

AN ACT

RELATING TO PUBLIC SCHOOLS; DISTINGUISHING A STUDENT'S ACADEMIC PROFICIENCY FROM THE ADEQUATE YEARLY PROGRESS OF PUBLIC SCHOOLS AND SCHOOL DISTRICTS; CONFORMING RANKINGS OF SCHOOLS IN NEED OF IMPROVEMENT WITH FEDERAL REQUIREMENTS; PROVIDING A PROCESS FOR REOPENING FAILING SCHOOLS AS STATE-CHARTERED CHARTER SCHOOLS; PROVIDING FOR THE DISAGGREGATION OF DATA BY GENDER; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005.

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

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

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

A. "academic proficiency" means mastery of the subject-matter knowledge and skills specified in state academic content and performance standards for a student's grade level;

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

C. "commission" means the public education commission;

D. "department" means the public education department;

E. "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;

F. "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;

G. "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;

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

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

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

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

L. "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;

M. "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;

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

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

P. "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 22-8-21 NMSA 1978 or as a resident of a state institution;

Q. "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;

R. "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;

S. "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;

T. "school employee" includes licensed and nonlicensed employees of a school district;

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

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

W. "secretary" means the secretary of public

education;

X. "state agency" or "state institution" means the New Mexico military institute, New Mexico school for the blind and visually impaired, New Mexico 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, New Mexico behavioral health institute at Las Vegas and any other state agency responsible for educating resident children;

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

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

AA. "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 or whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers;

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

CC. "certified school employee" or "certified

school personnel" means a licensed school employee."

Section 2. Section 22-2C-1 NMSA 1978 (being Laws 2003, Chapter 153, Section 10) is amended to read:

"22-2C-1. SHORT TITLE.--Chapter 22, Article 2C NMSA 1978 may be cited as the "Assessment and Accountability Act"."

Section 3. Section 22-2C-5 NMSA 1978 (being Laws 2003, Chapter 153, Section 14) is amended to read:

"22-2C-5. STUDENT ACHIEVEMENT RATINGS--CALCULATION OF ADEQUATE YEARLY PROGRESS.--The department shall adopt the process and methodology for calculating adequate yearly progress. The statewide standards-based assessments used to assess adequate yearly progress shall be valid and reliable and shall conform with nationally recognized professional and technical standards. Academic performance shall be measured by school and by the following subgroups:

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

Section 4. Section 22-2C-6 NMSA 1978 (being Laws 1986, Chapter 33, Section 7, as amended) is amended to read:

"22-2C-6. REMEDIATION PROGRAMS--PROMOTION POLICIES--RESTRICTIONS.--

- A. Remediation programs, academic improvement

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

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

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

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

E. A parent shall be notified no later than the end of the second grading period that the parent's child is

not academically proficient, and a conference consisting of the parent and the teacher shall be held to discuss possible remediation programs available to assist the student in becoming academically proficient. Specific academic deficiencies and remediation strategies shall be explained to the student's parent and a written intervention plan developed containing time lines, academic expectations and the measurements to be used to verify that a student has overcome academic deficiencies. Remediation programs and academic improvement programs include tutoring, extended day or week programs, summer programs and other research-based interventions and models for student improvement.

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

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

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

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



principal shall either be:

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

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

G. At the end of the eighth grade, a student who is not academically proficient shall be retained in the eighth grade for no more than one school year to become academically proficient or if the student assistance team determines that

retention of the student in the eighth grade will not assist the student to become academically proficient, the team shall design a high school graduation plan to meet the student's needs for entry into the work force or a post-secondary educational institution. If a student is retained in the eighth grade, the student assistance team shall develop a specific academic improvement plan that clearly delineates the student's academic deficiencies and prescribes a specific remediation plan to address those academic deficiencies.

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

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

J. For the purposes of this section:

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

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

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

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

- (a) teacher;
- (b) school counselor;
- (c) school administrator; and
- (d) parent."

Section 5. Section 22-2C-7 NMSA 1978 (being Laws 2003, Chapter 153, Section 16, as amended) is amended to read:

"22-2C-7. ADEQUATE YEARLY PROGRESS--SCHOOL IMPROVEMENT PLANS--CORRECTIVE ACTION--RESTRUCTURING.--

A. A public school that fails to make adequate yearly progress for two consecutive school years shall be identified as a school in need of improvement. A school in need of improvement shall be ranked as:

- (1) school improvement 1;

- (2) school improvement 2;
- (3) corrective action;
- (4) restructuring 1; or
- (5) restructuring 2.

B. Within ninety days of being notified that a public school within the school district has been identified as a public school in need of improvement, the school district shall submit an improvement plan for that public school to the department. In developing the improvement plan, the local superintendent, the president of the local school board and the school principal of the public school in need of improvement shall hold a public meeting to inform parents and the public of the public school's rank. The meeting shall be used to elicit suggestions from parents and the public on how to improve the public school. After the public meeting, the school district shall develop the public school's improvement plan, and the local school board shall approve the improvement plan before it is submitted to the department. The improvement plan shall be approved by the department within thirty days of its submission.

C. The improvement plan shall include:

- (1) documentation of performance measures in which the public school failed to make adequate yearly progress;

- (2) measurable objectives to indicate the

action that will be taken to address failed measures;

(3) benchmarks to be used to indicate progress in meeting academic content and performance standards;

(4) an estimate of the time and the resources needed to achieve each objective in the improvement plan;

(5) the support services that shall be provided to students;

(6) applications that have been made for federal and state funds; and

(7) any other information that the public school that needs improvement, the local superintendent, the local school board or the department deems necessary.

D. A public school in need of improvement may apply to the department for financial or other assistance in accordance with the improvement plan. The public school shall make application for assistance substantially in the form required by the department. The department shall evaluate applications for assistance and may recommend changes to an application or to an improvement plan if warranted by the final application. The department shall consider innovative methods to assist the public school in meeting its improvement plan, including department or other school employees serving as a mobile assistance team to provide administrative,

classroom, human resource and other assistance to the public school that needs improvement as needed and as provided in applications approved by the department.

E. If a public school has failed to make adequate yearly progress for two consecutive school years it shall be placed in school improvement 1 and shall provide transportation or pay the cost of transportation, within available funds, for students who choose to enroll in a higher ranked public school.

F. If a public school has failed to make adequate yearly progress for three consecutive school years it shall be placed in school improvement 2 and shall provide supplemental services, including after-school programs, tutoring and summer services to its Title I-eligible students, within available funds.

G. The department shall adopt rules that govern the priority for students for whom supplemental services shall be provided and for students for whom transportation costs are paid. The rules shall include the adoption of a sliding-fee schedule based on the educational level of tutors in New Mexico and require that providers use a pre- and post-assessment instrument approved by the department to measure the gains that students achieve through supplemental services.

H. If a public school has failed to make adequate yearly progress for four consecutive school years, it shall be

placed in corrective action and the school district, in conjunction with the department, shall take one or more of the following actions in addition to earlier improvements:

- (1) replace staff as allowed by law;
- (2) implement a new curriculum;
- (3) decrease management authority of the public school;
- (4) appoint an outside expert to advise the public school;
- (5) extend the school day or year; or
- (6) change the public school's internal organizational structure.

I. If a public school has failed to make adequate yearly progress for five consecutive school years, it shall be placed in restructuring 1 and shall continue the improvement measures implemented pursuant to Subsections B through H of this section and begin planning for restructuring of the public school if it fails to make adequate yearly progress in the sixth year.

J. If a public school has failed to make adequate yearly progress for six consecutive years, it shall be placed in restructuring 2. The school district, in conjunction with the department, shall take one or more of the following actions in addition to other improvements:

- (1) recommend reopening the public school as

a state-chartered charter school as provided in Section 22-2C-7.1 NMSA 1978;

(2) replace all or most of the staff as allowed by law;

(3) turn over the management of the public school to the department; or

(4) make other governance changes.

K. A school district that has failed to make adequate yearly progress for two consecutive school years may be subject to the same requirements as a public school subject to corrective action, as determined by the department. A school district that fails to make adequate yearly progress for four consecutive school years shall be subject to corrective action.

L. The state, a school district or a charter school shall not enter into management contracts with private entities for the management of a public school or a school district subject to corrective action.

M. If a public school that is identified as a school in need of improvement makes adequate yearly progress in the year that it has been placed in school improvement 1, school improvement 2, corrective action or restructuring 1, it shall not move to the next school improvement rank for one year. If the public school makes adequate yearly progress for a second consecutive year, it shall be removed from the ranks



of schools in need of improvement.

N. Nothing in this section shall be construed to restrict the powers and duties of the secretary or the department under the Public School Code."

Section 6. A new section of the Assessment and Accountability Act, Section 22-2C-7.1 NMSA 1978, is enacted to read:

"22-2C-7.1. FAILING SCHOOL SUBJECT TO REOPENING AS STATE-CHARTERED CHARTER SCHOOL--REQUIREMENTS.--

A. If, pursuant to Subsections I and J of Section 22-2C-7 NMSA 1978, the school district in which a public school that has failed to make adequate yearly progress for five consecutive years recommends that the public school be reopened as a state-chartered charter school, the department, after holding a public hearing in the school district, may take steps to have the public school reopened as a state-chartered charter school.

B. To reopen as a state-chartered charter school:

(1) the school's current enrollment for all grades cannot exceed ten percent of the total MEM of the school district where it is located when the school district has a total enrollment of less than one thousand three hundred students;

(2) the department, after obtaining information and community input during the public hearing,

shall find at least five qualified persons willing to serve in an interim capacity as a governing body;

(3) the governing body shall employ a qualified school administrator within thirty days of its appointment by the department;

(4) the governing body shall qualify as a board of finance and satisfy any conditions imposed by the commission prior to commencing full operation;

(5) the governing body shall develop a written plan and proposed charter that is satisfactory to the commission and that at a minimum addresses the following issues:

(a) the employment, discharge, termination or displacement of current school employees, including the effect of employment decisions on current employment contracts and collective bargaining agreements;

(b) fiscal and records management;

(c) instructional and administrative facilities;

(d) student transportation;

(e) special education;

(f) curriculum;

(g) education-related and other services;

(h) accreditation;

- (i) food service;
  - (j) graduation requirements, if a waiver of state graduation requirements is sought;
  - (k) governance turnover; and
  - (l) student assessments and school accountability;
- (6) the governing body and the school shall comply with any other substantive or procedural requirements imposed on them by law or rule of the department; and
- (7) the department and the governing body shall have a plan to provide for an orderly transition.

C. If, within ninety days of its determination that the school should be reopened as a state-chartered charter school, the department is unable to constitute a qualified governing body or the governing body does not have its charter approved by the commission and does not find a qualified school administrator able to commence operation of the proposed state-chartered charter school, the failing school shall not be reopened as a state-chartered charter school. Failure to reopen the school as a state-chartered charter school does not affect other actions that may be taken to improve the school.

D. The provisions of the Charter Schools Act shall apply to a public school that is reopened as a state-chartered charter school."

Section 7. Section 22-2C-11 NMSA 1978 (being Laws 2003, Chapter 153, Section 20, as amended) 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;

(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; and

(4) require that when public schools, school districts and the state disaggregate and report school data for demographic subgroups, they include data disaggregated by gender.

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

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.

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:

- (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.

F. The school district's annual accountability

report shall be adopted by the local school board, shall be published no later than November 15 of each year and shall be published at least once each school year in a newspaper of general circulation in the county where the school district 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.

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

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.

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." \_\_\_\_\_