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HOUSE BILL 331

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Mimi Stewart

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] FINDINGS--PURPOSE OF 2009 EDUCATION REFORM.--

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

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

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1 C. The purpose of this 2009 act is to establish a
2 new, simplified funding formula for public schools that is
3 based on student need, grade composition and scale of
4 operations for school districts and charter schools. The
5 formula, and the attendant accountability that is provided,
6 strengthen the goals of the overall education reform begun in
7 House Bill 212. This 2009 reform links increased funding that
8 will be provided through the adoption and full implementation
9 of the new funding formula to each school district's and
10 charter school's educational plan for student success. The
11 educational plan and the attendant site-specific school plans
12 are the means to inform statutory provisions such as the
13 Assessment and Accountability Act, kindergarten plus and K-3
14 plus, high school redesign, the Indian Education Act, the
15 Bilingual Multicultural Education Act, the Fine Arts Education
16 Act, the Mathematics and Science Education Act and other
17 curricula-specific provisions 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 student who:

9 (1) has not graduated from high school;

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

13 (3) in terms of age:

14 (a) is at least five years of age prior
15 to 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 a public school extended-
18 year kindergarten program that begins prior to the start of the
19 regular school year;

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

23 (c) has not reached the student's
24 twenty-second birthday on the first day of the school year and
25 is 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 needing
12 special education; ~~[membership as defined in Section 22-8-21~~
13 ~~NMSA 1978 or as a resident of a state institution;~~

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

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

23 ~~[S.]~~ X. "school district" means an area of land
24 established as a political subdivision of the state for the
25 administration of public schools and segregated geographically

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1 for taxation and bonding purposes;

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

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

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

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

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

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

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1 other state agency responsible for educating resident children;

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

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

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

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

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

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

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

23 "22-2-8.1. SCHOOL YEAR--LENGTH OF SCHOOL DAY--MINIMUM.--

24 A. A school year consists of at least one hundred
25 eighty full instructional days for a regular school year

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1 calendar, exclusive of any release time for in-service
2 training. A school year consists of at least one hundred
3 fifty-one full instructional days for a four-day school year
4 calendar, exclusive of any release time for in-service
5 training. Beginning with the 2012-2013 school year, a school
6 year consists of at least one hundred eighty-five full
7 instructional days for a regular school calendar, exclusive of
8 any release time for in-service training. Beginning in the
9 2012-2013 school year, a school year consists of at least one
10 hundred fifty-six full instructional days for a four-day school
11 year calendar, exclusive of any release time for in-service
12 training. Except as provided in Subsection B of this section,
13 days or parts of days that are lost to weather, in-service
14 training or other events that are not school-directed programs
15 shall be made up so that students are given a full school year.

16 [A.] B. Except as otherwise provided in this
17 section, regular students shall be in school-directed programs,
18 exclusive of lunch, for a minimum of the following:

19 (1) kindergarten, for half-day programs, two
20 and one-half hours per day [~~or four hundred fifty hours per~~
21 ~~year]~~ or, for full-day programs, five and one-half hours per
22 day [~~or nine hundred ninety hours per year]~~;

23 (2) grades one through six, five and one-half
24 hours per day [~~or nine hundred ninety hours per year]~~; and

25 (3) grades seven through twelve, six hours per

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1 day. [~~or one thousand eighty hours per year~~

2 ~~B.]~~ C. Thirty-three hours of the full-day
3 kindergarten program may be used for home visits by the teacher
4 or for parent-teacher conferences. Twenty-two hours of grades
5 one through five programs may be used for home visits by the
6 teacher or for parent-teacher conferences.

7 [~~E.]~~ D. Nothing in this section precludes a local
8 school board from setting a school year or the length of school
9 days in excess of the minimum requirements established by
10 [~~Subsection]~~ Subsections A and B of this section.

11 [~~D.]~~ E. The [~~state superintendent]~~ secretary may
12 waive the minimum length of school days in those districts
13 where such minimums would create undue hardships as defined by
14 the [~~state board]~~ department as long as the school year is
15 adjusted to ensure that students in those school districts
16 receive the same total minimum instructional time as other
17 students in the state."

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

20 "[NEW MATERIAL] EDUCATIONAL PLAN FOR STUDENT SUCCESS--
21 EDUCATIONAL PROGRAMMING.--

22 A. As used in this section:

23 (1) "demographic data" means a school
24 district's funding formula cost factor demographic data and any
25 other demographic data or health status data required by the

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1 department or collected by the school district for the purposes
2 of determining educational programming and focusing the
3 educational plan;

4 (2) "educational programming" includes
5 curricula; support services, including library and media,
6 school counseling, health services and athletic and activity
7 programs; and academic improvement strategies, including
8 extended school year, before- and after-school programs, credit
9 recovery and summer school courses, tutoring and other response
10 to intervention or remediation programs;

11 (3) "local school board" includes governing
12 bodies of charter schools; and

13 (4) "school district" includes charter
14 schools.

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

17 C. The department shall verify, monitor and
18 evaluate educational plans through the budget approval process
19 and otherwise throughout the year. The department shall ensure
20 that each educational plan is developed and implemented as
21 provided in this section and the rules of the department and
22 that results are evaluated for effectiveness each year.

23 D. Under the policy direction of the local school
24 board, each school district shall:

25 (1) develop, implement and assess a district-

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1 level, student-centered "educational plan for student success"
2 as a long-range strategic plan to improve academic achievement
3 and success for all students;

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

6 (3) include the required school plans of
7 public schools that are part of the school district, excluding
8 charter schools, and ensure that those plans are aligned with
9 the educational plan.

10 E. The chartering authority shall approve a charter
11 school's educational plan based on the plan's alignment with
12 the charter.

13 F. The educational plan shall:

14 (1) be specific, measurable, realistic and
15 attainable and include the school plan of each public school in
16 the school district, excluding charter schools, and specify how
17 each of the school plans shall be evaluated and aligned with
18 the educational plan;

19 (2) solicit the input of school district
20 staff, students, parents, businesses, post-secondary
21 educational institutions, tribal governments within the school
22 district and other interested citizens in the community at
23 large;

24 (3) address the major core issues identified
25 through the public input process;

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

5 (5) include focus areas and goals that address
6 student needs based on demographic data and student academic
7 achievement data;

8 (6) identify areas of student need that must
9 be addressed to ensure that students meet the educational
10 benchmarks specified in the state content standards and
11 benchmarks;

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

14 (a) highly qualified teachers, academic
15 coaches, resource teachers, interventionists, specialists,
16 counselors, educational assistants and other instructional
17 support personnel, and how staffing assignments of these
18 personnel shall be used in a proactive manner to assist
19 students in need of particular services;

20 (b) professional development and time
21 for in-school collaboration for instructional staff;

22 (c) administrative and classroom
23 technology and access to distance learning opportunities for
24 students and staff;

25 (d) parental involvement and outreach

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1 initiatives;

2 (e) involvement by post-secondary
3 educational institutions, tribal governments and the business
4 community; and

5 (f) other resources identified by the
6 school district or department;

7 (8) implement the state and district
8 assessment systems;

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

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

13 (11) be updated annually and submitted to the
14 department by March 1 or another date determined by the
15 department.

16 G. Each school district shall oversee the
17 development, implementation, assessment and evaluation of all
18 site-level school plans and shall ensure that those plans are
19 aligned with the school district's educational plan.

20 H. School plans shall include:

21 (1) data-based strategies and activities to
22 support each of the school district-level focus areas and
23 goals;

24 (2) identification of persons responsible for
25 the implementation of the strategies and activities;

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1 (3) time lines for the start and completion of
2 those strategies and activities;

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

5 (5) formal and informal professional
6 development activities that support each of the school
7 district-level focus areas and goals; and

8 (6) availability of school, district,
9 community and family resources that support each of the school
10 district-level focus areas and goals.

11 I. Each public school shall involve school staff,
12 parents and community members in the development and evaluation
13 of the school plan.

14 J. The educational plan shall include the cost
15 factor demographic data of each public school and the school
16 district and shall link educational programming to those and
17 other demographic data and the student academic achievement
18 data reported pursuant to the Assessment and Accountability
19 Act.

20 K. Educational programming shall be assessed
21 through the educational plan. As part of the approval process
22 of the educational plan and the operating budget of a school
23 district, the department shall consider how the school district
24 proposes to address specifically the needs of low-income
25 students, students who are not proficient in English, students

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1 whose education is disrupted by mobility, students in need of
2 special education and gifted students.

3 L. Based on the demographic profiles of students,
4 student academic achievement data and the department's
5 standards of excellence, the educational plan shall include
6 educational programming for:

7 (1) bilingual and multicultural education,
8 including culturally relevant learning environments,
9 educational opportunities and culturally relevant instructional
10 materials;

11 (2) health and wellness, including physical
12 education, athletics, nutrition and health education;

13 (3) career-technical education;

14 (4) visual and performing arts and music;

15 (5) gifted education, advanced placement and
16 honors programs;

17 (6) special education; and

18 (7) distance education.

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

21 N. The secretary shall disapprove an educational
22 plan in whole or in part if it does not meet the requirements
23 of this section or other provisions of the Public School Code.
24 The secretary shall provide the local school board and the
25 school district with a written report that specifies which

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1 parts of the educational plan the secretary is disapproving,
2 reasons for the disapproval and suggestions for improvement.
3 The school district has thirty days to submit a revised
4 educational plan, during which time the department shall assist
5 the school district as requested.

6 O. If the local school board does not approve a
7 revised educational plan or if the department does not
8 recommend approval of the revised educational plan, the
9 secretary shall hold a public hearing within twenty days after
10 the revised educational plan was due.

11 P. The secretary shall appoint an impartial person
12 to conduct the public hearing. All parties, including the
13 public, shall be given an opportunity to present their views
14 about the original educational plan and any revisions to that
15 plan. The impartial person shall make recommendations to the
16 secretary within ten days of the public hearing. The secretary
17 shall make the final decision. The final educational plan
18 shall be aligned with the department-approved operating
19 budget."

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

22 "[NEW MATERIAL] 2009 FUNDING FORMULA--FINDINGS AND
23 PURPOSE.--

24 A. The legislature finds that based on a two-year
25 study to determine the best method of funding a sufficient

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1 public education for New Mexico's children, the state, school
2 districts and charter schools would be better served by a new
3 funding formula that incorporates:

4 (1) a smaller and simplified set of student-
5 needs weighting factors to achieve a more equitable
6 distribution of the state's equalization guarantee;

7 (2) a simplified set of programmatic weights
8 that accounts for grade level composition for elementary,
9 middle and high school students; and

10 (3) a weighting schedule that accounts
11 separately for the scale of school district and charter school
12 operations.

13 B. The legislature finds further that the 2009
14 funding formula:

15 (1) avoids unnecessary complexity by focusing
16 directly on the factors associated with student needs and
17 scale;

18 (2) appropriately promotes and preserves both
19 vertical and horizontal equity across school districts;

20 (3) minimizes incentives to pursue funding not
21 directly linked to student needs; and

22 (4) captures components in the pre-2009
23 funding formula and is more precise in measuring student need
24 and scale.

25 C. The legislature finds further that the cost

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1 factors used in the 2009 funding formula better measure need by
2 addressing special cost differentials associated with students
3 that have special educational needs as well as particular types
4 of local educational agency. The poverty, English language
5 learner and special education cost factors measure those
6 federally recognized attributes that unambiguously reflect the
7 special educational needs of students. The cost factor for
8 mobility recognizes the significant impact of disruption on
9 students' educational experience. The cost factors for grade
10 level enrollment address the knowledge gained from educational
11 research and experience that educating students becomes more
12 expensive as they progress through the educational system from
13 elementary through secondary school. Total school district or
14 charter school enrollment is included as a cost factor that
15 accounts for relative economies of scale in the delivery of
16 educational services.

17 D. The legislature finds further that the federal
18 No Child Left Behind Act of 2001 requires states to employ
19 highly qualified teachers to teach students in core academic
20 subjects. The federal Individuals with Disabilities Education
21 Act requires highly qualified personnel to provide holistic
22 services for students in need of special education, as well as
23 staff who are qualified to intervene before students are
24 classified as needing special education. To carry out these
25 mandates, and to continue encouraging school districts to hire

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1 and retain highly qualified teachers and instructional support
2 providers, the 2009 funding formula replaces the training and
3 experience index with an index of staff qualifications to
4 provide the means to cover the costs associated with increased
5 academic qualifications and experience for these personnel."

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

9 "22-8-2. [NEW MATERIAL] DEFINITIONS.--As used in the
10 Public School Finance Act:

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

17 B. "cost factor" means a measure of student need,
18 grade level composition, scale of operations or staff
19 qualifications;

20 C. "enrollment" means the number of qualified
21 students on the current roll of a class or public school on a
22 specified day;

23 D. "formula adjustment" means a component of the
24 funding formula that accounts for a differential cost
25 associated with a cost factor;

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1 E. "governing body" means the governing body of a
2 charter school;

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

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

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

11 I. "operating budget" means the annual financial
12 plan required to be submitted to the department by a local
13 school board or governing body;

14 J. "public money" or "public funds" means all money
15 from public or private sources received by a school district or
16 charter school or officer or employee of a school district or
17 charter school for public use;

18 K. "sufficient per-student cost" means the base
19 per-student cost multiplied by the applicable formula
20 adjustments;

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

25 M. "total program cost" means the sufficient per-

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1 student cost multiplied by the number of students in a school
2 district or charter school."

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

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

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

20 "22-8-6. BUDGETS--SUBMISSION--FAILURE TO SUBMIT--
21 DISAPPROVAL.--

22 A. Prior to April 15 of each year, each local
23 school board shall submit to the department [~~an~~] a proposed
24 operating budget for the school district [~~and any charter~~
25 ~~schools in the district~~] for the ensuing fiscal year. Upon

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1 written approval of the [~~state superintendent~~] secretary, the
2 date for the submission of the proposed operating budget as
3 required by this section may be extended to a later date fixed
4 by the [~~state superintendent~~] secretary.

5 B. In order to receive final budget approval, the
6 operating budget must be aligned to the school district's
7 approved educational plan.

8 [~~B.~~] C. The operating budget required by this
9 section may include:

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

13 (2) estimates of the cost of contracts for the
14 transportation of students for terms extending up to four
15 years.

16 [~~G. The operating budget required by this section~~
17 ~~shall include a budget for each charter school of the~~
18 ~~membership projected for each charter school, the total program~~
19 ~~units generated at that charter school and approximate~~
20 ~~anticipated disbursements and expenditures at each charter~~
21 ~~school.]~~

22 D. If a local school board fails to submit [~~a~~] its
23 operating budget pursuant to this section, the department shall
24 prepare the operating budget for the school district for the
25 ensuing fiscal year. [~~A local school board shall be considered~~

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1 ~~as failing to submit a]~~

2 E. The department shall not approve an operating
3 budget pursuant to this section if the budget submitted:

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

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

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

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

14 "22-8-6.1. [NEW MATERIAL] CHARTER SCHOOL BUDGETS.--

15 A. Prior to April 15 of each year, the governing
16 body of each state-chartered charter school shall submit its
17 proposed operating budget to the charter schools division of
18 the department for its approval or amendment pursuant to the
19 Public School Finance Act and the Charter Schools Act. In
20 order to receive final budget approval, the operating budget
21 must be aligned to the school's approved educational plan.

22 B. Prior to April 15 of each year, the governing
23 body of each locally chartered charter school shall submit its
24 proposed operating budget at the same time to the department
25 and the school district that chartered it. In order to be

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1 approved, the operating budget must be aligned to the school's
2 approved educational plan. The operating budget shall be
3 submitted to the local school board for approval. The approval
4 authority of the local school board is limited to ensuring that
5 sound fiscal practices are followed in the development of the
6 operating budget and that the operating budget is within the
7 allotted resources. The local school board shall have no veto
8 authority over individual line items within the operating
9 budget, but shall only approve or disapprove the operating
10 budget in its entirety. The local school board shall notify
11 the department of its approval or disapproval of the operating
12 budget, including its reasons for disapproval.

13 C. Upon written approval of the secretary, the date
14 for submission of a proposed operating budget may be extended
15 to a later date fixed by the secretary. If the governing body
16 fails to submit its proposed operating budget pursuant to this
17 section, the department shall prepare the operating budget for
18 the charter school for the ensuing fiscal year. A governing
19 body shall be considered as failing to submit an operating
20 budget pursuant to this section if the operating budget
21 submitted:

22 (1) exceeds the total projected resources of
23 the charter school;

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 charter
3 school's approved educational plan.

4 D. For the first year of operation, the proposed
5 operating budget of a charter school shall be based on the
6 projected enrollment and cost factor demographic data of that
7 charter school and the index of staff qualifications of the
8 school district in which the charter school is geographically
9 located. The operating budget shall be adjusted based on the
10 actual October enrollment and cost factor demographic data.
11 For second and subsequent years of operation, the operating
12 budget shall be based on the charter school's own cost factor
13 demographic data and index of staff qualifications."

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

16 "22-8-8. OPERATING BUDGETS--MINIMUM STUDENT [~~MEMBERSHIP~~]
17 ENROLLMENT.--Without prior approval of the [~~state~~
18 ~~superintendent~~] secretary, no local school board or governing
19 body shall maintain or provide [~~a~~] an operating budget
20 allowance for a public school having an [~~average daily~~
21 ~~membership~~] enrollment of [~~less~~] fewer than eight."

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

24 "22-8-9. OPERATING BUDGETS--MINIMUM REQUIREMENTS.--

25 A. [~~A~~] An operating budget for a school district

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1 shall not be approved by the department that does not provide
2 for:

3 (1) a school year [~~consisting of at least one~~
4 ~~hundred eighty full instructional days or the equivalent~~
5 ~~thereof, exclusive of any release time for in-service training;~~
6 ~~or~~

7 ~~(2) a variable school year consisting of a~~
8 ~~minimum number of instructional hours established by the state~~
9 ~~board] and school day as provided in Section 22-2-8.1 NMSA~~
10 1978; and

11 [~~3~~] (2) a [~~pupil-teacher ratio or~~] class or
12 teaching load as provided in Section 22-10A-20 NMSA 1978.

13 B. Beginning with the 2012-2013 school year, an
14 operating budget for a school district shall not be approved by
15 the department that does not provide for a school year
16 established pursuant to Section 22-2-8.1 NMSA 1978. Teachers
17 and instructional support staff shall be paid for four days
18 additional to the school year for professional development or
19 instructional planning.

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

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

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1 "22-8-11. OPERATING BUDGETS--APPROVAL OF OPERATING
2 BUDGET.--

3 A. On or before July 1 of each year, the department
4 shall ~~[(1) on or before July 1 of each year]~~ approve and
5 certify ~~[to]~~ the operating budget for each [local] school
6 ~~[board] district and [governing body of a state-chartered]~~
7 ~~charter school [an operating budget for use by the school~~
8 ~~district or state-chartered charter school; and (2)]~~. The
9 department may make corrections, revisions and amendments to
10 the operating budgets fixed by the local school boards or
11 governing bodies ~~[of state-chartered charter schools and the~~
12 ~~secretary]~~ to conform the operating budgets to the requirements
13 of law and to the department's rules and procedures.

14 B. No school district or ~~[state-chartered]~~ charter
15 school or officer or employee of a school district or ~~[state-~~
16 ~~chartered]~~ charter school shall make any expenditure or incur
17 any obligation for the expenditure of public ~~[funds]~~ money
18 unless that expenditure or obligation is made in accordance
19 with an operating budget approved by the department. This
20 prohibition does not prohibit the transfer of ~~[funds]~~ money
21 pursuant to the department's rules and procedures.

22 C. The department shall not approve and certify an
23 operating budget of any school district or ~~[state-chartered]~~
24 charter school that ~~[fails to]~~ does not align with the
25 educational plan and demonstrate that parental involvement in

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1 the budget process was solicited.

2 D. The department may approve a conditional
3 operating budget if a school district's or charter school's
4 educational plan is in the process of being approved as
5 provided in Section 4 of this 2009 act. After the secretary's
6 final decision on the educational plan, the conditional
7 operating budget shall be aligned with the department-approved
8 educational plan and become the operating budget for the
9 applicable fiscal year."

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

12 "22-8-12.1. [~~MEMBERSHIP~~] SUFFICIENT PER-STUDENT COST
13 PROJECTIONS AND BUDGET REQUESTS.--

14 A. Beginning with projections for the 2010-2011
15 school year, each [~~local school board or governing body of a~~
16 ~~state-chartered~~] school district and charter school shall
17 submit annually, on or before October 15, to the department:

18 (1) an estimate for the succeeding fiscal year
19 of:

20 (a) the [~~membership of qualified~~
21 ~~students to be enrolled in the basic program~~] enrollment by
22 grade level;

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

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1 (c) the [~~membership of students to be~~
2 ~~enrolled~~] enrollment in approved special education programs;
3 and

4 (d) the cost factor demographic data by
5 grade level;

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

8 (3) any other information related to the
9 financial needs of the school district or [~~state-chartered~~]
10 charter school as may be requested by the department.

11 B. All information requested pursuant to Subsection
12 A of this section shall be submitted on forms prescribed and
13 furnished by the department and shall comply with the
14 department's rules and procedures.

15 C. The department shall:

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

19 (2) submit annually, on or before November
20 [~~30~~] 20, to the secretary of finance and administration the
21 recommendations of the department for:

22 (a) amendments to the public school
23 [~~finance~~] funding formula;

24 (b) appropriations for the succeeding
25 fiscal year to the public school fund for inclusion in the

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1 executive budget document; and

2 (c) appropriations for the succeeding
3 fiscal year for ~~[pupil]~~ student transportation and
4 instructional materials."

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

7 "22-8-13. REPORTS.--

8 A. Each public school ~~[in a school district and~~
9 ~~each state-chartered charter school]~~ shall keep accurate
10 records concerning ~~[membership]~~ enrollment in the public school
11 ~~[The superintendent of]~~.

12 B. The dates for which enrollment is reported are
13 as follows:

14 (1) first reporting date, second Wednesday in
15 October;

16 (2) second reporting date, second Wednesday in
17 December; and

18 (3) third reporting date, second Wednesday in
19 February.

20 C. The department may require enrollment or other
21 reports at other times specified by the department.

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

25 (1) the ~~[basic program MEM]~~ enrollment and

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1 cost factor demographic data by grade in each public school;

2 (2) the early childhood education [MEM]
3 enrollment;

4 (3) the special education [MEM in each public
5 school in class C and class D programs as defined in Section
6 22-8-21 NMSA 1978;

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

9 ~~(5)] (4) the [full-time equivalent MEM for]~~
10 bilingual multicultural education [programs] enrollment.

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

20 ~~[G.]~~ F. All information required pursuant to this
21 section shall be on forms prescribed and furnished by the
22 department. A copy of any report made pursuant to this section
23 shall be kept as a permanent record of the school district or
24 charter school and shall be subject to inspection and audit at
25 any reasonable time.

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1 ~~[D-]~~ G. The department ~~[shall]~~ may withhold up to
2 one hundred percent of the allotments of funds to any school
3 district or ~~[state-chartered]~~ charter school ~~[where]~~ when the
4 local superintendent or head administrator has failed to comply
5 with the requirements of this section. Withholding may
6 continue until the local superintendent or head administrator
7 complies with and agrees to continue complying with the
8 requirements of this section.

9 ~~[E-]~~ H. The provisions of this section may be
10 modified or suspended by the department for any school district
11 or ~~[school or state-chartered]~~ charter school operating under
12 the Variable School Calendar Act. The department shall require
13 ~~[MEM]~~ reports consistent with the calendar of operations of
14 ~~[such]~~ the school district or ~~[school or state-chartered]~~
15 charter school and shall calculate an equivalent ~~[MEM]~~
16 enrollment for use in projecting school district or charter
17 school revenue."

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

20 "22-8-14. PUBLIC SCHOOL FUND.--

21 A. The "public school fund" is created in the state
22 treasury. The fund consists of appropriations, earmarked
23 revenue, income from investment of the fund and any other money
24 credited to the fund.

25 B. The public school fund shall be distributed to

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1 school districts and state-chartered charter schools in the
2 following parts:

- 3 (1) state equalization guarantee distribution;
- 4 (2) transportation distribution; and
- 5 (3) supplemental distributions:
 - 6 (a) out-of-state tuition to school
 - 7 districts;
 - 8 (b) emergency; and
 - 9 (c) program enrichment.

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

15 D. Until the funding formula provided for in
16 Section 17 of this 2009 act is implemented, all revenue
17 dedicated to public school purposes by law or constitutional
18 amendment that is approved after January 1, 2009 shall be
19 credited to a separate account in the public school fund.
20 Money sequestered in this separate account shall not be counted
21 as part of a state reserve for bonding or any other purpose
22 other than to provide the marginal sufficiency cost of
23 implementing the funding formula as provided in Subsection 0 of
24 Section 17 of this 2009 act."

25 Section 16. Section 22-8-17 NMSA 1978 (being Laws 1974,

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1 Chapter 8, Section 7, as amended) is amended to read:

2 "22-8-17. TOTAL PROGRAM COST DETERMINATION--REQUIRED
3 INFORMATION.--

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

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

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

17 "22-8-18. [NEW MATERIAL] PROJECTED SUFFICIENT PER-STUDENT
18 COST CALCULATION FOR SCHOOL DISTRICTS AND CHARTER SCHOOLS--
19 LOCAL RESPONSIBILITY.--

20 A. As used in this section:

21 (1) "ENR" means total enrollment;

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

24 (3) "ln" means natural logarithm.

25 B. The cost factors used to determine the

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1 sufficient per-student cost for a school district or charter
2 school are:

3 (1) poverty, which is measured by the
4 percentage of qualified students in a school who qualified for
5 free or reduced-price lunch as of September 30 of the prior
6 school year;

7 (2) English language learners, which is
8 measured by the percentage of qualified students designated as
9 English language learners based on a department-approved
10 English language proficiency assessment;

11 (3) special education, which is measured by
12 sixteen percent of the number of qualified students for school
13 districts and by the percentage of qualified students who are
14 required by the federal Individuals with Disabilities Education
15 Act to have an individualized education program for the
16 delivery of special education and includes developmentally
17 disabled three- and four-year-old qualified students for
18 charter schools;

19 (4) mobility, which is the mobility rate
20 determined by the following formula: $1 - (1 \div (1 + \text{statewide}$
21 $\text{mobility ratio}))$, where the mobility ratio is determined
22 annually by the department;

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

25 (6) the percent of total district enrollment

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1 in grades nine through twelve;

2 (7) the total district enrollment; and

3 (8) the weighted index of staff

4 qualifications.

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

8 "base per-student cost x

9 $[(1 + \text{percent free/reduced-fee lunch})^{0.375}] \times$

10 $[(1 + \text{percent English language learners})^{0.094}] \times$

11 $[(1 + \text{percent special education})^{1.723}] \times$

12 $[(1 + \text{mobility rate})^{0.190}] \times$

13 $[(1 + \text{enrollment percent in grades six-eight})^{0.291} \div$

14 1.063] x

15 $[(1 + \text{enrollment percent in grades nine-twelve})^{0.608} \div$

16 1.187] x

17 $[(\text{ENR})^{-0.5750} \times \exp((\ln(\text{ENR}))^2)^{0.0287} \div 0.0619] \times$

18 weighted index of staff qualifications formula

19 adjustment determined pursuant to Section 22-8-24

20 NMSA 1978".

21 D. The funding formula equation used to determine
22 the sufficient per-student cost for charter schools is
23 determined by multiplying the base per-student cost by a series
24 of formula adjustments as follows:

25 "base per-student cost x

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1 $[(1 + \text{percent free/reduced-fee lunch})^{0.375}] \times$
2 $[(1 + \text{percent English language learners})^{0.094}] \times$
3 $[(1 + \text{percent special education})^{1.723}] \times$
4 $[(1 + \text{mobility rate})^{0.190}] \times$
5 $[(1 + \text{enrollment percent in grades six-eight})^{0.291} \div$
6 $1.074] \times$
7 $[(1 + \text{enrollment percent in grades nine-twelve})^{0.608} \div$
8 $1.241] \times$
9 $[(\text{ENR})^{-0.3071} \times \exp((\ln(\text{ENR}))^2)^{0.0122} \div 0.2881] \times$
10 weighted index of staff qualifications adjustment as
11 determined pursuant to Section 22-8-24 NMSA 1978".

12 E. The exponents and denominators used in the
13 formula adjustments shall remain constant until they are
14 redetermined after the required periodic funding formula study.

15 F. Except as otherwise provided in this section,
16 cost factor demographic data and total enrollment are based on
17 the average of the prior year's total enrollment reported in
18 December and February and the prior-year cost factor
19 demographic data.

20 G. A school district or charter school that is
21 experiencing growth may elect to use the greater of the prior-
22 year average December and February total enrollment or the
23 current-year October total enrollment, as determined by the
24 difference in the prior-year October total enrollment and the
25 current-year October total enrollment.

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

4 I. The special education formula adjustment for a
5 school district is calculated using sixteen percent of the
6 number of qualified students in the school district.

7 J. The special education formula adjustment for a
8 charter school is calculated using the actual number of
9 appropriately identified special education qualified students
10 who are receiving special education on the October enrollment
11 report. The legislature finds that charter schools are
12 designed for unique populations and the range of variation in
13 special education in charter schools is wider and often well
14 below school district averages; therefore, it is rational and
15 reasonable to differentiate between school districts and
16 charter schools in the special education cost factor.

17 K. The department shall assist school districts to
18 implement response to intervention strategies to lower their
19 special education identification rates. It is the intent of
20 the legislature that all school districts and charter schools
21 accurately identify students needing special education and that
22 they implement response to intervention strategies to provide
23 students with the most appropriate services required for their
24 educational success. The department shall report to the
25 legislature by September 1 of each year on:

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1 (1) the prior year's special education
2 identification rates in school districts and charter schools;
3 and

4 (2) the adoption and efficacy of response to
5 intervention strategies for each school district and charter
6 school.

7 L. To maintain the funding formula each year, the
8 department shall:

9 (1) update the cost factors of each school
10 district and charter school to determine their respective
11 formula adjustments for that year; and

12 (2) adjust the base per-student cost according
13 to legislative appropriation, including inflation. As used in
14 this section, inflation is determined by the percentage
15 increase, if any:

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

19 (b) of the prior-year consumer price
20 index for all urban consumers for the remaining statewide
21 portions of the budget funded through the formula.

22 M. The department shall undertake a thorough
23 funding formula study every ten years, or more frequently if
24 the legislature determines a need, to update the current
25 funding formula to determine the formula's equation exponents

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1 and denominators.

2 N. The sufficient per-student cost is based on a
3 comprehensive instructional program that includes the cost of
4 core academic programs, career-technical education, gifted
5 programs, bilingual-multicultural programs, arts and music,
6 health and physical education and special education and
7 appropriate staff. It is the responsibility of the local
8 school board or governing body to determine its priorities in
9 terms of the needs of the community served by that board or
10 body. Money distributed through the provisions of the Public
11 School Finance Act is discretionary to local school boards and
12 governing bodies to provide the programs identified in their
13 educational plans.

14 O. Beginning with fiscal year 2011, the legislature
15 and the department shall use the funding formula provided in
16 this section as the method for determining the appropriation
17 for and distribution of the state equalization guarantee. When
18 the funding formula is implemented, those school districts and
19 charter schools that had received more money than the funding
20 formula provides for a sufficient per-student cost shall be
21 held harmless for no more than three years."

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

24 "[NEW MATERIAL] SUFFICIENT PER-STUDENT COST.--

25 A. The 2005-2008 funding formula study found that
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1 the following types of expenditures are important in supporting
2 the educational plan:

3 (1) extending the school year one or more
4 days;

5 (2) extending the school day for teachers or
6 extending contract days for teachers up to four days beyond the
7 school year;

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

10 (4) lower class sizes and student-teacher
11 ratios;

12 (5) providing academic coaches, resource
13 teachers and specialists, particularly in reading, mathematics
14 and English language learning programs;

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

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

19 (8) improving truancy prevention and
20 intervention strategies, including establishing or enhancing
21 truancy tracking systems and employing truancy officers;

22 (9) establishing or enhancing bilingual-
23 multicultural programs;

24 (10) offering visual and performing arts,
25 music and physical education to more students;

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

25 B. The use to which increased funding is put

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1 pursuant to Subsection A of this section shall be incorporated
2 into the school district's or charter school's educational plan
3 and approved by the department. The educational plan shall
4 provide detailed information:

5 (1) describing the purposes to which increased
6 funding will be applied;

7 (2) the specific outcomes expected from such
8 increased funding;

9 (3) the performance measures to be used to
10 evaluate the efficacy of the purposes to which increased
11 funding was applied; and

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

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

21 "22-8-24. [NEW MATERIAL] INDEX OF STAFF QUALIFICATIONS--
22 NATIONAL BOARD CERTIFICATION STIPEND.--

23 A. For the purpose of calculating the index of
24 staff qualifications, the following definitions and limitations
25 apply:

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

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

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

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

22 B. The factors for each classification of academic
23 training by years of experience are provided in the following
24 matrix for teachers:

25 Matrix of Staff Qualifications A - Teachers

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Academic Classification	Years of Experience									
	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 or nat'l bd cert	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

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

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 credit hours or post-master's degree	0.87	1.00	1.13	1.22	1.30

D. The index of staff qualifications for each school district and charter school shall be calculated in accordance with instructions issued by the secretary. The following calculation shall be made to compute the value of the index of staff qualifications:

- (1) multiply the number of full-time-

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1 equivalent teachers in each academic classification and level
2 in matrix A by the numerical factor in the appropriate "years
3 of experience" column provided in Subsection B of this
4 section;

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

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

12 (4) divide the total obtained in Paragraph
13 (3) of this subsection by the total number of full-time-
14 equivalent instructional staff.

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

18 F. If a new school district is created, the index
19 of staff qualifications for that school district for the first
20 year of operation shall be 1.0.

21 G. If a school district's or charter school's
22 index of staff qualifications is greater than 1.0, the index
23 of staff qualifications formula adjustment used to determine
24 the sufficient per-student cost is equal to the amount
25 determined in Subsection D of this section multiplied by the

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1 percentage of the prior year's budget for instructional staff
2 salaries and benefits plus a factor equal to one hundred
3 percent minus the percentage of the prior year's budget for
4 instructional staff salaries and benefits.

5 H. In addition to the sufficient per-student cost,
6 each school district and charter school shall calculate the
7 amount of national board for professional teaching standards
8 certification salary differential due to each national board-
9 certified teacher employed by the school district or charter
10 school on the October report date. The department shall
11 calculate the amount of the salary differential for
12 legislative appropriation based on the amount paid to board-
13 certified teachers in the 2009-2010 base school year adjusted
14 yearly by the same overall percentage increase in teacher
15 salary provided by the legislature. The department shall
16 verify the certification and current employment of board-
17 certified teachers. Department approval of any allocations
18 for this item shall be contingent on verification by the
19 school district or charter school that these teachers will
20 receive the one-time salary differential for the school year
21 equal to the amount calculated."

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

24 "22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--
25 DEFINITIONS--DETERMINATION OF AMOUNT.--

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

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

22 C. "Federal revenue", as used in this section,
23 means receipts to the school district, excluding amounts that,
24 if taken into account in the computation of the state
25 equalization guarantee distribution, result, under federal law

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1 or regulations, in a reduction in or elimination of federal
2 school funding otherwise receivable by the school district,
3 derived from the following:

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

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

12 D. To determine the amount of the state
13 equalization guarantee distribution, the department shall

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

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

23 ~~(3) calculate the number of program units to~~
24 ~~which a school district or charter school with a MEM of two~~
25 ~~hundred or less is entitled by using an average of the MEM on~~

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1 ~~the eightieth and one hundred twentieth days of the prior year~~
2 ~~or the fortieth day of the current year, whichever is greater;~~
3 and

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

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

11 ~~(6) deduct the sum of the calculations made~~
12 ~~in Paragraph (5) of this subsection from the program cost~~
13 ~~established in Paragraph (4) of this subsection;~~

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

25 E. Reduction of a school district's state

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

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

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

22 Section 21. Section 22-8-41 NMSA 1978 (being Laws 1967,
23 Chapter 16, Section 99, as amended) is amended to read:

24 "22-8-41. RESTRICTION ON OPERATIONAL FUNDS--EMERGENCY
25 ACCOUNTS--CASH BALANCES.--

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

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

18 C. In addition to the emergency account, school
19 districts or charter schools may also budget operational fund
20 cash balances carried forward from the previous fiscal year
21 for operational expenditures, exclusive of salaries and
22 payroll, upon specific prior approval of the secretary. The
23 secretary shall notify the legislative finance committee in
24 writing of the secretary's approval of such proposed
25 expenditures. ~~[For fiscal years 2004 and 2005, with the~~

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1 ~~approval of the secretary, a school district or charter school~~
2 ~~may budget so much of its operational cash balance as is~~
3 ~~needed for nonrecurring expenditures, including capital~~
4 ~~outlay.~~

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

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

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

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

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

23 ~~(4) if the current year program cost is~~
24 ~~twenty-five million dollars (\$25,000,000) or more but less~~
25 ~~than two hundred million dollars (\$200,000,000), eight percent~~

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1 ~~of the budgeted expenditures; and~~

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

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

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

23 ~~(2) for other school districts and charter~~
24 ~~schools, if the excess cash balance is greater than eighteen~~
25 ~~percent of the allowable, unrestricted, unreserved operational~~

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1 ~~cash balance and the emergency reserve, the reduction pursuant~~
2 ~~to this subsection shall equal eighteen percent of the~~
3 ~~allowable unrestricted, unreserved operational cash balance~~
4 ~~and the emergency reserve.~~

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

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

16 ~~F.]~~ E. Upon application by a school district or
17 charter school, the secretary may ~~[waive all or a portion of~~
18 ~~the reduction otherwise required by Subsection F of this~~
19 ~~section if the secretary finds that the]~~ approve the use of a
20 school district's [excess] or charter school's cash balance
21 ~~[is needed]~~ to provide the local match required under the
22 Public School Capital Outlay Act or to recoup an amount paid
23 as the district's share pursuant to Section 22-24-5.7 NMSA
24 1978.

25 ~~[J. Notwithstanding the provisions of Subsection F~~

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1 ~~of this section, for fiscal year 2004, the reduction from the~~
2 ~~state equalization guarantee distribution shall be the greater~~
3 ~~of the amount calculated pursuant to that subsection or ten~~
4 ~~dollars (\$10.00) per MEM.~~

5 ~~K. For the purposes of this section, "operational~~
6 ~~cash balance" means the allowable, unrestricted, unreserved~~
7 ~~operational cash balance and the emergency reserve.~~

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

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

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

19 A. As used in this section, "high-cost special
20 education" means the provision of special education and
21 related services to a qualified student, the cost of which
22 exceeds the established threshold amount above the base per-
23 student cost.

24 B. The "special education catastrophic aid fund"
25 is created as a nonreverting fund in the state treasury. The

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1 fund consists of appropriations, gifts, grants, donations,
2 income from investment of the fund and any other money
3 credited to the fund. The fund shall be administered by the
4 department, and money in the fund is appropriated to the
5 department to provide grants to school districts to assist
6 them in paying costs associated with high-cost special
7 education students.

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

16 D. Based on legislative appropriation each year,
17 the department shall determine the threshold amount for high-
18 cost special education."

19 Section 23. Section 22-13-1.7 NMSA 1978 (being Laws
20 2007, Chapter 348, Section 3) is amended to read:

21 "22-13-1.7. ELEMENTARY PHYSICAL EDUCATION.--

22 A. As used in this section,

23 [~~(1) "eligible students" means students in~~
24 ~~kindergarten through grade six in a public school classified~~
25 ~~by the department as an elementary school; and~~

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

6 B. Elementary physical education programs [~~that~~
7 ~~serve eligible students are eligible for funding if those~~
8 ~~programs~~] shall meet academic content and performance
9 standards for elementary physical education programs and shall
10 be taught by teachers with license endorsement for physical
11 education.

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

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1 ~~submitted by the school districts each year and make an annual~~
2 ~~report to the legislative education study committee and the~~
3 ~~legislature.~~

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

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

15 ~~(2) use teachers with a license endorsement~~
16 ~~for physical education.~~

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

21 Section 24. A new Section 22-13-1.8 NMSA 1978 is enacted
22 to read:

23 "22-13-1.8. [NEW MATERIAL] GIFTED STUDENTS--STANDARDS--
24 DETERMINATION--MULTIDISCIPLINARY TEAMS--STUDENT-SPECIFIC
25 GIFTED EDUCATION PLANS--ADVISORY COMMITTEES.--

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1 A. The department's educational standards for New
2 Mexico public schools shall include standards for the
3 identification, evaluation and education of gifted students.
4 The department shall monitor and oversee the implementation of
5 gifted student standards.

6 B. Each school district offering a gifted
7 education program shall create one or more advisory committees
8 of parents of gifted students, community members with
9 knowledge and concern about gifted education and school staff
10 members who work in gifted education. The school district may
11 create as many advisory committees as there are high schools
12 in the district or may create a single districtwide advisory
13 committee. The membership of each advisory committee shall
14 reflect the cultural diversity of the enrollment of the school
15 district or the schools the committee advises. The advisory
16 committee shall regularly review the goals and priorities of
17 the gifted program, including the process of gifted student
18 identification, evaluation, placement and service delivery and
19 the development of student-specific educational goals plans
20 for gifted students.

21 C. To determine whether a student is gifted, a
22 multidisciplinary team from the school district shall evaluate
23 the student and shall consider:

24 (1) diagnostic or other evidence of the
25 student's:

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1 (a) creativity or divergent-thinking
2 ability;

3 (b) critical-thinking or
4 problem-solving ability;

5 (c) intelligence; and

6 (d) achievement;

7 (2) information regarding the student's
8 cultural and linguistic background and socioeconomic
9 background; and

10 (3) any disabling condition.

11 D. With the agreement of the student's parent, the
12 multidisciplinary team has the authority to designate a
13 student as gifted and constitute a gifted education plan team
14 made up of the gifted student's parent, the gifted student,
15 teachers and other specialists the multidisciplinary team
16 deems necessary. The gifted education plan team shall prepare
17 a student-specific gifted education plan for the student that
18 at a minimum meets the department's standards of excellence
19 and includes a description of the differentiated instruction
20 and affective curriculum to be provided that will best
21 facilitate effective learning and development for the gifted
22 student. The gifted education plan team shall consider a
23 continuum of research-based services and placements when
24 developing the student-specific plan. If a gifted student
25 also has a disabling condition that requires an individualized

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1 educational plan pursuant to federal law, that plan shall be
2 substituted for the gifted education plan.

3 E. Nothing in this section shall preclude a school
4 district from offering gifted programs to students who fail to
5 meet the eligibility criteria for gifted students, but the
6 school district is not required to prepare a student-specific
7 gifted education plan for those students."

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

10 "22-13-5. SPECIAL EDUCATION.--

11 A. School districts shall provide special
12 education and related services appropriate to meet the needs
13 of ~~[all children]~~ public school students requiring special
14 education and related services. ~~[Regulations]~~ Rules and
15 standards shall be developed and established by the ~~[state~~
16 ~~board]~~ department for the provision of special education in
17 the schools and classes of the public school system in the
18 state and in all institutions wholly or partly supported by
19 the state. The ~~[state board]~~ department shall monitor and
20 enforce the ~~[regulations]~~ rules and standards.

21 B. Except as otherwise provided in this section,
22 the state institution in which a school-age person is detained
23 or enrolled shall be responsible for providing educational
24 services for the school-age person. A school-age person who
25 is a client as defined in Section 43-1-3 NMSA 1978 in a state

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1 institution under the authority of the secretary of health has
2 a right to attend public school in the school district in
3 which the state institution in which the school-age person is
4 a client is located if:

5 (1) the school-age person has been
6 recommended for placement in a public school by the
7 educational appraisal and review committee of the school
8 district in which the institution is located; or

9 (2) the school-age person has been
10 recommended for placement in a public school as a result of
11 the appeal process as provided in the special education rules
12 of the department.

13 C. School districts shall also provide services
14 for three-year-old and four-year-old [~~preschool~~] children with
15 disabilities, unless the parent [~~or guardian~~] chooses not to
16 enroll [~~his~~] the child. If a child receiving services in the
17 department of health's family infant toddler program has [~~his~~]
18 a third birthday during the school year, the child's [~~parents~~]
19 parent shall have the option of having the child complete the
20 school year in the family infant toddler program or enrolling
21 the child in the public school's preschool program. A child
22 with a disability who enrolls in the public school's preschool
23 program and who has [~~his~~] a third birthday during a school
24 year may receive special education and related services from
25 the beginning of that school year.

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

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

14 "22-13-7. SPECIAL EDUCATION--RESPONSIBILITY.--

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

18 B. The department ~~[of education with the approval~~
19 ~~of the state board]~~ shall set standards for diagnosis and
20 screening of and educational offerings for ~~[exceptional]~~
21 qualified students and school-age persons receiving special
22 education in public schools; in private, nonsectarian,
23 nonprofit training centers or residential treatment centers
24 for whom a school district is responsible; and in state
25 institutions under the authority of the secretary of health or

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1 the secretary of children, youth and families.

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

13 D. The department [~~of education~~] shall coordinate
14 programming related to the transition of [~~persons with~~
15 ~~disabilities~~] qualified students receiving special education
16 from secondary and post-secondary education programs to
17 employment or vocational placement."

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

20 "22-13-8. SPECIAL EDUCATION--PRIVATE.--

21 A. The responsibility of school districts, state
22 institutions and the state to provide a free public education
23 for [~~exceptional children~~] qualified students who need special
24 education is not diminished by the availability of private
25 schools and services. [~~Whenever such schools or services are~~

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1 ~~utilized, it continues to be~~ It is a state responsibility to
2 ~~[assure]~~ ensure that all ~~[exceptional children]~~ qualified
3 students who need special education receive the education to
4 which ~~[the]~~ federal and state laws ~~[of the state]~~ entitle them
5 whether provided by public or private schools and services.

6 B. A school district in which a private,
7 nonsectarian, nonprofit training center or residential
8 treatment center is located shall not be considered the
9 resident school district of a school-age person in need of
10 special education if residency is based solely on the school-
11 age person's enrollment at the facility and the school-age
12 person would not otherwise be considered a resident of the
13 state.

14 C. For a qualified student or school-age person in
15 need of special education who is placed in a private,
16 nonsectarian, nonprofit training center or residential
17 treatment center by a school district or by a due process
18 decision, the school district in which the qualified student
19 or school-age person lives, whether in-state or out-of-state,
20 is responsible for the educational costs of that placement.

21 D. For a school-age person in need of special
22 education placed in a private, nonsectarian, nonprofit
23 training center or residential treatment center not as a
24 result of a due process decision but by a parent who assumes
25 the responsibility for such placement, the department shall

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1 ensure that the school district in which the facility is
2 located is allocating and distributing the school-age person's
3 proportionate share of the federal Individuals with
4 Disabilities Education Act Part B funds, but the state is not
5 required to distribute state funds for that school-age person.

6 E. For a school-age person in need of special
7 education placed in a private, nonsectarian, nonprofit
8 training center or residential treatment center by a New
9 Mexico public agency with custody or control of the school-age
10 person or by a New Mexico court of competent jurisdiction, the
11 school district in which the facility is located shall be
12 responsible for the planning and delivery of special education
13 and related services, unless the school-age person's resident
14 school district has an agreement with the facility to provide
15 such services.

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

24 [B-] G. A local school board, in consultation with
25 the department, may make an agreement with a private,

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1 nonsectarian, nonprofit educational training [~~centers~~] center
2 or residential treatment center for educating [~~exceptional~~
3 ~~children~~] qualified students for whom the school district is
4 responsible for providing a free appropriate public education
5 under the federal Individuals with Disabilities Education Act
6 and for providing [~~for~~] payment for [~~such~~] that education.
7 All financial agreements between local school boards and
8 private, nonsectarian, nonprofit educational training centers
9 and residential treatment centers must be negotiated in
10 accordance with [~~regulations~~] rules promulgated by the
11 [~~director~~] department. Payment for education and services
12 under [~~such~~] those agreements shall be made by the local
13 school board [~~of education~~] in which the qualified student
14 lives from available funds [~~available~~].

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

24 (1) diagnosis [~~and~~];

25 (2) an educational program for each [~~child~~]

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1 ~~which~~ qualified student that meets state standards for such
2 programs, except that teachers employed by private schools are
3 not required to be highly qualified;

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

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

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

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

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1 educational program for the student.

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

16 L. The department shall promulgate rules to carry
17 out the provisions of this section."

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

21 "22-30-6. DISTANCE LEARNING STUDENTS.--

22 A. A student must be enrolled in a public school
23 or a state-supported school and must have the permission of
24 the student's local distance education learning site to enroll
25 in a distance learning course. A distance learning student

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1 shall [~~only~~] be counted only in the student's primary
2 enrolling district for the purpose of determining the
3 [~~membership~~] enrollment used to calculate a school district's
4 state equalization guarantee. A student shall have only one
5 primary enrolling district.

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

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

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

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1 district in which the facility is located."

2 Section 29. TEMPORARY PROVISION--ENROLLMENT REPORTS--
3 MEM--STATUTORY REFERENCES.--

4 A. References in the Public School Code to the
5 fortieth day membership shall be deemed to be references to
6 the total enrollment on the second Wednesday in October.

7 B. References in the Public School Code to the
8 eightieth day membership shall be deemed to be references to
9 the total enrollment on the second Wednesday in December.

10 C. References in the Public School Code to the one
11 hundred twentieth day membership shall be deemed to be
12 references to the total enrollment on the second Wednesday in
13 February.

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

16 Section 30. TEMPORARY PROVISION--PROJECTIONS AND BUDGET
17 PREPARATION--PRE-2011 FORMULA.--

18 A. Section 22-8-13 NMSA 1978 notwithstanding, the
19 public education department may institute new reporting dates
20 for the 2009-2010 school year as follows:

21 (1) first reporting date, second Wednesday in
22 October;

23 (2) second reporting date, second Wednesday
24 in December; and

25 (3) third reporting date, second Wednesday in

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1 February.

2 B. The public education department may require
3 enrollment or other reports at other times specified by the
4 department.

5 C. The effective date of sections in this act
6 notwithstanding, the definitions set out in Section 22-8-2
7 NMSA 1978 as enacted in this act shall be used to project
8 enrollments and prepare budgets for the 2010-2011 school year.

9 Section 31. TEMPORARY PROVISION--DATA VERIFICATION--BETA
10 TESTING OF FUNDING FORMULA.--

11 A. For the 2008-2009 and 2009-2010 school years,
12 the department and school districts shall collect and verify
13 all data required for the funding formula provided for in
14 Section 17 of this act, and shall test the data and the
15 formula. The office of education accountability and the
16 legislative education study committee shall work with the
17 department to review the data collected and reported by the
18 department and may make recommendations on how to improve data
19 collection and reporting. The data collected through the
20 student and teacher accountability reporting system shall be
21 verified against the data used by the school budget and
22 finance analysis bureau for the final funded run to determine
23 distribution of the state equalization guarantee and any other
24 data collected by the department. The department, the school
25 districts, the office of education accountability and the

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1 legislative education study committee shall verify that the
2 data are accurate, and the department shall correct all data
3 errors. The school budget and finance analysis bureau shall
4 test the funding formula with the 2008-2009 and 2009-2010
5 school years verified data, using the budget analysts' finance
6 calculator that underpins the funding formula.

7 B. During the testing period, the department shall
8 consult with the United States department of education to
9 ensure that the proposed funding formula meets federal impact
10 aid requirements. The department shall keep the legislative
11 education study committee and the legislative finance
12 committee apprised of the results of its consultations.

13 C. During the testing period, the department shall
14 work with the coalition of school administrators to provide
15 training to superintendents, business officers, principals and
16 others involved in data collection, compilation and
17 verification at the school and district levels.

18 Section 32. REPEAL.--Sections 22-8-3, 22-8-7.1, 22-8-19,
19 22-8-20 through 22-8-23.8, 22-8-25.1, 22-13-6 and 22-13-6.1
20 NMSA 1978 (being Laws 1988, Chapter 64, Section 14; Laws 1993,
21 Chapter 224, Section 1; Laws 1974, Chapter 8, Section 9; Laws
22 1991, Chapter 85, Section 3; Laws 1974, Chapter 8, Section 11;
23 Laws 1974, Chapter 8, Section 13; Laws 1975, Chapter 119,
24 Section 1; Laws 1990 (1st S.S.), Chapter 3, Sections 7 and 8;
25 Laws 1993, Chapter 237, Section 2; Laws 1997, Chapter 40,

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1 Section 7; Laws 2003, Chapter 144, Section 2 and Laws 2003,
2 Chapter 152, Section 9; Laws 2003, Chapter 144, Section 3 and
3 Laws 2003, Chapter 152, Section 8; Laws 2006, Chapter 94,
4 Section 15; Laws 2007, Chapter 348, Section 1; Laws 2007,
5 Chapter 365, Section 2; Laws 1985 (1st S.S.), Chapter 15,
6 Section 17; Laws 1972, Chapter 95, Section 2; and Laws 1994,
7 Chapter 25, Section 2, as amended) are repealed.

8 Section 33. EFFECTIVE DATE.--

9 A. The effective date of the provisions of
10 Sections 2, 4, 5, 8, 9, 10, 11, 12, 13 and 22 of this act is
11 July 1, 2009.

12 B. The effective date of the provisions of
13 Sections 3, 6, 7, 14, 16, 17, 18, 19, 20, 23, 24, 28, 29 and
14 32 of this act is July 1, 2010.

15 C. The effective date of the provisions of
16 Sections 1, 15, 21, 25, 26, 27, 30 and 31 of this act is June
17 19, 2009.