 3
10 members have at the time of the filing of the application and other information required
11 by the department.

12 B. Application for expedited food stamps shall be made to the
13 department's county office in the county or district in which an applicant resides. The
14 department shall process the application for expedited food stamps within twenty-four
15 hours after the application is made.

16 C. At the time of application for cash assistance and services, an
17 applicant shall identify everyone who is to be counted in the benefit group. Once an
18 application is approved, the recipient shall advise the department if there are any
19 changes in the membership of the benefit group.

20 D. No later than thirty days after an application is filed, the department
21 shall make referrals and act on the application.

22 E. No later than five days after an application is approved, the
23 department shall provide reimbursement for child care.

24 F. Whenever the department receives an application for assistance, a
25 verification and record of the applicant's circumstances shall promptly be made to
ascertain the facts supporting the application and to obtain other information required
by the department. The verification may include a visit to the home of the applicant,
as long as the department gives adequate prior notice of the visit to the applicant.

G. The department shall work with the recipient to develop an

1 individual educational plan that:

2 (1) sets forth the educational goal for the recipient, identifies
3 barriers to that goal and identifies the steps to be taken by the recipient to achieve
4 that goal;

5 (2) describes the services the department may provide so that
6 the recipient may complete his educational goal; and

7 (3) provides for meetings with the recipient every six months or
8 at the end of each academic term to review the eligibility of the benefit group and to
9 review and revise his individual education plan.

10 H. The recipient and a representative of the department shall sign the
11 recipient's individual education plan. The department shall:

12 (1) not allow a recipient to decline to participate in developing
13 an individual education plan;

14 (2) not waive the requirement that a recipient develop an
15 individual education plan; and

16 (3) emphasize the importance of the individual education plan
17 to the recipient.

18 Section 4. EDUCATION WORKS PROGRAM--ELIGIBILITY-- RESTRICTIONS--
19 REQUIREMENTS.--

20 A. A person is eligible to receive education works services or cash
21 assistance if the person demonstrates that:

22 (1) at the time of the application, the person does not have a
23 bachelor's degree;

24 (2) the person has been accepted or has been determined to
25 be eligible to enroll in a two- or four-year post-secondary degree program; and

(3) the degree the person will receive will increase his ability to
engage in full-time paid employment.

B. A recipient shall not receive cash assistance funded by the
temporary assistance for needy families block grant during the period in which the

1 recipient is receiving cash assistance pursuant to the Education Works Act.

2 C. A recipient shall apply for all financial aid available from the post-
3 secondary educational institution that the recipient attends.

4 D. During the twenty-four months of participation in the education
5 works program, a recipient shall engage in at least twenty hours per week of class
6 time, studying, work, work study or volunteering. The department shall assume that a
7 recipient spends one and one-half hours studying for every hour of class time.

8 E. A recipient may participate in the education works program for no
9 more than twenty-four months, except that a recipient may participate in the education
10 works program for one additional academic term following the twenty-four month
11 participation limit if doing so will result in the recipient earning a degree.

12 F. The number of recipients enrolled in the education works program
13 is limited to the number of recipients who can be served by the funds available.

14 G. A recipient may earn only one degree through the education works
15 program.

16 H. For purposes of this section, "work" means work study, training-
17 related practicums, internships, paid employment, volunteering or any other activity
18 approved by the department.

19 Section 5. FINANCIAL STANDARD OF NEED.--

20 A. The secretary shall adopt a financial standard of need based upon
21 the availability of state funds.

22 B. The following income sources are exempt from the gross income
23 test, the net income test and the cash payment calculation:

- 24 (1) medicaid;
- 25 (2) food stamps;
- (3) government-subsidized foster care payments if the child for
whom the payment is received is also excluded from the benefit group;
- (4) supplemental security income;
- (5) government-subsidized housing or housing payments;

- 1 (6) federally excluded income;
- 2 (7) educational payments made directly to an educational
- 3 institution;
- 4 (8) government-subsidized child care;
- 5 (9) earned income that belongs to a person seventeen years
- 6 of age or younger who is not the head of household;
- 7 (10) fifty dollars (\$50.00) of collected child support passed
- 8 through to the recipient by the child support enforcement division of the department;
- 9 and
- 10 (11) other income sources as determined by the department.

11 C. The total countable gross earned and unearned income of the
12 benefit group shall not exceed eighty-five percent of the federal poverty guidelines for
13 the size of the benefit group.

14 D. For a benefit group to be eligible to participate:

- 15 (1) earned and unearned income that belongs to the benefit
16 group shall not exceed eighty-five percent of the federal poverty guidelines for the size
17 of the benefit group; and
- 18 (2) earned and unearned income that belongs to the benefit
19 group shall not equal or exceed the financial standard of need after applying the
20 disregards set out in Paragraphs (1) through (4) of Subsection E of this section.

21 E. Subject to the availability of state funds, the department shall
22 determine the cash payment of the benefit group by applying the following disregards
23 to the benefit group's earned income and then subtracting that amount from the
24 benefit group's financial standard of need:

- 25 (1) for the first two years of receiving cash assistance or
services, if a recipient works over the work requirement rate set by the department
pursuant to the Education Works Act, one hundred percent of the income earned by
the recipient beyond that rate;
- (2) for the first two years of receiving cash assistance or

1 services, for a two-parent benefit group, one hundred percent of income earned by
2 each recipient beyond the work requirement rate set by the department;

3 (3) one hundred twenty-five dollars (\$125) of monthly earned
4 income and one-half of the remainder, or for a two-parent family, two hundred twenty-
5 five dollars (\$225) of monthly earned income and one-half of the remainder for each
6 parent;

7 (4) monthly payments made for child care at a maximum of two
8 hundred dollars (\$200) for a child under two years of age and a maximum of one
9 hundred seventy-five dollars (\$175) for a child two years of age or older;

10 (5) costs of self-employment income; and

11 (6) business expenses.

12 F. The department may recover overpayments of cash assistance on
13 a monthly basis not to exceed fifteen percent of the financial standard of need
14 applicable to the benefit group.

15 Section 6. RESOURCES.--

16 A. Liquid and nonliquid resources owned by the benefit group shall be
17 counted in the eligibility determination.

18 B. A benefit group may at a maximum own the following resources:

19 (1) two thousand dollars (\$2,000) in nonliquid resources;

20 (2) one thousand five hundred dollars (\$1,500) in liquid
21 resources;

22 (3) the value of the principal residence of the recipient;

23 (4) the value of burial plots and funeral contracts for family
24 members;

25 (5) individual development accounts; and

(6) the value of work-related equipment up to one thousand
dollars (\$1,000).

C. Vehicles owned by the benefit group shall not be considered in the
determination of resources attributed to the benefit group.

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Section 7. INELIGIBILITY.--

A. The following are ineligible to be members of a benefit group:

- (1) an inmate or patient of a nonmedical institution;
- (2) a person who, in the two years preceding application, assigned or transferred real property unless he:
 - (a) received or receives a reasonable return;
 - (b) attempted to or attempts to receive a reasonable return; or
 - (c) attempted to or attempts to regain title to the real property;
- (3) a minor unmarried parent who has not successfully completed a high school education and who has a child at least twelve weeks of age in his care unless the minor unmarried parent:
 - (a) participates in educational activities directed toward the attainment of a high school diploma or its equivalent; or
 - (b) participates in an alternative educational or training program that has been approved by the department;
- (4) a minor unmarried parent who is not residing in a place of residence maintained by his parent, legal guardian or other adult relative unless the department:
 - (a) refers or locates the minor unmarried parent to a second-chance home, maternity home or other appropriate adult-supervised supportive living arrangement and takes into account the needs and concerns of the minor unmarried parent;
 - (b) determines that the minor unmarried parent has no parent, legal guardian or other appropriate adult relative who is living or whose whereabouts are known;
 - (c) determines that a minor unmarried parent is not allowed to live in the home of a living parent, legal guardian or other appropriate adult

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1 relative;

2 (d) determines that the minor unmarried parent is or
3 has been subjected to serious physical or emotional harm, sexual abuse or
4 exploitation in the home of the parent, legal guardian or other appropriate adult
5 relative;

6 (e) finds that substantial evidence exists of an act or a
7 failure to act that presents an imminent or serious harm to the minor unmarried parent
8 and the child of the minor unmarried parent if they live in the same residence with the
9 parent, legal guardian or other appropriate adult relative; or

10 (f) determines that it is in the best interest of the
11 unmarried minor parent to waive this requirement;

12 (5) a minor child who has been absent or is expected to be
13 absent from the home for forty-five days;

14 (6) a person who does not provide a social security number or
15 who refuses to apply for one;

16 (7) a person who is not a resident of
17 New Mexico;

18 (8) a person who fraudulently misrepresented residency to
19 receive assistance in two or more states simultaneously, except that the person shall
20 be ineligible only for ten years;

21 (9) a person who is a fleeing felon or a probation and parole
22 violator;

23 (10) a person concurrently receiving supplemental security
24 income, tribal temporary assistance for needy families or bureau of Indian affairs
25 general assistance; and

(11) unless he demonstrates good cause, a parent who does
not assist the department in establishing paternity or obtaining child support or who
does not assign support rights to New Mexico as required pursuant to the federal act.

B. For the purposes of this section, "second-chance home" means an

1 entity that provides a supportive and supervised living arrangement to a minor
2 unmarried parent where the minor unmarried parent is required to learn parenting
3 skills, including child development, family budgeting, health and nutrition and other
4 skills to promote long-term economic independence and the well-being of children.

5 C. Pursuant to the authorization provided to the states in the Personal
6 Responsibility and Work Opportunity Reconciliation Act of 1996, 21 U.S.C. Section
7 862a(d)(1)(A), New Mexico elects to exempt all persons domiciled in the state from
8 application of 21 U.S.C. Section 862a(a).

9 Section 8. FAIR HEARING--REVIEW AND APPEAL.--

10 A. A recipient may request a hearing if:

11 (1) an application is not acted on within a reasonable time after
12 the filing of the application;

13 (2) an application is denied in whole or in part; or

14 (3) the cash assistance or services are modified, terminated or
15 not provided.

16 B. The department shall notify the recipient of his rights under this
17 section.

18 C. The department shall by rule establish procedures for the filing of a
19 request for a hearing and the time limits within which a request may be filed; provided,
20 however, that the department may grant reasonable extensions of the time limits. If
21 the request is filed in a timely manner, cash assistance and services shall be provided
22 until the appeal is resolved. If the request is not filed within the specified time for
23 appeal or within whatever extension the department may grant, the department action
24 shall be final. Upon receipt of a timely request, the department shall give the recipient
25 reasonable notice of an opportunity for a fair hearing in accordance with the rules of
the department.

D. The hearing shall be conducted by a hearing officer designated by
the director. The powers of the hearing officer shall include administering oaths or
affirmations to witnesses called to testify, taking testimony, examining witnesses,

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1 admitting or excluding evidence and reopening a hearing to receive additional
2 evidence. The technical rules of evidence and the rules of civil procedure shall not
3 apply. The hearing shall be conducted so that the contentions or defenses of each
4 party to the hearing are amply and fairly presented. Each party may be represented
5 by counsel or other representative and may conduct cross-examination. Oral or
6 documentary evidence may be received, but the hearing officer may exclude
irrelevant, immaterial or unduly repetitious evidence.

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7 E. The director shall review the record of the proceedings and shall
8 make his decision on the record. The recipient or his representative shall be notified
9 in writing of the director's decision and the reasons for the decision. The written notice
10 shall inform the recipient of his right to judicial review. The department shall be
11 responsible for ensuring that the decision is enforced.

12 F. Within thirty days after receiving written notice of the decision of the
13 director, a recipient may file a notice of appeal with the court of appeals together with
14 a copy of the notice of the decision. The clerk of the court shall transmit a copy of the
notice of appeal to the director.

15 G. The filing of a notice of appeal shall not stay the enforcement of the
16 decision of the director, but the department may grant, or the court upon motion and
17 good cause shown may order, a stay.

18 H. Within twenty days after receipt of the notice of appeal, the
19 department shall file with the clerk of the court three copies and furnish to the
appellant one copy of the written transcript of the record of the proceedings.

20 I. If, before the date set for argument, application is made to the court
21 for leave to present additional evidence and the court is satisfied that the additional
22 evidence is material and there was good reason for not presenting it in the hearing,
23 the court may order the additional evidence taken before the department. If the
24 application to present additional evidence is filed by the department and is approved
25 by the court, the department's decision that is being appealed shall be stayed. The
director may modify his findings and decision by reason of the additional evidence and

1 shall file with the court a transcript of the additional evidence together with any
2 modified or new findings or decision.

3 J. The review of the court shall be made upon the decision and the
4 record of the proceedings.

5 K. The court shall set aside a decision and order of the director only if
6 the decision is found to be:

- 7 (1) arbitrary, capricious or an abuse of discretion;
- 8 (2) not supported by substantial evidence in the record as a
9 whole; or

- 10 (3) otherwise not in accordance with law.

11 L. The department shall not authorize or allow expenditures in excess
12 of the amounts previously appropriated by the legislature.

13 Section 9. SATISFACTORY PARTICIPATION.--

14 A. To maintain satisfactory participation in the education works
15 program, a recipient shall be a full-time student as defined by the school that the
16 recipient attends.

17 B. A recipient may demonstrate good cause for failure to maintain
18 satisfactory participation in the education works program, and must work with the
19 department to address the barrier, in any month of participation for the following
20 reasons:

- 21 (1) extended illness or injury of the recipient;
- 22 (2) the recipient is the primary caretaker for a special needs
23 child or an ill or aging parent; or

- 24 (3) the recipient has been assessed to have a learning
25 disability or a mental or physical health problem.

26 C. If a recipient falls below the academic standard of the school in one
27 academic term, he shall be placed on probationary status for one academic term to
28 improve his grades. If a recipient's overall grade point average falls below 2.0 based
29 on a four-point system, the department shall place him on probation for a maximum of

1 two academic terms to allow him to bring up his overall grade point average.

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2 D. A recipient shall:

3 (1) attend classes as scheduled and participate as required by
4 the standard of the school;

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5 (2) report to the department a change that may affect the
6 benefit group's eligibility for or anything that may affect the recipients ability to
7 participate in the education works program;

8 (3) provide the department with copies of any financial aid
9 award letters; and

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10 (4) provide the department with copies of his grades as they
11 become available.

12 E. If a recipient does not comply with Subsection C of this section or
13 with the provisions of the Education Works Act, the department may require the
14 recipient to apply for public assistance pursuant to the New Mexico Works Act. This
15 decision shall be made in writing and the recipient shall have the opportunity to appeal
16 the decision.

17 Section 10. EMERGENCY.--It is necessary for the public peace, health and
18 safety that this act take effect
19 immediately.

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