

**ARTICLE 4**  
**Creation, Consolidation and Annexation**  
**of School Districts**

Section

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**22-4-1. School districts.**

A. Every public school in the state shall be located within the geographical boundaries of a school district.

B. A school district shall be created, exist or be consolidated only pursuant to the provisions of law.

C. The geographical boundaries of a school district shall not coincide or overlap the geographical boundaries of another school district except as may be provided by law.

**History:** 1953 Comp., § 77-3-1, enacted by Laws 1967, ch. 16, § 14.

**22-4-2. New school districts; creation.**

A. The state board [department] may order the creation of a new school district:

(1) upon receipt of and according to a resolution requesting the creation of the new school district by the local school board of the existing school district;

(2) after review by the local school board and upon receipt of a petition bearing signatures verified by the county clerk of the affected area of sixty percent of the registered voters residing within the geographic area desiring creation of a new school district; or

(3) upon recommendation of the state superintendent [secretary] and upon a determination by the state board [department] that creation of a new district would meet the standards set forth in Subsection B of this section.

B. Within ninety days of receipt of the local school board resolution, receipt of the voters' petition or receipt of a recommendation by the state superintendent, the state board [department] shall conduct a public hearing to determine whether:

(1) the existing school district and the new school district to be created will each have a minimum membership of five hundred;

(2) a high school program is to be taught in the existing school district and in the new school district to be created unless an exception is granted to this requirement by the state board [department]; and

(3) creating the new school district is in the best interest of public education in the existing school district and in the new school district to be created and in the best interest of public education in the state.

**History:** 1953 Comp., § 77-3-2, enacted by Laws 1967, ch. 16, § 15; 1981, ch. 26, § 1; 1993, ch. 235, § 1.

**Cross references.** — For current powers and duties of the former state board of education, see 9-24-9 NMSA 1978.

For references to the former state board, see 9-24-15 NMSA 1978.

For contents and publication of order creating new school district, see 22-4-10 and 22-4-11 NMSA 1978.

For interim school board of newly created district, see 22-4-12 NMSA 1978.

For election of local school board for newly created district, see 22-4-13 and 22-4-14 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, added the subsection designation "A" at the beginning of the section; deleted "within an existing school district" at the end of the introductory paragraph of Subsection A; inserted the paragraph designations (1) and (2) and added Paragraph (3) in Subsection A; deleted "after a hearing to be held within ninety (90) days after filing of petition by the state board to determine that" at the end of Paragraph (2) of Subsection A; added the introductory paragraph of current Subsection B; redesignated former Subsections A to C as Paragraphs (1) to (3) of Subsection B; and made minor stylistic changes in Subsection A.

## ANNOTATIONS

**Secretary of education may create a new school district.** — Under Article XII, Section 6 of the New Mexico Constitution, as amended in 2003, the secretary of education has legal authority to order the creation of a new school district and to order a school district to convey by deed all right, title and interest in school-owned realty located in the proposed boundary of the new school district to the new school district. If the transferred property is encumbered, the school district that incurred the indebtedness

**22-4-3. Consolidation; request; districts without junior or senior high schools; standards.**

A. The state board [department] may order consolidation of school districts upon receipt of and according to identical resolutions requesting consolidation from each local school board of each school district affected by the consolidation only if it determines that such consolidation:

- (1) will help to equalize the educational opportunities for public school students in each school district affected by the consolidation;
- (2) will make the most advantageous and economical use of public school facilities;
- (3) takes into consideration the convenience and welfare of the public school students in each school district affected by the consolidation; and
- (4) is in the best interest of public education in each school district affected by the consolidation and in the best interest of the public education in the state.

B. The state board [department] may also order consolidation of a school district which has not maintained either a junior or senior high school program for two consecutive years prior to consolidation with an adjacent district which has maintained such programs for the students of both districts upon receipt of and according to identical resolutions requesting consolidation from each local school board of each school district affected by the consolidation.

C. The state board [department] may bring an action in the district court for an order of consolidation of two or more school districts when:

- (1) all attempts to obtain an agreement between the local school boards to consolidate such school districts under Subsection A of this section have failed;
- (2) one or more schools within the school districts proposed to be consolidated have received a disapproval accreditation status from the state department of education [public education department]; and
- (3) after public hearing on such proposed consolidation, the state board makes findings of fact:
  - (a) that such consolidation will meet the criteria specified in Paragraphs (1) through (4) of Subsection A of this section; and
  - (b) that one or more schools within a school district proposed to be consolidated are deficient in their ability to provide the necessary educational opportunities for public school students in that district.

D. Notice of public hearing shall be given by the state board [department] at least thirty days prior to the hearing date by two consecutive publications one week apart in a newspaper of general circulation in the deficient school district proposed to be consolidated. The notice shall state:

- (1) the subject of the hearing;
- (2) the time and place of the hearing; and
- (3) the manner in which interested persons may present their views.

E. The public hearing shall be held in a suitable and convenient location within the deficient school district proposed to be consolidated. At the hearing, the state board [department] shall allow all interested persons a reasonable opportunity to submit data, views or arguments, orally or in writing, and to examine witnesses testifying at the hearing.

F. Within ten days from the date the hearing is concluded the state board [department] shall make its determination in writing and if such determination includes an intention to bring an action for consolidation in the district court, such intention shall be included in the written determination. A copy of the written determination of the state board shall be sent to each of the school boards concerned.

G. Within sixty days from the date of the issuance of its written determination, the state board [department] may bring an action for a court order of consolidation in the district court of any judicial district in which the deficient school district is located. A copy of the petition for such action shall be served upon each of the local school boards affected by the consolidation. Such local school boards shall be parties to the action. The director shall authorize the necessary transfers and expenditures in the budgets of the concerned school districts to cover all necessary costs incurred by them in such action. Upon request of any of the parties to the action, a jury trial shall be allowed. The state board shall have the burden of establishing the existence of conditions required under Subsection C of this section and of proving that such consolidation will meet the criteria specified in Paragraphs (1) through (4) of Subsection A of this section. The court may deny the order for consolidation if it is found that:

- (1) the conditions prescribed in Paragraphs (1) and (2) of Subsection C of this section do not exist;
- (2) such proposed consolidation will not meet the criteria specified in Paragraphs (1) through (4) of Subsection A of this section; or
- (3) that the alleged deficiency in the school district's ability to provide the necessary educational opportunities for public school students in such district does not exist.

H. In the event the court denies the order for consolidation, the state board [department] shall not again initiate such action for consolidation affecting the same or substantially the same school districts for one year after the date of the denial of such order.

I. In the event the court orders the consolidation, such consolidation shall not become effective until the end of the current school term.

J. Any final order of the district court is reviewable by the court of appeals in the same manner as provided under the rules of civil procedure.

**History:** 1953 Comp., § 77-3-3, enacted by Laws 1967, ch. 16, § 16; 1970, ch. 4, § 1; 1973, ch.

106, § 1; 1977, ch. 246, § 61.

**Cross references.** — For references to the state board and state department, see 9-24-15 NMSA 1978.

For alternate method of consolidation, see 22-4-5 to 22-4-9 NMSA 1978.

For contents and publication of order consolidating school districts, see 22-4-10 and 22-4-11 NMSA 1978.

For interim school board of newly consolidated district, see 22-4-12 NMSA 1978.

For election of local school board for newly created district, see 22-4-13 and 22-4-14 NMSA 1978.

## ANNOTATIONS

**Constitutionality of Subsection B.** — See *State ex rel. Apodaca v. New Mexico State Bd. of Educ.*, 82 N.M. 558, 484 P.2d 1268 (1971).

**Where school consolidation was ordered pursuant to Subsection B, the provisions of 22-4-4 NMSA 1978 were controlling** as to the board which should govern the consolidated district, and the provisions of 22-4-10 to 22-4-14 NMSA 1978 were inapplicable. *State ex rel. Apodaca v. New Mexico State Bd. of Educ.*, 82 N.M. 558, 484 P.2d 1268 (1971).

### 22-4-4. [Consolidation of district without junior or senior high schools; governing board.]

Where consolidation is ordered under Subsection B hereof [22-4-3B NMSA 1978], the governing board of the district maintaining the junior and senior high school programs shall become the governing board of the consolidated district, the board of the district consolidated shall be dissolved, and the provisions of Sections 22-4-10 through 22-4-14 NMSA 1978 relating to appointment of an interim board and the holding of special elections shall not be applicable.

**History:** 1953 Comp., § 77-3-3.1, enacted by Laws 1970, ch. 4, § 2.

## ANNOTATIONS

**Where school consolidation was ordered pursuant to Subsection B of 22-4-3 NMSA 1978, the provisions of this section were controlling** as to the board which should govern the consolidated district, and the provisions of 22-4-10 to 22-4-14 NMSA 1978 were inapplicable. *State ex rel. Apodaca v. New Mexico State Bd. of Educ.*, 82 N.M. 558, 484 P.2d 1268 (1971).

### 22-4-5. Alternate method of consolidation.

Sections 22-4-6 through 22-4-9 NMSA 1978 shall be an alternative method of consolidation to that provided in Section 22-4-3 NMSA 1978.

**History:** 1953 Comp., § 77-3-4, enacted by Laws 1967, ch. 16, § 17.

**22-4-6. Alternate method; survey; report; submission to the state board [department].**

A. Upon receipt of a request from a local school board, the state board [department] shall cause a school district survey to be made to study the feasibility of a consolidation.

B. A school district survey shall be made by a school district survey committee. The school district survey committee shall submit a written report on a school district survey, along with any recommendations made by the committee, to each local school board of each school district affected by the survey. The report shall be accompanied by all maps, records and material supporting the recommendations.

C. Any local school board of a school district affected by the survey may suggest alterations to the report and the recommendations. If these alterations are approved by each local school board of each school district affected by the survey and the school district survey committee, the alterations shall become part of the final report and recommendations of the school district survey committee. If local school boards of all school districts affected by the survey approve the final report and recommendations of the school district survey committee, the final report and recommendations shall be submitted to the state board [department].

**History:** 1953 Comp., § 77-3-5, enacted by Laws 1967, ch. 16, § 18.

**Cross references.** — For references to the former state board, see 9-24-15 NMSA 1978.

**22-4-7. Alternate method; survey committee.**

To make a school district survey to determine the feasibility of a consolidation, the school district survey committee shall consist of the following members:

A. one person designated by the state transportation director from the state transportation division;

B. one person appointed by the state board [department] for each school district affected by the survey. Each person appointed by the state board shall reside outside of every school district affected by the school district survey; and

C. one person appointed by each local school board of a school district affected by the school district survey.

**History:** 1953 Comp., § 77-3-6, enacted by Laws 1967, ch. 16, § 19.

**Cross references.** — For references to the former state board, see 9-24-15 NMSA 1978.

**22-4-8. Alternate method; survey committee; compensation.**

Members of a school district survey committee shall serve without compensation but shall be entitled to reimbursement of expenses incurred in the performance of committee duties out of funds of the department of education.

**History:** 1953 Comp., § 77-3-7, enacted by Laws 1967, ch. 16, § 20.

#### **22-4-9. Alternate method; standards for consolidation.**

The state board [department] may order consolidation according to the recommendations contained in a final report and recommendations of the school district survey committee approved by each local school board of each school district affected by the survey only if it determines that such consolidation:

- A. will help to equalize the educational opportunities for public school students in each school district affected by the consolidation;
- B. will make the most advantageous and economical use of public school facilities;
- C. takes into consideration the convenience and welfare of the public school students in each school district affected by the survey; and
- D. is in the best interest of public education in each school district affected by the consolidation and in the best interest of public education in the state.

**History:** 1953 Comp., § 77-3-8, enacted by Laws 1967, ch. 16, § 21.

**Cross references.** — For standards for consolidation generally, see 22-4-3 NMSA 1978.

For contents and publication of order consolidating school districts, see 22-4-10 and 22-4-11 NMSA 1978.

### **ANNOTATIONS**

**Applicability of section to consolidation under Subsection B of 22-4-3 NMSA 1978.** — Where school consolidation was ordered pursuant to Subsection B of 22-4-3 NMSA 1978, the provisions of 22-4-4 NMSA 1978 were controlling as to the board which should govern the consolidated district, and the provisions of this section and 22-4-10 to 22-4-14 NMSA 1978 were inapplicable. *State ex rel. Apodaca v. New Mexico State Bd. of Educ.*, 82 N.M. 558, 484 P.2d 1268 (1971).

#### **22-4-10. Order of state board [department].**

A. Any order of the state board [department] for creation of a new school district or for consolidation shall contain the following:

- (1) an accurate description of the geographical boundaries of all school districts affected by the order;
- (2) the disposition of all property affected by the order;

(3) the dissolution of the elected local school board of each school district affected by the order of consolidation; and

(4) the appointment of three qualified electors of the state who are residents of the new school district created by the order or the consolidated school district to be members of an interim local school board to govern the new or consolidated school district.

B. A certified copy of the order of the state board [department] shall be kept on permanent file with the department of education.

C. One certified copy of the order of the state board [department] shall be furnished to each local school board affected by the order, to each county assessor of a county having a school district within it affected by the order, to the chief [secretary of public education], to the state tax commission [property tax division of the taxation and revenue department], to the oil and gas accounting commission [audit and compliance division of the taxation and revenue department] and to each member appointed to the interim local school board.

D. Any creation of a new school district or consolidation ordered by the state board [department] shall take effect upon the issuance of the order. However, for taxation purposes, creation of a new school district or consolidation shall be effective on January 1 following the date of the issuance of the order by the state board [department].

**History:** 1953 Comp., § 77-3-9, enacted by Laws 1967, ch. 16, § 22.

**Cross references.** — For references to the former state board, see 9-24-15 NMSA 1978.

The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

See the Public Education Department Act, 9-24-1 NMSA 1978 and N.M. Const. art. XII, § 6 for current law governing the former powers of the chief of the public school finance division.

**Bracketed material.** — The bracketed material was inserted by the compiler. The provisions relating to the state tax commission, referred to in this section, were repealed by Laws 1970, ch. 31, § 22. Laws 1970, ch. 31, created the property appraisal department. The provisions of Laws 1970, ch. 31, relating to the property appraisal department, were repealed by Laws 1973, ch. 258, § 156. Laws 1973, ch. 258, created the property tax department. The property tax department and the oil and gas accounting commission were abolished by Laws 1977, ch. 249, § 5. Laws 1977, ch. 249, § 4, established the taxation and revenue department, which now consists of, inter alia, the revenue division, the property tax division and the audit and compliance division.

## 22-4-11. [Publication of order; actions attacking order.]

After adoption of an order of the state board [department] for creation of a new school district or for consolidation of school districts, the state superintendent [secretary] of public instruction

shall forthwith cause a copy of such order to be published in a newspaper of general circulation in each county within which any part of the new or consolidated school district may be located.

Actions to attack the validity of any such order shall be filed within thirty days from the date of such publication, but not afterwards. Such actions shall be filed in Santa Fe county district court and the state board of education [department] shall be an indispensable party thereto.

**History:** 1953 Comp., § 77-3-9.1, enacted by Laws 1970, ch. 4, § 3.

**Cross references.** — For references to the former state board, see 9-24-15 NMSA 1978.

#### **22-4-12. Interim local school board; special election.**

A. The interim local school board of a newly created or consolidated school district has all the powers and duties of a local school board. The interim local school board shall hold office only until the local school board is elected and qualified.

B. For the purpose of electing five members to the local school board of a newly created or consolidated school district, the interim local school board shall call a special school district election to be held not less than forty-five days nor more than ninety days from the date of the issuance of the order of the state board [department] appointing members to the interim local school board. If the date for a regular school district election occurs during this period, the interim local school board shall give notice of the regular school district election for the purpose of electing five members to the local school board of the newly created or consolidated school district instead of calling a special school district election.

C. The interim local school board shall appoint a superintendent of schools to perform the administrative and supervisory functions of the interim local school board and to also conduct the school district election. The term of office of the superintendent of schools appointed by the interim local school board shall coincide with the term of office of the interim local school board.

**History:** 1953 Comp., § 77-3-10, enacted by Laws 1967, ch. 16, § 23.

#### **22-4-13. Special school district election; term of office.**

The term of office of members of a local school board elected at a special school district election for a newly created or consolidated school district shall be as follows:

A. three members shall be elected for terms expiring at the next regular school district election; and

B. two members shall be elected for terms expiring two years after the next regular school district election.

**History:** 1953 Comp., § 77-3-11, enacted by Laws 1967, ch. 16, § 24; 1985, ch. 142, § 1.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Applicability and application of § 2 of Voting Rights Act of 1965 (42 USCS § 1973) to members of school board, 105 A.L.R. Fed. 254.

### **22-4-14. Regular school district election; term of office.**

If the interim local school board calls for the election of members to the local school board of a newly created or consolidated school district at a regular school district election, the terms of office of the members elected shall be as follows:

- A. three members shall be elected for terms of two years; and
- B. two members shall be elected for terms of four years.

**History:** 1953 Comp., § 77-3-12, enacted by Laws 1967, ch. 16, § 25; 1985, ch. 142, § 2.

### **22-4-15. Consolidated school districts; outstanding contracts; indebtedness.**

A. All contracts entered into by a local school board of a school district prior to consolidation shall be honored by the consolidated school district. The acquiring of tenure rights and tenure rights that have been obtained shall not be affected by consolidation.

B. Any outstanding school district bonds or other indebtedness of a school district shall not be affected by consolidation. Whenever a school district included within a consolidation has outstanding school district bonds or certificates of indebtedness, the school district shall retain its identity for the purpose of paying any debt service until the bonds or certificates are paid in full. No school district included within a consolidation shall become responsible for the debt service of any other school district included within the consolidation.

**History:** 1953 Comp., § 77-3-13, enacted by Laws 1967, ch. 16, § 26.

### **22-4-16. [Existing school districts validated.]**

That the organization, existence or consolidation of all school districts heretofore ordered by the state board [department] of education of the state of New Mexico are hereby validated and their existence as ordered by the state board of education is hereby validated and confirmed, provided that the passage of this act [22-4-16 NMSA 1978] shall not affect any consolidations upon which an action is pending contesting such consolidation at the time this act becomes effective.

**History:** 1953 Comp., § 73-15-9, enacted by Laws 1955, ch. 76, § 1.

### **22-4-17. Annexation of area for school district purposes; resolutions; approval; filing.**

A. Whenever it becomes economically feasible for students residing in one school district to attend school in another school district, whether or not that school district is within the same county as the school district of residence, the local school boards of the school districts may provide for annexation of the appropriate area by resolution of each of the local school boards concerned. The resolutions shall be submitted to the state board [department] of education for its approval.

B. Prior to adopting such resolution, the local school board proposing to annex the area within another school district shall furnish an accurate legal description of the area to be annexed and the net taxable value of the property within the area to the chief, public school finance division [secretary of public education]. The chief [secretary] shall furnish to each local school board concerned a statement of the financial implication of the annexation.

C. After resolutions are adopted by each of the local school boards concerned and approved by the state board [department] of education, copies of the resolutions shall be filed with:

(1) the county commission of the county where the principal office of each local school board is located and the county commissions of those other counties in which area is affected;

(2) the county assessor of the county where the principal office of each local school board is located and the county assessors of those other counties in which area is affected;

(3) state board of education; and

(4) department of finance and administration.

**History:** 1953 Comp., § 77-3-2.1, enacted by Laws 1977, ch. 213, § 1.

**Cross references.** — For references to the former state board, see 9-24-15 NMSA 1978.

The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

See the Public Education Department Act, 9-24-1 NMSA 1978 and N.M. Const. art. XII, § 6 for current law governing the former powers of the chief of the public school finance division.

#### **22-4-18. Validation of previous annexation.**

Every member of a local school board of a local school district which has been a party to an annexation similar to that authorized in Section 1 [22-4-17 NMSA 1978] of this act but occurring prior to the effective date of this act is determined to have been a legally authorized governing authority and such annexation is validated as of the date of the resolution adopting such action.

**History:** 1953 Comp., § 77-3-2.2, enacted by Laws 1977, ch. 213, § 2.

