

FIFTY-FIRST LEGISLATURE
FIRST SESSION, 2013

HB 215/a

March 9, 2013

Mr. President:

Your **EDUCATION COMMITTEE**, to whom has been referred

HOUSE BILL 215

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 1, between lines 18 and 19, insert the following new sections:

"SECTION 1. Section 22-1-1.2 NMSA 1978 (being Laws 2003, Chapter 153, Section 2, as amended by Laws 2007, Chapter 307, Section 1 and by Laws 2007, Chapter 308, Section 1) is amended to read:

"22-1-1.2. LEGISLATIVE FINDINGS AND PURPOSE.--

A. The legislature finds that no education system can be sufficient for the education of all children unless it is founded on the sound principle that every child can learn and succeed and that the system must meet the needs of all children by recognizing that student success for every child is the fundamental goal.

B. The legislature finds further that the key to student success in New Mexico is to have a multicultural education system that:

(1) attracts and retains quality and diverse teachers to teach New Mexico's multicultural student population;

(2) holds teachers, students, schools, school districts and the state accountable;

(3) integrates the cultural strengths of its diverse student population into the curriculum with high expectations for all students;

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(4) recognizes that cultural diversity in the state presents special challenges for policymakers, administrators, teachers and students;

(5) provides students with a rigorous and relevant high school curriculum that prepares them to succeed in college and the workplace; and

(6) elevates the importance of public education in the state by clarifying the governance structure at different levels.

C. The legislature finds further that the teacher shortage in this country has affected the ability of New Mexico to compete for the best teachers and that, unless the state and school districts find ways to mentor beginning teachers, intervene with teachers while they still show promise, improve the job satisfaction of quality teachers and elevate the teaching profession by shifting to a professional educator licensing and salary system, public schools will be unable to recruit and retain the highest quality teachers in the teaching profession in New Mexico.

D. The legislature finds further that a well-designed, well-implemented and well-maintained assessment and accountability system is the linchpin of public school reform and must ensure that:

(1) students who do not meet or exceed expectations will be given individual attention and assistance through extended learning programs and individualized tutoring;

(2) students have accurate, useful information about their options and the adequacy of their preparation for post-secondary education, training or employment in order to set and achieve high goals;

(3) teachers who do not meet performance standards must improve their skills or they will not continue to be employed

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as teachers;

(4) public schools make [~~adequate~~ yearly] progress toward educational excellence; and

(5) school districts and the state are prepared to actively intervene and improve failing public schools.

E. The legislature finds further that improving children's reading and writing abilities and literacy throughout their years in school must remain a priority of the state.

F. The legislature finds further that the public school governance structure needs to change to provide accountability from the bottom up instead of from the top down. Each school principal, with the help of school councils made up of parents and teachers, must be the instructional leader in the public school, motivating and holding accountable both teachers and students. Each local superintendent must function as the school district's chief executive officer and have responsibility for the day-to-day operations of the school district, including personnel and student disciplinary decisions.

G. It is the purpose of the 2003 public school reform legislation as augmented by this 2007 legislation to provide the framework to implement the legislative findings to ensure student success in New Mexico."

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

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

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

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

G.] B. "commission" means the public education commission;

~~[D.]~~ C. "department" means the public education department;

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

~~[F.]~~ E. "instructional support provider" means a person who is employed to support the instructional program of a school district, including educational assistant, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, marriage and family therapist, interpreter for the deaf and diagnostician;

~~[G.]~~ F. "licensed school employee" means teachers, school administrators and instructional support providers;

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

~~[I.]~~ H. "local superintendent" means the chief executive officer of a school district;

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

~~[K.]~~ J. "private school" means a school, other than a home school, that offers on-site programs of instruction and that is not

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under the control, supervision or management of a local school board;

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

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

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

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

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

~~[Q.]~~ P. "school bus private owner" means a person, other than a school district, the department, the state or any other political subdivision of the state, that owns a school bus;

~~[R.]~~ Q. "school district" means an area of land established as a political subdivision of the state for the

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

~~[S.]~~ R. "school employee" includes licensed and nonlicensed employees of a school district;

~~[T.]~~ S. "school principal" means the chief instructional leader and administrative head of a public school;

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

~~[V.]~~ U. "secretary" means the secretary of public education;

~~[W.]~~ V. "state agency" or "state institution" means the New Mexico military institute, New Mexico school for the blind and visually impaired, New Mexico school for the deaf, New Mexico boys' school, girls' welfare home, New Mexico youth diagnostic and development center, Sequoyah adolescent treatment center, Carrie Tingley crippled children's hospital, New Mexico behavioral health institute at Las Vegas and any other state agency responsible for educating resident children;

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

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

~~[Z.]~~ Y. "teacher" means a person who holds a level one, two or three-A license and whose primary duty is classroom instruction or the supervision, below the school principal level, of an instructional program or whose duties include curriculum development, peer intervention, peer coaching or mentoring or

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serving as a resource teacher for other teachers;

~~[AA.]~~ Z. "certified school instructor" means a teacher or instructional support provider; and

~~[BB.]~~ AA. "certified school employee" or "certified school personnel" means a licensed school employee."

SECTION 3. Section 22-1-4 NMSA 1978 (being Laws 1975, Chapter 338, Section 1, as amended) is amended to read:

"22-1-4. FREE PUBLIC SCHOOLS--EXCEPTIONS--WITHDRAWING AND ENROLLING--OPEN ENROLLMENT.--

A. Except as provided by Section 24-5-2 NMSA 1978, a free public school education shall be available to any school-age person who is a resident of this state and has not received a high school diploma or its equivalent.

B. A free public school education in those courses already offered to persons pursuant to the provisions of Subsection A of this section shall be available to any person who is a resident of this state and has received a high school diploma or its equivalent if there is available space in such courses.

C. Any person entitled to a free public school education pursuant to the provisions of this section may enroll or re-enroll in a public school at any time and, unless required to attend school pursuant to the Compulsory School Attendance Law, may withdraw from a public school at any time.

D. In adopting and promulgating rules concerning the enrollment of students transferring from a home school or private school to the public schools, the local school board shall provide that the grade level at which the transferring student is placed is appropriate to the age of the student or to the student's score on a student achievement test administered according to the statewide

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assessment and accountability system.

E. A local school board shall adopt and promulgate rules governing enrollment and re-enrollment at public schools other than charter schools within the school district. These rules shall include:

(1) definition of the school district boundary and the boundaries of attendance areas for each public school;

(2) for each public school, definition of the boundaries of areas outside the school district boundary or within the school district but outside the public school's attendance area and within a distance of the public school that would not be served by a school bus route as determined pursuant to Section 22-16-4 NMSA 1978 if enrolled, which areas shall be designated as "walk zones";

(3) priorities for enrollment of students as follows:

(a) first, students residing within the school district and within the attendance area of a public school and students who had resided in the attendance area prior to a parent who is an active duty member of the armed forces of the United States or member of the national guard being deployed and whose deployment has required the student to relocate outside the attendance area for custodial care;

(b) second, students enrolled in a school [~~ranked as a school that needs improvement or a school subject to corrective action~~] rated as "F" for two of the prior four years pursuant to the A-B-C-D-F School Ratings Act;

(c) third, students who previously attended the public school; and

(d) fourth, all other applicants;

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(4) establishment of maximum allowable class size if smaller than that permitted by law; and

(5) rules pertaining to grounds for denial of enrollment or re-enrollment at schools within the school district and the school district's hearing and appeals process for such a denial. Grounds for denial of enrollment or re-enrollment shall be limited to:

(a) a student's expulsion from any school district or private school in this state or any other state during the preceding twelve months; or

(b) a student's behavior in another school district or private school in this state or any other state during the preceding twelve months that is detrimental to the welfare or safety of other students or school employees.

F. In adopting and promulgating rules governing enrollment and re-enrollment at public schools other than charter schools within the school district, a local school board may establish additional enrollment preferences for rules admitting students in accordance with the third and fourth priorities of enrollment set forth in Subparagraphs (c) and (d) of Paragraph (3) of Subsection E of this section. The additional enrollment preferences may include:

- (1) after-school child care for students;
- (2) child care for siblings of students attending the public school;
- (3) children of employees employed at the public school;
- (4) extreme hardship;
- (5) location of a student's previous school;

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(6) siblings of students already attending the public school; and

(7) student safety.

G. As long as the maximum allowable class size established by law or by rule of a local school board, whichever is lower, is not met or exceeded in a public school by enrollment of first- and second-priority persons, the public school shall enroll other persons applying in the priorities stated in the school district rules adopted pursuant to Subsections E and F of this section. If the maximum would be exceeded by enrollment of an applicant in the second through fourth priority, the public school shall establish a waiting list. As classroom space becomes available, persons highest on the waiting list within the highest priority on the list shall be notified and given the opportunity to enroll."".

2. Renumber the succeeding sections accordingly.

3. On page 5, between lines 14 and 15, insert the following new section:

"SECTION 7. Section 22-2C-8 NMSA 1978 (being Laws 2003, Chapter 153, Section 17) is amended to read:

"22-2C-8. [~~ADEQUATE YEARLY PROGRESS--SUPPLEMENTAL INCENTIVE FUNDING--STATE PROGRAM FOR OTHER ACHIEVEMENT~~] STATE IMPROVING SCHOOLS PROGRAM.--

~~[A. The state board shall institute an "adequate yearly progress program" that measures public schools' improvements in adequate yearly progress. The public schools that show the greatest improvement in adequate yearly progress shall be eligible for supplemental funding from the incentives for school improvement fund, including allowable federal funds.~~

~~B.]~~ The [~~state board~~] department may institute a "state

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improving schools program" that measures public school improvement ~~[by adequate yearly progress and other indicators, including]~~ through school safety, dropout rate, parent and community involvement and ~~[if not used to determine adequate yearly progress]~~ graduation and attendance rates. Those indicators may be weighed against socioeconomic variables such as the percentage of student mobility rates, the percentage of limited English proficient students using criteria established by the federal office of civil rights and the percentage of students eligible for free or reduced-fee lunches and other factors determined by the ~~[state board]~~ department. Public schools that show the greatest improvement ~~[through the use of additional indicators]~~ may be eligible for supplemental funding from the incentives for school improvement fund pursuant to Section 22-2C-9 NMSA 1978. Funding for the state improving schools program ~~[shall]~~ may include federal funds ~~[only if allowed by]~~ allowable under federal law or rule."".

4. Renumber the succeeding sections accordingly.

5. On page 7, between lines 2 and 3, insert the following new section:

"SECTION 9. Section 22-2C-10 NMSA 1978 (being Laws 2003, Chapter 153, Section 19) is amended to read:

"22-2C-10. SCHOOLS IN NEED OF IMPROVEMENT FUND--CREATED.--

A. The "schools in need of improvement fund" is created in the state treasury. The fund includes appropriations, federal allocations for the purposes of the fund, income from investment of the fund, gifts, grants and donations. Balances in the fund shall not revert to any other fund at the end of any fiscal year. The fund shall be administered by the department, and money in the fund is appropriated to the department to provide assistance to public schools in need of improvement ~~[and public schools subject to corrective action]~~. No more than three percent of the fund may be retained by the department for administrative purposes. Money in

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the fund shall be expended on warrants of the secretary of finance and administration pursuant to vouchers signed by the [~~state superintendent or his~~] secretary of public education or the secretary's authorized representative.

B. Distributions from the fund shall be by application approved by the department [~~based on a public school's approved improvement plan as provided in Section 22-2C-7 NMSA 1978~~]."

6. Renumber the succeeding sections accordingly.

7. On page 14, between lines 16 and 17, insert the following new sections:

"SECTION 11. Section 22-2E-4 NMSA 1978 (being Laws 2011, Chapter 10, Section 4) is amended to read:

"22-2E-4. ANNUAL RATINGS--LETTER GRADES--RATINGS BASED ON STANDARDS-BASED [~~TESTS~~] ASSESSMENTS--RIGHT TO SCHOOL CHOICE--DISTANCE LEARNING--RESPONSIBILITY FOR COST--USE OF FUNDS--ADDITIONAL REMEDY.--

A. All public schools shall be graded annually by the department.

B. The department shall assign a letter grade of A, B, C, D or F to each public school pursuant to criteria established by department rules, after input from the secretary's superintendents' council, that include as a minimum a combination of the following factors in a public school's grade:

(1) for elementary and middle schools:

(a) student proficiency, including achievement on the New Mexico standards-based assessments;

(b) student growth in reading and mathematics;

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and

(c) growth of the lowest twenty-fifth percentile of students in the public school in reading and mathematics; and

(2) for high schools:

(a) student proficiency, including achievement on the New Mexico standards-based assessments;

(b) student growth in reading and mathematics;

(c) growth of the lowest twenty-fifth percentile of students in the high school in reading and mathematics; and

(d) additional academic indicators such as high school graduation rates, growth in high school graduation rates, advanced placement and international baccalaureate courses, dual enrollment courses and SAT and ACT scores.

C. The New Mexico standards-based assessments used for rating a school are those administered annually to students in grades three, four, five, six, seven, eight, nine and eleven pursuant to Section 22-2C-4 NMSA 1978.

D. In addition to any rights a parent may have pursuant to federal law, the parent of a student enrolled in a public school rated F for two of the last four years has the right to transfer the student in the same grade to any public school in the state not rated F or the right to have the student continue schooling by means of distance learning offered through the statewide or a local cyber academy. The school district or charter school in which the student is enrolled is responsible for the cost of distance learning.

E. The department shall ensure that a local school board or governing body of a charter school is prioritizing resources of a public school rated D or F toward proven programs and methods linked

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to improved student achievement until the public school earns a grade of C or better for two consecutive years.

~~[F. The school options available pursuant to the A-B-C-D-F Schools Rating Act are in addition to any remedies provided for in the Assessment and Accountability Act for students in schools in need of improvement or any other interventions prescribed by the federal No Child Left Behind Act of 2001.]"~~

SECTION 12. Section 22-8E-6 NMSA 1978 (being Laws 2005, Chapter 292, Section 6) is amended to read:

"22-8E-6. RENEWAL OF CHARTER.--

A. A charter for a charter school district may be renewed for successive periods of five years each.

B. Before it submits an application for renewal to the department, the local school board shall hold a public hearing to adopt a resolution approving the application for renewal.

C. A charter school district renewal application submitted to the department shall contain:

(1) a report on the progress that the charter school district has made toward achieving the goals of its charter;

~~[(2) a list of schools in the charter school district that have made adequate yearly progress;~~

~~(3) a list of schools in the charter school district that have not made adequate yearly progress, together with an indication of the school improvement status of each of those schools;~~

~~(4)]~~ (2) a petition in support of the charter school district renewing its charter school district status signed by not

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less than sixty-five percent of the employees in the charter school district;

[~~(5)~~] (3) a resolution by the local school board requesting renewal of the charter; and

[~~(6)~~] (4) any other information that the department deems appropriate."

SECTION 13. Section 22-10A-14 NMSA 1978 (being Laws 2003, Chapter 153, Section 45) is amended to read:

"22-10A-14. CERTIFICATES OF WAIVER.--

A. If a local superintendent or governing authority of a state agency certifies to the department that an emergency exists in the hiring of a qualified person, the department may issue a certificate of teaching waiver or assignment waiver.

B. The department may issue a certificate of teaching waiver to a person who holds a baccalaureate degree but does not meet other requirements for licensure as a level one teacher. Certificates of teaching waivers are one-year waivers and may be renewed only if the holder provides satisfactory evidence of continued progress toward a level one license.

C. At the request of a local superintendent, the department may issue a certificate of assignment waiver to a licensed teacher who is assigned to teach outside [~~his~~] the teacher's teaching endorsement area. A certificate of assignment waiver may be renewed each school year if the teacher provides satisfactory evidence of continued progress toward meeting the requirements for endorsement.

~~[D. A teacher who holds a teaching or assignment waiver shall not be assigned to a school that has not made adequate yearly progress for two consecutive years.]"~~

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SECTION 14. Section 22-23B-6 NMSA 1978 (being Laws 2010, Chapter 108, Section 6 and Laws 2010, Chapter 114, Section 6) is amended to read:

"22-23B-6. STATEWIDE STATUS REPORT.--

A. The department, in collaboration with the higher education department, shall submit an annual preschool through post-secondary statewide Hispanic education status report no later than November 15 to the governor and the legislature through the legislative education study committee. A copy shall be provided to the legislative library in the legislative council service.

B. The status report shall include the following information, by school district, by charter school and statewide, which may be compiled from data otherwise required to be submitted to the department:

- (1) Hispanic student achievement at all grades;
- (2) attendance for all grades;
- (3) the graduation rates for Hispanic students; and

~~[(4) the number of Hispanic students in schools that make adequate yearly progress and in schools at each level of school improvement or restructuring; and~~

~~(5)]~~ (4) the number and type of bilingual and multicultural programs in each school district and charter school.

C. The status report shall include the following information, by post-secondary educational institution, which may be compiled from data otherwise required to be submitted to the higher education department:

- (1) Hispanic student enrollment;

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- (2) Hispanic student retention; and
- (3) Hispanic student completion rates."".

8. Renumber the succeeding section accordingly.

9. On page 14, strike line 25 and on page 15, strike lines 1 through 3 and insert in lieu thereof:

"SECTION 16. REPEAL.--Sections 22-2C-7, 22-2C-7.1 and 22-2C-12 NMSA 1978 (being Laws 2003, Chapter 153, Section 16, Laws 2007, Chapter 309, Section 6 and Laws 2009, Chapter 189, Section 1, as amended) are repealed.".,

and thence referred to the **FINANCE COMMITTEE**.

Respectfully submitted,

John M. Sapien, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 0 Against
Yes: 5
No: 0
Excused: Brandt, Pinto, Soules, Woods
Absent: None