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HOUSE BILL 241

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Mimi Stewart

FOR THE FUNDING FORMULA STUDY TASK FORCE AND FOR THE
LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOLS; PROVIDING A NEW PUBLIC SCHOOL
FUNDING FORMULA; PROVIDING FOR MAINTENANCE AND PERIODIC
RECALIBRATION OF THE FORMULA; REQUIRING ACCOUNTABILITY; USING A
CENSUS-BASED SPECIAL EDUCATION IDENTIFICATION RATE FOR SCHOOL
DISTRICTS; CLARIFYING FINANCIAL RESPONSIBILITY FOR SPECIAL
EDUCATION; CREATING A FUND; CHANGING REPORTING TIMES TO
SPECIFIED DATES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME
SECTIONS OF LAW IN A SINGLE YEAR; AMENDING, REPEALING, ENACTING
AND RECOMPILING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of the Public School Code is
enacted to read:

"[NEW MATERIAL] PURPOSE OF 2008 EDUCATION REFORM.--

A. The legislature finds that education reform in

1 New Mexico has been a multiyear process that began in 1999 with
2 the creation of the education initiatives and accountability
3 task force. That task force reported the results of its work
4 to the 2001 legislative session, and the legislature passed a
5 bill that was subsequently vetoed by the governor. In 2003,
6 the legislature again passed the bill, commonly referred to as
7 "House Bill 212", and the governor signed it. That bill
8 enacted the first part of education reform, which was based on
9 the need to attract and retain highly qualified teachers to
10 teach New Mexico's multicultural student population and to hold
11 teachers and administrators accountable for student success.
12 That educational reform recognized the importance of
13 integrating the cultural strengths of New Mexico into the
14 curriculum with high expectations for all students. In 2007,
15 the legislature and governor addressed the need for a rigorous
16 and relevant high school curriculum, as expressed in House Bill
17 212, by enacting what is popularly known as "high school
18 redesign". The goal of that legislation is to prepare students
19 for success in college and the workplace.

20 B. The legislature finds that the next step toward
21 true educational reform was taken in 2005, when the legislature
22 passed, and the governor signed, legislation to appoint a task
23 force of legislators and educators to direct an independent
24 study of the state's funding formula.

25 C. The purpose of this 2008 act is to establish a

1 new, simplified funding formula for public schools that is
2 based on student need, grade composition and scale of
3 operations for school districts and charter schools. The
4 formula, and the attendant accountability that is provided,
5 strengthen the goals of the overall education reform begun in
6 House Bill 212 and specified in Section 22-1-1.2 NMSA 1978.
7 This 2008 reform links the increased funding that will be
8 provided through the adoption and implementation of the new
9 funding formula to each school district's and charter school's
10 educational plan for student success. The educational plan and
11 the attendant site-specific school plans are the means to
12 enliven statutory provisions such as the Assessment and
13 Accountability Act, kindergarten plus and K-3 plus, high school
14 redesign, the Indian Education Act, the Bilingual Multicultural
15 Education Act, the Fine Arts Education Act, the Mathematics and
16 Science Education Act and other curricula-specific provisions
17 of the Public School Code."

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

20 "22-1-2. DEFINITIONS.--As used in the Public School Code:

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

24 B. "adequate yearly progress" means the measure
25 adopted by the department based on federal requirements to

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1 assess the progress that a public school or school district or
2 the state makes toward improving student achievement;

3 C. "cost factor demographic data" means a school
4 district's or charter school's student-need data pertaining to
5 poverty, English language learners, special education and
6 mobility;

7 [~~E.~~] D. "commission" means the public education
8 commission;

9 E. "December enrollment" means the total enrollment
10 in a public school or school district on the second Wednesday
11 in December;

12 [~~D.~~] F. "department" means the public education
13 department;

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

19 G. "educational plan" means the educational plan
20 for student success of a school district or charter school;

21 H. "February enrollment" means the total enrollment
22 in a public school or school district on the second Wednesday
23 in February;

24 [~~F.~~] I. "home school" means the operation by the
25 parent of a school-age person of a home study program of

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1 instruction that provides a basic academic educational program,
2 including reading, language arts, mathematics, social studies
3 and science;

4 ~~[G.]~~ J. "instructional support provider" means a
5 person who is employed to support the instructional program of
6 a school district, including educational assistant, school
7 counselor, social worker, school nurse, speech-language
8 pathologist, psychologist, physical therapist, occupational
9 therapist, recreational therapist, interpreter for the deaf and
10 diagnostician;

11 ~~[H.]~~ K. "licensed school employee" means teachers,
12 school administrators and instructional support providers;

13 ~~[I.]~~ L. "local school board" means the policy-
14 setting body of a school district;

15 ~~[J.]~~ M. "local superintendent" means the chief
16 executive officer of a school district;

17 N. "October enrollment" means the total enrollment
18 in a public school or school district on the second Wednesday
19 in October;

20 ~~[K.]~~ O. "parent" includes a guardian or other
21 person having custody and control of a school-age person;

22 ~~[L.]~~ P. "private school" means a school, other than
23 a home school, that offers on-site programs of instruction and
24 that is not under the control, supervision or management of a
25 local school board;

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1 ~~[M-]~~ Q. "public school" means that part of a school
2 district that is a single attendance center in which
3 instruction is offered by one or more teachers and is
4 discernible as a building or group of buildings generally
5 recognized as either an elementary, middle, junior high or high
6 school or any combination of those and includes a charter
7 school;

8 R. "qualified student" means a public school
9 student who:

10 (1) has not graduated from high school; and

11 (2) is regularly enrolled in one-half or more
12 of the minimum course requirements approved by the department
13 for public school students; and

14 (3) is at least five years of age prior to
15 12:01 a.m. on September 1 of the school year or will be five
16 years of age prior to 12:01 a.m. on September 1 of the school
17 year if the student is enrolled in an extended-year
18 kindergarten program that begins prior to the start of the
19 regular school year; or

20 (4) is at least three years of age at any time
21 during the school year and is receiving special education
22 pursuant to rules of the department; or

23 (5) has not reached the student's twenty-
24 second birthday on the first day of the school year and is
25 receiving special education in accordance with federal law;

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1 ~~[N.]~~ S. "school" means a supervised program of
2 instruction designed to educate a student in a particular
3 place, manner and subject area;

4 ~~[O.]~~ T. "school administrator" means a person
5 licensed to administer in a school district and includes school
6 principals and central district administrators;

7 ~~[P.]~~ U. "school-age person" means a person who is
8 at least five years of age prior to 12:01 a.m. on September 1
9 of the school year and who has not received a high school
10 diploma or its equivalent. A maximum age of twenty-one shall
11 be used for a school-age person who ~~[is classified as]~~ receives
12 special education ~~[membership as defined in Section 22-8-21~~
13 ~~NMSA 1978 or as a resident of a state institution]~~ as provided
14 in Sections 22-13-5, 22-13-7 and 22-13-8 NMSA 1978;

15 ~~[Q.]~~ V. "school building" means a public school, an
16 administration building and related school structures or
17 facilities, including teacher housing, that is owned, acquired
18 or constructed by the school district as necessary to carry out
19 the functions of the school district;

20 ~~[R.]~~ W. "school bus private owner" means a person,
21 other than a school district, the department, the state or any
22 other political subdivision of the state, that owns a school
23 bus;

24 ~~[S.]~~ X. "school district" means an area of land
25 established as a political subdivision of the state for the

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1 administration of public schools and segregated geographically
2 for taxation and bonding purposes;

3 [~~F.~~] Y. "school employee" includes licensed and
4 nonlicensed employees of a school district;

5 [~~U.~~] Z. "school principal" means the chief
6 instructional leader and administrative head of a public
7 school;

8 [~~V.~~] AA. "school year" means the total number of
9 [~~contract~~] instructional days offered by public schools in a
10 school district during a period of twelve consecutive months;

11 [~~W.~~] BB. "secretary" means the secretary of public
12 education;

13 CC. "special education" means the provision of
14 services additional to, supplementary to or different from
15 those provided in the general school program of a public school
16 to students who are required by the federal Individuals with
17 Disabilities Education Act to have an individualized education
18 program, and including developmentally disabled three- and
19 four-year-old children attending public school;

20 [~~X.~~] DD. "state agency" or "state institution"
21 means the New Mexico military institute, New Mexico school for
22 the blind and visually impaired, New Mexico school for the
23 deaf, New Mexico boys' school, girls' welfare home, New Mexico
24 youth diagnostic and development center, Sequoyah adolescent
25 treatment center, Carrie Tingley crippled children's hospital,

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1 New Mexico behavioral health institute at Las Vegas and any
2 other state agency responsible for educating resident children;

3 ~~[Y.]~~ EE. "state educational institution" means an
4 institution enumerated in Article 12, Section 11 of the
5 constitution of New Mexico;

6 FF. "student" means a school-age person who is a
7 public school student;

8 ~~[Z.]~~ GG. "substitute teacher" means a person who
9 holds a certificate to substitute for a teacher in the
10 classroom;

11 ~~[AA.]~~ HH. "teacher" means a person who holds a
12 level one, two or three-A license and whose primary duty is
13 classroom instruction or the supervision, below the school
14 principal level, of an instructional program or whose duties
15 include curriculum development, peer intervention, peer
16 coaching or mentoring or serving as a resource teacher for
17 other teachers;

18 ~~[BB.]~~ II. "certified school instructor" means a
19 teacher or instructional support provider; and

20 ~~[CC.]~~ JJ. "certified school employee" or "certified
21 school personnel" means a licensed school employee."

22 Section 3. Section 22-2-8.1 NMSA 1978 (being Laws 1986,
23 Chapter 33, Section 2, as amended) is amended to read:

24 "22-2-8.1. LENGTH OF SCHOOL DAY--MINIMUM.--

25 A. Except as otherwise provided in this section,

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1 ~~[regular]~~ general students shall be in school-directed
2 programs, exclusive of lunch, for a minimum of the following:

3 (1) kindergarten, for half-day programs, two
4 and one-half hours per day or four hundred fifty hours per
5 year, ~~[or]~~ and, for full-day programs, five and one-half hours
6 per day or nine hundred ninety hours per year;

7 (2) grades one through six, five and one-half
8 hours per day or nine hundred ninety hours per year; and

9 (3) grades seven through twelve, six hours per
10 day or one thousand eighty hours per year.

11 B. Beginning with the 2011-2012 school year,
12 general students shall be in school-directed programs,
13 exclusive of lunch, for a minimum of the following:

14 (1) kindergarten, for half-day programs, two
15 and one-half hours per day or four hundred sixty-two and one-
16 half hours per year, and, for full-day programs, five and one-
17 half hours per day or one thousand seventeen and one-half hours
18 per year;

19 (2) grades one through six, five and one-half
20 hours per day or one thousand seventeen and one-half hours per
21 year; and

22 (3) grades seven through twelve, six hours per
23 day or one thousand one hundred ten hours per year.

24 ~~[B.]~~ C. Thirty-three hours of the full-day
25 kindergarten program may be used for home visits by the teacher

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1 or for parent-teacher conferences. Twenty-two hours of grades
2 one through five programs may be used for home visits by the
3 teacher or for parent-teacher conferences.

4 [~~G.~~] D. Nothing in this section precludes a local
5 school board from setting length of school days in excess of
6 the minimum requirements established by Subsection A or B of
7 this section.

8 [~~D.~~] E. The [~~state superintendent~~] secretary may
9 waive the minimum length of school days in those districts
10 where such minimums would create undue hardships as defined by
11 the [~~state board~~] department."

12 Section 4. A new section of the Assessment and
13 Accountability Act is enacted to read:

14 "[NEW MATERIAL] EDUCATIONAL PLAN FOR STUDENT SUCCESS--
15 EDUCATIONAL PROGRAMMING.--

16 A. As used in this section:

17 (1) "demographic data" means a school
18 district's funding formula cost factor demographic data and any
19 other demographic data or health status data required by the
20 department or collected by the school district for the purposes
21 of determining educational programming and focusing the
22 educational plan;

23 (2) "educational programming" includes
24 curricula; support services, including library and media,
25 school counseling, health services and athletic and activity

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1 programs; and academic improvement strategies, including
2 extended instructional days and year, before- and after-school
3 programs, credit recovery and summer school courses, tutoring
4 and other response to intervention or remediation programs;

5 (3) "local school board" includes governing
6 bodies of charter schools; and

7 (4) "school district" includes charter
8 schools.

9 B. The department shall adopt and promulgate rules
10 to implement the provisions of this section.

11 C. The department shall verify, monitor and
12 evaluate educational plans through the budget approval process
13 and otherwise throughout the year. The department shall ensure
14 that each educational plan is developed and implemented as
15 provided in this section and the rules of the department and
16 that results are evaluated for effectiveness each year.

17 D. Under the policy direction of the local school
18 board, each school district shall:

19 (1) develop, implement and assess a district-
20 level, student-centered "educational plan for student success"
21 as a long-range strategic plan to improve academic achievement
22 and success for all students;

23 (2) use a strategic planning model that is
24 approved by the department; and

25 (3) include the required school plans of

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1 public schools that are part of the school district, excluding
2 charter schools, and ensure that those plans are aligned with
3 the educational plan.

4 E. The chartering authority shall approve a charter
5 school's educational plan based on the plan's alignment with
6 the charter.

7 F. The educational plan shall:

8 (1) be specific, measurable, realistic and
9 attainable and include the school plan of each public school in
10 the school district, excluding charter schools, and specify how
11 each of the school plans shall be evaluated and aligned with
12 the educational plan;

13 (2) solicit the input of school district
14 staff, students, parents, businesses, post-secondary
15 educational institutions, tribal governments within the school
16 district and other interested citizens in the community at
17 large;

18 (3) address the major core issues identified
19 through the public input process;

20 (4) implement the department's standards of
21 excellence, including the content standards and benchmarks, and
22 other programmatic requirements of state and federal law and
23 rules adopted in accordance with those laws;

24 (5) include focus areas and goals that address
25 student needs based on demographic data and student academic

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1 achievement data;

2 (6) identify areas of student need that must
3 be addressed to ensure that students meet the educational
4 benchmarks specified in the state content standards and
5 benchmarks;

6 (7) identify resources to address student
7 needs, including such items as:

8 (a) highly qualified teachers, academic
9 coaches, resource teachers, interventionists, specialists,
10 counselors, educational assistants and other instructional
11 support personnel, and how staffing assignments of these
12 personnel shall be used in a proactive manner to assist
13 students in need of particular services;

14 (b) professional development and time
15 for in-school collaboration for instructional staff;

16 (c) administrative and classroom
17 technology and access to distance learning opportunities for
18 students and staff;

19 (d) parental involvement and outreach
20 initiatives;

21 (e) involvement by post-secondary
22 educational institutions, tribal governments and the business
23 community; and

24 (f) other resources identified by the
25 school district or department;

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1 (8) implement the state and district
2 assessment systems;

3 (9) demonstrate student progress toward the
4 educational plan's focus areas and goals;

5 (10) provide for a comprehensive and periodic
6 evaluation of the educational plan by the school district; and

7 (11) be updated annually and submitted to the
8 department by March 1 or another date determined by the
9 department.

10 G. Each school district shall oversee the
11 development, implementation, assessment and evaluation of all
12 site-level school plans and shall ensure that those plans are
13 aligned with the school district's educational plan.

14 H. School plans shall include:

15 (1) data-based strategies and activities to
16 support each of the school district-level focus areas and
17 goals;

18 (2) identification of persons responsible for
19 the implementation of the strategies and activities;

20 (3) time lines for the start and completion of
21 those strategies and activities;

22 (4) the educational programming targeted to
23 the school's demographic data and student academic achievement;

24 (5) formal and informal professional
25 development activities that support each of the school

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1 district-level focus areas and goals; and

2 (6) availability of school, district,
3 community and family resources that support each of the school
4 district-level focus areas and goals.

5 I. Each public school shall involve school staff,
6 parents and community members in the development and evaluation
7 of the school plan.

8 J. The educational plan shall include the cost
9 factor demographic data of each public school and the school
10 district and shall link educational programming to those and
11 other demographic data and the student academic achievement
12 data reported pursuant to the Assessment and Accountability
13 Act.

14 K. Educational programming shall be assessed
15 through the educational plan. As part of the approval process
16 of the educational plan and the operating budget of a school
17 district, the department shall consider how the school district
18 proposes to address specifically the needs of low-income
19 students, students who are not proficient in English, students
20 whose education is disrupted by mobility, students in need of
21 special education and gifted students.

22 L. Based on the demographic profiles of students,
23 student academic achievement data and the department's
24 standards of excellence, the educational plan shall include
25 educational programming for:

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1 (1) bilingual and multicultural education,
2 including culturally relevant learning environments,
3 educational opportunities and culturally relevant instructional
4 materials;

5 (2) health and wellness, including physical
6 education, athletics, nutrition and health education;

7 (3) career-technical education;

8 (4) visual and performing arts and music;

9 (5) gifted education, advanced placement and
10 honors programs;

11 (6) special education; and

12 (7) distance education.

13 M. The local school board shall approve the
14 educational plan and submit it to the department.

15 N. The secretary shall disapprove an educational
16 plan in whole or in part if it does not meet the requirements
17 of this section or other provisions of the Public School Code.
18 The secretary shall provide the local school board and the
19 school district with a written report that specifies which
20 parts of the educational plan the secretary is disapproving,
21 reasons for the disapproval and suggestions for improvement.
22 The school district has thirty days to submit a revised
23 educational plan, during which time the department shall assist
24 the school district as requested.

25 O. If the local school board does not approve a

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1 revised educational plan or if the department does not
2 recommend approval of the revised educational plan, the
3 secretary shall hold a public hearing within twenty days after
4 the revised educational plan was due.

5 P. The secretary shall appoint a hearing officer to
6 conduct the public hearing. All parties, including the public,
7 shall be given an opportunity to present their views about the
8 original educational plan and any revisions to that plan. The
9 hearing officer shall make recommendations to the secretary
10 within ten days of the public hearing. The secretary shall
11 make the final decision on whether to accept the school
12 district's original plan, the revised plan or a department-
13 developed educational plan. The final educational plan shall
14 be aligned with the department-approved operating budget."

15 Section 5. A new section of the Public School Finance Act
16 is enacted to read:

17 "[NEW MATERIAL] 2009 FUNDING FORMULA--FINDINGS AND
18 PURPOSE.--

19 A. The legislature finds that based on a two-year
20 study to determine the best method of funding a sufficient
21 public education for New Mexico's children, the state, school
22 districts and charter schools would be better served by a new
23 funding formula that incorporates:

24 (1) a smaller and simplified set of student-
25 needs weighting factors to achieve a more equitable

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1 distribution of the state's equalization guarantee;

2 (2) a simplified set of programmatic weights
3 that accounts for student grade level composition for
4 elementary, middle and high school students; and

5 (3) a weighting schedule that accounts
6 separately for the scale of school district and charter school
7 operations.

8 B. The legislature finds further that the 2009
9 funding formula:

10 (1) avoids unnecessary complexity by focusing
11 directly on the factors associated with student needs and
12 scale;

13 (2) appropriately promotes and preserves both
14 vertical and horizontal equity across school districts;

15 (3) minimizes incentives to pursue funding not
16 directly linked to student needs; and

17 (4) captures components in the pre-2009
18 funding formula and is more precise in measuring student need
19 and scale.

20 C. The legislature finds further that the cost
21 factors used in the 2009 funding formula better measure need by
22 addressing special cost differentials associated with students
23 that have special educational needs as well as particular types
24 of local educational agency. The poverty, English language
25 learner and special education cost factors measure those

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1 federally recognized attributes that unambiguously reflect the
2 special educational needs of students. The cost factor for
3 mobility recognizes the significant impact of disruption on
4 students' educational experience. The cost factors for grade
5 level enrollment address the knowledge gained from educational
6 research and experience that educating students becomes more
7 expensive as they progress through the educational system from
8 elementary through secondary school. Total school district or
9 charter school enrollment is included as a cost factor that
10 accounts for relative economies of scale in the delivery of
11 educational services.

12 D. The legislature finds further that the federal
13 No Child Left Behind Act of 2001 requires states to employ
14 highly qualified teachers to teach students in core academic
15 subjects. The federal Individuals with Disabilities Education
16 Act requires highly qualified personnel to provide holistic
17 services for students in need of special education, as well as
18 staff who are qualified to intervene before students are
19 classified as needing special education. To carry out these
20 mandates, and to continue encouraging school districts to hire
21 and retain highly qualified teachers and instructional support
22 providers, the 2009 funding formula replaces the training and
23 experience index with an index of staff qualifications to
24 provide the means to cover the costs associated with increased
25 academic qualifications and experience for these personnel."

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1 Section 6. Section 22-8-2 NMSA 1978 (being Laws 1978,
2 Chapter 128, Section 3, as amended) is repealed and a new
3 Section 22-8-2 NMSA 1978 is enacted to read:

4 "22-8-2. [NEW MATERIAL] DEFINITIONS.--As used in the
5 Public School Finance Act:

6 A. "base per-student cost" means the reference
7 value cost of providing an educational program to a qualified
8 student attending the average size district with the average
9 composition of enrollment across grade ranges kindergarten
10 through five, six through eight and nine through twelve and
11 with no formula adjustments applied;

12 B. "cost factor" means a measure of student need,
13 grade level composition, scale of operations or staff
14 qualifications;

15 C. "enrollment" means the number of qualified
16 students on the current roll of a class or public school on a
17 specified day;

18 D. "formula adjustment" means a component of the
19 funding formula that accounts for a differential cost
20 associated with a cost factor;

21 E. "governing body" means the governing body of a
22 charter school;

23 F. "growth" means that a school district's or
24 charter school's current-year October total enrollment is
25 greater than its prior-year October total enrollment;

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1 G. "head administrator" means the person
2 responsible for the day-to-day operations of a charter school;

3 H. "mobility rate" means the district-level
4 student-weighted average percentage of total enrollment that
5 entered or left the school over the school year;

6 I. "operating budget" means the annual financial
7 plan required to be submitted by a local school board or
8 governing body;

9 J. "public money" or "public funds" means all money
10 from public or private sources received by a school district or
11 governing body or officer or employee of a school district or
12 governing body for public use;

13 K. "sufficient per-student cost" means the base
14 per-student cost multiplied by the applicable formula
15 adjustments;

16 L. "total enrollment" means the number of qualified
17 students on a school's or charter school's roll on a specified
18 day in all grade levels and in programs for three- and four-
19 year-old developmentally disabled qualified students; and

20 M. "total program cost" means the sufficient per-
21 student cost multiplied by the number of students in a school
22 district or charter school."

23 Section 7. A new section of the Public School Finance Act
24 is enacted to read:

25 "[NEW MATERIAL] ESTABLISHMENT OF ENROLLMENT.--The current
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1 roll of a class, public school and school district or charter
2 school is established by the addition of original entries and
3 re-entries minus withdrawals. Withdrawals of qualified
4 students, in addition to qualified students formally withdrawn
5 from the public school, include qualified students absent from
6 the public school for as many as ten consecutive school days;
7 provided that withdrawals do not include truants and habitual
8 truants with whom the school district or charter school is
9 required to intervene and keep in an educational setting as
10 provided in Section 22-12-9 NMSA 1978."

11 Section 8. Section 22-8-6 NMSA 1978 (being Laws 1967,
12 Chapter 16, Section 60, as amended by Laws 1999, Chapter 281,
13 Section 21 and by Laws 1999, Chapter 291, Section 2) is amended
14 to read:

15 "22-8-6. BUDGETS--SUBMISSION--FAILURE TO SUBMIT.--

16 A. Prior to April 15 of each year, each local
17 school board shall submit to the department [~~an~~] a proposed
18 operating budget for the school district [~~and any charter~~
19 ~~schools in the district~~] for the ensuing fiscal year. Upon
20 written approval of the [~~state superintendent~~] secretary, the
21 date for the submission of the operating budget as required by
22 this section may be extended to a later date fixed by the
23 [~~state superintendent~~] secretary.

24 B. In order to receive final budget approval, the
25 operating budget must be aligned to the school district's

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1 approved educational plan.

2 ~~[B.]~~ C. The proposed operating budget required by
3 this section may include:

4 (1) estimates of the cost of insurance
5 policies for periods up to five years if a lower rate may be
6 obtained by purchasing insurance for the longer term; ~~[or]~~ and

7 (2) estimates of the cost of contracts for the
8 transportation of students for terms extending up to four
9 years.

10 ~~[C. The operating budget required by this section
11 shall include a budget for each charter school of the
12 membership projected for each charter school, the total program
13 units generated at that charter school and approximate
14 anticipated disbursements and expenditures at each charter
15 school.]~~

16 D. If a local school board fails to submit ~~[a]~~ its
17 budget pursuant to this section, the department shall prepare
18 the operating budget for the school district for the ensuing
19 fiscal year. A local school board shall be considered as
20 failing to submit a budget pursuant to this section if the
21 budget submitted:

22 (1) exceeds the total projected resources of
23 the school district ~~[or if the budget submitted];~~

24 (2) does not comply with the law or with rules
25 and procedures of the department; or

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1 (3) except as provided in Subsection D of
2 Section 22-8-11 NMSA 1978, is not aligned with the school
3 district's approved educational plan."

4 Section 9. Section 22-8-6.1 NMSA 1978 (being Laws 1993,
5 Chapter 227, Section 8, as amended) is repealed and a new
6 Section 22-8-6.1 NMSA 1978 is enacted to read:

7 "22-8-6.1. [NEW MATERIAL] CHARTER SCHOOL BUDGETS.--

8 A. Prior to April 15 of each year, the governing
9 body of each state-chartered charter school shall submit its
10 proposed operating budget to the charter schools division of
11 the department for its approval or amendment pursuant to the
12 Public School Finance Act and the Charter Schools Act. In
13 order to receive final budget approval, the proposed budget
14 must be aligned to the school's approved educational plan.

15 B. Prior to April 15 of each year, the governing
16 body of each locally chartered charter school shall submit its
17 proposed operating budget at the same time to the department
18 and the school district that chartered it. In order to be
19 approved, the proposed budget must be aligned to the school's
20 approved educational plan. The budget shall be submitted to
21 the local school board for approval. The approval authority of
22 the local school board is limited to ensuring that sound fiscal
23 practices are followed in the development of the budget and
24 that the budget is within the allotted resources. The local
25 school board shall have no veto authority over individual line

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1 items within the budget, but shall approve or disapprove the
2 budget only in its entirety. The local school board shall
3 notify the department of its approval or disapproval of the
4 budget, including its reasons for disapproval.

5 C. Upon written approval of the secretary, the date
6 for submission of a proposed budget may be extended to a later
7 date fixed by the secretary. If the governing body fails to
8 submit its proposed operating budget pursuant to this section,
9 the department shall prepare the budget for the charter school
10 for the ensuing fiscal year. A governing body shall be
11 considered as failing to submit a budget pursuant to this
12 section if the budget submitted:

13 (1) exceeds the total projected resources of
14 the charter school;

15 (2) does not comply with the law or with rules
16 and procedures of the department; or

17 (3) except as provided in Subsection D of
18 Section 22-8-11 NMSA 1978, is not aligned with the charter
19 school's approved educational plan.

20 D. For the first year of operation, the proposed
21 operating budget of a charter school shall be based on the
22 projected enrollment and cost factor demographic data of that
23 charter school and the index of staff qualifications of the
24 school district in which the charter school is geographically
25 located. The operating budget shall be adjusted based on the

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1 actual October enrollment and cost factor demographic data.
2 For second and subsequent years of operation, the operating
3 budget shall be based on the charter school's own cost factor
4 demographic data and index of staff qualifications."

5 Section 10. Section 22-8-8 NMSA 1978 (being Laws 1967,
6 Chapter 16, Section 62, as amended) is amended to read:

7 "22-8-8. BUDGETS--MINIMUM STUDENT [~~MEMBERSHIP~~]
8 ENROLLMENT.--Without prior approval of the [~~state~~
9 ~~superintendent~~] secretary, no local school board or governing
10 body shall maintain or provide a budget allowance for a public
11 school having an [~~average daily membership~~] enrollment of
12 [~~less~~] fewer than eight."

13 Section 11. Section 22-8-9 NMSA 1978 (being Laws 1967,
14 Chapter 16, Section 63, as amended) is amended to read:

15 "22-8-9. BUDGETS--MINIMUM REQUIREMENTS.--

16 A. A budget for a school district shall not be
17 approved by the department that does not provide for:

18 (1) a school year consisting of at least one
19 hundred eighty full instructional days or the equivalent
20 thereof, exclusive of any release time for in-service training;
21 or

22 (2) a variable school year consisting of a
23 minimum number of instructional hours established by the [~~state~~
24 ~~board~~] department; and

25 (3) a pupil-teacher ratio or class or teaching

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1 load as provided in Section 22-10A-20 NMSA 1978.

2 B. Beginning with the 2011-2012 school year, a
3 budget for a school district shall not be approved by the
4 department that does not provide for a school year consisting
5 of at least one hundred eighty-five full instructional days or
6 the equivalent on a variable calendar. Teachers and
7 instructional support staff shall be paid for at least four
8 days additional to the school year for professional development
9 or instructional planning.

10 ~~[B.]~~ C. The ~~[state board]~~ department shall, by
11 rule, establish the requirements for an instructional day, the
12 standards for an instructional hour and the standards for a
13 full-time teacher and for the equivalent thereof."

14 Section 12. Section 22-8-11 NMSA 1978 (being Laws 1967,
15 Chapter 16, Section 66, as amended) is amended to read:

16 "22-8-11. BUDGETS--APPROVAL OF OPERATING BUDGET.--

17 A. On or before June 30 of each year, the
18 department shall ~~[(1) on or before July 1 of each year]~~
19 approve and certify ~~[to]~~ the operating budget for each [local]
20 school ~~[board]~~ district and ~~[governing body of a state-~~
21 ~~chartered]~~ charter school ~~[an operating budget for use by the~~
22 ~~school district or state-chartered charter school; and (2)].~~
23 The department may make corrections, revisions and amendments
24 to the operating budgets fixed by the local school boards or
25 governing bodies ~~[of state-chartered charter schools and the~~

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1 ~~secretary~~] to conform the budgets to the requirements of law
2 and to the department's rules and procedures.

3 B. No school district or [~~state-chartered~~] charter
4 school or officer or employee of a school district or [~~state-~~
5 ~~chartered~~] charter school shall make any expenditure or incur
6 any obligation for the expenditure of public [~~funds~~] money
7 unless that expenditure or obligation is made in accordance
8 with an operating budget approved by the department. This
9 prohibition does not prohibit the transfer of [~~funds~~] money
10 pursuant to the department's rules and procedures.

11 C. The department shall not approve and certify an
12 operating budget of any school district or [~~state-chartered~~]
13 charter school that [~~fails to~~] does not align with the
14 educational plan and demonstrate that parental involvement in
15 the budget process was solicited.

16 D. The department may approve a conditional
17 operating budget if a school district's or charter school's
18 educational plan is in the process of being approved as
19 provided in Section 4 of this 2008 act. After the secretary's
20 final decision on the educational plan, the conditional
21 operating budget shall be aligned with the department-approved
22 educational plan and become the operating budget for the
23 applicable fiscal year. If the approved operating budget
24 requires a decrease or increase in the school district's state
25 equalization guarantee distribution, the department shall

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1 adjust the monthly allotments accordingly."

2 Section 13. Section 22-8-12.1 NMSA 1978 (being Laws 1978,
3 Chapter 128, Section 5, as amended) is amended to read:

4 "22-8-12.1. [~~MEMBERSHIP~~] SUFFICIENT PER-STUDENT COST
5 PROJECTIONS AND BUDGET REQUESTS.--

6 A. Beginning with projections for the 2009-2010
7 school year, each [~~local school board or governing body of a~~
8 ~~state-chartered~~] school district and charter school shall
9 submit annually, on or before October 15, to the department:

10 (1) an estimate for the succeeding fiscal year
11 of:

12 (a) the [~~membership of qualified~~
13 ~~students to be enrolled in the basic program~~] enrollment by
14 grade level;

15 (b) the full-time-equivalent [~~membership~~
16 ~~of students to be enrolled~~] enrollment in approved early
17 childhood education programs; [~~and~~]

18 (c) the [~~membership of students to be~~
19 ~~enrolled~~] enrollment in approved special education programs;
20 and

21 (d) the cost factor demographic data by
22 grade level;

23 (2) all other information necessary to
24 calculate total program [~~costs~~] cost; and

25 (3) any other information related to the

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1 financial needs of the school district or [~~state-chartered~~]
2 charter school as may be requested by the department.

3 B. All information requested pursuant to Subsection
4 A of this section shall be submitted on forms prescribed and
5 furnished by the department and shall comply with the
6 department's rules and procedures.

7 C. The department shall:

8 (1) review the financial needs of each school
9 district [~~or state-chartered~~] and charter school for the
10 succeeding fiscal year; and

11 (2) submit annually, on or before November 30,
12 to the secretary of finance and administration the
13 recommendations of the department for:

14 (a) amendments to the public school
15 [~~finance~~] funding formula;

16 (b) appropriations for the succeeding
17 fiscal year to the public school fund for inclusion in the
18 executive budget document; and

19 (c) appropriations for the succeeding
20 fiscal year for [~~pupil~~] student transportation and
21 instructional materials."

22 Section 14. Section 22-8-13 NMSA 1978 (being Laws 1974,
23 Chapter 8, Section 3, as amended) is amended to read:

24 "22-8-13. REPORTS.--

25 A. Each public school [~~in a school district and~~

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1 ~~each state-chartered charter school]~~ shall keep accurate
2 records concerning [~~membership~~] enrollment in the public school
3 [~~The superintendent of~~].

4 B. The dates for which enrollment is reported are
5 as follows:

6 (1) first reporting date, second Wednesday in
7 October;

8 (2) second reporting date, second Wednesday in
9 December; and

10 (3) third reporting date, second Wednesday in
11 February.

12 C. The department may require enrollment or other
13 reports at other times specified by the department.

14 D. Each school district or [head administrator of a
15 state-chartered] charter school shall maintain the following
16 reports for each [~~twenty-day~~] enrollment reporting period:

17 (1) the [~~basic program MEM~~] enrollment and
18 cost factor demographic data by grade in each public school;

19 (2) the early childhood education [~~MEM~~]
20 enrollment;

21 (3) the special education [~~MEM in each public~~
22 ~~school in class C and class D programs as defined in Section~~
23 ~~22-8-21 NMSA 1978;~~

24 (~~4) the number of class A and class B programs~~
25 ~~as defined in Section 22-8-21 NMSA 1978; and]~~ enrollment; and

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1 [~~(5)~~] (4) the [~~full-time equivalent MEM for~~]
2 bilingual multicultural education [~~programs~~] enrollment.

3 [~~B. The superintendent of~~] E. Each school district
4 and [~~the head administrator of each state-chartered~~] charter
5 school shall furnish all reports, including financial reports
6 required by the department, to the department [~~reports of the~~
7 ~~information required in Paragraphs (1) through (5) of~~
8 ~~Subsection A of this section for the first forty days of the~~
9 ~~school year. The forty-day report and all other reports~~
10 ~~required by law or by the department shall be furnished~~] within
11 five days of the close of [~~the~~] each reporting period.

12 [~~G.~~] F. All information required pursuant to this
13 section shall be on forms prescribed and furnished by the
14 department. A copy of any report made pursuant to this section
15 shall be kept as a permanent record of the school district or
16 charter school and shall be subject to inspection and audit at
17 any reasonable time.

18 [~~D.~~] G. The department [~~shall~~] may withhold up to
19 one hundred percent of the allotments of funds to any school
20 district or [~~state-chartered~~] charter school [~~where~~] when the
21 local superintendent or head administrator has failed to comply
22 with the requirements of this section. Withholding may
23 continue until the local superintendent or head administrator
24 complies with and agrees to continue complying with the
25 requirements of this section.

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1 [~~E-~~] H. The provisions of this section may be
2 modified or suspended by the department for any school district
3 or [~~school or state-chartered~~] charter school operating under
4 the Variable School Calendar Act. The department shall require
5 [~~MEM~~] the reports consistent with the calendar of operations of
6 [~~such~~] the school district or [~~school or state-chartered~~]
7 charter school and shall calculate an equivalent [~~MEM~~]
8 enrollment for use in projecting school district or charter
9 school revenue."

10 Section 15. Section 22-8-14 NMSA 1978 (being Laws 1967,
11 Chapter 16, Section 69, as amended) is amended to read:

12 "22-8-14. PUBLIC SCHOOL FUND.--

13 A. The "public school fund" is created in the state
14 treasury. The fund consists of appropriations, earmarked
15 revenue, income from investment of the fund and any other money
16 credited to the fund.

17 B. The public school fund shall be distributed to
18 school districts and state-chartered charter schools in the
19 following parts:

- 20 (1) state equalization guarantee distribution;
21 (2) transportation distribution; and
22 (3) supplemental distributions:
23 (a) out-of-state tuition to school
24 districts;
25 (b) emergency; and

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(c) program enrichment.

C. The distributions of the public school fund shall be made by the department within limits established by law. The balance remaining in the public school fund at the end of each fiscal year shall not revert to the general fund [~~unless otherwise provided by law~~]."

Section 16. Section 22-8-17 NMSA 1978 (being Laws 1974, Chapter 8, Section 7, as amended) is amended to read:

"22-8-17. TOTAL PROGRAM COST DETERMINATION--REQUIRED INFORMATION.--

A. The department shall calculate the total program cost for each school district and charter school [~~shall be determined by the department~~] in accordance with the provisions of the Public School Finance Act.

B. The department is authorized to require from each school district and charter school the information necessary to make an accurate determination of the district's or charter school's total program cost."

Section 17. Section 22-8-18 NMSA 1978 (being Laws 1974, Chapter 8, Section 8, as amended by Laws 2007, Chapter 347, Section 1 and by Laws 2007, Chapter 348, Section 2 and also by Laws 2007, Chapter 365, Section 1) is repealed and a new Section 22-8-18 NMSA 1978 is enacted to read:

"22-8-18. [NEW MATERIAL] PROJECTED SUFFICIENT PER-STUDENT COST CALCULATION FOR SCHOOL DISTRICTS AND CHARTER SCHOOLS--

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1 LOCAL RESPONSIBILITY.--

2 A. As used in this section:

3 (1) "ENR" means total enrollment;

4 (2) "exp" means the exponential function with
5 its base being the mathematical constant e; and

6 (3) "ln" means natural logarithm.

7 B. The cost factors used to determine the
8 sufficient per-student cost for a school district or charter
9 school are:

10 (1) poverty, which is measured by the
11 percentage of qualified students in a school who qualified for
12 free or reduced-price lunch as of September 30 of the prior
13 school year;

14 (2) English language learners, which is
15 measured by the percentage of qualified students designated as
16 English language learners based on a department-approved
17 English language proficiency assessment;

18 (3) special education, which is measured by
19 sixteen percent of the number of qualified students for school
20 districts and by the percentage of qualified students who are
21 required by the federal Individuals with Disabilities Education
22 Act to have an individualized education program for the
23 delivery of special education and includes developmentally
24 disabled three- and four-year-old qualified students for
25 charter schools;

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1 (4) mobility, which is the mobility rate
2 determined by the following formula: $1 - (1 \div (1 + \text{statewide}$
3 $\text{mobility ratio}))$, where the mobility ratio is determined
4 annually by the department;

5 (5) the percent of total district enrollment
6 in grades six through eight;

7 (6) the percent of total district enrollment
8 in grades nine through twelve;

9 (7) the total district enrollment; and

10 (8) the weighted index of staff
11 qualifications.

12 C. The sufficient per-student cost for school
13 districts is determined by multiplying the base per-student
14 cost by a series of formula adjustments as follows:

15 "base per-student cost x
16 $[(1 + \text{percent free/reduced-fee lunch})^{0.375}] \times$
17 $[(1 + \text{percent English language learners})^{0.094}] \times$
18 $[(1 + \text{percent special education})^{1.723}] \times$
19 $[(1 + \text{mobility rate})^{0.190}] \times$
20 $[(1 + \text{enrollment percent in grades six-eight})^{0.291} \div$
21 $1.063] \times$
22 $[(1 + \text{enrollment percent in grades nine-twelve})^{0.608} \div$
23 $1.187] \times$
24 $[(\text{ENR})^{-0.575} \times \exp((\ln(\text{ENR}))^2)^{0.029} \div 0.062] \times$
25 weighted index of staff qualifications formula

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1 adjustment determined pursuant to Section 22-8-24
2 NMSA 1978".

3 D. The funding formula equation used to determine
4 the sufficient per-student cost for charter schools is
5 determined by multiplying the base per-student cost by a series
6 of formula adjustments as follows:

7 "base per-student cost x
8 $[(1 + \text{percent free/reduced-fee lunch})^{0.375}] \times$
9 $[(1 + \text{percent English language learners})^{0.094}] \times$
10 $[(1 + \text{percent special education})^{1.723}] \times$
11 $[(1 + \text{mobility rate})^{0.190}] \times$
12 $[(1 + \text{enrollment percent in grades six-eight})^{0.291} \div$
13 $1.074] \times$
14 $[(1 + \text{enrollment percent in grades nine-twelve})^{0.608} \div$
15 $1.241] \times$
16 $[(\text{ENR})^{-0.307} \times \exp((\ln(\text{ENR}))^2)^{0.012} \div 0.288] \times$
17 weighted index of staff qualifications adjustment as
18 determined pursuant to Section 22-8-24 NMSA 1978".

19 E. The exponents and denominators used in the
20 formula adjustments shall remain constant until they are
21 redetermined after the required periodic funding formula study.

22 F. Except as otherwise provided in this section,
23 cost factor demographic data and total enrollment are based on
24 the average of the prior year's total enrollment reported in
25 December and February and the prior-year cost factor

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1 demographic data.

2 G. A school district or charter school that is
3 experiencing growth may elect to use the greater of the prior-
4 year average December and February total enrollment or the
5 current-year October total enrollment, as determined by the
6 difference in the prior-year October total enrollment and the
7 current-year October total enrollment.

8 H. A new school district or charter school shall
9 use the current-year October cost factor demographic data and
10 total enrollment for the first year.

11 I. The special education formula adjustment for a
12 school district is calculated using sixteen percent of the
13 number of qualified students in the school district. In the
14 2008-2009 school year, a school district with an actual special
15 education identification rate over sixteen percent shall
16 reassess its special education students to determine whether:

17 (1) there is a significant disproportionality
18 in the identification rate based on ethnic or racial
19 background; and

20 (2) individual students should be reevaluated
21 to determine the most appropriate education and related
22 services needed.

23 J. The special education formula adjustment for a
24 charter school is calculated using the actual number of
25 appropriately identified special education qualified students

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1 who are receiving special education on the October enrollment
2 report. The legislature finds that charter schools are
3 designed for unique populations and the range of variation in
4 special education in charter schools is wider and often well
5 below school district averages; therefore, it is rational and
6 reasonable to differentiate between school districts and
7 charter schools in the special education cost factor.

8 K. The department shall assist school districts to
9 implement response to intervention strategies to lower their
10 special education identification rates. It is the intent of
11 the legislature that all school districts and charter schools
12 accurately identify students needing special education and that
13 they implement response to intervention strategies to provide
14 students with the most appropriate services required for their
15 educational success. The department shall report to the
16 legislature by September 1 of each year on:

17 (1) the prior year's special education
18 identification rates in school districts and charter schools;
19 and

20 (2) the adoption and efficacy of response to
21 intervention strategies for each school district and charter
22 school.

23 L. To maintain the funding formula each year, the
24 department shall:

25 (1) update the cost factors of each school

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1 district and charter school to determine their respective
2 formula adjustments for that year; and

3 (2) adjust the base per-student cost according
4 to legislative appropriation, including inflation. As used in
5 this paragraph, inflation is determined by the percentage
6 increase, if any:

7 (a) of the prior-year legislative
8 appropriation for salary increases applied to that statewide
9 portion of the budget designated for salaries and benefits; and

10 (b) of the prior-year consumer price
11 index for all urban consumers for the remaining statewide
12 portions of the budget funded through the formula.

13 M. The department shall undertake a thorough
14 funding formula study every ten years, or more frequently if
15 the secretary or the legislature determines a need, to update
16 the current funding formula to determine the formula's equation
17 exponents and denominators.

18 N. The sufficient per-student cost is based on a
19 comprehensive instructional program that includes the cost of
20 core academic programs, career-technical education, gifted
21 programs, bilingual-multicultural programs, arts and music,
22 health and physical education and special education and
23 appropriate staff. It is the responsibility of the local
24 school board or governing body to determine its priorities in
25 terms of the needs of the community served by that board or

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1 body. Money distributed through the provisions of the Public
2 School Finance Act is discretionary to local school boards and
3 governing bodies to provide the programs identified in their
4 educational plans.

5 O. Beginning with fiscal year 2010, the legislature
6 and the department shall use the funding formula provided in
7 this section as the method for determining the appropriation
8 for and distribution of the state equalization guarantee;
9 provided that funding for complete implementation of the
10 provisions of this 2008 act may be phased in during a period
11 not to exceed three years; and provided further that the
12 funding formula shall not be initiated in fiscal year 2010
13 unless the 2010 appropriation is equal to at least one-third of
14 the difference between the projected total program cost for
15 fiscal year 2010 and the actual program cost for fiscal year
16 2009 inflated to fiscal year 2010. For the first two years of
17 phase-in, if the total program cost for a school district or
18 charter school is less than that of the prior fiscal year, the
19 total program cost for the school district or charter school
20 shall be calculated using the prior fiscal year's total program
21 cost adjusted for inflation."

22 Section 18. A new section of the Public School Finance
23 Act is enacted to read:

24 "[NEW MATERIAL] FORMULA PHASE-IN.--

25 A. During the phase-in of the funding formula, a

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1 school district or charter school shall use its state
2 equalization guarantee distribution, above the amount it
3 received in the prior fiscal year and the amount needed for
4 increases in fixed costs and salaries pursuant to the budget
5 approved by the department, for one or more of the following
6 purposes that support the educational plan:

7 (1) extending the instructional year one or
8 more days;

9 (2) extending the school day for teachers or
10 extending contract days for teachers up to four days beyond the
11 instructional year;

12 (3) offering summer school, credit recovery
13 and enhanced before- and after-school opportunities;

14 (4) lower class sizes and student-teacher
15 ratios;

16 (5) employing academic coaches, resource
17 teachers and specialists, particularly in reading, mathematics
18 and English language learning programs;

19 (6) enhancing intervention efforts for
20 children who may be at risk of academic failure;

21 (7) enhancing remediation programs in language
22 arts and reading, mathematics, science and social studies;

23 (8) improving truancy prevention and
24 intervention strategies, including establishing or enhancing
25 truancy tracking systems and employing truancy officers;

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- 1 (9) establishing or enhancing bilingual-
2 multicultural programs;
- 3 (10) offering visual and performing arts,
4 music and physical education to more students;
- 5 (11) enhancing programs for gifted students;
- 6 (12) enhancing career-technical education
7 programs;
- 8 (13) employing educational assistants,
9 librarians, counselors, nurses, social workers and student
10 support service staff;
- 11 (14) providing professional development
12 opportunities for licensed school employees outside the
13 instructional day or year;
- 14 (15) providing teaching English as a second
15 language endorsement courses for instructional staff;
- 16 (16) providing stipends for instructional
17 staff who have a bilingual or teaching English as a second
18 language endorsement;
- 19 (17) improving information technology services
20 for students and staff, including employing information
21 technology personnel or contracting with technical consultants;
- 22 (18) improving the district's ability to
23 collect and analyze student and staff data to improve education
24 management;
- 25 (19) improving student and school safety; or

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1 (20) other measures approved by the department
2 that are tied to the educational plan.

3 B. The use to which increased funding is put
4 pursuant to Subsection A of this section shall be incorporated
5 into the school district's or charter school's educational plan
6 and approved by the department. The educational plan shall
7 provide detailed information:

8 (1) describing the purposes to which increased
9 funding will be applied;

10 (2) the specific outcomes expected from such
11 increased funding;

12 (3) the performance measures to be used to
13 evaluate the efficacy of the purposes to which increased
14 funding was applied; and

15 (4) any other information requested by the
16 department to assist the department and the school district or
17 charter school to evaluate its educational programs or
18 administrative efficiency."

19 Section 19. Section 22-8-24 NMSA 1978 (being Laws 1974,
20 Chapter 8, Section 15, as amended by Laws 1993, Chapter 91,
21 Section 1 and also by Laws 1993, Chapter 237, Section 3) is
22 repealed and a new Section 22-8-24 NMSA 1978 is enacted to
23 read:

24 "22-8-24. [NEW MATERIAL] INDEX OF STAFF QUALIFICATIONS--
25 NATIONAL BOARD CERTIFICATION STIPEND.--

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1 A. For the purpose of calculating the index of
2 staff qualifications, the following definitions and limitations
3 apply:

4 (1) "instructional staff" means the personnel
5 assigned to the instructional program of a school district or
6 charter school, including instructional support providers, and
7 excluding principals, substitute teachers, educational
8 assistants, secretaries and clerks;

9 (2) the number of instructional staff to be
10 counted in calculating matrix A and matrix B of the index of
11 staff qualifications is the actual number of full-time
12 equivalent instructional staff on the October payroll of the
13 prior year;

14 (3) the number of years of experience within a
15 level for matrix A or the number of years of experience for
16 matrix B to be used in calculating the index of staff
17 qualifications is that number of years of experience allowed
18 for salary increment purposes on the salary schedule of the
19 school district or charter school; and

20 (4) the academic degree and additional credit
21 hours to be used in calculating the index of staff
22 qualifications are the degree and additional semester credit
23 hours allowed for salary increment purposes on the salary
24 schedule of the school district or charter school.

25 B. The factors for each classification of academic

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1 training by years of experience are provided in the following
 2 matrix for teachers:

3 Matrix of Staff Qualifications A - Teachers

| Academic Classification | Years of Experience Within Level | | | | | | | | | |
|--|----------------------------------|------|------|----------|------|------|---------|-----------|------|---------|
| | Level I | | | Level II | | | | Level III | | |
| | 0-1 | 2-3 | 4-5 | 4-6 | 7-8 | 9-15 | Over 15 | 7-8 | 9-15 | Over 15 |
| Bachelor's degree | 0.64 | 0.67 | 0.71 | 0.76 | 0.82 | 0.93 | 1.04 | 0.90 | 1.02 | 1.17 |
| Master's degree | 0.68 | 0.72 | 0.76 | 0.81 | 0.88 | 1.00 | 1.11 | 0.96 | 1.09 | 1.25 |
| Master's degree plus 45 credit hours or post-master's degree | 0.71 | 0.75 | 0.79 | 0.85 | 0.92 | 1.05 | 1.16 | 1.01 | 1.14 | 1.31 |

12 C. The factors for each classification of academic
 13 training by years of experience are provided in the following
 14 matrix for other instructional staff:

15 Matrix of Staff Qualifications B - Other Instructional Staff

| Academic Classification | Years of Experience | | | | |
|---|---------------------|------|------|------|---------|
| | 0-2 | 3-5 | 6-8 | 9-15 | Over 15 |
| Bachelor's degree or less | 0.65 | 0.78 | 0.87 | 0.91 | 0.91 |
| Bachelor's degree plus 15 credit hours | 0.70 | 0.83 | 0.87 | 0.96 | 1.00 |
| Bachelor's degree plus 45 credit hours or master's degree | 0.74 | 0.87 | 0.91 | 1.00 | 1.04 |
| Master's degree plus 15 credit hours | 0.78 | 0.91 | 1.00 | 1.13 | 1.17 |
| Master's degree plus 45 or post-master's degree | 0.87 | 1.00 | 1.13 | 1.22 | 1.30 |

23 D. The index of staff qualifications for each
 24 school district and charter school shall be calculated in
 25 accordance with instructions issued by the secretary. The

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1 following calculation shall be made to compute the value of
2 the index of staff qualifications:

3 (1) multiply the number of full-time-
4 equivalent teachers in each academic classification and level
5 in matrix A by the numerical factor in the appropriate "years
6 of experience within the level" column provided in Subsection
7 B of this section;

8 (2) multiply the number of full-time
9 equivalent other instructional staff in each classification
10 and level in matrix B by the numerical factor in the
11 appropriate "years of experience" column provided in
12 Subsection C of this section;

13 (3) add the adjusted full-time-equivalents
14 calculated in Paragraphs (1) and (2) of this subsection; and

15 (4) divide the total obtained in Paragraph
16 (3) of this subsection by the total number of full-time-
17 equivalent instructional staff.

18 E. If the result of the calculation of the index
19 of staff qualifications for a school district or charter
20 school is less than 1.0, its factor shall be 1.0.

21 F. If a new school district is created, the index
22 of staff qualifications for that school district for the first
23 year of operation shall be 1.0.

24 G. If a school district's or charter school's
25 index of staff qualifications is greater than 1.0, the index

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1 of staff qualifications formula adjustment used to determine
2 the sufficient per-student cost is equal to the amount
3 determined in Subsection D of this section multiplied by the
4 percentage of the prior year's budget for instructional staff
5 salaries and benefits plus a factor equal to one hundred
6 percent minus the percentage of the prior year's budget for
7 instructional staff salaries and benefits.

8 H. In addition to the sufficient per-student cost,
9 each school district and charter school shall calculate the
10 amount of national board for professional teaching standards
11 certification salary differential due to each national board-
12 certified teacher employed by the school district or charter
13 school on the October report date. The department shall
14 calculate the amount of the salary differential for
15 legislative appropriation based on the amount paid to board-
16 certified teachers in the 2007-2008 base school year adjusted
17 yearly by the same overall percentage increase in teacher
18 salary provided by the legislature. The department shall
19 verify the certification and current employment of board-
20 certified teachers. Department approval of any allocations
21 for this item shall be contingent on verification by the
22 school district or charter school that these teachers will
23 receive the one-time salary differential for the school year
24 equal to the amount calculated."

25 Section 20. Section 22-8-25 NMSA 1978 (being Laws 1981,
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1 Chapter 176, Section 5, as amended) is amended to read:

2 "22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--
3 DEFINITIONS--DETERMINATION OF AMOUNT.--

4 A. The state equalization guarantee distribution
5 is that amount of money distributed to each school district to
6 ensure that its operating revenue, including its local and
7 federal revenues as defined in this section, is at least equal
8 to the school district's total program cost. For [~~state-~~
9 ~~chartered~~] charter schools, the state equalization guarantee
10 distribution is the difference between the [~~state-chartered~~]
11 charter school's total program cost and the two percent
12 withheld by the school district or the department for
13 administrative services.

14 B. "Local revenue", as used in this section, means
15 seventy-five percent of receipts to the school district
16 derived from that amount produced by a school district
17 property tax applied at the rate of fifty cents (\$.50) to each
18 one thousand dollars (\$1,000) of net taxable value of property
19 allocated to the school district and to the assessed value of
20 products severed and sold in the school district as determined
21 under the Oil and Gas Ad Valorem Production Tax Act and upon
22 the assessed value of equipment in the school district as
23 determined under the Oil and Gas Production Equipment Ad
24 Valorem Tax Act.

25 C. "Federal revenue", as used in this section,

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1 means receipts to the school district, excluding amounts that,
2 if taken into account in the computation of the state
3 equalization guarantee distribution, result, under federal law
4 or regulations, in a reduction in or elimination of federal
5 school funding otherwise receivable by the school district,
6 derived from the following:

7 (1) seventy-five percent of the school
8 district's share of forest reserve funds distributed in
9 accordance with Section 22-8-33 NMSA 1978; and

10 (2) seventy-five percent of grants from the
11 federal government as assistance to those areas affected by
12 federal activity authorized in accordance with Title 20 of the
13 United States Code, commonly known as "PL 874 funds" or
14 "impact aid".

15 D. To determine the amount of the state
16 equalization guarantee distribution, the department shall

17 ~~[(1) calculate the number of program units to~~
18 ~~which each school district or charter school is entitled using~~
19 ~~an average of the MEM on the eightieth and one hundred~~
20 ~~twentieth days of the prior year; or~~

21 ~~(2) calculate the number of program units to~~
22 ~~which a school district or charter school operating under an~~
23 ~~approved year-round school calendar is entitled using an~~
24 ~~average of the MEM on appropriate dates established by the~~
25 ~~department; or~~

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1 ~~(3) calculate the number of program units to~~
2 ~~which a school district or charter school with a MEM of two~~
3 ~~hundred or less is entitled by using an average of the MEM on~~
4 ~~the eightieth and one hundred twentieth days of the prior year~~
5 ~~or the fortieth day of the current year, whichever is greater;~~
6 ~~and~~

7 ~~(4) using the results of the calculations in~~
8 ~~Paragraph (1), (2) or (3) of this subsection and the~~
9 ~~instructional staff training and experience index from the~~
10 ~~October report of the prior school year, establish a total~~
11 ~~program cost of the school district or charter school;~~

12 ~~(5) for school districts, calculate the local~~
13 ~~and federal revenues as defined in this section;~~

14 ~~(6) deduct the sum of the calculations made~~
15 ~~in Paragraph (5) of this subsection from the program cost~~
16 ~~established in Paragraph (4) of this subsection;~~

17 ~~(7)]~~ determine the total program cost for each
18 school district and charter school and subtract the local and
19 federal revenue. The department shall then deduct the total
20 amount of guaranteed energy savings contract payments that the
21 department determines will be made to the school district from
22 the public school utility conservation fund during the fiscal
23 year for which the state equalization guarantee distribution
24 is being computed and ~~[(8)]~~ deduct ninety percent of the
25 amount certified for the school district by the department

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1 pursuant to the Energy Efficiency and Renewable Energy Bonding
2 Act.

3 E. Reduction of a school district's state
4 equalization guarantee distribution pursuant to the Energy
5 Efficiency and Renewable Energy Bonding Act shall cease when
6 the school district's cumulative reductions equal its
7 proportional share of the cumulative debt service payments
8 necessary to service the bonds issued pursuant to [~~the Energy~~
9 ~~Efficiency and Renewable Energy Bonding~~] that act.

10 [~~F. The amount of the state equalization guarantee~~
11 ~~distribution to which a school district is entitled is the~~
12 ~~balance remaining after the deductions made in Paragraphs (6)~~
13 ~~through (8) of Subsection D of this section.~~

14 G.] F. The state equalization guarantee
15 distribution shall be distributed prior to June 30 of each
16 fiscal year. The calculation shall be based on the local and
17 federal revenues specified in this section received from June
18 1 of the previous fiscal year through May 31 of the fiscal
19 year for which the state equalization guarantee distribution
20 is being computed. In the event that a school district or
21 charter school has received more state equalization guarantee
22 funds than its entitlement, a refund shall be made by the
23 school district or charter school to the [~~state general~~]
24 public school fund."

25 Section 21. Section 22-8-41 NMSA 1978 (being Laws 1967,

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1 Chapter 16, Section 99, as amended) is amended to read:

2 "22-8-41. RESTRICTION ON OPERATIONAL FUNDS--EMERGENCY
3 ACCOUNTS [~~CASH BALANCES~~].--

4 A. A school district shall not expend money from
5 its operational fund for the acquisition of a building site or
6 for the construction of a new structure, unless the school
7 district has bonded itself to practical capacity or the
8 secretary determines and certifies to the legislative finance
9 committee that the expending of money from the operational
10 fund for this purpose is necessary for [~~an adequate~~] a
11 sufficient public educational program and will not unduly
12 hamper the school district's current operations.

13 B. A school district or charter school may budget
14 out of cash balances carried forward from the previous fiscal
15 year an amount not to exceed five percent of its proposed
16 operational fund expenditures for the ensuing fiscal year as
17 an emergency account. Money in the emergency account shall be
18 used only for unforeseen expenditures incurred after the
19 annual budget [~~was~~] is approved and shall not be expended
20 without the prior written approval of the secretary.

21 C. In addition to the emergency account, school
22 districts or charter schools may also budget operational fund
23 cash balances carried forward from the previous fiscal year
24 for operational expenditures, exclusive of salaries and
25 payroll, upon specific prior approval of the secretary. The

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1 secretary shall notify the legislative finance committee in
2 writing of the secretary's approval of such proposed
3 expenditures. [~~For fiscal years 2004 and 2005, with the~~
4 ~~approval of the secretary, a school district or charter school~~
5 ~~may budget so much of its operational cash balance as is~~
6 ~~needed for nonrecurring expenditures, including capital~~
7 ~~outlay.~~

8 D. ~~Beginning with fiscal year 2007, prior to~~
9 ~~approval of a school district's or charter school's budget,~~
10 ~~the secretary shall verify that the reductions from the state~~
11 ~~equalization guarantee distribution have been taken pursuant~~
12 ~~to this section.~~

13 E. ~~The allowable limit for a school district's or~~
14 ~~charter school's ending operational cash balance is:~~

15 ~~(1) if the current year program cost is less~~
16 ~~than five million dollars (\$5,000,000), eighteen percent of~~
17 ~~the budgeted expenditures;~~

18 ~~(2) if the current year program cost is five~~
19 ~~million dollars (\$5,000,000) or more but less than ten million~~
20 ~~dollars (\$10,000,000), twelve percent of the budgeted~~
21 ~~expenditures;~~

22 ~~(3) if the current year program cost is ten~~
23 ~~million dollars (\$10,000,000) or more but less than twenty-~~
24 ~~five million dollars (\$25,000,000), ten percent of the~~
25 ~~budgeted expenditures;~~

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1 ~~(4) if the current year program cost is~~
2 ~~twenty five million dollars (\$25,000,000) or more but less~~
3 ~~than two hundred million dollars (\$200,000,000), eight percent~~
4 ~~of the budgeted expenditures; and~~

5 ~~(5) if the current year program cost is two~~
6 ~~hundred million dollars (\$200,000,000) or more, five percent~~
7 ~~of the budgeted expenditures.~~

8 ~~F. Except as otherwise provided in this section,~~
9 ~~for the 2006 and subsequent fiscal years, the secretary shall~~
10 ~~reduce the state equalization guarantee distribution,~~
11 ~~calculated pursuant to Section 22-8-25 NMSA 1978, to each~~
12 ~~school district or charter school by an amount equal to the~~
13 ~~school district's or charter school's excess cash balance. As~~
14 ~~used in this section, "excess cash balance" means the~~
15 ~~difference between a school district's or a charter school's~~
16 ~~actual operational cash balance and the allowable limit~~
17 ~~calculated pursuant to Subsection E of this section. However:~~

18 ~~(1) for a school district or charter school~~
19 ~~with a current year program cost that exceeds two hundred~~
20 ~~million dollars (\$200,000,000), if the excess cash balance is~~
21 ~~greater than twenty percent of the allowable, unrestricted,~~
22 ~~unreserved operational cash balance and the emergency reserve,~~
23 ~~the reduction pursuant to this subsection shall equal twenty~~
24 ~~percent of the allowable, unrestricted, unreserved operational~~
25 ~~cash balance and the emergency reserve; and~~

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1 ~~(2) for other school districts and charter~~
2 ~~schools, if the excess cash balance is greater than eighteen~~
3 ~~percent of the allowable, unrestricted, unreserved operational~~
4 ~~cash balance and the emergency reserve, the reduction pursuant~~
5 ~~to this subsection shall equal eighteen percent of the~~
6 ~~allowable unrestricted, unreserved operational cash balance~~
7 ~~and the emergency reserve.~~

8 G.] D. In developing budgets, school districts and
9 charter schools shall not budget current year cash balances
10 without the approval of the secretary. Cash balances shall be
11 expended pursuant to the school district's or charter school's
12 educational plan.

13 ~~[H. A school district or charter school whose~~
14 ~~enrollment growth exceeds one percent from the prior year and~~
15 ~~whose facility master plan includes the addition of a new~~
16 ~~school within two years may request from the secretary a~~
17 ~~waiver of up to fifty percent of the reduction otherwise~~
18 ~~required by Subsection F of this section.~~

19 ~~F.]~~ E. Upon application by a school district or
20 charter school, the secretary may ~~[waive all or a portion of~~
21 ~~the reduction otherwise required by Subsection F of this~~
22 ~~section if the secretary finds that the]~~ approve the use of a
23 school district's ~~[excess]~~ or charter school's cash balance
24 ~~[is needed]~~ to provide the local match required under the
25 Public School Capital Outlay Act or to recoup an amount paid

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1 as the district's share pursuant to Section 22-24-5.7 NMSA
2 1978.

3 ~~[J. Notwithstanding the provisions of Subsection F~~
4 ~~of this section, for fiscal year 2004, the reduction from the~~
5 ~~state equalization guarantee distribution shall be the greater~~
6 ~~of the amount calculated pursuant to that subsection or ten~~
7 ~~dollars (\$10.00) per MEM.~~

8 ~~K. For the purposes of this section, "operational~~
9 ~~cash balance" means the allowable, unrestricted, unreserved~~
10 ~~operational cash balance and the emergency reserve.~~

11 ~~L. For the purposes of this section, "allowable,~~
12 ~~unrestricted, unreserved operational cash balance and the~~
13 ~~emergency reserve" means the proportional share not~~
14 ~~attributable to revenue derived from the school district~~
15 ~~property tax, forest reserve funds and impact aid for which~~
16 ~~the state takes credit in determining a school district's or~~
17 ~~charter school's state equalization guarantee distribution.]"~~

18 Section 22. A new section of the Public School Finance
19 Act is enacted to read:

20 "[NEW MATERIAL] SPECIAL EDUCATION CATASTROPHIC AID FUND--
21 CREATED--DISTRIBUTION--LOCAL EFFORT.--

22 A. As used in this section, "high-cost special
23 education" means the provision of special education and
24 related services to a qualified student that exceeds the
25 threshold amount above the base per-student cost as determined

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1 by the department pursuant to appropriation by the
2 legislature.

3 B. The "special education catastrophic aid fund"
4 is created as a nonreverting fund in the state treasury. The
5 fund consists of appropriations, gifts, grants, donations,
6 income from investment of the fund and any other money
7 credited to the fund. The fund shall be administered by the
8 department, and money in the fund is appropriated to the
9 department to provide grants to school districts to assist
10 them in paying costs associated with high-cost special
11 education students.

12 C. A school district may apply to the department
13 for a grant from the fund to help defray the cost of providing
14 high-cost special education. The application shall be in a
15 form approved by the department and shall include the
16 documentation required by the department. A single grant
17 shall not exceed seventy-five percent of the projected cost of
18 providing the high-cost special education for a given school
19 year.

20 D. Based on legislative appropriation each year,
21 the department shall determine the threshold amount for high-
22 cost special education."

23 Section 23. Section 22-13-1.7 NMSA 1978 (being Laws
24 2007, Chapter 348, Section 3) is amended to read:

25 "22-13-1.7. ELEMENTARY PHYSICAL EDUCATION.--

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1 A. As used in this section:

2 (1) "eligible students" means students in
3 kindergarten through grade six in a public school classified
4 by the department as an elementary school; and

5 (2) "physical education" includes programs of
6 education through which students participate in activities
7 related to fitness education and assessment; active games and
8 sports; and development of physical capabilities such as motor
9 skills, strength and coordination.

10 B. Elementary physical education programs [~~that~~
11 ~~serve eligible students are eligible for funding if those~~
12 ~~programs~~] shall meet academic content and performance
13 standards for elementary physical education programs.

14 ~~[C. In granting approval for funding of elementary~~
15 ~~physical education programs, the department shall provide that~~
16 ~~programs are first implemented in public schools that have the~~
17 ~~highest proportion of students most in need based on the~~
18 ~~percentage of students eligible for free or reduced-fee lunch~~
19 ~~or grade-level schools that serve an entire school district~~
20 ~~and in public schools with available space. If the department~~
21 ~~determines that an elementary physical education program is~~
22 ~~not meeting the academic content and performance standards for~~
23 ~~elementary physical education programs, the department shall~~
24 ~~notify the school district that the public school's failure to~~
25 ~~meet the academic content and performance standards will~~

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1 ~~result in the cessation of funding for the following school~~
2 ~~year. The department shall compile the program results~~
3 ~~submitted by the school districts each year and make an annual~~
4 ~~report to the legislative education study committee and the~~
5 ~~legislature.~~

6 D. ~~As they become eligible for elementary physical~~
7 ~~education program funding, public schools shall submit to the~~
8 ~~department their elementary physical education program plans~~
9 ~~that meet academic content and performance standards and other~~
10 ~~guidelines of the department. At a minimum, the plan shall~~
11 ~~include the elementary physical education program being taught~~
12 ~~and an evaluation component. To be eligible for state~~
13 ~~financial support, an elementary physical education program~~
14 ~~shall:~~

15 (1) ~~provide for the physical education needs~~
16 ~~of students defined in this section; and~~

17 (2) ~~use teachers with a license endorsement~~
18 ~~for physical education.~~

19 E. ~~The department shall annually determine the~~
20 ~~programs and the consequent number of students in elementary~~
21 ~~physical education that will receive state financial support~~
22 ~~in accordance with funding available in each school year.]"~~

23 Section 24. Section 22-13-6.1 NMSA 1978 (being Laws
24 1994, Chapter 25, Section 2, as amended) is recompiled as
25 Section 22-13-1.8 NMSA 1978 and is amended to read:

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1 "22-13-1.8. GIFTED [~~CHILDREN~~] STUDENTS--DETERMINATION.--

2 A. The department shall adopt standards pertaining
3 to the determination of who is a gifted [~~child~~] student and
4 shall publish those standards as part of the educational
5 standards for New Mexico schools.

6 B. In adopting standards to determine who is a
7 gifted [~~child~~] student, the department shall provide for the
8 evaluation of selected [~~school-age children~~] students by
9 multidisciplinary teams from each [~~child's~~] student's school
10 district. That team shall be vested with the authority to
11 designate a [~~child~~] student as gifted. The team shall
12 consider information regarding a [~~child's~~] student's cultural
13 and linguistic background and socioeconomic background in the
14 identification, referral and evaluation process. The team
15 also shall consider any disabling condition in the
16 identification, referral and evaluation process.

17 C. Each school district offering a gifted
18 education program shall create one or more advisory committees
19 of parents, community members, students and school staff
20 members. The school district may create as many advisory
21 committees as there are high schools in the district or may
22 create a single districtwide advisory committee. The
23 membership of each advisory committee shall reflect the
24 cultural diversity of the enrollment of the school district or
25 the schools the committee advises. The advisory committee

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1 shall regularly review the goals and priorities of the gifted
2 program, including the operational plans for student
3 identification, evaluation, placement and service delivery and
4 shall demonstrate support for the gifted program.

5 D. In determining whether a [~~child~~] student is
6 gifted, the multidisciplinary team shall consider diagnostic
7 or other evidence of the [~~child's~~] student's:

- 8 (1) creativity or divergent-thinking ability;
9 (2) critical-thinking or problem-solving
10 ability;
11 (3) intelligence; and
12 (4) achievement.

13 E. Nothing in this section shall preclude a school
14 district from offering additional gifted programs for students
15 who fail to meet the eligibility criteria."

16 Section 25. Section 22-13-5 NMSA 1978 (being Laws 1972,
17 Chapter 95, Section 1, as amended) is amended to read:

18 "22-13-5. SPECIAL EDUCATION.--

19 A. School districts shall provide special
20 education and related services appropriate to meet the needs
21 of [~~all children~~] students requiring special education and
22 related services. [~~Regulations~~] Rules and standards shall be
23 developed and established by the [~~state board~~] department for
24 the provision of special education in the schools and classes
25 of the public school system in the state and in all

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1 institutions wholly or partly supported by the state. The
2 [~~state board~~] department shall monitor and enforce the
3 [~~regulations~~] rules and standards.

4 B. Except as otherwise provided in this section,
5 the state institution in which a school-age person is detained
6 or enrolled shall be responsible for providing educational
7 services for the school-age person. A school-age person who
8 is a client as defined in Section 43-1-3 NMSA 1978 in a state
9 institution under the authority of the secretary of health has
10 a right to attend public school in the school district in
11 which the state institution in which the person is a client is
12 located if:

13 (1) the school-age person has been
14 recommended for placement in a public school by the
15 educational appraisal and review committee of the school
16 district in which the institution is located; or

17 (2) the school-age person has been
18 recommended for placement in a public school as a result of
19 the appeal process as provided in the special education rules
20 of the department.

21 C. School districts shall also provide services
22 for three-year-old and four-year-old [~~preschool~~] children with
23 disabilities, unless the parent [~~or guardian~~] chooses not to
24 enroll [~~his~~] the child. If a child receiving services in the
25 department of health's family infant toddler program has [~~his~~]

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1 a third birthday during the school year, the child's ~~[parents]~~
2 parent shall have the option of having the child complete the
3 school year in the family infant toddler program or enrolling
4 the child in the public school's preschool program. A child
5 with a disability who enrolls in the public school's preschool
6 program and who has ~~[his]~~ a third birthday during a school
7 year may receive special education and related services from
8 the beginning of that school year.

9 D. Services for students age three through twenty-
10 one may include, but are not limited to, evaluating particular
11 needs, providing learning experiences that develop cognitive
12 and social skills, arranging for or providing related services
13 as defined by the ~~[state board]~~ department and providing
14 parent education. The services may be provided by ~~[certified]~~
15 licensed school ~~[personnel]~~ employees or contracted for ~~[with~~
16 ~~other community agencies]~~ and shall be provided in age-
17 appropriate, integrated settings, including home, daycare
18 centers, head start programs, schools or community-based
19 settings."

20 Section 26. Section 22-13-7 NMSA 1978 (being Laws 1972,
21 Chapter 95, Section 3, as amended) is amended to read:

22 "22-13-7. SPECIAL EDUCATION--RESPONSIBILITY.--

23 A. The ~~[state board]~~ department shall make, adopt
24 and keep current a state plan for special education policy,
25 programs and standards.

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1 B. The department [~~of education with the approval~~
2 ~~of the state board~~] shall set standards for diagnosis and
3 screening of and educational offerings for [~~exceptional~~]
4 qualified students and school-age persons receiving special
5 education in public schools; in private, nonsectarian,
6 nonprofit training centers; and in state institutions under
7 the authority of the secretary of health or the secretary of
8 children, youth and families.

9 C. The [~~state board~~] department shall establish
10 and maintain a program of evaluation of the implementation
11 and impact of all programs for [~~exceptional children~~]
12 qualified students receiving special education in the public
13 schools. [~~This~~] The evaluation program shall be operated with
14 the cooperation of [~~local~~] school districts, and portions of
15 the evaluation program may be subcontracted [~~and~~]. Periodic
16 reports regarding the efficacy of educational programs for
17 [~~exceptional children~~] qualified students receiving special
18 education shall be made to the legislative education study
19 committee.

20 D. The department [~~of education~~] shall coordinate
21 programming related to the transition of [~~persons with~~
22 ~~disabilities~~] qualified students receiving special education
23 from secondary and post-secondary education programs to
24 employment or vocational placement."

25 Section 27. Section 22-13-8 NMSA 1978 (being Laws 1972,
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1 Chapter 95, Section 4, as amended) is amended to read:

2 "22-13-8. SPECIAL EDUCATION--PRIVATE.--

3 A. The responsibility of school districts, state
4 institutions and the state to provide a free public education
5 for ~~[exceptional children]~~ qualified students who need special
6 education is not diminished by the availability of private
7 schools and services. ~~[Whenever such schools or services are~~
8 ~~utilized, it continues to be]~~ It is a state responsibility to
9 [assure] ensure that all ~~[exceptional children]~~ qualified
10 students who need special education receive the education to
11 which ~~[the]~~ federal and state laws ~~[of the state]~~ entitle them
12 whether provided by public or private schools and services.

13 B. A school district in which a private,
14 nonsectarian, nonprofit training center or residential
15 treatment center is located shall not be considered the
16 resident school district of a school-age person in need of
17 special education if residency is based solely on the school-
18 age person's enrollment at the facility and the school-age
19 person would not otherwise be considered a resident of the
20 state.

21 C. For a qualified student or school-age person in
22 need of special education who is placed in a private,
23 nonsectarian, nonprofit training center or residential
24 treatment center by a school district or by a due process
25 decision, the school district in which the qualified student

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1 or school-age person lives, whether in-state or out-of-state,
2 is responsible for the educational costs of that placement.

3 D. For a school-age person in need of special
4 education placed in a private, nonsectarian, nonprofit
5 training center or residential treatment center not as a
6 result of a due process decision but by a parent who assumes
7 the responsibility for such placement, the department shall
8 ensure that the school district in which the facility is
9 located is allocating and distributing the school-age person's
10 proportionate share of the federal Individuals with
11 Disabilities Education Act Part B funds, but the state is not
12 required to distribute state funds for that school-age person.

13 E. The department shall determine which school
14 district is responsible for the cost of educating a qualified
15 student in need of special education who has been placed in a
16 private, nonsectarian, nonprofit training center or
17 residential treatment center outside the qualified student's
18 resident school district. The department shall determine the
19 reasonable reimbursement owed to the receiving school
20 district.

21 ~~[B.]~~ F. A local school board, in consultation with
22 the department, may make an agreement with a private,
23 nonsectarian, nonprofit educational training [~~centers~~] center
24 or residential treatment center for educating [~~exceptional~~
25 children] qualified students for whom the school district is

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1 responsible for providing a free appropriate public education
2 under the federal Individuals with Disabilities Education Act
3 and for providing [~~for~~] payment for [~~such~~] that education.

4 All financial agreements between local school boards and
5 private, nonsectarian, nonprofit educational training centers
6 and residential treatment centers must be negotiated in
7 accordance with [~~regulations~~] rules promulgated by the
8 [~~director~~] department. Payment for education and services
9 under [~~such~~] those agreements shall be made by the local
10 school board [~~of education~~] in which the qualified student
11 lives from available funds [~~available~~].

12 [~~G.~~] G. All agreements between local school boards
13 and private, nonsectarian, nonprofit educational training
14 centers and residential treatment centers must be reviewed and
15 approved by the [~~state superintendent~~] secretary. The
16 agreements shall ensure that all qualified students placed in
17 a private, nonsectarian, nonprofit training center or
18 residential treatment center receive the education to which
19 they are entitled pursuant to federal and state laws. All
20 agreements must provide for:

- 21 (1) diagnosis [~~and~~];
22 (2) an educational program for each [~~child~~
23 ~~which~~] qualified student that meets state standards for such
24 programs, except that teachers employed by private schools are
25 not required to be highly qualified;

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1 (3) special education and related services
2 in conformance with an individualized education program that
3 meets the requirements of federal and state law; and

4 (4) adequate classroom and other physical
5 space provided at the training center or residential treatment
6 center that allows the school district to provide an
7 appropriate education.

8 H. The agreements must also acknowledge the
9 authority and responsibility of the local school board and the
10 department [~~of education~~] to conduct on-site evaluations of
11 programs and [~~pupil~~] student progress to [~~insure~~] ensure that
12 the education provided to the qualified student is meeting
13 state standards.

14 [~~D. Exceptional children~~] I. A qualified student
15 for whom the state is required by federal law to provide a
16 free appropriate public education and who is attending a
17 private, nonsectarian, nonprofit training center or a
18 residential treatment center is a public school student and
19 shall be counted in the special education membership of the
20 school district [as enrolled in the Class D special education
21 program] that is responsible for the costs of educating the
22 student and in the class level identified as appropriate in
23 the individualized educational program for the student.

24 J. The department shall adopt the format to report
25 individual student data and costs for any school-age person

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1 attending public or private training centers or residential
2 treatment programs and shall include those reports in the
3 student teacher accountability reporting system by using the
4 same student identification number issued to a public school
5 student pursuant to Section 22-2C-11 NMSA 1978 or by assigning
6 a unique student identifier for school-age persons, including
7 those who are not residents of this state but who are
8 attending a private training center or residential treatment
9 program in this state. Every public and private training
10 center and every public and private residential treatment
11 program that serves school-age persons in this state shall
12 comply with this provision.

13 K. The department shall promulgate rules to carry
14 out the provisions of this section."

15 Section 28. Section 22-30-6 NMSA 1978 (being Laws 2007,
16 Chapter 292, Section 6 and Laws 2007, Chapter 293, Section 6)
17 is amended to read:

18 "22-30-6. DISTANCE LEARNING STUDENTS.--

19 A. A student must be enrolled in a public school
20 or a state-supported school and must have the permission of
21 the student's local distance education learning site to enroll
22 in a distance learning course. A distance learning student
23 shall [~~only~~] be counted only in the student's primary
24 enrolling district for the purpose of determining the
25 [~~membership~~] enrollment used to calculate a school district's

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1 state equalization guarantee. A student shall have only one
2 primary enrolling district.

3 B. A home school [~~student~~] school-age person may
4 participate in the statewide cyber academy by enrolling for
5 one-half or more of the minimum course requirements approved
6 by the department for public school students in the school
7 district in which the student resides; or, if the student is
8 enrolled for less than one-half of the minimum course
9 requirements, the student may participate in the statewide
10 cyber academy by paying not more than thirty-five percent of
11 the current [~~unit value per curricular unit~~] base per-student
12 cost.

13 C. A student enrolled in a nonpublic school may
14 participate in the statewide cyber academy if the school in
15 which the student is enrolled enters into a contract with the
16 school district in which the nonpublic school is located to
17 pay the required tuition.

18 D. A student who is detained in or committed to a
19 juvenile detention facility or a facility for the long-term
20 care and rehabilitation of delinquent children may participate
21 in the statewide cyber academy if the facility in which the
22 student is enrolled enters into a contract with the school
23 district in which the facility is located."

24 Section 29. Section 24-3B-4 NMSA 1978 (being Laws 1978,
25 Chapter 211, Section 4) is amended to read:

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1 "24-3B-4. FUND CREATED--USE--CALCULATION.--

2 A. There is created the "department of health [~~and~~
3 ~~environment department~~] education fund" in the state treasury.

4 B. The fund shall be used solely to provide
5 educational services to institution-bound residents of the
6 state institutions under the authority of the secretary.

7 C. The secretary shall distribute the fund to
8 institutions under [~~his~~] the secretary's authority within
9 limits established by law.

10 D. The secretary shall determine the allocation to
11 each institution from the fund according to the annual program
12 cost of that institution as calculated on September 15 of the
13 fiscal year.

14 E. The annual program cost for each institution
15 shall be determined by the following calculation:

16 number of dollar value annual
17 institution-bound x 3.9 x per = program
18 residents [~~program unit~~] cost.
19 sufficient per-
20 student cost

21 F. The dollar value per program unit shall be the
22 same as the dollar value [~~per program unit as~~] of sufficient
23 per-student cost established by the legislature for the state
24 equalization guarantee.

25 G. Each director of each state institution under

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1 the authority of the secretary shall submit annually, on or
2 before October 15, to the secretary an estimate for the
3 succeeding fiscal year of the number of institution-bound
4 residents and any other information necessary to calculate
5 annual program cost.

6 H. The secretary shall submit annually, on or
7 before November 15, to the department of finance and
8 administration the recommendations of the department regarding
9 the fund for the succeeding fiscal year, for inclusion in the
10 executive budget document."

11 Section 30. TEMPORARY PROVISION--ENROLLMENT REPORTS--
12 MEM--STATUTORY REFERENCES.--

13 A. References in the Public School Code to the
14 fortieth day membership shall be deemed to be references to
15 the total enrollment on the second Wednesday in October.

16 B. References in the Public School Code to the
17 eightieth day membership shall be deemed to be references to
18 the total enrollment on the second Wednesday in December.

19 C. References in the Public School Code to the one
20 hundred twentieth day membership shall be deemed to be
21 references to the total enrollment on the second Wednesday in
22 February.

23 D. References in the Public School Code to MEM or
24 membership shall be deemed to be references to enrollment.

25 Section 31. TEMPORARY PROVISION--PROJECTIONS AND BUDGET

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1 PREPARATION--PRE-2010 FORMULA.--

2 A. Section 22-8-13 NMSA 1978 notwithstanding, the
3 public education department may institute new reporting dates
4 for the 2008-2009 school year as follows:

5 (1) first reporting date, second Wednesday
6 in October;

7 (2) second reporting date, second Wednesday
8 in December; and

9 (3) third reporting date, second Wednesday
10 in February.

11 B. The public education department may require
12 enrollment or other reports at other times specified by the
13 department.

14 C. The effective date of sections in this act
15 notwithstanding, the definitions set out in Section 22-8-2
16 NMSA 1978 as enacted in this act shall be used to project
17 enrollments and prepare budgets for the 2009-2010 school year.

18 D. If the legislature does not appropriate a
19 sufficient amount to begin using the funding formula as
20 provided in Subsection 0 of Section 22-8-18 NMSA 1978, as that
21 section is repealed and re-enacted in this 2008 act, the
22 public education department shall use the funding formula in
23 place on January 1, 2008 to determine and distribute the state
24 equalization guarantee in fiscal year 2010.

25 Section 32. TEMPORARY PROVISION--IMPLEMENTATION

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1 COMMITTEE.--

2 A. The "funding formula implementation assistance
3 committee" is created to advise and assist school districts
4 and the public education department in the implementation of
5 the funding formula and other provisions of this 2008 act.

6 B. Members of the committee shall be:

7 (1) the voting members of the funding
8 formula study task force and the project advisory panel of the
9 task force;

10 (2) one superintendent of schools from a
11 rural, high-poverty, high English language learner school
12 district, appointed by the speaker of the house of
13 representatives;

14 (3) one superintendent of schools from an
15 urban school district, appointed by the president pro tempore
16 of the senate;

17 (4) the secretary of public education;

18 (5) the chairperson of the legislative
19 education study committee;

20 (6) the chairperson of the Indian education
21 advisory council or the chairperson's designee; and

22 (7) the president of the New Mexico
23 association of bilingual educators or the president's
24 designee.

25 C. The co-chairs of the funding formula study task

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1 force shall be the co-chairs of the funding formula
2 implementation assistance committee.

3 D. Members who are not state employees are
4 entitled to receive per diem and mileage expenses as provided
5 in the Per Diem and Mileage Act.

6 E. Staff for the committee shall be provided by
7 the legislative council service, the legislative education
8 study committee, the legislative finance committee, the public
9 education department and the office of education
10 accountability. The legislative council service or other
11 staff may contract for expert and technical assistance for the
12 committee as needed.

13 F. The committee shall:

14 (1) develop a work plan and budget for
15 approval by the New Mexico legislative council;

16 (2) advise, assist and monitor the progress
17 of school districts and the public education department in the
18 planning phase of this 2008 act;

19 (3) meet with and provide assistance to the
20 public education department's staff or other planning and
21 implementation groups established by the secretary of public
22 education;

23 (4) provide regular reports to the
24 legislative education study committee, the legislative finance
25 committee and the governor, which reports may be in person or

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1 written as requested; and

2 (5) report its findings and recommendations,
3 including recommendations for statutory changes, to the
4 legislature and the governor by January 15, 2009.

5 Section 33. REPEAL.--Sections 22-8-3, 22-8-7.1,
6 22-8-19, 22-8-20 through 22-8-23.8, 22-8-25.1 and
7 22-13-6 NMSA 1978 (being Laws 1988, Chapter 64, Section 14;
8 Laws 1993, Chapter 224, Section 1; Laws 1974, Chapter 8,
9 Section 9; Laws 1991, Chapter 85, Section 3; Laws 1969,
10 Chapter 180, Section 17; Laws 1974, Chapter 8, Section 13;
11 Laws 1975, Chapter 119, Section 1; Laws 1990 (1st S.S.),
12 Chapter 3, Sections 7 and 8; Laws 1993, Chapter 237, Section
13 2; Laws 1997, Chapter 40, Section 7; Laws 2003, Chapter 144,
14 Section 2 and Laws 2003 Chapter 152, Section 9; Laws 2003,
15 Chapter 144, Section 3 and Laws 2003, Chapter 152, Section 8;
16 Laws 2006, Chapter 94, Section 15; Laws 2007, Chapter 348,
17 Section 1; Laws 2007, Chapter 365, Section 2; Laws 1985 (1st
18 S.S.), Chapter 15, Section 17; and Laws 1972, Chapter 95,
19 Section 2, as amended) are repealed.

20 Section 34. EFFECTIVE DATE.--

21 A. The effective date of the provisions of
22 Sections 2, 4, 5, 8, 9, 10, 11, 12, 13 and 22 of this act is
23 July 1, 2008.

24 B. The effective date of the provisions of
25 Sections 3, 6, 7, 14, 16, 17, 18, 19, 20, 23, 24, 28, 29, 30

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1 and 33 of this act is July 1, 2009.

2 C. The effective date of the provisions of
3 Sections 1, 15, 21, 25, 26, 27, 31, 32 and 34 of this act is
4 May 14, 2008.