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HOUSE BILL 332

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO STATE INSTITUTIONS; CREATING THE NEW MEXICO SCHOOL FOR THE ARTS AS A STATE INSTITUTION, WHICH WILL BE A PUBLICLY FUNDED STATEWIDE RESIDENTIAL HIGH SCHOOL FOR GRADES NINE THROUGH TWELVE; EXEMPTING THE SCHOOL FROM CERTAIN PROVISIONS OF THE PUBLIC SCHOOL CODE AND THE AUTHORITY OF THE PUBLIC EDUCATION DEPARTMENT; PROVIDING FOR ADMISSIONS CRITERIA; CREATING A BOARD OF TRUSTEES; PROVIDING POWERS AND DUTIES; PROVIDING FOR BUDGETS AND APPROPRIATIONS; PROVIDING FOR PROGRESSIVE ESTABLISHMENT OF GRADES; RECONCILING MULTIPLE ADMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005.

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

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 9 of this act may be cited as the "New Mexico School for the Arts Act".

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1 Section 2. ~~[NEW MATERIAL]~~ FINDINGS AND PURPOSE.--

2 A. The legislature finds that the arts have played
3 an invaluable role in New Mexico's history, culture and economy
4 and are deeply woven into the fabric of New Mexico's diverse
5 peoples and communities. The legislature further finds that
6 ancient, traditional and contemporary creative arts add a
7 richness to the lives of New Mexicans that should be
8 perpetuated through expansion of the opportunities made
9 available to the state's creative, talented youth.

10 B. The purpose of the New Mexico School for the
11 Arts Act is to establish a publicly funded statewide high
12 school for the arts to provide free, high quality education and
13 training for New Mexico students with demonstrated artistic
14 abilities and potential.

15 Section 3. ~~[NEW MATERIAL]~~ SCHOOL ESTABLISHED--STATUS--
16 DIPLOMAS--INITIAL YEAR--REPORTS.--

17 A. The "New Mexico school for the arts" is
18 established to provide free, publicly funded education and
19 training in grades nine through twelve for exceptional
20 artistically talented students who are residents of New Mexico
21 and who meet the admissions criteria and standards of the
22 school. The school is a residential high school located in
23 Santa Fe. For purposes of state law, the New Mexico school for
24 the arts is a state institution.

25 B. In addition to an academic program similar to

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1 that required of public schools, the New Mexico school for the
2 arts shall offer education in visual arts, graphic arts,
3 creative writing, dance, music and theater. In addition to
4 educating students attending the school, the school shall serve
5 as a resource center for public school students, teachers and
6 art programs statewide.

7 C. Except as provided in this subsection, the New
8 Mexico school for the arts is expressly exempted from the
9 provisions of the Public School Code and it shall not be
10 subject to the public education department's rules or eligible
11 for funding through the state equalization guarantee
12 distribution. The Compulsory School Attendance Law, the
13 Instructional Material Law, the Technology for Education Act,
14 the School Library Material Act, the Educational Retirement Act
15 and the Public School Insurance Authority Act apply to the New
16 Mexico school for the arts.

17 D. The board of trustees shall award a diploma to
18 each student who meets the board's requirements for graduation.

19 E. The board of trustees shall be appointed by July
20 1, 2006 and the first class of the New Mexico school of the
21 arts, which shall be a ninth grade class, shall begin in the
22 2007-2008 school year as determined by the board. The board
23 shall provide for the addition of one grade each year until the
24 school is offering arts and academic instruction for grades
25 nine through twelve. The board of trustees shall report

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1 periodically to the legislative finance committee and the
2 legislative education study committee on its progress in
3 setting up the school, hiring faculty and staff, determining
4 admissions criteria and other requirements, obtaining adequate
5 school and residential facilities, developing its proposed
6 budget and other matters as required by the legislative
7 committees.

8 Section 4. [NEW MATERIAL] BOARD OF TRUSTEES--MEMBERSHIP--
9 TERMS.--

10 A. The "board of trustees" of the New Mexico school
11 for the arts is created. The board is comprised of nine
12 members who are appointed by the governor with the advice and
13 consent of the senate and who are residents of the state as
14 follows:

15 (1) two members who are knowledgeable about
16 public schools, including public school curricula, public
17 education department standards and benchmarks and public school
18 finance;

19 (2) two members who are knowledgeable about
20 public post-secondary educational institutions, including
21 admissions requirements; and

22 (3) five members who are knowledgeable about
23 the arts, including visual arts, Indian arts and culture,
24 Hispanic arts and culture, dance, music, theater or creative
25 writing.

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1 B. In making the appointments, the governor shall
2 give due consideration to the geographic distribution of the
3 members.

4 C. Members shall be appointed for terms of six
5 years; provided that for the initial appointments, three
6 members shall be appointed for six years, three members shall
7 be appointed for four years and three members shall be
8 appointed for two years. Members shall serve until their
9 successors have been appointed and qualified. Vacancies shall
10 be filled by the appointing authority for the remainder of the
11 original terms. Members of the board of trustees shall not
12 receive any compensation.

13 D. Members of the board of trustees shall not be
14 removed except for malfeasance or misfeasance in office or
15 neglect of duty.

16 E. The governor shall select the chairperson of the
17 board of trustees and the members may elect other officers as
18 they deem necessary.

19 Section 5. [NEW MATERIAL] BOARD OF TRUSTEES--GENERAL
20 POWERS AND DUTIES.--

21 A. The board of trustees shall have control over
22 the management and operations of the New Mexico school for the
23 arts and shall:

24 (1) determine financial and educational
25 policies of the school;

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1 (2) provide for the management of the school
2 and execution of its policies by selecting a competent school
3 principal and, upon the principal's recommendation and subject
4 to appropriation, employ other administrative personnel,
5 instructional faculty or other personnel as may be needed for
6 the operation, maintenance and administration of the school and
7 set their salaries pursuant to a salary schedule adopted and
8 promulgated by the board;

9 (3) adopt and promulgate school admission
10 criteria, standards and procedures;

11 (4) adopt and promulgate rules, standards and
12 benchmarks for the arts instructional program and the academic
13 program;

14 (5) adopt and promulgate rules concerning:

15 (a) length of school day and length of
16 school year; provided that the school year shall be at least
17 one hundred eighty days;

18 (b) graduation requirements; and

19 (c) employment, discharge and
20 termination of school faculty and personnel, including
21 evaluation standards and procedures;

22 (6) review and approve the annual school
23 budget and submit it to the department of finance and
24 administration;

25 (7) provide for an annual audit as provided in

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1 the Audit Act;

2 (8) provide for the repair and maintenance of
3 all property belonging to the school;

4 (9) adopt and promulgate student discipline
5 policies, including suspension or expulsion from school for
6 violations of the policies;

7 (10) adopt and promulgate codes of conduct for
8 students, faculty, staff and board members; provided that codes
9 of conduct shall incorporate any state laws pertaining to
10 conduct of public officers and employees and licensed school
11 personnel;

12 (11) establish an outreach program to foster
13 and promote public elementary school arts programs throughout
14 the state to educate and identify potential students who may
15 matriculate to the school; and

16 (12) provide an annual accountability report
17 to the governor, the legislature and the public on the school's
18 operations, including:

19 (a) a financial summary;
20 (b) information about the arts
21 instructional program and academic program, including faculty
22 qualifications;

23 (c) student assessments, including
24 student demographics, student academic performance and
25 graduation rates;

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1 (d) a survey of parents' views of the
2 school and its performance;

3 (e) the results of a self-assessment by
4 the trustees, faculty, staff and students on the school's
5 effectiveness in meeting its goals in the arts instruction and
6 academic programs; and

7 (f) the results of any third-party
8 evaluation or accreditation of the school's programs received
9 by the trustees since the last accountability report, if
10 applicable.

11 B. The board of trustees may:

12 (1) adopt and promulgate rules to carry out
13 the provisions of the New Mexico School for the Arts Act;

14 (2) sue and be sued;

15 (3) enter into contracts and other agreements
16 in accordance with the provisions of the Procurement Code;

17 (4) have the attorney general be the board's
18 attorney or hire an attorney to give advice and counsel in
19 regard to any matter connected with the duties of the board and
20 to represent the board in any legal proceedings;

21 (5) within constitutional and statutory
22 limitations, acquire, lease and dispose of property;

23 (6) apply for and receive, in the name of the
24 school, any public or private funds, including United States
25 government funds, available to the school to carry out its

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1 programs, duties or services;

2 (7) accept or reject any charitable gift,
3 grant, devise or bequest. The particular gift, grant, devise
4 or bequest accepted shall be considered an asset of the school;

5 (8) give prior approval for any educational or
6 other program in the school that is to be conducted, sponsored,
7 carried on or caused to be carried on by a private organization
8 or agency; and

9 (9) do such other things as are necessary to
10 carry out the purposes of the New Mexico School for the Arts
11 Act and ensure the accountability of the school and its
12 programs.

13 Section 6. [NEW MATERIAL] RULEMAKING.--The board of
14 trustees may adopt and promulgate such reasonable rules as may
15 be necessary to carry out its duties and those of the New
16 Mexico school for the arts. Rules shall be adopted, amended or
17 repealed after a public hearing on the proposed action before
18 the board of trustees or a hearing officer designated by the
19 board. The public hearing shall be held in Santa Fe unless
20 otherwise permitted by statute. Notice of the subject matter
21 of the rule, the action proposed to be taken, the time and
22 place of the hearing, the manner in which interested persons
23 may present their views and the method by which copies of the
24 proposed rule or proposed amendment or repeal of an existing
25 rule may be obtained shall be published once at least thirty

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1 days prior to the hearing date in a newspaper of general
2 circulation and mailed at least thirty days prior to the
3 hearing date to all persons who have made a written request for
4 advance notice of the hearing. All rules shall be filed in
5 accordance with the State Rules Act.

6 Section 7. [NEW MATERIAL] BUDGETS AND APPROPRIATIONS--
7 ACCOUNTABILITY IN GOVERNMENT ACT--LOCAL EDUCATIONAL AGENCY
8 STATUS--SURETY BOND ACT COVERAGE.--

9 A. The New Mexico school for the arts is subject to
10 the provisions of Chapter 6, Article 3 NMSA 1978; provided,
11 however, that upon the determination of the dates for the
12 school's school year, the board of trustees and the state
13 budget division of the department of finance and administration
14 may agree on a date other than September 1 for the submission
15 of the school's proposed budget and may agree on a date other
16 than May 1 for the submission of the school's operating budget.

17 Proposed budgets for the ensuing fiscal year shall be
18 submitted to the state budget division and the legislative
19 finance committee by the agreed-upon date. The legislature
20 shall appropriate money to the school as it does to other state
21 agencies and institutions in the general appropriation act.

22 B. The New Mexico school for the arts is subject to
23 the provisions of the Accountability in Government Act. The
24 Surety Bond Act applies to the trustees and employees of the
25 school.

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1 C. The board of trustees may apply to the secretary
2 of finance and administration to have the school issue warrants
3 and be exempt from prior submission of vouchers, purchase
4 orders and contracts pursuant to Section 6-5-9 NMSA 1978.

5 Section 8. [NEW MATERIAL] PRINCIPAL--OTHER FACULTY AND
6 STAFF--DUTIES.--

7 A. The chief administrative and executive officer
8 of the New Mexico school for the arts is the principal, who
9 shall be a New Mexico licensed school administrator.

10 B. The arts instructional program of the school
11 shall be comprised of faculty who:

12 (1) hold advanced degrees in recognized arts
13 fields; or

14 (2) are practicing master artists whose
15 artistic expertise has been recognized by state or national
16 arts organizations to the satisfaction of the board of
17 trustees.

18 C. Arts instructional faculty are not required to
19 be licensed by the public education department, but they shall
20 participate annually in professional development programs
21 approved by the school principal that are modeled on national
22 research-based professional development standards for
23 instructional staff and artists.

24 D. The arts instructional faculty may be
25 supplemented by artists in residence or other visiting, part-

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1 time or adjunct faculty who are recognized for their
2 accomplishments in their field of artistic endeavor and who are
3 exempt from degree, licensing and professional development
4 requirements provided for in this section.

5 E. The academic program shall be comprised of
6 faculty who hold teaching licenses issued by the public
7 education department.

8 F. The board of trustees shall approve the courses
9 offered in the arts instructional program and the academic
10 program.

11 Section 9. [NEW MATERIAL] ADMISSIONS--CRITERIA AND
12 STANDARDS.--

13 A. The New Mexico school for the arts shall admit
14 and enroll students in accordance with the admission criteria,
15 standards and procedures promulgated by the board of trustees.
16 The board may provide for the formation of one or more
17 admissions committees that will make admissions recommendations
18 to the school principal.

19 B. Applicants shall demonstrate:

20 (1) proof of New Mexico residency;
21 (2) artistic talent, which may be by audition,
22 portfolio review or other method as determined by the board of
23 trustees; and

24 (3) a high degree of commitment to the arts,
25 motivation and maturity.

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1 Section 10. Section 22-1-2 NMSA 1978 (being Laws 2003,
2 Chapter 153, Section 3, as amended by Laws 2005, Chapter 313,
3 Section 3 and by Laws 2005, Chapter 315, Section 1) is amended
4 to read:

5 "22-1-2. DEFINITIONS.--As used in the Public School Code:

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

11 B. "commission" means the public education
12 commission;

13 C. "department" means the public education
14 department;

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

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

24 F. "instructional support provider" means a person
25 who is employed to support the instructional program of a

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1 school district, including an educational assistant, school
2 counselor, social worker, school nurse, speech-language
3 pathologist, psychologist, physical therapist, occupational
4 therapist, recreational therapist, interpreter for the deaf and
5 diagnostician;

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

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

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

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

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

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

25 M. "school" means a supervised program of

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1 instruction designed to educate a student in a particular
2 place, manner and subject area;

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

6 O. "school-age person" means a person who is at
7 least five years of age prior to 12:01 a.m. on September 1 of
8 the school year and who has not received a high school diploma
9 or its equivalent. A maximum age of twenty-one shall be used
10 for a person who is classified as special education membership
11 as defined in Section 22-8-21 NMSA 1978 or as a resident of a
12 state institution;

13 P. "school building" means a public school, an
14 administration building and related school structures or
15 facilities, including teacher housing, that is owned, acquired
16 or constructed by the school district as necessary to carry out
17 the functions of the school district;

18 Q. "school bus private owner" means a person, other
19 than a school district, the department, the state or any other
20 political subdivision of the state, that owns a school bus;

21 R. "school district" means an area of land
22 established as a political subdivision of the state for the
23 administration of public schools and segregated geographically
24 for taxation and bonding purposes;

25 S. "school employee" includes licensed and

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1 nonlicensed employees of a school district;

2 T. "school principal" means the chief instructional
3 leader and administrative head of a public school;

4 U. "school year" means the total number of contract
5 days offered by public schools in a school district during a
6 period of twelve consecutive months;

7 V. "secretary" means the secretary of public
8 education;

9 W. "state agency" or "state institution" means the
10 New Mexico military institute, New Mexico school for the blind
11 and visually impaired, New Mexico school for the deaf, New
12 Mexico school for the arts, New Mexico boys' school, New Mexico
13 girls' school, New Mexico youth diagnostic and development
14 center, Sequoyah adolescent treatment center, Carrie Tingley
15 crippled children's hospital, New Mexico behavioral health
16 institute at Las Vegas and any other state agency responsible
17 for educating resident children;

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

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

23 Z. "teacher" means a person who holds a level one,
24 two or three-A license and whose primary duty is classroom
25 instruction or the supervision, below the school principal

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1 level, of an instructional program or whose duties include
2 curriculum development, peer intervention, peer coaching or
3 mentoring or serving as a resource teacher for other teachers;

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

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

8 Section 11. Section 22-2-2 NMSA 1978 (being Laws 1967,
9 Chapter 16, Section 5, as amended) is amended to read:

10 "22-2-2. DEPARTMENT--GENERAL DUTIES.--The department
11 shall:

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

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

20 C. supervise all schools and school officials
21 coming under its jurisdiction, including taking over the
22 control and management of a public school or school district
23 that has failed to meet requirements of law or department rules
24 or standards, and, until such time as requirements of law,
25 standards or rules have been met and compliance is ensured, the

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1 powers and duties of the local school board and local
2 superintendent shall be suspended;

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

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

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

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

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

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

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

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

9 L. approve or disapprove all rules promulgated by
10 an association or organization attempting to regulate a public
11 school activity and invalidate any rule in conflict with any
12 rule promulgated by the department. The department shall
13 require an association or organization attempting to regulate a
14 public school activity to comply with the provisions of the
15 Open Meetings Act and be subject to the inspection provisions
16 of the Public Records Act. The department may require
17 performance and financial audits of an association or
18 organization attempting to regulate a public school activity.
19 The department shall have no power or control over the rules or
20 the bylaws governing the administration of the internal
21 organization of the association or organization;

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

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

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

11 P. approve education curricula and programs offered
12 in all two-year public post-secondary educational institutions,
13 except those in Chapter 21, Article 12 NMSA 1978, that lead to
14 alternative licenses for degreed persons pursuant to Section
15 22-10A-8 NMSA 1978 or licensure for educational assistants;

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

19 (1) is based upon current scientifically based
20 reading research;

21 (2) aligns with department-adopted reading
22 standards;

23 (3) includes strategies and assessment
24 measures to ensure that beginning teachers are proficient in
25 teaching reading; and

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1 (4) was designed after seeking input from
2 experts in the education field;

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

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

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

13 Section 12. Section 22-10A-2 NMSA 1978 (being Laws 1975,
14 Chapter 306, Section 2, as amended) is amended to read:

15 "22-10A-2. DEFINITIONS.--As used in the School Personnel
16 Act:

17 A. "discharge" means the act of severing the
18 employment relationship with a [~~certified~~] licensed school
19 employee prior to the expiration of the current employment
20 contract;

21 B. "state agency" means any state institution or
22 state agency providing an educational program requiring the
23 employment of [~~certified school instructors~~] licensed school
24 employees, except the New Mexico school for the arts;

25 C. "sabbatical leave" means leave of absence with

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1 pay as set by the local school board or governing authority of
2 a state agency during all or part of a regular school term for
3 purposes of study or travel related to the staff member's
4 duties and of direct benefit to the instructional program;

5 D. "terminate" means, in the case of a [~~certified~~]
6 licensed school employee, the act of not reemploying an
7 employee for the ensuing school year and, in the case of a
8 [~~non-certified~~] nonlicensed school employee, the act of
9 severing the employment relationship with the employee;

10 E. "working day" means every calendar day,
11 excluding Saturday, Sunday or a legal holiday; and

12 F. "just cause" means a reason that is rationally
13 related to an employee's competence or turpitude or the proper
14 performance of [~~his~~] duties and that is not in violation of the
15 employee's civil or constitutional rights."

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