

AN ACT

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RELATING TO EDUCATION; CREATING THE PUBLIC EDUCATION
DEPARTMENT; CREATING THE PUBLIC EDUCATION COMMISSION;
PROVIDING POWERS AND DUTIES; ENACTING THE PUBLIC EDUCATION
DEPARTMENT ACT; REMOVING LIBRARIANS FROM THE DEFINITION OF
INSTRUCTIONAL SUPPORT PROVIDER; AMENDING, REPEALING, ENACTING
AND RECOMPILING SECTIONS OF THE NMSA 1978.

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

Section 1. SHORT TITLE.--Sections 1 through 12 of this act may be cited as the "Public Education Department Act".

Section 2. PURPOSE.--The purpose of the Public Education Department Act is to establish a single, unified department to administer laws and exercise functions formerly administered and exercised by the state board of education and the state department of public education.

Section 3. DEFINITIONS.--As used in the Public Education Department Act:

- A. "commission" means the public education commission;
- B. "department" means the public education department; and
- C. "secretary" means the secretary of public education.

Section 4. DEPARTMENT CREATED.--The "public education department" is created in the executive branch. The department is a cabinet department. The secretary may organize the department and divisions of the department and may transfer or merge functions between divisions and bureaus in the interest of efficiency and economy. The secretary shall make recommendations to the first

session of the forty-seventh legislature on the statutory organization of the department, and until that time, references in law to the Indian education division, the vocational education division, the vocational rehabilitation division, the instructional material bureau or other statutorily created divisions and bureaus shall be deemed to be references to the appropriate organizational unit to which the secretary has assigned those statutory duties.

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Section 5. SECRETARY--APPOINTMENT.--

A. The administrative head of the department is the "secretary of public education", who shall be appointed by the governor with the consent of the senate and who shall serve in the executive cabinet.

B. An appointed secretary shall serve and have all of the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting his appointment.

Section 6. DIVISION DIRECTORS.--The secretary shall appoint, with the approval of the governor, directors of the divisions established within the department. Division directors are exempt from the Personnel Act.

Section 7. BUREAU CHIEFS.--The secretary may establish within each division of the department such bureaus as he deems necessary to carry out the provisions of the Public Education Department Act. He shall employ a chief to be the administrative head of each bureau. The chiefs and all subsidiary employees of the department shall be covered by the Personnel Act.

Section 8. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the

department and to administer and enforce the laws with which he or the department is charged.

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B. To perform his duties, the secretary has every power expressly enumerated in the law, whether granted to the secretary, the department or any division of the department, except when any division is explicitly exempted from the secretary's power by statute. In accordance with these provisions, the secretary shall:

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(1) except as otherwise provided in the Public Education Department Act or the Public School Code, exercise general supervisory and appointing power over all department employees, subject to applicable personnel laws and rules;

(2) delegate power to subordinates as he deems necessary and appropriate, clearly delineating such delegated power and the limitations to that power;

(3) organize the department into organizational units as necessary to enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with law, to ensure implementation of and compliance with the provisions of law for which administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action in

the courts;

(6) conduct research and studies that will improve the operation of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objectives of improving the operations and efficiency of administration and of promoting comprehensive, coordinated and culturally sensitive services that address the education of the whole child;

(8) prepare an annual budget for the department; and

(9) provide cooperation, at the request of administratively attached agencies and adjunct agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, record keeping and related clerical assistance to administratively attached agencies.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including United States government funds, available to the department to carry out its programs, duties or services.

D. The secretary may make and adopt such reasonable and

procedural rules as may be necessary to carry out the duties of the department and its divisions. No rule promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary. Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The final public hearing on adoption, amendment or repeal of a rule shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule or proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All rules shall be filed in accordance with the State Rules Act.

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Section 9. PUBLIC EDUCATION COMMISSION.--

A. The "public education commission" is created pursuant to Article 12, Section 6 of the constitution of New Mexico. The commission shall be administratively attached to the department, with administrative staff provided by the department. Additional requests for staff services shall be made through the secretary. The commission shall advise the department on policy matters and shall perform other functions as provided by law.

B. The commission shall consist of ten members elected from public

education districts as provided in the decennial educational redistricting act.

Members shall be entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act, but shall receive no other perquisite, compensation or allowance.

C. The commission shall annually elect a chairman, vice chairman and secretary from among its membership. A majority of the members constitutes a quorum for the conduct of business. The commission shall keep a record of all proceedings of the commission.

D. The commission shall meet at the call of the chairman at least quarterly. Meetings of the commission shall be held in Santa Fe and at other sites within the state at the direction of the commission. The chairman in consultation with the secretary shall call a meeting at the request of a majority of the members. Commission members shall not vote by proxy.

E. No member of the commission shall be appointed secretary or be employed by the department on either a full- or part-time basis.

Section 10. ORGANIZATIONAL UNITS OF THE DEPARTMENT--POWERS AND DUTIES SPECIFIED BY LAW--ACCESS TO INFORMATION.--Those organizational units of the department and the officers of those units specified by law shall have all of the powers and duties enumerated in the specific laws involved. However, the carrying out of those powers and duties shall be subject to the direction and supervision of the secretary, who shall retain the final decision-making authority and responsibility for the administration of any laws as provided in Subsection B of Section 8 of the Public Education Department Act. The department shall have access to all records, data and information of other state departments,

agencies and institutions, including its own organizational units, not specifically held confidential by law.

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Section 11. ADVISORY COMMITTEES.--

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A. Advisory committees may be created. "Advisory" means furnishing advice, gathering information, making recommendations and performing such other activities as may be instructed or delegated and as may be necessary to fulfill advisory functions or to comply with federal or private funding requirements and does not extend to administering a program or function or setting policy unless specified by law. Advisory committees shall be appointed in accordance with the provisions of the Executive Reorganization Act.

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B. All members of advisory committees appointed under the authority of this section shall receive as their sole remuneration for services as a member those amounts authorized under the Per Diem and Mileage Act.

Section 12. COOPERATION WITH THE FEDERAL GOVERNMENT--
AUTHORITY OF SECRETARY--SINGLE STATE AGENCY STATUS.--

A. The department is authorized to cooperate with the federal government in the administration of education programs in which financial or other participation by the federal government is authorized or mandated under state or federal laws, rules or orders. The secretary may enter into agreements with agencies of the federal government to implement education programs subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.

B. The governor or the secretary may by appropriate order designate the department or any organizational unit of the department as the single state

agency for the administration of any public school program when that designation is a condition of federal financial or other participation in the program under applicable federal law, rule or order. Whether or not a federal condition exists, the governor may designate the department or any organizational unit of the department as the single state agency for the administration of any public school program. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law.

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Section 13. Section 22-1-2 NMSA 1978 (being Laws 2003, Chapter 153, Section 3) is amended to read:

"22-1-2. DEFINITIONS.--As used in the Public School Code:

A. "adequate yearly progress" means the measure adopted by the department based on federal requirements to assess the progress that a student, a public school or school district or the state makes toward improving student achievement;

B. "commission" means the public education commission;

C. "department" means the public education department;

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

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

F. "instructional support provider" means a person who is employed

to support the instructional program of a school district, including educational assistant, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, interpreter for the deaf and diagnostician;

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

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

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

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

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

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

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

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

- O. "school-age person" means a person who is at least five years of age prior to 12:01 a.m. on September 1 of the school year and who has not received a high school diploma or its equivalent. A maximum age of twenty-one shall be used for a person who is classified as special education membership as defined in Section 22-8-2 NMSA 1978 or as a resident of a state institution;
- P. "school building" means a public school, an administration building and related school structures or facilities, including teacher housing, that is owned, acquired or constructed by the school district as necessary to carry out the functions of the school district;
- Q. "school bus private owner" means a person, other than a school district, the department, the state or any other political subdivision of the state, that owns a school bus;
- R. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes;
- S. "school employee" includes licensed and nonlicensed employees of a school district;
- T. "school principal" means the chief instructional leader and administrative head of a public school;
- U. "school year" means the total number of contract days offered by public schools in a school district during a period of twelve consecutive months;
- V. "secretary" means the secretary of public education;
- W. "state agency" or "state institution" means the New Mexico military institute, New Mexico school for the visually handicapped, New Mexico

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school for the deaf, New Mexico boys' school, girls' welfare home, New Mexico youth diagnostic and development center, Sequoyah adolescent treatment center, Carrie Tingley crippled children's hospital, Las Vegas medical center and any other state agency responsible for educating resident children;

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

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

Z. "teacher" means a person who holds a level one, two or three-A license and whose primary duty is classroom instruction or the supervision, below the school principal level, of an instructional program;

AA. "certified school instructor" means a teacher or instructional support provider; and

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

Section 14. Section 22-2-1 NMSA 1978 (being Laws 1990 (1st S.S.), Chapter 9, Section 10, as amended) is amended to read:

"22-2-1. SECRETARY AND DEPARTMENT--GENERAL POWERS.--

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

B. The department may:

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

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

(3) apply to the district court for an injunction, writ of mandamus or other appropriate relief to enforce the provisions of the Public School Code or rules promulgated pursuant to the Public School Code; and

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

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Section 15. Section 22-2-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 5, as amended by Laws 2003, Chapter 153, Section 5 and by Laws 2003, Chapter 394, Section 2) is repealed and a new Section 22-2-2 NMSA 1978 is enacted to read:

"22-2-2. DEPARTMENT--GENERAL DUTIES.--The department shall:

A. properly and uniformly enforce the provisions of the Public School Code;

B. determine policy for the operation of all public schools and vocational education programs in the state, 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

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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 and be subject to the inspection provisions of the Public Records Act. 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;

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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."

Section 16. Section 22-2-2.1 NMSA 1978 (being Laws 2003, Chapter 104, Section 1) is amended to read:

"22-2-2.1. ADDITIONAL DEPARTMENT DUTIES--WAIVER OF CERTAIN REQUIREMENTS.--

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

by the department:

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

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

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

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

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

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

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

(2) evaluation standards for school personnel; and

(3) other requirements of the Public School Code that impede innovation in education if the waiver request is supported by the teachers at the requesting school and the requesting school's local school board.

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

D. The department shall only waive requirements that do not conflict

with the federal No Child Left Behind Act of 2001 or rules adopted pursuant to that act."

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Section 17. A new section of Chapter 22, Article 2 NMSA 1978 is enacted to read:

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"COMMISSION--DUTIES.--

A. The commission shall work with the department to develop the five-year strategic plan for public elementary and secondary education in the state. The strategic plan shall be updated at least biennially. The commission shall solicit the input of persons who have an interest in public school policy, including local school boards, school districts and school employees; home schooling associations; parent-teacher associations; educational organizations; the commission on higher education; colleges, universities and vocational schools; state agencies responsible for educating resident children; juvenile justice agencies; work force development providers; and business organizations.

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

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

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

Section 18. Section 22-2-14 NMSA 1978 (being Laws 1978, Chapter 129, Section 1, as amended) is amended to read:

"22-2-14. LOCAL SCHOOL BOARDS--PUBLIC SCHOOLS--SUSPENSION-

-PROCEDURES.--

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

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

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

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

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

D. To suspend a local school board, local superintendent or school

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

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

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

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

H. The commission shall consult with the secretary and may

recommend alternative actions for the secretary's consideration.

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

Section 19. Section 22-2C-11 NMSA 1978 (being Laws 2003, Chapter 153, Section 20) is amended to read:

"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; and

(3) adopt the format for reporting annual yearly progress of public schools, school districts and the department. 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.

B. Local school boards may establish additional indicators through which to measure the school district's performance in areas other than adequate yearly progress.

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C. The school district's annual accountability report shall include a report of graduation rates for each public high school in the school district. As part of the graduation rate data, the school district shall indicate contributing factors to nongraduation such as transfer out of the school district, pregnancy, dropout and other factors as known.

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

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

students.

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

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

G. The annual accountability report shall include the names of those local school board members who failed to attend annual mandatory training.

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

I. The department shall create an accountability data system through

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

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J. The department shall verify data submitted by the school districts.

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K. 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.

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L. 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.

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

Section 20. Section 22-5-4 NMSA 1978 (being Laws 1967, Chapter 16, Section 28, as amended) is amended to read:

"22-5-4. LOCAL SCHOOL BOARDS--POWERS--DUTIES.--A local school board shall have the following powers or duties:

- A. subject to the rules of the department, develop educational policies for the school district;
- B. employ a local superintendent for the school district and fix his salary;
- C. review and approve the school district budget;
- D. acquire, lease and dispose of property;
- E. have the capacity to sue and be sued;
- F. acquire property by eminent domain pursuant to the procedures provided in the Eminent Domain Code;
- G. issue general obligation bonds of the school district;
- H. provide for the repair of and maintain all property belonging to the school district;
- I. for good cause and upon order of the district court, subpoena witnesses and documents in connection with a hearing concerning any powers or duties of the local school board;
- J. except for expenditures for salaries, contract for the expenditure of money according to the provisions of the Procurement Code;
- K. adopt rules pertaining to the administration of all powers or duties of the local school board;
- L. accept or reject any charitable gift, grant, devise or bequest. The particular gift, grant, devise or bequest accepted shall be considered an asset of the school district or the public school to which it is given;
- M. offer and, upon compliance with the conditions of such offer, pay rewards for information leading to the arrest and conviction or other appropriate

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disciplinary disposition by the courts or juvenile authorities of offenders in case of theft, defacement or destruction of school district property. All such rewards shall be paid from school district funds in accordance with rules promulgated by the department; and

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N. give prior approval for any educational program in a public school in the school district that is to be conducted, sponsored, carried on or caused to be carried on by a private organization or agency."

Section 21. Section 22-8-2 NMSA 1978 (being Laws 1978, Chapter 128, Section 3, as amended) is amended to read:

"22-8-2. DEFINITIONS.--As used in the Public School Finance Act:

A. "ADM" or "MEM" means membership;

B. "membership" means the total enrollment of qualified students on the current roll of a class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawals of students, in addition to students formally withdrawn from the public school, include students absent from the public school for as many as ten consecutive school days;

C. "basic program ADM" or "basic program MEM" means the MEM of qualified students but excludes the full-time-equivalent MEM in early childhood education and three- and four-year-old students receiving special education services;

D. "cost differential factor" is the numerical expression of the ratio of the cost of a particular segment of the school program to the cost of the basic program in grades four through six;

- E. "department" or "division" means the public education department;
- F. "early childhood education ADM" or "early childhood education MEM" means the full-time-equivalent MEM of students attending approved early childhood education programs;
- G. "full-time-equivalent ADM" or "full-time- equivalent MEM" is that membership calculated by applying to the MEM in an approved public school program the ratio of the number of hours per school day devoted to the program to six hours or the number of hours per school week devoted to the program to thirty hours;
- H. "operating budget" means the annual financial plan required to be submitted by a local school board;
- I. "program cost" is the product of the total number of program units to which a school district is entitled multiplied by the dollar value per program unit established by the legislature;
- J. "program element" is that component of a public school system to which a cost differential factor is applied to determine the number of program units to which a school district is entitled, including but not limited to MEM, full-time-equivalent MEM, teacher, classroom or public school;
- K. "program unit" is the product of the program element multiplied by the applicable cost differential factor;
- L. "public money" or "public funds" means all money from public or private sources received by a local school board or officer or employee of a local school board for public use;

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M. "qualified student" means a public school student who:

- (1) has not graduated from high school;
- (2) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and
- (3) is at least five years of age prior to 12:01 a.m. on September 1 of the school year; or
- (4) is at least three years of age at any time during the school year and is receiving special education services pursuant to rules of the department; or
- (5) has not reached his twenty-second birthday on the first day of the school year and is receiving special education services pursuant to rules of the department; and

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

Section 22. Section 22-9-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 102) is amended to read:

"22-9-2. FEDERAL AID TO EDUCATION--STATE EDUCATIONAL AGENCY.--The department shall be the sole educational agency of the state for the administration or for the supervision of the administration of any state plan established or funds received by the state by virtue of any federal statute relating to aid for education, school construction or school lunch programs, except as is provided in Section 21-1-26 NMSA 1978 and as may otherwise be provided by law."

Section 23. Section 22-9-3 NMSA 1978 (being Laws 1967, Chapter 16, Section 103) is amended to read:

"22-9-3. STATE EDUCATIONAL AGENCY--POWERS--DUTIES.--

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Whenever the department is the sole educational agency of the state pursuant to the provisions of Section 22-9-2 NMSA 1978, it may:

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A. enter into an agreement with the proper federal agency to procure for the state the benefits of the federal statute;

B. establish a state plan, if required by the federal statute, which meets the requirements of the federal statute to qualify the state for the benefits of the federal statute;

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C. provide for reports to be made to the federal agency as may be required;

D. provide for reports to be made to the department or its representative from agencies receiving federal funds;

E. make surveys and studies in cooperation with other agencies to determine the needs of the state in the areas where the federal funds are to be applied;

F. establish standards to which agencies must conform in receiving federal funds; and

G. give technical advice and assistance to any local educational agency in connection with that agency obtaining federal funds."

Section 24. Section 22-10A-17 NMSA 1978 (being Laws 2003, Chapter 153, Section 48) is amended to read:

"22-10A-17. INSTRUCTIONAL SUPPORT PROVIDER LICENSES.--

A. The department shall license instructional support providers, including educational assistants, school counselors, school social workers, school

nurses, speech-language pathologists, psychologists, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, recreational therapists, interpreters for the deaf, diagnosticians and other service providers. The department may provide a professional licensing framework in which licensees can advance in their careers through the demonstration of increased competencies and the undertaking of increased duties.

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B. The department shall provide by rule for the requirements for licensure of types of instructional support providers. If an instructional support provider practices a licensed profession, he shall provide evidence satisfactory to the department that he holds a current, unsuspended license in the profession for which he is applying to provide instructional support services. The instructional support provider shall notify the school district and department immediately if his professional license is suspended, revoked or denied. Suspension, revocation or denial of a professional license shall be just cause for discharge or termination and suspension, revocation or denial of the instructional support provider license."

Section 25. A new section of Chapter 22, Article 10A NMSA 1978 is enacted to read:

"PROFESSIONAL DEVELOPMENT--SYSTEMIC FRAMEWORK--
REQUIREMENTS--DEPARTMENT DUTIES.--

A. The department shall develop a systemic framework for professional development that provides training to ensure quality teachers, school principals and instructional support providers and that improves and enhances student achievement. The department shall work with licensed school employees, the commission on higher education and institutions of higher education to establish

the framework.

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B. The framework shall include:

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(1) the criteria for school districts to apply for professional development funds, including an evaluation component that will be used by the department in approving school district professional development plans; and

(2) guidelines for developing extensive professional development activities for school districts that:

(a) improve teachers' knowledge of the subjects they teach and the ability to teach those subjects to all of their students;

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(b) are an integral part of the public school and school district plans for improving student achievement;

(c) provide teachers, school administrators and instructional support providers with the strategies, support, knowledge and skills to help all students meet New Mexico academic standards;

(d) are high quality, sustained, intensive and focused on the classroom; and

(e) are developed and evaluated regularly with extensive participation of school employees and parents."

Section 26. Section 22-11-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 126, as amended) is amended to read:

"22-11-2. DEFINITIONS.--As used in the Educational Retirement Act:

A. "member" means an employee, except for a participant or a retired member, coming within the provisions of the Educational Retirement Act;

B. "regular member" means:

(1) a person regularly employed as a teaching, nursing or administrative employee of a state educational institution, except for:

(a) a participant; or

(b) all employees of a general hospital or outpatient clinics thereof operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

(2) a person regularly employed as a teaching, nursing or administrative employee of a junior college or community college created pursuant to Chapter 21, Article 13 NMSA 1978, except for a participant;

(3) a person regularly employed as a teaching, nursing or administrative employee of a technical and vocational institute created pursuant to the Technical and Vocational Institute Act, except for a participant;

(4) a person regularly employed as a teaching, nursing or administrative employee of the New Mexico boys' school, the New Mexico girls' school, the Los Lunas medical center or a school district or as a licensed school employee of a state institution or agency providing an educational program and holding a license issued by the department, except for a participant;

(5) a person regularly employed by the department holding a license issued by the department at the time of commencement of such employment;

(6) a member classified as a regular member in accordance with the rules of the board;

(7) a person regularly employed by the New Mexico activities association holding a license issued by the department at the time of

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commencement of such employment; or

(8) a person regularly employed by a regional education cooperative holding a license issued by the department at the time of commencement of such employment;

C. "provisional member" means a person not eligible to be a regular member but who is employed by a local administrative unit designated in Subsection B of this section; provided, however, that employees of a general hospital or outpatient clinics thereof operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico are not provisional members;

D. "local administrative unit" means an employing agency however constituted that is directly responsible for the payment of compensation for the employment of members or participants;

E. "beneficiary" means a person having an insurable interest in the life of a member or a participant designated by written instrument duly executed by the member or participant and filed with the director to receive a benefit pursuant to the Educational Retirement Act that may be received by someone other than the member or participant;

F. "employment" means employment by a local administrative unit that qualifies a person to be a member or participant;

G. "service employment" means employment that qualifies a person to be a regular member;

H. "provisional service employment" means employment that qualifies a person to be a provisional member;

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I. "prior employment" means employment performed prior to the effective date of the Educational Retirement Act that would be service employment or provisional service employment if performed thereafter;

J. "service credit" means that period of time with which a member is accredited for the purpose of determining his eligibility for and computation of retirement or disability benefits;

K. "earned service credit" means that period of time during which a member was engaged in employment or prior employment with which he is accredited for the purpose of determining his eligibility for retirement or disability benefits;

L. "allowed service credit" means that period of time during which a member has performed certain nonservice employment with which he may be accredited, as provided in the Educational Retirement Act, for the purpose of computing retirement or disability benefits;

M. "retirement benefit" means an annuity paid monthly to members whose employment has been terminated by reason of their age;

N. "disability benefit" means an annuity paid monthly to members whose employment has been terminated by reason of a disability;

O. "board" means the educational retirement board;

P. "fund" means the educational retirement fund;

Q. "director" means the educational retirement director;

R. "medical authority" means a medical doctor within the state or as provided in Subsection D of Section 22-11-36 NMSA 1978 either designated or employed by the board to examine and report on the physical condition of

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applicants for or recipients of disability benefits;

S. "actuary" means a person trained and regularly engaged in the occupation of calculating present and projected monetary assets and liabilities under annuity or insurance programs;

T. "actuarial equivalent" means a sum paid as a current or deferred benefit that is equal in value to a regular benefit, computed upon the basis of interest rates and mortality tables;

U. "contributory employment" means employment for which contributions have been made by both a member and a local administrative unit pursuant to the Educational Retirement Act;

V. "qualifying state educational institution" means the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university, western New Mexico university, Albuquerque technical-vocational institute, Clovis community college, Luna vocational-technical institute, Mesa technical college, New Mexico junior college, northern New Mexico state school, San Juan college and Santa Fe community college;

W. "participant" means:

(1) a person regularly employed as a faculty or professional employee of the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university or western New Mexico university who first becomes employed with such an educational institution on or after July 1, 1991, or a person regularly employed as a faculty or professional employee of the Albuquerque

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technical-vocational institute, Clovis community college, Luna vocational-technical institute, Mesa technical college, New Mexico junior college, northern New Mexico state school, San Juan college or Santa Fe community college who is first employed by the institution on or after July 1, 1999 and who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan; and

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(2) a person regularly employed who performs research or other services pursuant to a contract between a qualifying state educational institution and the United States government or any of its agencies who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan, provided that the research or other services are performed outside the state;

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X. "salary" means the compensation or wages paid to a member or participant by any local administrative unit for services rendered. "Salary" includes payments made for annual or sick leave and payments for additional service provided to related activities, but does not include payments for sick leave not taken unless the payment for the unused sick leave is made through continuation of the member on the regular payroll for the period represented by that payment and does not include allowances or reimbursements for travel, housing, food, equipment or similar items;

Y. "alternative retirement plan" means the retirement plan provided for in Sections 22-11-47 through 22-11-52 NMSA 1978; and

Z. "retired member" means a person whose employment has been terminated by reason of age and who is receiving or is eligible to receive retirement benefits."

Section 27. TEMPORARY PROVISION--TRANSFERS--STATUTORY

REFERENCES.--

A. All appropriations, money, personnel, records, files, furniture, equipment, supplies and other property of the state department of public education are transferred to the public education department.

B. All contractual obligations of the state department of public education shall be binding on the public education department.

C. All references in law to the state board of education shall be deemed to be references to the public education department. All references to the state department of public education or the department of education shall be deemed to be references to the public education department. All references in law to the state superintendent or the superintendent of public instruction shall be deemed to be references to the secretary of public education.

Section 28. TEMPORARY PROVISION--RECOMPILATION.--Sections 22-8-30.1 and 22-8-30.2 NMSA 1978 (being Laws 1995, Chapter 56, Sections 1 and 2, as amended) are recompiled into Chapter 21 NMSA 1978.

Section 29. REPEAL.--

A. Laws 2003, Chapter 143 is repealed.

B. Sections 22-1-6.1 and 22-2-3 through 22-2-6 NMSA 1978 (being Laws 2003, Chapter 18, Section 1 and Laws 1967, Chapter 16, Sections 6 through 9, as amended) are repealed.

C. Section 22-2-15 NMSA 1978 (being Laws 1978, Chapter 129, Section 2, as amended) is repealed.

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