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**LEGISLATIVE EDUCATION STUDY COMMITTEE**

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June 27, 2011

**MEMORANDUM**

**TO:** Legislative Education Study Committee

**FR:** LESC Staff

**RE: UPDATES: SECRETARY-DESIGNATE OF PUBLIC EDUCATION**

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***a. Public Education Department (PED) Reduction-in-Force Plan***

Item 1, tab *a*, in the committee's notebooks includes two documents:

- The first is a copy of a letter, dated June 2, 2011, from Secretary-designate Hanna Skandera requesting State Personnel Board approval of a PED reduction-in-force (RIF) plan. According to the letter, the proposed RIF would affect 37 PED staff effective July 1, 2011. According to the letter, the primary reason for the RIF was the \$3.2 million, or 23.1 percent, reduction in the FY 12 General Fund appropriation to the department.
- The second is a table called *New Mexico Public Education Department Employees Affected by the 2011 Reduction in Force*, which outlines the names and titles of the 33 PED staff that were included in the RIF plan. According to the Secretary-designate, the original plan included 37 PED staff; however, four of those staff left the department for various reasons prior to the implementation of the RIF.

**Background**

Prior to the beginning of each legislative session, the Executive provides the Legislature with budget recommendations for every Executive agency. For fiscal year 2012, the Executive budget recommendations included the following language for PED:

Governor Martinez is not just requiring reductions in administrative costs at the local school district level but also at the state level. The Executive recommendation calls for a \$3 million or 20% reduction in the Public Education Department's General Fund operating budget. By cutting the bureaucracy in Santa Fe, Governor Martinez will protect funds for local classroom spending.

***b. Common Core Standards***

Item 1, tab *b*, in the committee's notebooks includes copies of two sections of PED rule included in Title 6, Chapter 29, *Primary and Secondary Education Standards for Excellence*:

- 6.29.13 NMAC, *English Language Arts Common Core Standards*; and
- 6.29.14 NMAC, *Mathematics Common Core Standards*.

Although the sections of rule became effective as of October 29, 2010, school districts and charter schools will not be accountable for the requirements of the rules until July 1, 2012.

**Background**

In the 2010 interim, the Legislative Education Study Committee (LESC) heard a presentation regarding New Mexico's participation in the Common Core State Standards Initiative of the Center for Best Practices of the National Governors Association (NGA) and the Council of Chief State School Officers (CCSSO). The committee was told that the goal of the initiative was to develop high standards in mathematics and language arts, consistent from state to state, that would be essential, rigorous, clear and specific, coherent, and internationally benchmarked, so that all students would be well prepared with the skills and knowledge necessary to compete not only with their peers in the United States, but also with students from around the world.

PED informed the LESL that anticipated costs to the department and the public schools of implementing the Common Core Standards included modifying state standards-based assessments to align with the standards, pending development of new multi-state assessments by the SMARTER Balanced Coalition, of which New Mexico is a member. PED also noted that school district costs of new instructional materials and professional development for teachers to align instruction with the new standards in their classrooms could entail additional costs to districts.

At the May 2011 LESL meeting, the Secretary-designate of Public Education announced that PED had been awarded a grant of \$350,000 from the Kellogg Foundation to implement the Common Core Standards. According to PED, the purposes of the grant are to:

- develop a written plan to implement the Common Core Standards;
- develop a communication plan for the standards;
- identify and establish a planning committee;
- analyze requirements for alignment with the standards of:

- curriculum development;
  - teacher preparation and professional development; and
  - assessments; and
- map the assets that could be leveraged to implement the standards.

PED states that the project will involve meeting with stakeholders to garner consensus and input on the outcomes and implementation planning for transition to the new standards. PED further states that the budget for the project includes:

- \$190,000 for contractual services (project director, administrative assistant, community facilitators, and a Common Core Standards expert);
- \$50,000 for curriculum mapping;
- \$40,000 for communication (updating the PED website);
- \$23,000 for air and ground travel;
- \$12,000 for meals and lodging;
- \$5,000 for project evaluation; and
- \$30,000 for indirect costs.

***c. A-B-C-D-F Schools Rating System***

Item 1, tab *c*, in the committee’s notebooks includes a copy of SB 427, *A-B-C-D-F Schools Rating System*, which was enacted as Laws of 2011, Chapter 10.

**Background**

Beginning in school year 2011-2012, the legislation creates a new public school accountability system, to operate in addition to, and separate from, the existing Adequate Yearly Progress system created in state and federal law.

At its May 2011 meeting, the LESC heard a presentation from the Secretary-designate of Public Education concerning design and implementation of the new system. She stated that she had met twice with the Secretary’s Superintendents’ Advisory Council on development of the proposed rule and that more meetings were scheduled. She said the PED rule would be published, and a rule hearing held, in summer 2011, so that the rule could be adopted to coincide with the start of the school year. Finally, she indicated that PED planned to release baseline data for all schools in early fall 2011.

***d. New Mexico Effective Teaching Task Force***

Item 1, tab *d*, in the committee’s notebooks contains two documents:

- a copy of Executive Order 2011-024, *Formation of the New Mexico Effective Teaching Task Force*; and
- a copy of the May 19, 2011, press release identifying the gubernatorial appointees to the task force.

## Background

In 2011, the Legislature considered, but did not pass, SB 502, *School Teacher and Principal Evaluation System*. Among its provisions, the bill required PED to convene a work group to develop and make recommendations for a highly objective uniform statewide evaluation framework for school district and charter school teacher evaluation models and school principal evaluations, and to propose a performance-based compensation system that provides incentives for effective teachers and school principals.

In April 2011, Governor Susana Martinez issued Executive Order 2011-024 creating the New Mexico Effective Teaching Task Force, comprising up to 15 members appointed by and serving at the pleasure of the Governor, consisting of individuals who represent the geographic distribution and cultural diversity of the state. The press release identified the appointees to the task force named to serve in addition to the Secretary-designate of Public Education, who is to chair the task force; the Director of the Legislative Finance Committee (LFC); and the Director of the LESC.

The first meeting of the Task Force was held in the Governor's Conference Room at the Capitol in Santa Fe on June 1, 2011. Subsequent meetings were held on June 14 at Atrisco Heritage High School in Albuquerque and on June 21 at Bernalillo High School. Future meetings of the Task Force are scheduled for:

- June 30 in Santa Fe;
- July 12 in Texico;
- July 19 in Gallup;
- July 27;
- August 2; and
- August 10.

The Task Force has heard presentations by four invited guests:

- **Dr. Peter Goldschmidt**, Senior Researcher at the National Center for Research on Evaluation, Standards, and Student Testing (CRESST) at the University of California-Los Angeles, regarding “value-added” evaluation models. According to the CRESST website, Dr. Goldschmidt’s research interests include investigating proper methods for monitoring student and school performance. Specifically, the website states, “this entails examining mediating and moderating factors such as community, organization, and policy effects on student outcomes by applying innovative cross-sectional and longitudinal random effects models to analyses of school quality, cost effectiveness studies, and program evaluations”;
- **Dr. Grover J. “Russ” Whitehurst**, Director of the Brown Center on Education Policy at the Brookings Institution, regarding development of evaluation systems that include value-added components. According to the Brookings Institution website, Dr. Whitehurst is the former Director of the Institute of Education Sciences in the US Department of Education, and he is an expert on reading, teacher quality, student assessment, learning and instruction, education technology, and preschool programs; and

- **Dr. V. Sue Cleveland**, Superintendent and **Dr. Susan Passell**, Executive Director of Human Resources, Rio Rancho Public Schools (RRPS), regarding the ongoing effort at RRPS to improve its educator evaluation process.

*e. P-20 Educational Data System/Council*

Item 1, tab *e*, in the committee’s notebooks is a copy of legislation endorsed by the LESC and enacted in 2010 to codify the requirements for a pre-kindergarten through postsecondary (P-20) education accountability data system in order to:

- collect, integrate, and report longitudinal student-level and educator data required to implement federal or state education performance accountability measures;
- conduct research and evaluation of federal, state, and local education programs; and
- audit program compliance with federal and state requirements.

The legislation defines the “data system partners” as PED and the Higher Education Department (HED) and charges the data system partners with convening the Data System Council. The council is charged with overseeing the development and implementation of the data system. Provisions in current law define the council as representatives from:

- PED;
- HED;
- the Children, Youth and Families Department;
- the Department of Workforce Solutions;
- the Department of Economic Development;
- the Department of Information Technology;
- the Human Services Department;
- the Department of Health;
- the Office of Education Accountability;
- the Office of the Governor;
- the Public School Facilities Authority;
- public postsecondary educational institutions;
- public school districts;
- charter schools;
- the LESC; and
- the LFC.

During the 2010 interim, the LESC received a report on the implementation of the P-20 educational data system, including the first meeting of the Data System Council, held September 22, 2010. Among its activities at that meeting, the council:

- reviewed the requirements of the legislation;
- received updates on the current capabilities of existing data systems in linking P-20 data; and
- approved a governance and management plan.

At the time of publication of this update, LESC staff has not received a response to a request to PED regarding plans of the data system partners to convene the next meeting of the Data System Council.

***f. American Recovery and Reinvestment Act of 2009 (ARRA) Government Service Fund Allocation to Support Cyber Academy/Virtual School Program***

Item 1, tab *f*, in the committee’s notebooks is a copy of the provisions in current law for the *Statewide Cyber Academy Act*.

In a June 13, 2011 report, the staff of the LFC reported that the Governor allocated \$500,000 to HED for data hosting and software maintenance for New Mexico K-12 and higher education online learning system, and \$50,000 to PED to provide funding to support the “Cyber Academy/Virtual School Program” from the discretionary ARRA Government Service Fund provided to New Mexico by the US Department of Education.

A subsequent LFC report, dated June 22, 2011, stated that the Governor made a \$50,000 allocation to PED from discretionary Government Service Funds. The department indicates that the allocation will be used to support limited Innovative Digital Education and Learning-New Mexico (IDEAL-NM) staff positions until those positions are filled under departmental reorganization anticipated by the first week of July.

**Background**

In 2007, LESC-endorsed legislation was enacted to establish a statewide cyber academy to provide distance learning courses for students in grades 6 through 12. That same year, the Legislature appropriated funds to implement IDEAL-NM. Both of these initiatives represent steps toward providing New Mexicans with access to online learning resources. Cooperatively administered by PED and HED, the initiatives aim to:

- provide eLearning services to public schools, higher education institutions, and state agencies;
- reduce geographic and other barriers to educational opportunity statewide; and
- increase the computer literacy skills, online learners need to participate in a global economy.

***Appropriation History:*** Since 2007, the Legislature has appropriated a total of approximately \$11.6 million for IDEAL-NM, to fund the implementation and operation of the program, including:

- \$7.9 million to HED; and
- approximately \$3.7 million to PED.

***IDEAL-NM Structure:*** The primary goal of IDEAL-NM is to establish a common infrastructure for online learning for the project’s three main components: P-12 education, higher education, and state agencies. The infrastructure includes:

- a statewide eLearning services center: This center is the physical location for administrative staff for IDEAL-NM and the cyber academy, including the Executive Director, Chief Academic Officer, Course Development Coordinator, Chief Technology Officer, Help Desk Support Staff, Technical Support Specialists, and Special Projects/Management Staff. It is from this center that IDEAL-NM staff provide support for users of the statewide learning management and web-conferencing systems, including:
  - administrative and technical help desk services for eLearning students, instructors, facilitators;
  - academic services for students;
  - course development;
  - teacher training and professional development;
  - scheduling and management of online courses; and
  - continuing eLearning planning; and
- a statewide eLearning system: This system supports all aspects of online learning, including a Learning Management System (LMS) that manages learning activities through the system's ability to catalog, register, deliver, and track learners and learning, accessible via a web portal.

IDEAL-NM staff cites two advantages to the statewide cyber academy's developing, housing, and maintaining its own courses:

- the same course can be used in multiple semesters and school years without having to pay licensing fees charged by online course vendors. According to PED staff during the 2010 interim, once a course is developed, it will require only periodic revision to ensure that the course content is updated and that other online features remain accurate and functional, at a cost of approximately \$1,200 every three years; and
- the cyber academy will have greater control over course content to ensure that online courses are aligned with the state's academic performance standards, as required by state statute.

***g. Public School Transportation Emergency Fund: Distribution of \$1.2 Million Special Appropriation for Fuel Increases/Other Fund Distribution***

The public school transportation distribution in the *General Appropriation Act of 2011* includes \$82.3 million for operational and maintenance costs, including the purchase of fuel. To address the risk of increased fuel costs during school years 2010-2011 and 2011-2012, the Legislature appropriated an additional \$1.2 million from the Transportation Emergency Fund<sup>1</sup>. The appropriation includes language to require that:

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<sup>1</sup> Money in the Transportation Emergency Fund is appropriated to PED for the purpose of funding transportation emergencies. The Secretary may make distributions only to ensure the safety of students receiving to-and-from transportation services. PED reports that the following conditions commonly constitute an emergency: (1) the need to replace a school bus; (2) unexpected growth within a district; (3) start-up costs for a school district taking over transportation from a contractor; and (4) increased fuel costs.

- notwithstanding the provisions governing distributions from the Transportation Emergency Fund, for school years 2010-2011 and 2011-2012, the Secretary make distributions from the fund first to provide additional funding to school districts and state-chartered charter schools for increased school bus fuel costs;
- the distribution of funding be based on miles traveled for “to-and-from” transportation of public school students;
- school districts and state-chartered charter schools request funds for fuel from the secretary and provide supporting documentation that they have incurred increased costs due to higher fuel prices; and
- the secretary approve requests for funding for fuel cost increases and make distributions on a reimbursement basis.

On May 18, 2011, PED reported that a “methodology on how the funds will be distributed is under review, and not final.” PED further reports that it is working to ensure that these funds go to districts that exhibit the most need, rather than distributing them on a pro rata basis to each school district. To this effect, the department reports that the information and supporting documentation required of school districts (and transportation contractors) will likely include:

- detailed expenditure reports for the current fiscal year from the district’s transportation fund;
- current unexpended cash balances;
- projected expenditures for the remainder of the fiscal year;
- operational expenditure reports if districts have had to use operational funds to cover transportation costs;
- fuel receipts or invoices for fuel purchased; and
- reports of miles traveled.

As of June 24, 2011, PED has not provided any additional information concerning the above methodology or any distributions of these funds.

According to PED, the projected balance in the Transportation Emergency Fund at the end of FY 11 is approximately \$2.34 million. After budgeting \$1.2 million of the balance toward the appropriation for increased fuel costs, PED reports that approximately \$1.14 million remains to be used pursuant to the provisions of that fund.

#### ***h. K-3 Plus Program***

Item 1, tab *h*, in the committee’s notebooks is a staff report, with one attachment, on the K-3 Plus pilot program. The report:

- reviews changes in program design over the years, which generally have made the state-level application form more prescriptive;
- highlights the changes for school year 2011-2012, which are the most numerous and probably the most significant changes since the program was implemented;

- includes a brief account of the rationale behind the decisions of five school districts not to participate in the state-funded program this year, partly because of changes in the program design and requirements;
- addresses the potential effects of the most recent program changes on a five-year study of the K-3 Plus program being conducted by Utah State University; and
- includes a brief background that summarizes the statutory provisions and funding history of the program.

## **Background**

Enacted in 2007, K-3 Plus is a six-year pilot program that extends the school year in kindergarten through grade 3 by at least 25 instructional days. The program is intended to demonstrate the academic and social benefits of increased time in kindergarten and the early grades.

For FY 12 (school year 2011-2012):

- the Legislature appropriated \$5.3 million for K-3 Plus; and
- PED has approved 51 programs in 14 school districts and one state-chartered charter school, intending to serve 6,630 students altogether.

### *i. Educational Retirement Employer/Employee Contribution Swap*

#### **School Districts and Employees' Share of Retirement Swap**

Item 1, tab *i*, in the committee's notebooks is a copy of a memorandum from the Secretary-designate of Public Education to Ms. Frances Maestas, Director of the LESC, dated June 7, 2011, on the subject of the employer/employee *Educational Retirement Act* (ERA) pension fund "contribution swap" in the *General Appropriation Act of 2011*. The memo was written in response to a question whether a school district could cover the increase to its employees' share so the employee does not experience a reduction in pay.

The memorandum states that school districts are prohibited from paying the employee share for several reasons, as follows:

- mandatory district contributions to the ERA fund are determined by a formula set out in state statute;
- by paying the exact amount of the increased employee's share, the school district is defeating the purpose of the 2011 legislation mandating the swap;
- payment of the employee's share is considered a "pick up" under both the ERA and Section 414 of the federal *Internal Revenue Code*; and Internal Revenue Service rulings have consistently held that an employer cannot make a contribution and also pay the employee's contribution;

- to permit this proposed arrangement would be to permit a school district to amend the state retirement plan without legislative authority;
- it is not clear whether paying the employee’s legislatively increased share would disturb the employee’s earned service credit; and
- payment of the increased employee’s share in the face of legislation setting the share proportions would constitute increased compensation for employees, in violation of the anti-donation clause of the New Mexico Constitution.

### Allocation Appropriation Reduction

The *General Appropriation Act of 2011* requires that the Department of Finance and Administration (DFA) allocate the appropriation reduction among all state agencies, public school support, and higher education institutions. However, an LFC report of a staff review of the process DFA used to implement this reduction indicated that the reductions to state agencies appeared to have been under-allocated by approximately \$1.9 million and public schools over-allocated by approximately \$1.9 million. Thus, K-12 school districts appeared to be bearing a disproportionate share of the pension cost.

The following table illustrates the difference between the LFC calculations and those implemented by DFA for the FY 12 operating budget:

**FY 12 PERA/ERA Employer/Employee Contribution Swap: Comparison of DFA and LFC Calculations**

	DFA Allocation	LFC Allocation	Difference DFA Over (Under) LFC
State Agencies	\$8,597.3	\$10,503.8	(\$1,906.5)
K-12	\$27,538.8	\$25,645.4	\$1,893.4
Higher Education	\$13,485.9	\$13,507.9	(\$22.0)
Total	\$49,622.0	\$49,657.1	(\$35.1)

Source: LFC

A more recent LFC report noted that:

[f]ollowing staff review of the “retirement swap” calculations and discussions at the LESC meeting, DFA Secretary May reported. . . a plan to adjust the calculations to increase the budget reduction to agencies by \$1.16 million and reduce the reduction to public education by the same amount. In effect this will increase the monthly public school allotment to districts and will be an upward factor in the January re-calculation of the unit value. DFA allocated the additional reduction only to legislative agencies and executive agencies under governor’s control, excluding judicial agencies, district attorneys, the public defender, and agencies lead by elected officials.

## **Background**

The *General Appropriation Act of 2011* includes a reduction of \$49.7 million pursuant to enacted legislation that decreases employer retirement contribution rates by 1.75 percent of salary and that increases employer retirement contribution rates by the same amount.



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HANNA SKANDERA  
SECRETARY OF EDUCATION

SUSANA MARTINEZ  
Governor

June 2, 2011

Mr. Paul T. Yarbrough, Chairman  
Mr. Eugene J. Moser, Director  
New Mexico State Personnel Board  
2600 Cerrillos Rd.  
Santa Fe, NM 87505

Chairman Yarbrough and Director Moser:

The New Mexico Public Education Department (PED or Department) respectfully requests that the State Personnel Board approve a reduction-in-force plan in compliance with State Personnel Board Rule 1.7.10.9 NMAC - Reduction in Force (RIF). The effective date of the reduction in force would be July 01, 2011.

PED's appropriation contained in the General Appropriation Act of 2011 (Laws 2011, Chapter 179) provided for a reduction in general fund support of \$3.2 million or 23.1 percent less than the fiscal year 2011 appropriation. While the Department has made every effort to maximize the effect of all funding sources to minimize the impact of the general fund reduction, at this appropriation level, the Department is unable to support the number of staff the Department currently employs.

Throughout the legislative session and since the General Appropriation Act was signed, staff at PED have been kept apprised of the appropriation reduction and the need for a reduction in the number of staff at the agency. The current plan as proposed to the State Personnel Board affects 37 staff. Affected staff includes a combination of managers, professional licensed and unlicensed staff.

Staff of the State Personnel Office (SPO) has advised the Department throughout the development of the reduction plan to ensure compliance with applicable statutes and SPO rules and to minimize the impact to Department employees. This assistance is greatly appreciated.

Although this is a difficult situation, I want to thank you for your consideration in this matter. The New Mexico Public Education Department respectfully requests your approval of the reduction in force plan as submitted.

Warmest regards,

Hanna Skandera  
Secretary Designate

New Mexico Public Education Department  
Employees Affected by the 2011 Reduction In Force

Office of the Secretary							
Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Ortiz, Marissa	Bus Ops Spec-A	00021464	126408	PERM	60	103	No
Human Resources							
Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Fresquez, Stephen	Gen-I	00021365	108554	PERM	90	103	No
Quintana-Trujillo, Grace	HR, Train & Labor SPC -A	00021481	122916	PERM	65	103	No
Larkin, Annette	HR, Train & Labor SPC -O	00021376	106928	PERM	60	103	No
Office of the Inspector General							
Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Bamman, Sheridan	Gen-I	00021369	102462	PERM	90	103	No
Raymond, Bernard	A/O II	00021370	113402	PERM	85	103	No
Quality Assurance Bureau							
Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Aquino, Shellie	Office and Admin Sup A	00021521	305513	PERM	45	103	Yes
Assistant Secretary- Quality Assurance & Systems Integrations							
Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Valencia, Valerie	Exec Sec & Admin Asst-O	00021361	300640	PERM	50	103	Yes
Administrative Services Division- Procurement Bureau							
Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Rodella, Dion	Printing Mach OP-B	00021493	315679	PERM	35	103	Yes
Instructional Materials Bureau							
Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Tapia, Cesaria	Office & Admin Sup-A	00021379	122875	PERM	45	103	Yes

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New Mexico Public Education Department  
Employees Affected by the 2011 Reduction In Force

**Chief Information Officer**

Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Nudi, Joel	IT PROJ Manager	00074052	316634	PERM	85	103	Yes

**Deputy Secretary-Learning & Accountability**

Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Enos, Anya Dozier	EDUC-ADMIN-A	10103610	318188	PERM	75	103	Yes

**Santa Fe Indian Education Bureau**

Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Alvarez, Barbara	A/O II	00021467	124022	PERM	85	103	No

**NW Indian Education Satellite Bureau**

Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Lano, Edmund	A/O II	00021575	112312	PERM	85	1301	No

**Assistant Secretary- Charter**

Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
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**Santa Fe Charter Bureau**

Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Obenshain, Sam	A/O I	00021514	304700	PERM	80	201	No
Valencia, Lorianne	Office & Admin Sup-A	00021463	300427	PERM	45	103	Yes

**Rural Education Bureau**

Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Rendon, Andrew	A/O II	00033760	119945	PERM	85	103	No
Candelaria, Mia	Exec. Sec & Adm. Asst-O	00021460	111218	PERM	50	103	Yes
Lewis, Michelle	EDUC-ADMIN A	00027070	109560	PERM	75	103	Yes
Pitzl, Gerald	EDUC-ADMIN A	00071537	104490	PERM	75	103	Yes
Gray, Brenda	EDUC-ADMIN A	00071536	300946	PERM	75	103	Yes
Grein, Donna	EDUC-ADMIN A	00071593	102870	PERM	75	103	Yes

New Mexico Public Education Department  
Employees Affected by the 2011 Reduction In Force

**Professional Licensure Bureau**

Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Baca, Phil	A/O II	00021505	123707	PERM	85	103	No

**Professional Development Bureau**

Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Martinez, Lawrence	Staff	00021670	123166	STRM	75	103	No

**Educator Ethics Bureau**

Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Hudson, Lonnie	A/O II	10102915	103219	STRM	85	103	No
Montoya-Ortiz, Valerie	Office & Admin Sup-A	10100458	112859	STRM	45	103	Yes
Calderon, Paul	Staff	00042779	116857	PERM	75	103	No

**Priority Schools Bureau**

Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Martinez, Juleann	Exec Sec & Admin Asst -O	00074048	118708	PERM	50	103	Yes

**Math and Science**

Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Leyba, Felicia Rae	Exec. Sec & Adm. Asst-O	00075357	306957	PERM	50	103	Yes

**Assessment & Evaluation Bureau**

Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Cata, Alisha	Office & Admin Sup-A	00021527	122400	PERM	45	103	Yes

**Legislative & Community Relations Bureau**

Name	Classification Title	Position Number	Employee ID	Position Type	Pay Band	Geographic Location	Barg. Unit Covered
Williams, Ruth	Gen-I	00021358	103126	PERM	90	103	No
Griego, Veronica	Office & Admin Sup-A	00021359	303270	PERM	45	103	Yes
Rich, David	Pub Relation Spec-B	00021520	103309	PERM	50	103	No

**TITLE 6            PRIMARY AND SECONDARY EDUCATION**  
**CHAPTER 29       STANDARDS FOR EXCELLENCE**  
**PART 13            ENGLISH LANGUAGE ARTS COMMON CORE STANDARDS**

**6.29.13.1            ISSUING AGENCY:** Public Education Department, hereinafter the department.  
 [6.29.13.1 NMAC - N, 10-29-2010]

**6.29.13.2            SCOPE:** All public schools, state educational institutions and educational programs conducted in state institutions other than the New Mexico military institute.  
 [6.29.13.2 NMAC - N, 10-29-2010]

**6.29.13.3            STATUTORY AUTHORITY:**

A.            Section 22-2-2 NMSA 1978 grants the department the authority and responsibility for the assessment and evaluation of public schools, state-supported educational institutions and educational programs conducted in state institutions other than the New Mexico military institute.

B.            Section 22-2-2 NMSA 1978 directs the department to set graduation expectations and hold schools accountable.

C.            Section 22-2C-3 NMSA 1978 requires the department to adopt academic content and performance standards and to measure the performance of public schools in New Mexico.

[6.29.13.3 NMAC - N, 10-29-2010]

**6.29.13.4            DURATION:** Permanent.

[6.29.13.4 NMAC - N, 10-29-2010]

**6.29.13.5            EFFECTIVE DATE:** October 29, 2010, unless a later date is cited at the end of a section. This rule is filed effective October 29, 2010. School districts and charter schools will not be accountable for the requirements of this rule until July 1, 2012.

[6.29.13.5 NMAC - N, 10-29-2010]

**6.29.13.6            OBJECTIVE:** The New Mexico common core content standards for English language arts are mandated for students in grades K-12. The New Mexico content standards with benchmarks and performance standards for English language arts were adopted in April 1996 as part of 6 NMAC 3.2; they were revised in June 2000. The content standards, benchmarks and performance standards for grades K-4 were again revised in April 2008, and the content standards and performance indicators for Grades 9-12 were again revised in May 2009.

[6.29.13.6 NMAC - N, 10-29-2010]

**6.29.13.7            DEFINITIONS:** "Text" means written language, oral language, digital communications (written, oral, and graphic), and other forms of multimedia communications.

[6.29.13.7 NMAC - N, 10-29-2010]

**6.29.13.8            CONTENT STANDARDS FOR ENGLISH LANGUAGE ARTS, Grades K-5.** All public schools, state supported educational institutions and educational programs conducted in state institutions other than the New Mexico military institute are bound by the English language arts common core state standards published by the national governor's association center for best practices and the council of chief state school officers. These standards are available at [www.ped.state.nm.us](http://www.ped.state.nm.us). The English language arts common core state standards published by the national governor's association center for best practices and the council of chief state school officers are incorporated in this rule by reference.

A.            The following standards are additional New Mexico standards that shall be utilized for grades K-5 in conjunction with the common core state standards incorporated by reference in 6.29.13 NMAC.

B.            Reading literature. Key ideas and details.

(1)          Kindergarten students will identify the main topic, retell key details of a text, and make predictions.

(2)          Grade 1 students will:

(a)          identify the main topic, retell key details of a text, and make predictions;

(b)          identify characters and simple story lines from selected myths and stories from around the world.

- (3) Grade 2 students will:
  - (a) identify the main topic, retell key details of a text, and make predictions;
  - (b) use literature and media to develop an understanding of people, cultures, and societies to explore self identity.
- (4) Grade 3 students will:
  - (a) ask and answer questions and make predictions to demonstrate understanding of a text;
  - (b) develop an understanding of people, cultures, and societies and explore self identity through literature, media, and oral tradition;
  - (c) understand that oral tribal history is not a myth, fable, or folktale, but a historical perspective.
- (5) Grade 4 students will:
  - (a) develop an understanding of people, cultures, and societies and explore self identity through literature, media, and oral tradition;
  - (b) understand that oral tribal history is not a myth, fable, or folktale, but a historical perspective.
- (6) Grade 5 students will:
  - (a) develop an understanding of people, cultures, and societies and explore self identity through literature, media, and oral tradition;
  - (b) understand that oral tribal history is not a myth, fable, or folktale, but a historical perspective.
- C. Reading literature: Craft and structure. Grade 1 students will recognize repetition and predict repeated phrases.
- D. Reading literature: Integration of knowledge and ideas. Grade 1 students will relate prior knowledge to textual information.
- E. Writing standards: Production and distribution of writing.
  - (1) Kindergarten students will apply digital tools to gather, evaluate, and use information.
  - (2) Grade 1 students will apply digital tools to gather, evaluate, and use information.
  - (3) Grade 2 students will:
    - (a) apply digital tools to gather, evaluate, and use information;
    - (b) use digital media and environments to communicate and work collaboratively.
- F. Writing standards: text type and purposes. In grades 3, 4, and 5 students will use digital media environments to communicate and work collaboratively, including at a distance, to support individual learning and to contribute to the learning of others.
- G. Writing standards: research to build and present knowledge.
  - (1) Grade 3 students will:
    - (a) gather relevant information from multiple sources, including oral knowledge;
    - (b) apply digital tools to gather, evaluate, and use information.
  - (2) Grade 4 students will:
    - (a) gather relevant information from multiple sources, including oral knowledge;
    - (b) apply digital tools to gather, evaluate, and use information;
    - (c) demonstrate creative thinking, construct knowledge, and develop innovative products and processes using technology.
  - (3) Grade 5 students will:
    - (a) gather relevant information from multiple sources, including oral knowledge;
    - (b) apply digital tools to gather, evaluate, and use information;
    - (c) demonstrate creative thinking, construct knowledge, and develop innovative products and processes using technology.
- H. Speaking and listening standards: presentation of knowledge and ideas.
  - (1) Kindergarten students will:
    - (a) demonstrate familiarity with stories and activities related to various ethnic groups and countries;
    - (b) with prompting and support: role play; make predictions; and follow oral and graphic instructions.
  - (2) Grade 1 students will:
    - (a) describe events related to the students' experiences, nations, and cultures;
    - (b) follow simple written and oral instructions.

- (3) Grade 2 students will describe events related to the students' experiences, nations, and cultures.
- (4) Grade 3, 4, and 5 students will:
  - (a) understand the influence of heritage language in English speech patterns;
  - (b) orally compare and contrast accounts of the same event and text;
  - (c) demonstrate appropriate listening skills for understanding and cooperation within a variety

of cultural settings.

I. Language standards: Conventions of standard English. Students in grades K, 1, and 2 will use letter formation, lines, and spaces to create a readable document.

[6.29.13.8 NMAC - N, 10-29-2010]

**6.29.13.9 CONTENT STANDARDS FOR ENGLISH LANGUAGE ARTS, Grades 6-8:** All public schools, state supported educational institutions and educational programs conducted in state institutions other than the New Mexico Military institute are bound by the English language arts common core state standards published by the national governors association center for best practices and the council of chief state school officers. The standards are available at [www.ped.state.nm.us](http://www.ped.state.nm.us). The English language arts common core state standards published by the national governors association center for best practices and the council of chief state school officers are incorporated in this rule by reference.

A. The following standards are additional New Mexico standards that shall be utilized in conjunction with the common core state standards incorporated by reference in 6.29.13 NMAC.

B. Reading literature. Key ideas and details.

(1) Grade 6 students will:

(a) analyze how a cultural work of literature, including oral tradition, draws on themes, patterns of events, or character types, and how the differing structure of the text contributes to society, past or present;

(b) analyze works of Hispanic and Native American text by showing how it reflects the heritage, traditions, attitudes, and beliefs of the author and how it applies to society;

(c) compare a cultural value as portrayed in literature with a personal belief or value.

(2) Grade 7 students will:

(a) analyze how a cultural work of literature, including oral tradition, draws on themes, patterns of events, or character types, and how the differing structure of the text contributes to society, past or present;

(b) analyze works of Hispanic and Native American text by showing how it reflects the heritage, traditions, attitudes, and beliefs of the author and how it applies to society;

(c) use oral and written texts from various cultures to cite evidence that supports or negates understanding of a cultural value.

(3) Grade 8 students will:

(a) analyze how a cultural work of literature, including oral tradition, draws on themes, patterns of events, or character types, and how the differing structure of the text contributes to society, past or present;

(b) analyze works of Hispanic and Native American text by showing how it reflects the heritage, traditions, attitudes, and beliefs of the author and how it applies to society;

(c) use oral or written texts from various cultures, cite textual evidence that supports or negates reader inference of a cultural value.

C. Reading literature. Range of reading and level of text complexity. Grade 8 students will, by the end of the year, read and comprehend significant works of 18<sup>th</sup>, 19<sup>th</sup>, and 20<sup>th</sup> century literature including stories, dramas, and poems independently and proficiently.

D. Reading standards for informational text: integration of knowledge and ideas. Students in grades 6, 7, and 8 will:

(1) distinguish between primary and secondary sources;

(2) describe how the media use propaganda, bias, and stereotyping to influence audiences.

E. Speaking and listening standards: presentation of knowledge and ideas. Students in grades 6, 7, and 8 will:

(1) understand the influence of heritage language in English speech patterns;

(2) orally compare and contrast accounts of the same event and text;

(3) demonstrate appropriate listening skills for understanding and cooperation within a variety of cultural settings.

[6.29.13.9 NMAC - N, 10-29-2010]

**6.29.13.10 CONTENT STANDARDS FOR ENGLISH LANGUAGE ARTS, Grades 9-12:** All public schools, state supported educational institutions and educational programs conducted in state institutions other than the New Mexico military institute are bound by the English language arts common core state standards published by the national governors association center for best practices and the council of chief state school officers. These standards are available at [www.ped.state.nm.us](http://www.ped.state.nm.us). The English language arts common core state standards published by the national governor's association center for best practices and the council of chief state school officers are incorporated in this rule by reference. The department, in consultation with relevant stakeholders, shall develop guidelines for the implementation of standards set forth in 6.29.13.10 NMAC.

A. The following standards are additional New Mexico standards that shall be utilized in conjunction with the common core state standards incorporated by reference in 6.29.13 NMAC.

B. Reading literature. Key ideas and details. Students in grades 9, 10, 11, and 12 will:

(1) analyze and evaluate common characteristics of significant works of literature from various genres, including Hispanic and Native American oral and written texts;

(2) cite strong and thorough textual evidence to support analysis of British, world, and regional literatures, including various Hispanic and Native American oral and written texts.

C. Reading standards for informational text: Integration of knowledge and ideas. Students in grades 9, 10, 11, and 12 will:

(1) analyze and evaluate common characteristics of significant works, including Hispanic and Native American oral and written texts;

(2) cite strong and thorough textual evidence to support analysis of significant works, including Hispanic and Native American oral and written texts.

[6.29.13.10 NMAC - N 10-29-2010]

#### **HISTORY OF 6.29.13 NMAC:**

**Pre-NMAC HISTORY:** The material in this part is derived from that previously filed with the State Records Center:

SDE 74-17, (Certificate No. 74-17), Minimum Educational Standards for New Mexico Schools, filed April 16, 1975.

SDE 76-9, (Certificate No. 76-9), Minimum Education Standards for New Mexico Schools, filed July 7, 1976.

SDE 78-9, Minimum Education Standards for New Mexico Schools, filed August 17, 1978.

SBE 80-4, Educational Standards for New Mexico Schools, filed September 10, 1980.

SBE 81-4, Educational Standards for New Mexico Schools, filed July 27, 1981.

SBE 82-4, Educational Standards for New Mexico Schools, Basic and Vocational Program Standards, filed November 16, 1982.

SBE Regulation No. 83-1, Educational Standards for New Mexico Schools, Basic and Vocational Program Standards, filed June 24, 1983.

SBE Regulation 84-7, Educational Standards for New Mexico Schools, Basic and Vocational Program Standards, filed August 27, 1984.

SBE Regulation 85-4, Educational Standards for New Mexico Schools, Basic, Special Education, and Vocational Programs, filed October 21, 1985.

SBE Regulation No. 86-7, Educational Standards for New Mexico Schools, filed September 2, 1986.

SBE Regulation No. 87-8, Educational Standards for New Mexico Schools, filed February 2, 1988.

SBE Regulation No. 88-9, Educational Standards for New Mexico Schools, filed October 28, 1988.

SBE Regulation No. 89-8, Educational Standards for New Mexico Schools, filed November 22, 1989.

SBE Regulation No. 90-2, Educational Standards for New Mexico Schools, filed September 7, 1990.

SBE Regulation No. 92-1, Standards for Excellence, filed January 3, 1992.

#### **History of Repealed Material:**

6.30.2 NMAC, Standards for Excellence, filed November 2, 2000 - Repealed effective June 30, 2009.

#### **NMAC History:**

6 NMAC 3.2, Standards for Excellence, filed October 17, 1996.

6.30.2 NMAC, Standards for Excellence, filed November 2, 2000.

6.29.4 NMAC, English Language Arts; filed September 16, 2009.

6.29.14 NMAC, English Language Arts Common Core Standards; filed October 18, 2010.

**TITLE 6            PRIMARY AND SECONDARY EDUCATION**  
**CHAPTER 29       STANDARDS FOR EXCELLENCE**  
**PART 14           MATHEMATICS COMMON CORE STANDARDS**

**6.29.14.1           ISSUING AGENCY:** Public Education Department, hereinafter the department.  
[6.29.14.1 NMAC - N, 10-29-2010]

**6.29.14.2           SCOPE:** All public schools, state educational institutions and educational programs conducted in state institutions other than the New Mexico military institute.  
[6.29.14.2 NMAC - N, 10-29-2010]

**6.29.14.3           STATUTORY AUTHORITY:**

A.            Section 22-2-2 NMSA 1978 grants the department the authority and responsibility for the assessment and evaluation of public schools, state-supported educational institutions and educational programs conducted in state institutions other than New Mexico military institute.

B.            Section 22-2-2 NMSA 1978 directs the department to set graduation expectations and hold schools accountable.

C.            Section 22-2C-3 NMSA 1978 requires the department to adopt academic content and performance standards and to measure the performance of public schools in New Mexico.

[6.29.14.3 NMAC - N, 10-29-2010]

**6.29.14.4           DURATION:** Permanent.

[6.29.14.4 NMAC - N, 10-29-2010]

**6.29.14.5           EFFECTIVE DATE:** October 29, 2010, unless a later date is cited at the end of a section. This rule is filed effective October 29, 2010. School districts and charter schools will not be accountable for the requirements of this rule until July 1, 2012.

[6.29.14.5 NMAC - N, 10-29-2010]

**6.29.14.6           OBJECTIVE:** The New Mexico common core content standards for mathematics provide a framework of required knowledge and skills in this field; they are mandated for grades K-12. The content standards with benchmarks and performance standards for mathematics were adopted in 1996 as part of 6 NMAC 3.2; they were replaced in 2002. The mathematics content standards for grades 9-12 were again revised in April 2008 and in June 2009. In May 2010, the content standards for grades K-12 were revised; the benchmarks and performance standards will be developed from this foundation document.

[6.29.14.6 NMAC - N, 10-29-2010]

**6.29.14.7           DEFINITIONS:** [Reserved]

**6.29.14.8           CONTENT STANDARDS, Grades K-12:** All public schools, state supported educational institutions and educational programs conducted in state institutions other than the New Mexico military institute are bound by the mathematics common core state standards published by the national governor's association center for best practices and the council of chief state school officers. The standards are available at [www.ped.state.nm.us](http://www.ped.state.nm.us). The mathematics common core state standards published by the national governor's association center for best practices and the council of chief state school officers are incorporated in this rule by reference. The department, in consultation with relevant stakeholders, shall develop guidelines for the implementation of standards set forth in 6.29.14.8 NMAC.

[6.29.14.8 NMAC - N, 10-29-2010]

**HISTORY OF 6.29.14 NMAC:**

**Pre-NMAC HISTORY:** The material in this part is derived from that previously filed with the State Records Center:

SDE 74-17, (Certificate No. 74-17), Minimum Educational Standards for New Mexico Schools, filed April 16, 1975.

SDE 76-9, (Certificate No. 76-9), Minimum Education Standards for New Mexico Schools, filed July 7, 1976.

SDE 78-9, Minimum Education Standards for New Mexico Schools, filed August 17, 1978.

SBE 80-4, Educational Standards for New Mexico Schools, filed September 10, 1980.  
SBE 81-4, Educational Standards for New Mexico Schools, filed July 27, 1981.  
SBE 82-4, Educational Standards for New Mexico Schools, Basic and Vocational Program Standards, filed November 16, 1982.  
SBE Regulation No. 83-1, Educational Standards for New Mexico Schools, Basic and Vocational Program Standards, filed June 24, 1983.  
SBE Regulation 84-7, Educational Standards for New Mexico Schools, Basic and Vocational Program Standards, filed August 27, 1984.  
SBE Regulation 85-4, Educational Standards for New Mexico Schools, Basic, Special Education, and Vocational Programs, filed October 21, 1985.  
SBE Regulation No. 86-7, Educational Standards for New Mexico Schools, filed September 2, 1986.  
SBE Regulation No. 87-8, Educational Standards for New Mexico Schools, filed February 2, 1988.  
SBE Regulation No. 88-9, Educational Standards for New Mexico Schools, filed October 28, 1988.  
SBE Regulation No. 89-8, Educational Standards for New Mexico Schools, filed November 22, 1989.  
SBE Regulation No. 90-2, Educational Standards for New Mexico Schools, filed September 7, 1990.  
SBE Regulation No. 92-1, Standards for Excellence, filed January 3, 1992.

**History of Repealed Material:**

6.30.2 NMAC, Standards for Excellence, filed November 2, 2000 - Repealed effective June 30, 2009.

**NMAC History:**

6. 3.2 NMAC, Standards for Excellence, filed October 17, 1996.  
6.30.2 NMAC, Standards for Excellence, filed November 2, 2000.  
6.29.7 NMAC, Mathematics, filed May 29, 2009.  
6.29.14 NMAC, Mathematics Common Core Standards, filed October 18, 2010.



# The Legislature of the State of New Mexico

50th Legislature, 1st Session

LAWS 2011

CHAPTER 10

SENATE BILL 427, as amended

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Introduced by

- SENATOR VERNON D. ASBILL
- SENATOR SUE WILSON BEFFORT
- SENATOR STEPHEN H. FISCHMANN
- SENATOR MARY JANE M. GARCIA
- SENATOR TIMOTHY M. KELLER
- SENATOR GAY G. KERNAN
- SENATOR LYNDA M. LOVEJOY
- SENATOR SANDER RUE
- SENATOR BERNADETTE M. SANCHEZ



# CHAPTER 10

## AN ACT

RELATING TO PUBLIC SCHOOLS; ENACTING THE A-B-C-D-F SCHOOLS RATING ACT; PROVIDING FOR A RATING SYSTEM TO GRADE PUBLIC SCHOOLS IN A WAY EASILY UNDERSTANDABLE BY PARENTS, SCHOOL PERSONNEL AND THE COMMUNITY; ESTABLISHING CRITERIA FOR RATING PUBLIC SCHOOLS; PROVIDING SCHOOL OPTIONS; PROVIDING FUNDING FOR FAILING SCHOOLS TO IMPLEMENT PROGRAMS LINKED TO IMPROVED STUDENT ACHIEVEMENT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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:

"SHORT TITLE.--Sections 1 through 4 of this act may be cited as the "A-B-C-D-F Schools Rating Act"."

SECTION 2. A new section of the Public School Code is enacted to read:

"DEFINITIONS.--As used in the A-B-C-D-F Schools Rating Act:

A. "growth" means learning a year's worth of knowledge in one year's time, which is demonstrated by a student's performance on New Mexico standards-based assessments that shows the student:

(1) moving from one performance level to a higher performance level;

1 (2) maintaining a proficient or advanced  
2 proficient performance level as provided by department rule;  
3 or

4 (3) remaining in beginning step or nearing  
5 proficient performance level but improving a number of scale  
6 score points as specified by department rule; and

7 B. "school options" means a right to transfer to  
8 any public school not rated an F in the state or have  
9 children continue their schooling through distance learning  
10 offered through the statewide or a local cyber academy."

11 SECTION 3. A new section of the Public School Code is  
12 enacted to read:

13 "RATING CERTAIN SCHOOLS.--Commencing with the 2011-2012  
14 school year, public schools shall be subject to being rated  
15 annually by the department as provided in the A-B-C-D-F  
16 Schools Rating Act."

17 SECTION 4. A new section of the Public School Code is  
18 enacted to read:

19 "ANNUAL RATINGS--LETTER GRADES--RATINGS BASED ON  
20 STANDARDS-BASED TESTS--RIGHT TO SCHOOL CHOICE--DISTANCE  
21 LEARNING--RESPONSIBILITY FOR COST--USE OF FUNDS--ADDITIONAL  
22 REMEDY.--

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

25 B. The department shall assign a letter grade of

1 A, B, C, D or F to each public school pursuant to criteria  
2 established by department rules, after input from the  
3 secretary's superintendents' council, that include as a  
4 minimum a combination of the following factors in a public  
5 school's grade:

6 (1) for elementary and middle schools:

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

9 (b) student growth in reading and  
10 mathematics; and

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

14 (2) for high schools:

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

17 (b) student growth in reading and  
18 mathematics;

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

22 (d) additional academic indicators such  
23 as high school graduation rates, growth in high school  
24 graduation rates, advanced placement and international  
25 baccalaureate courses, dual enrollment courses and SAT and

1 ACT scores.

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

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

15 E. The department shall ensure that a local school  
16 board or governing body of a charter school is prioritizing  
17 resources of a public school rated D or F toward proven  
18 programs and methods linked to improved student achievement  
19 until the public school earns a grade of C or better for two  
20 consecutive years.

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

1 Act of 2001."

2 SECTION 5. Section 22-8-11 NMSA 1978 (being Laws 1967,  
3 Chapter 16, Section 66, as amended) is amended to read:

4 "22-8-11. BUDGETS--APPROVAL OF OPERATING BUDGET.--

5 A. The department shall:

6 (1) on or before July 1 of each year,  
7 approve and certify to each local school board and governing  
8 body of a state-chartered charter school an operating budget  
9 for use by the school district or state-chartered charter  
10 school;

11 (2) make corrections, revisions and  
12 amendments to the operating budgets fixed by the local school  
13 boards or governing bodies of state-chartered charter schools  
14 and the secretary to conform the budgets to the requirements  
15 of law and to the department's rules and procedures; and

16 (3) ensure that a local school board or  
17 governing body of a charter school is prioritizing resources  
18 of a public school rated D or F toward proven programs and  
19 methods that are linked to improved student achievement until  
20 the public school earns a grade of C or better for two  
21 consecutive years.

22 B. No school district or state-chartered charter  
23 school or officer or employee of a school district or  
24 state-chartered charter school shall make any expenditure or  
25 incur any obligation for the expenditure of public funds

1 unless that expenditure or obligation is made in accordance  
2 with an operating budget approved by the department. This  
3 prohibition does not prohibit the transfer of funds pursuant  
4 to the department's rules and procedures.

5 C. The department shall not approve and certify an  
6 operating budget of any school district or state-chartered  
7 charter school that fails to demonstrate that parental  
8 involvement in the budget process was solicited."

9 SECTION 6. Section 22-8-18 NMSA 1978 (being Laws 1974,  
10 Chapter 8, Section 8, as amended by Laws 2007, Chapter 347,  
11 Section 1 and by Laws 2007, Chapter 348, Section 2 and also  
12 by Laws 2007, Chapter 365, Section 1) is amended to read:

13 "22-8-18. PROGRAM COST CALCULATION--LOCAL  
14 RESPONSIBILITY.--

15 A. The total program units for the purpose of  
16 computing the program cost shall be calculated by multiplying  
17 the sum of the program units itemized as Paragraphs (1)  
18 through (6) in this subsection by the instructional staff  
19 training and experience index and adding the program units  
20 itemized as Paragraphs (7) through (13) in this subsection.

21 The itemized program units are as follows:

22 (1) early childhood education;

23 (2) basic education;

24 (3) special education, adjusted by

25 subtracting the units derived from membership in class D

1 special education programs in private, nonsectarian,  
2 nonprofit training centers;

3 (4) bilingual multicultural education;

4 (5) fine arts education;

5 (6) elementary physical education;

6 (7) size adjustment;

7 (8) at-risk program;

8 (9) enrollment growth or new district  
9 adjustment;

10 (10) special education units derived from  
11 membership in class D special education programs in private,  
12 nonsectarian, nonprofit training centers;

13 (11) national board for professional  
14 teaching standards certification;

15 (12) home school student activities; and

16 (13) charter school student activities.

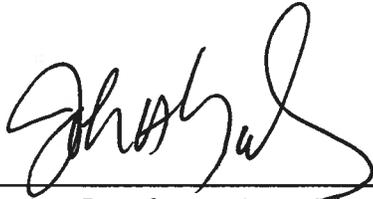
17 B. The total program cost calculated as prescribed  
18 in Subsection A of this section includes the cost of early  
19 childhood, special, bilingual multicultural, fine arts and  
20 vocational education and other remedial or enrichment  
21 programs. It is the responsibility of the local school board  
22 or governing body of a charter school to determine its  
23 priorities in terms of the needs of the community served by  
24 that board. Except as otherwise provided in this section,  
25 funds generated under the Public School Finance Act are

1 discretionary to local school boards and governing bodies of  
2 charter schools, provided that the special program needs as  
3 enumerated in this section are met; provided, however, that  
4 if a public school has been rated D or F for two consecutive  
5 years, the department shall ensure that the local school  
6 board or governing body of a charter school is prioritizing  
7 resources for the public school toward proven programs and  
8 methods linked to improved student achievement until the  
9 public school earns a C or better for two consecutive years."

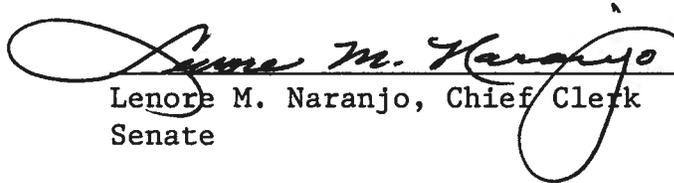
10 SECTION 7. SEVERABILITY.--If any part or application  
11 of this act is held invalid, the remainder or its application  
12 to other situations or persons shall not be affected. \_\_\_\_\_

SB 427  
Page 8

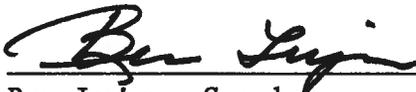
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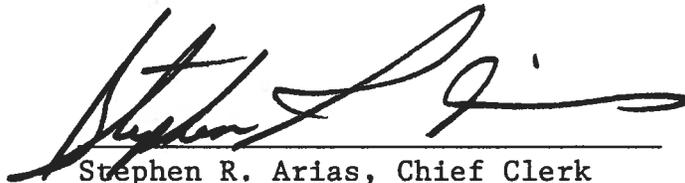
John A. Sanchez, President  
Senate



Lenore M. Naranjo, Chief Clerk  
Senate

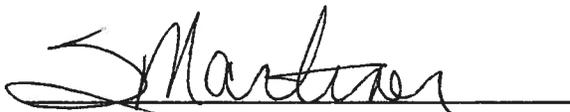


Ben Lujan, Speaker  
House of Representatives



Stephen R. Arias, Chief Clerk  
House of Representatives

Approved by me this 29<sup>th</sup> day of March, 2011



Governor Susana Martinez  
State of New Mexico

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# State of New Mexico

Susana Martinez  
*Governor*

## EXECUTIVE ORDER 2011-024

### FORMATION OF THE NEW MEXICO EFFECTIVE TEACHING TASK FORCE

**WHEREAS**, the State of New Mexico is committed to ensuring every child has access to a high quality education;

**WHEREAS**, research has consistently shown that one of the most critical factors to a student's educational achievement is the quality of his or her teacher;

**WHEREAS**, while there are many outstanding, effective and hardworking teachers and school leaders throughout New Mexico, the State does not have an effective system for recognizing and rewarding their achievements in the classroom;

**WHEREAS**, the current method for evaluating teacher and school leader performance has proven to be ineffective and inadequate;

**WHEREAS**, the absence of a framework to fully and fairly assess teacher and school leader quality has resulted in the failure to effectively assess performance, reward excellence and establish real accountability;

**WHEREAS**, one of the chief priorities of the Governor of New Mexico is creating a comprehensive strategy to identify, recruit, retain and reward effective teachers and school leaders;

**WHEREAS**, the Administration believes that improving methods of evaluating teachers and school leaders in this State will lead to greater academic outcomes for students, accountability and allow teachers and school leaders to reach higher levels of success and performance;

**WHEREAS**, with a new evaluation framework to measure teacher effectiveness based on student achievement, districts will be better able to address and improve school personnel policies concerning professional development, promotion, compensation, performance pay and tenure;

**WHEREAS**, any new evaluation framework shall identify teachers and school leaders who are most effective at helping students succeed, provide targeted assistance and professional development opportunities for teachers and school leaders, improve the match between teacher assignments and student and school needs, and enhance incentives for effective teachers and school leaders; and

**WHEREAS**, New Mexico recognizes the need to honor excellence within the teaching profession, a Task Force comprised of a broad range of education practitioners and experts shall be established to explore evaluation models, a performance pay structure, value-added determinations and tenure, and recommend a statewide teacher and school leader evaluation framework that will inform decisions about which teachers and school leaders are most effective at helping students succeed, provide targeted assistance and professional development opportunities for teachers and school leaders, improve the match between teacher assignments and student and school needs, and enhance incentives for effective teachers and school leaders.

**NOW THEREFORE**, I, Susana Martinez, Governor of the State of New Mexico, by the authority vested in me by the Constitution of the State of New Mexico and by its statutes do hereby ORDER and DIRECT:

1. The creation of the New Mexico Effective Teaching Task Force, hereinafter referred to as the "Task Force."
2. The Task Force shall consist of up to fifteen (15) members appointed by the Governor who shall serve at her pleasure. The Secretary of Education shall serve as the Chair of the Task Force. The Task Force shall consist of individuals who represent the geographic distribution and cultural diversity of the State and shall be composed of:
  - a. The Secretary of Education;
  - b. The Director of the Legislative Finance Committee;
  - c. The Executive Director of the Legislative Education Study Committee; and
  - d. Other members appointed by the Governor, including:
    - i. School leaders;
    - ii. Teachers;
    - iii. Administrators;
    - iv. Members of the business community;
    - v. Charter school representatives;

- vi. Parents;
  - vii. An expert on teacher evaluation models;
  - viii. An expert on value-added models; and
  - ix. Representation from minority communities
  - x. Representation from the special needs community
3. The Task Force is charged with presenting recommendations to the Governor regarding how best to measure the effectiveness of teachers and school leaders based on specific parameters. The recommendations must include:
  - a. Identified measures of student achievement – representing at least 50 percent of the teacher evaluation – which shall be used for evaluating educator performance;
  - b. Identification of demonstrated best practices of effective teachers and teaching, which should comprise the remaining basis for such evaluation;
  - c. How these measures of effective practice should be weighted; and
  - d. How the State can transition to a performance-based compensation system, whereby acknowledging student growth and progress.
4. The Public Education Department shall provide staff support to the Task Force.
5. The Task Force may consult with additional education stakeholders, practitioners, and experts in the public or private sector on any aspect of its mission and recommendations.
6. The Task Force shall issue a report and recommendations on the implementation of a teacher effectiveness and evaluation system to the Governor no later than August 22, 2011.
7. The final report of the Task Force shall be provided to the Legislature and shall be made available to the public.

**THIS ORDER** supersedes any other previous orders, proclamations or directives to the extent they are in conflict. This Executive Order shall take effect immediately.

ATTEST



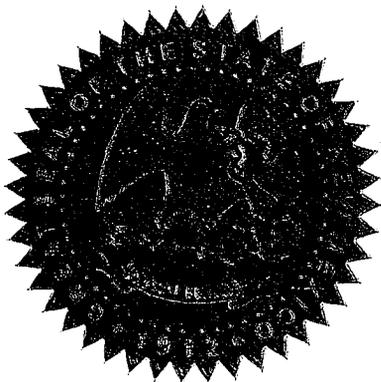
DIANNA J. DURAN  
SECRETARY OF STATE

SIGNED AT THE EXECUTIVE OFFICE  
THIS 25<sup>TH</sup> DAY OF APRIL, 2011.

WITNESS MY HAND AND THE GREAT  
SEAL OF THE STATE OF NEW  
MEXICO.



SUSANA MARTINEZ  
GOVERNOR



**22-1-11. Educational data system.**

A. As used in this section:

- (1) "council" means the data system council;
- (2) "data system" means the unified pre- kindergarten through post-graduate education accountability data system;
- (3) "data system partners" means the public education department and the higher education department;
- (4) "educational agencies" means other public agencies and institutions that provide educational services for resident school-age persons and children in state-funded private pre-kindergarten programs; and
- (5) "pre-kindergarten through post-graduate system" means an integrated, seamless pre-kindergarten through post-graduate system of education.

B. The data system partners, in consultation with the council, shall establish a data system, the purpose of which is to:

- (1) collect, integrate and report longitudinal student-level and educator data required to implement federally or state-required education performance accountability measures;
- (2) conduct research and evaluation regarding federal, state and local education and training programs at all levels; and
- (3) audit and ensure compliance of those programs with applicable federal or state requirements.

C. The components of the data system shall include the use of a common student identifier for the pre-kindergarten through post-graduate system and an educator identifier, both of which may include additional identifiers, with the ability to match educator data to student data and educator data to data from schools, post-secondary education programs and other educational agencies.

D. The data system partners shall convene a "data system council" made up of the following members:

- (1) the secretary of public education or the secretary's designee;
- (2) the secretary of higher education or the secretary's designee;
- (3) the secretary of children, youth and families or the secretary's designee;
- (4) the secretary of workforce solutions or the secretary's designee;
- (5) the secretary of economic development or the secretary's designee;
- (6) the secretary of information technology or the secretary's designee;
- (7) the secretary of human services or the secretary's designee;

- (8) the secretary of health or the secretary's designee;
- (9) the director of the office of education accountability or the director's designee;
- (10) the director of the public school facilities authority or the director's designee;
- (11) a representative from the office of the governor;
- (12) the presidents or their designees of one research university, one four-year comprehensive university, two branch colleges and two independent community colleges; provided that the presidents shall be selected by the data system partners in collaboration with organizations that represent the presidents of those institutions;
- (13) at least six public school superintendents or their designees; provided that the appointments by the data system partners shall be made so that small, medium and large school districts are equally represented on the council at all times;
- (14) at least three charter school administrators or their designees appointed by the data system partners;
- (15) the director of the legislative education study committee or the director's designee; and
- (16) the director of the legislative finance committee or the director's designee.

E. The council shall:

- (1) meet at least four times each calendar year;
- (2) create a management plan that assigns authority and responsibility for the operation of the data system among the educational agencies whose data will be included in the data system;
- (3) assist the educational agencies whose data will be included in the data system in developing interagency agreements to:
  - (a) enable data to be shared across and between the educational agencies;
  - (b) define appropriate uses of data;
  - (c) assure researcher access to data;
  - (d) assure the security of the data system;
  - (e) ensure that the educational system agencies represented on the council, the legislative education study committee, the legislative finance committee and other users, as appropriate, have access to the data system; and
  - (f) ensure the privacy of any person whose personally identifiable information is contained in the data system;
- (4) develop a strategic plan for the data system; and
- (5) create policies that ensure users have prompt and reasonable access to reports generated from the data system, including:

(a) identification of categories of data system users based on security level;

(b) descriptions of the reports that the data system is capable of generating on demand; and

(c) definitions of the most timely process by which users may retrieve other reports without compromising the security of the data system or the privacy of any person whose personally identifiable information is contained in the data system.

F. The data system strategic plan shall include:

(1) the development of policy and practical goals, including time lines and budget goals, that are to be met through the implementation of the data system; and

(2) the training and professional development that the data system partners will provide to users who will be analyzing, accessing or entering data into the data system.

G. The confidentiality of personally identifiable student and educator data shall be safeguarded consistent with the requirements of state and federal law. To the extent permitted by the data system partners in conformance with state and federal law, public entities participating in the data system may:

(1) disclose or redisclose data for educational purposes and longitudinal comparisons, analyses or studies, including those authorized by law;

(2) enter into agreements with other organizations for research studies to improve instruction for the benefit of local educational agencies, public schools and post-secondary educational institutions, subject to safeguards to ensure that the research organization uses the student records only for the authorized study purposes; and

(3) disclose education records to a student's former secondary school or school district upon request solely for purposes of evaluation or accountability for its programs.

H. Nothing in this section precludes the data system partners, in consultation with school districts, charter schools and public post-secondary educational institutions, from collecting and distributing aggregate data about students or educators or data about an individual student or educator without personally identifiable information.

I. The data system partners, in consultation with school districts, charter schools and public post-secondary educational institutions, shall jointly adopt rules to carry out the provisions of this section, including security administration requirements and the provision of training for data entry personnel at all levels.

J. By December 31 of each year, the data system partners shall submit a data system status report to the legislature and to the governor. Prior to submission and publication of the report referred to in subsection K, the data system partners shall distribute a draft of the report to school districts, charter schools and all public post-secondary educational institutions to allow comment on the draft report.

K. The data system partners, in consultation with school districts, charter schools and public

post-secondary educational institutions, shall develop and adopt the content and a format for the report, including the ability of the data system to:

- (1) connect student records from pre- kindergarten through post-graduate education;
- (2) connect public school educator data to student data;
- (3) match individual public school students' test records from year to year to measure academic growth, including student-level college and career readiness test scores;
- (4) report the number and percentage of untested public school students by school district and by school and by major ethnic group, special education status, poverty status and gender;
- (5) report high school longitudinal graduation and dropout data, including information that distinguishes between dropouts or students whose whereabouts are unknown and students who have transferred to other schools, including private schools or home schools, other school districts or other states;
- (6) provide post-secondary remediation data, including assessment scores on exams used to determine the need for remediation;
- (7) provide post-secondary remedial course enrollment history, including the number and type of credit and noncredit remedial courses being taken;
- (8) report post-secondary retention data that indicate whether students are returning the second fall term after being enrolled as full-time first-time degree-seeking students;
- (9) report to New Mexico public high schools on their students who enroll in a public post-secondary educational institution within three years of graduating or leaving the high school regarding freshman-year outcomes;
- (10) provide post-secondary student completion status, including information that indicates if students are making annual progress toward their degrees;
- (11) include data regarding students who have earned a general educational development certificate in reporting post-secondary outcomes;
- (12) report data collected for the educator accountability reporting system;
- (13) report pre-kindergarten through post-graduate student-level enrollment data, demographic information and program participation information;
- (14) report pre-kindergarten through post-graduate student-level transcript information, including information on courses completed, grades earned and cumulative grade point average;
- (15) connect performance with financial information;
- (16) establish and maintain a state data audit system to assess the quality, validity and reliability of data; and
- (17) provide any other student-level and educator data necessary to assess the

performance of the pre-kindergarten through post-graduate system.

History: Laws 2010, ch. 112, § 1.

**Cross references.** — For the public education department, *see* 9-24-4 NMSA 1978.

For the higher education department, *see* 9-25-4 NMSA 1978.

For the secretary of public education, *see* 9-24-5 NMSA 1978.

For the secretary of higher education, *see* 9-25-5 NMSA 1978.

For the secretary of children youth and families, *see* 9-2A-6 NMSA 1978.

For the secretary of workforce solutions, *see* 9-26-5 NMSA 1978.

For the secretary of economic development, *see* 9-15-5 NMSA 1978.

For the secretary of information technology, *see* 9-27-5 NMSA 1978.

For the secretary of human services, *see* 9-8-5 NMSA 1978.

For the secretary of health, *see* 9-7-5 NMSA 1978.

For the office of education accountability, *see* 9-6-15 NMSA 1978.

For the public school facilities authority, *see* 22-24-9 NMSA 1978.

For the legislative education study committee, *see* 2-10-1 NMSA 1978.

For the legislative finance committee, *see* 2-5-1 NMSA 1978.

**Effective dates.** — Laws 2010, ch. 112 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

## ARTICLE 30

### Statewide Cyber Academy Act

#### Section

22-30-1	Short title.
22-30-2	Definitions.
22-30-3	Statewide cyber academy created.
22-30-4	Department rules.
22-30-5	Statewide cyber academy; duties.
22-30-6	Distance learning students.
22-30-7	Distance learning and computer-based courses.
22-30-8	Evaluation of regional education cooperative distance learning networks.

#### **22-30-1. Short title.**

Sections 1 through 7 [and 11] of this act may be cited as the "Statewide Cyber Academy Act".

History: Laws 2007, ch. 292, § 1 and Laws 2007, ch. 293, § 1.

**Bracketed material.** — The bracketed material was added by the compiler to reflect a recompilation into the Statewide Cyber Academy Act. Laws 2007, ch. 292, § 11 and Laws 2007, ch. 293, § 11, recompile former 22-13-27 NMSA 1978 into the Statewide Cyber Academy Act as 22-30-7 NMSA 1978.

**Duplicate laws.** — Laws 2007, ch. 292, § 1 and Laws 2007, ch. 293, § 1 enacted identical new sections, effective June 15, 2007.

#### **22-30-2. Definitions.**

As used in the Statewide Cyber Academy Act:

- A. "course provider" means a person that supplies educational course content for distance learning courses;
- B. "distance learning course" means an educational course that is taught where the student and primary instructor are separated by time or space and linked by technology;
- C. "distance learning student" means a qualified student as defined in Section 22-8-2 NMSA 1978 who is enrolled in one or more distance learning courses for credit;
- D. "learning management system" means a software application that facilitates online instruction and interaction between teachers and distance learning students;
- E. "local distance learning site" means a school district or charter school that offers and grants credit for distance learning courses to distance learning students enrolled in the school district or charter school;
- F. "primary enrolling district" means the school district or charter school in which

the distance learning student is enrolled;

G. "regional host" means an educational institution, school district or other entity selected by the statewide cyber academy to coordinate the delivery of distance learning courses within a broad geographic region of the state;

H. "service center" means the single central facility where administrative and management functions of the statewide cyber academy are physically located in New Mexico; and

I. "statewide cyber academy" means the department's collaborative program that offers distance learning courses to all local distance learning sites.

History: Laws 2007, ch. 292, § 2 and Laws 2007, ch. 293, § 2.

**Duplicate laws.** — Laws 2007, ch. 292, § 2 and Laws 2007, ch. 293, § 2 enacted identical new sections, effective June 15, 2007.

### **22-30-3. Statewide cyber academy created.**

The "statewide cyber academy" program is created in the department. The statewide cyber academy is a collaborative program among the department, the higher education department, telecommunications networks and representatives of other state agencies engaged in providing distance education. The statewide cyber academy shall provide distance learning courses for grades six through twelve and professional development for teachers, instructional support providers and school administrators.

History: Laws 2007, ch. 292, § 3 and Laws 2007, ch. 293, § 3.

**Cross references.** — For the public education department, see 9-24-4 NMSA 1978.

For the higher education department, see 9-25-1 NMSA 1978.

**Duplicate laws.** — Laws 2007, ch. 292, § 3 and Laws 2007, ch. 293, § 3 enacted identical new sections, effective June 15, 2007.

The Statewide Cyber Academy Act was enacted as part of the Public School Code, 22-1-1 NMSA 1978. The department referred to in the Statewide Cyber Academy Act means the public education department, 22-1-2 NMSA 1978.

### **22-30-4. Department rules.**

The department shall promulgate rules to carry out the provisions of the Statewide Cyber Academy Act.

History: Laws 2007, ch. 292, § 4 and Laws 2007, ch. 293, § 4.

**Effective dates.** — Laws 2007, ch. 293, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

**Compiler's notes.** — Laws 2007, ch. 292, § 4 and Laws 2007, ch. 293, § 4 enacted identical new sections, effective June 15, 2007.

### **22-30-5. Statewide cyber academy; duties.**

The statewide cyber academy shall:

A. establish a distance learning course delivery system that is efficient and cost-effective and that uses a statewide service center and regional hosts to provide approved distance learning courses;

B. select regional hosts based on pre-existing experience and capacity to facilitate the delivery of distance educational programs, including public post-secondary educational institutions, regional education cooperatives and school districts;

C. provide technical and program support to regional hosts and local distance learning sites;

D. ensure that all distance learning courses offered by course providers are taught by highly qualified teachers or members of the faculty of accredited post-secondary educational institutions and meet state academic content and performance standards;

E. provide for reasonable and equitable means to allocate the costs of distance learning courses among the statewide cyber academy, the course providers and the school districts whose students are enrolled in a distance learning course;

F. give first priority to the delivery of distance learning courses for credit to distance learning students who have the greatest need because of geographic location or circumstances in which a school district may have difficulty delivering essential course instruction due to financial restraints or lack of highly qualified teachers; provided that in fiscal year 2008 the statewide cyber academy shall include, among those distance learning students who are determined to have the greatest need, distance learning students served by school districts that are members of regional education cooperatives three, eight and nine;

G. ensure that the statewide cyber academy's learning management system is compatible with school district and department data collection, analysis and reporting systems;

H. ensure that all deficiencies in the infrastructure, hardware and software in the statewide cyber academy are corrected in accordance with educational technology adequacy standards pursuant to Section 22-15A-11 NMSA 1978;

I. comply with all rules governing privacy and confidentiality of student records for secure record storage;

J. offer distance learning courses to distance learning students;

K. offer professional development via distance learning, using a learning management system;

L. assist the council on technology in education in its development of the statewide plan required by Section 22-15A-7 NMSA 1978, including a statewide cyber academy plan that addresses short- and long-range goals;

M. define and coordinate the roles and responsibilities of the collaborating agencies to establish a distance learning governance and accountability framework; and

N. conduct an annual evaluation and provide an annual report to the department and the legislature that includes a detailed report of expenditures; a description of services provided, including the number and location of local distance learning sites, public schools and distance learning students served; the courses offered; the credits generated by local distance learning sites; and student and teacher accountability reporting data.

History: Laws 2007, ch. 292, § 5 and Laws 2007, ch. 293, § 5.

**Compiler's notes.** — Laws 2007, ch. 292, § 5 and Laws 2007, ch. 293, § 5 enacted identical new sections, effective June 15, 2007.

### **22-30-6. Distance learning students.**

A. A student must be enrolled in a public school or a state-supported school and must have the permission of the student's local distance education learning site to enroll in a distance learning course. A distance learning student shall only be counted in the student's primary enrolling district for the purpose of determining the membership used to calculate a school district's state equalization guarantee. A student shall have only one primary enrolling district.

B. A home school student may participate in the statewide cyber academy by enrolling for one-half or more of the minimum course requirements approved by the department for public school students in the school district in which the student resides; or, if the student is enrolled for less than one-half of the minimum course requirements, the student may participate in the statewide cyber academy by paying not more than thirty-five percent of the current unit value per curricular unit.

C. A student enrolled in a nonpublic school may participate in the statewide cyber academy if the school in which the student is enrolled enters into a contract with the school district in which the nonpublic school is located.

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

History: Laws 2007, ch. 292, § 6 and Laws 2007, ch. 293, § 6.

**Compiler's notes.** — Laws 2007, ch. 292, § 6 and Laws 2007, ch. 293, § 6 enacted identical new sections, effective June 15, 2007.

**22-30-7. Distance learning and computer-based courses.**

Public schools that offer distance learning and computer-based courses of study shall provide accompanying electronic formats that are usable by a person with a disability using assistive technology, and those formats shall be based on the American standard code for information interchange, hypertext markup language and extensible markup language.

History: Laws 2003, ch. 162, § 2; recompiled by Laws 2007, ch. 292, § 11 and Laws 2007, ch. 293, § 11.

**Recompilations.** — Laws 2007, ch. 292, § 11 and Laws 2007, ch. 293, § 11, effective June 15, 2007, recompile former 22-13-27 NMSA 1978 into the Statewide Cyber Academy Act as 22-30-7 NMSA 1978.

**22-30-8. Evaluation of regional education cooperative distance learning networks.**

A network developed by regional education cooperatives three, eight and nine shall serve as a regional host in fiscal year 2008. The statewide cyber academy shall provide a preliminary report to the governor and the legislature by January 1, 2008 on the quality and cost-effectiveness of the provision of distance learning courses by the regional education cooperatives. At the end of fiscal year 2008, the statewide cyber academy shall prepare a final report on the quality and cost-effectiveness of services provided, including whether the services increased the rigor of school district and charter school curricula, and make recommendations for the expansion to other regional education cooperatives.

History: Laws 2007, ch. 292, § 7 and Laws 2007, ch. 293, § 7.

**Duplicate laws.** — Laws 2007, ch. 292, § 7 and Laws 2007, ch. 293, § 7 enacted identical new sections, effective June 15, 2007.

**STATE OF NEW MEXICO**  
**LEGISLATIVE EDUCATION STUDY COMMITTEE**

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June 27, 2011

**MEMORANDUM**

**TO:** Legislative Education Study Committee

**FR:** David Harrell

**RE: STAFF REPORT: K-3 PLUS PROGRAM**

**Introduction**

In 2007, Legislation endorsed by the Legislative Education Study Committee (LESC) was enacted to establish K-3 Plus, a six-year pilot project that extends the school year in kindergarten through third grade by at least 25 instructional days. The project is designed to demonstrate that increased time in kindergarten and the early grades narrows the achievement gap between disadvantaged students and other students, increases cognitive skills, and leads to higher test scores for all participants. Thus, the program, which is administered by the Public Education Department (PED), will measure the effect of the additional time on literacy, numeracy, and social skills development of the participants.

As illustrated under "Background," below, the Legislature has appropriated funds for the program each year since its implementation. For FY 12, the Legislature appropriated \$5.3 million; and for school year 2011-2012, PED has approved 51 programs in 14 school districts and one state-chartered charter school, intending to serve 6,630 students altogether.

From the first request for proposals for school year 2007-2008 to the renewal plan application for school year 2011-2012, each year has seen some changes in the requirements or conditions that PED has placed on the program, as presented in each year's application. Overall, the trend seems to have been toward a more prescriptive application; and the latest version is perhaps the most prescriptive of all. As the co-director of a longitudinal study of the K-3 Plus

program has observed, “The changes that are specified in the 2010-11 Renewal Plan Application mean that statewide K-3 Plus is being implemented in significantly different ways in 2011 than it was in prior years. This year the program is more prescriptive in regard to the time spent on literacy, the students that are the focus of the intervention and the resources and funding that are provided to support those services . . . .”

This staff report will:

- review the changes in the program design and requirements as indicated in the application forms;
- note responses from selected school districts; and
- address the potential effect of these changes on the five-year longitudinal study of the K-3 Plus program being conducted by Utah State University.

The report concludes with a brief background that summarizes the statutory provisions of the K-3 Plus pilot program and that provides a funding history of the program.

### **Changes in Program Design**

The timing of the program has changed over the years.

- For school year 2007-2008, the application required the “majority” of the 25 days to occur before the regular school year begins.
- In school year 2008-2009, the 25 days could be at the end of one year, the beginning of the next, or some combination of the two.
- Since school year 2009-2010, however, all 25 days must occur prior to the start of the regular school year.

According to PED, funding has always been in the form of reimbursement although the basis for funding has changed over time.

- The applications for the first two years do not specify a funding basis,<sup>1</sup> but for school years 2009-2010 and 2010-2011, the funding was by classroom or teacher. For school year 2011-2012, the funding changed to a per-student basis.
- For this school year, the standard rate is \$800 per student although several districts were approved for \$850 because of their additional costs – transportation, for example

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<sup>1</sup> The application for school year 2007-2008 does estimate the cost of K-3 Plus at \$18,500 per class; and an LESC staff report in August 2007 cites a PED cost calculation of approximately \$711 per student.

– and three others were approved at a lower rate based on their budgets (see the Attachment).<sup>2</sup>

Requirements for teachers have changed as well.

- Beginning with the application for school year 2009-2010, schools have been directed to “make every effort to progress the classroom of [K-3 Plus] students with the same teacher in the regular school year.”
- The applications for school years 2010-2011 and 2011-2012 added the requirement that, “to be eligible for reimbursement,” prior written permission of PED must be obtained if the teacher in the regular school year will be different from the teacher in the K-3 Plus program.

Finally, the application for school year 2011-2012 contains the most changes and, arguably, the most significant changes. In addition to those noted above, for the first time in the course of the program:

- “districts should put an increased emphasis and time on literacy instruction” in order to align with the Governor’s education priorities;
- the program “should be an integral part” of each district’s or charter school’s program “to insure [sic] that all children read by third grade”;
- “it is important to prioritize data-driven literacy instruction and interventions to the lowest 25% of students in each grade level”;
- the amount of time spent in literacy instruction must vary according to the level of students in the Response to Intervention Framework: 30 additional minutes for students in Tier 2 and 60 additional minutes for students in Tier 3; and
- the amount of awards “may be reduced based on the actual number of students completing at least 20 of the 25 days of the K-3 Plus program.”

## **District Responses**

### ***Districts Declining to Participate***

Although they all expressed support for the program in general, five districts that had offered state-funded K-3 Plus programs in the past chose not to participate in the program this year, some of them citing the changes for school year 2011-2012 as part of their rationale.

- Bernalillo Public Schools (BPS) opted out of the program partly because of timing issues. Because the district was already operating a summer academy through the 21<sup>st</sup>

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<sup>2</sup> PED has explained that the \$800 per-student amount “came from looking at the proposed number of students in light of the appropriation and examining funding for prior years, including the validity of the kind of things that were requested and funded.”

Century program, it would have been difficult to accommodate K-3 Plus as well, in addition to making up days lost to winter weather during the preceding regular school year.

- The district was also concerned about its ability to meet the requirement of the same teachers in K-3 Plus and the succeeding regular school year, as well as its ability to satisfy the 20 of 25 days attendance requirement.
- On this latter point, BPS noted the cultural activities that pueblos schedule during the summer and, like other districts, the fact that the *Compulsory School Attendance Law* does not apply to the K-3 Plus program.
- Carrizozo Municipal Schools chose to operate its regular summer school in June rather than K-3 Plus in July. One reason was that, unlike years past, the district was unable to incur the costs of K-3 Plus and wait for reimbursement; another was concern that, with summer school and K-3 Plus, some teachers and students would have virtually no break between school years. “Teachers are tired,” a district official said.
- Also unable to incur the upfront costs and wait for reimbursement was Jemez Mountain Public Schools. In addition, the school that had participated in the program found it difficult to coordinate its year-round schedule with the K-3 Plus schedule.
- For Las Cruces Public Schools (LCPS), the decision not to participate in the state-funded program was based on “changes in the rules of engagement.” Of particular concern were (1) the requirements for the same teacher in K-3 Plus and the regular year; and (2) the 20 of 25 days’ attendance requirement, both of which were likely to affect the funding level.
  - On the first point, although the district has enough teachers altogether, it was unable to guarantee the continuity that the application expected, given that not all teachers would be willing to work during both terms.
  - On the second point, the district’s experience with the program in the past was that approximately 65 percent of the K-3 Plus students would likely miss more than five days of the program, largely because so many of the families served spend much of the summers in Mexico. The district tried to reach an agreement with PED for a waiver due to “exceptional circumstances,” but the parties were unable to agree. As discussed more fully below, the absence of LCPS from the program may be especially significant.
- Finally, West Las Vegas Public Schools, like other districts, was unable to afford the upfront costs. Other factors were the limited enrollment in the program last year and the difficulty of ensuring the 20 of 25 days’ attendance, given families’ travel and vacation plans for the summer.

### ***Districts Receiving Reduced Funding***

As illustrated in the Attachment, PED reports that three school districts participating in the program – Albuquerque Public Schools (APS), Dulce Independent Schools, and Los Lunas Public Schools – submitted budgets based on their needs, not on the proposed \$800 per student.

- APS explains that the district’s proposal was developed according to the applications for school-level services, which reflect the recent reductions in the K-3 Plus appropriations. In addition, PED had advised the district to have its schools prepare “budgets as ‘bare-bone’ as possible.” The district further explains that the individual schools’ budgets are not based so much on a per-student allocation as they are on projected student enrollment and the projected number of teachers and staff needed. Like other districts, APS is particularly mindful about the licensure levels of the teachers in K-3 Plus because “the salary adjustments are quite significant.”
- According to Dulce Independent Schools, the budget was developed largely at the direction of PED to limit enrollment in the program. The district is concerned about costs partly because one of the four Pre-K teachers, who held a Level 1 license, has resigned and been replaced by a Level 3 teacher, whose salary is higher. Any shortfall in funding, the district suggested, must come from the operational budget. The district is also concerned about satisfying the same-teacher requirement, indicating that, at the very least, the district will keep the cohorts of students together.
- With Los Lunas Public Schools, the request did not include funds for supplies or for professional development as all the teachers in the program have had the required professional development already. Like other districts, however, Los Lunas is concerned about the effects of the 20/25 requirement. In fact, this requirement has already presented the district with the dilemma of whether to continue the program next year, depending in part upon experience this year.

### **Effect on External Longitudinal Study of K-3 Plus**

In November 2010, the LESC heard a presentation describing the scope and purpose of a five-year study of the effectiveness of the state’s K-3 Plus program. Led by staff at the Center for Persons with Disabilities at Utah State University, which had previously studied the implementation of the program, this study is supported by a total of \$19.1 million in funding – most from a grant from the US Department of Education Investing in Innovation (i3) Program and the rest from a variety of foundations and some in-kind contributions from school districts and publishers.

- Called Start Smart K-3 Plus, this study is an evaluation of the K-3 Plus program with two fundamental goals: (1) to determine the cost-effectiveness of the K-3 Plus program in reducing the achievement gap; and (2) to use the evaluation to support the scale-up and replication of the K-3 Plus program.
- The evaluation is being conducted in partnership with New Mexico State University and four school districts – Gallup-McKinley County Public Schools, Albuquerque

Public Schools, Gadsden Independent Schools, and Las Cruces Public Schools – and its funding will pay for K-3 Plus services to students randomly assigned to the program in approximately 38 classrooms in the four districts, in addition to the state-funded programs.

According to Dr. Linda Goetze, the co-director of the study, the changes in the design and requirements of K-3 Plus for school year 2011-2012 are likely to affect the study in a number of ways.

- As noted earlier, fiscal concerns caused one of the study’s four partner districts, Las Cruces Public Schools, to withdraw from the state-approved program. Dr. Goetze explains that the district has committed to participate in the study this year, but whether the district will participate in future years “remains uncertain.” The district official who oversees the K-3 Plus program has said that the district cannot participate in a program that may cause the district’s budget to go into the red, especially under current fiscal constraints.<sup>3</sup>
- The condition “to prioritize data-driven literacy instruction and interventions to the lowest 25% of students at each grade level” has shifted the focus to a different student population. In addition, such a focus tends to reinforce the false impression among some parents and students, which Dr. Goetze has worked to correct, that K-3 Plus is a remediation program, when in fact it is an enhancement program and an effort to close the achievement gap.<sup>4</sup>
- Although the study is funding its own cohorts of K-3 Plus programs and its own control group, in addition to those programs funded by the state, the study was designed to incorporate standards-based assessment data from the state-funded programs as well. The loss of state-funded program data from one of the four partner districts reduces the amount of data overall.
- Fidelity of implementation is another issue. If this study is to accomplish its goal of “inform[ing] state and national education policy,” its findings must apply not just to the study’s programs but to the state-funded programs as well. Given what has become the “moving target” of the state’s programs, Dr. Goetze and her colleagues face the dilemma of what direction to give the teachers in the study’s programs: follow the requirements in law or follow the latest directives from the Secretary-designate of Public Education. Dr. Goetze describes this dilemma in more detail:

One of the requirements for a methodologically rigorous evaluation is that the fidelity of the intervention must be clearly described and documented concurrent with the delivery of those intervention services. That rigorous standard in regard to fidelity of the intervention cannot be met if the intervention is in constant flux due to changes in state implementation policies. Frankly the lead investigators for the Start Smart K-3 Plus study

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<sup>3</sup> It was this district official, incidentally, who first alerted Dr. Goetze to the changes in the program for school year 2011-2012.

<sup>4</sup> Dr. Goetze first raised this point in a presentation to the LESC in November 2009.

have had several discussions about whether to send this year's Renewal Plan Application guidelines to the school and district staff that are participating in the Start Smart Project or whether to stick with guidelines that we developed as part of the original i3 grant application. We are reluctant to adopt this year's K-3 Plus guidelines since we do not know what future changes might also be imposed for the project and we really need to implement one intervention that is consistent each year of the project if our results are to be meaningful.

## **Background**

Among its other provisions, the statute creating K-3 Plus:

- requires PED, in evaluating applications for K-3 Plus programs, to grant priority to those schools with Kindergarten Plus programs that have received one or more satisfactory annual evaluations;
- specifies that K-3 Plus must be conducted in high-poverty public schools – that is, schools in which at least 85 percent of the students are eligible for free or reduced-fee lunch at the time of application;
- requires PED to determine application requirements and procedures, as well as evaluation criteria;
- requires PED to provide additional professional development for K-3 Plus teachers in how young children learn to read;
- specifies that teachers and educational assistants must be paid at the same rate and under the same terms as teachers and educational assistants in regular educational programs;
- requires that students be evaluated at the beginning of the program and that their progress be measured (1) in literacy, using the Dynamic Indicators of Basic Early Literacy Skills (DIBELS) in kindergarten through grade 3; and (2) in numeracy in grades 3 and 4; and
- allows PED to use up to 4.0 percent of any legislative appropriation for K-3 Plus for professional development for participating educators and department administrative costs.

In addition to the appropriation of \$5.3 million for FY 12, the Legislature has appropriated a total of almost \$27.6 million in General Fund revenue to fund the K-3 Plus pilot program, with the smallest appropriations in the last two fiscal years:

- \$7.2 million for expenditure in FY 08:
  - for school year 2007-2008, PED approved 54 programs serving 5,069 students in 17 school districts.
- \$7.2 million for expenditure in FY 09:
  - for school year 2008-2009, PED approved 92 programs serving 6,996 students in 25 school districts; and
  - in addition, the Legislature appropriated \$3.0 million in Temporary Assistance for Needy Families funds, which were vetoed.

- \$8.5 million for expenditure in FY 10:
  - as a result of the special session in October 2009, however, this appropriation was reduced by 6.5 percent to \$7.9 million; and
  - for school year 2009-2010, PED approved 93 programs serving 8,053 students in 25 school districts.
  
- \$5.5 million for expenditure in FY11:
  - in the 2010 special session, the appropriation was reduced by 0.544 percent to \$5,470,100. After the 3.244 percent reduction in August 2010, \$5,292,600 was available for K-3 Plus; and
  - for school year 2010-2011, PED approved 62 programs serving 5,816 students in 19 districts, plus one state-chartered charter school.

## FY12 K-3 Plus Funding

6/14/2011

K-3 Plus SCHOOL DISTRICT	STUDENTS in FY12 APPLICATION (all funded)	FY12 REQUESTED STUDENTS @ \$800 per STUDENT and \$850 PER STUDENT for High Need Districts (blue Font)
Albuquerque Public Schools	3720	\$2,697,670
Central Consolidated Schools	641	\$544,850
Deming Public Schools	300	\$240,000
Dulce Public Schools	80	\$50,265
Espanola Public Schools	60	\$48,000
Gadsden Independent Schools	527	\$447,950
Gallup-McKinley County Schools	240	\$204,000
JVPS-San Diego Riverside Charter	40	\$32,000
La Promesa Charter School-Abq	110	\$88,000
Los Lunas Public Schools	120	\$85,082
Loving Municipal Schools	154	\$123,200
Santa Fe Public Schools	260	\$208,000
Silver Consolidated Schools	70	\$59,500
Socorro Consolidated Schools	80	\$68,000
Taos Municipal School District	228	\$182,400
<b>TOTALS</b>	<b>6,630</b>	<b>\$5,078,917</b>
<p style="color: blue;">High need was determined by district request due to high transportation costs or for intervention materials and personnel to work with the lowest achieving 25% of students.</p>		
<p>Note: APS, Dulce and Los Lunas submitted a budget based on their needs, not on the proposed \$800 per student</p>		
<p>Actual FY11 students =5816</p>		

Source: PED

LESC: 06-27-11



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HANNA SKANDERA  
 SECRETARY OF EDUCATION

SUSANA MARTINEZ  
 GOVERNOR

RECEIVED

JUN 08 2011

LESC

June 7, 2011

MEMORANDUM

**TO:** Frances Maestas, Director, Legislative Education Study Committee (LESC)

**FROM:** Hanna Skandera  
 Secretary-designate of Education *HS*

**RE:** Question Regarding Employer Coverage of Increased ERB Contributions

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On May 21, 2011, you asked whether a school district can cover the employee increased ERB contribution so that the employee does not have a pay reduction. There are several reasons why such a proposal is prohibited by state and federal laws.

1. Mandatory school district contributions to the Employee Retirement Act (ERA) retirement fund for district employees who are in ERA are determined by a formula which is set forth in Section 22-11-21 of the ERA.
2. By paying the employee the exact amount of the contribution to ERA, the school district is essentially paying the contribution, which defeats the purpose of the amended legislation, which intended to impose a greater contribution on ERA member employees—instead of on the school district employing unit.
3. Payment of an employee's contribution is considered a "pick up" under Section 22-11-21.1 of the ERA and Section 414 of the Internal Revenue Code (IRC). However, under IRC Section 414, the employer cannot make a contribution and also pay the employee the amount of the contribution. There are IRS revenue rulings that have held this interpretation.
4. Essentially, to permit this proposed arrangement would be to permit a school district to amend the state retirement plan, which it cannot do without legislative authority.

5. It is not clear whether paying a school employee the amount of the employee's legislatively increased contribution to his/her ERA fund would disturb that employee's earned service credit.
6. Lastly, given that the Legislature has set the level of employer and employee contributions for teachers under the ERA, a school district that makes up the difference in reduced earnings because of increased employee retirement contributions set by a change in law is essentially providing these employees with increased compensation. This would violate the Anti-Donation Clause of the New Mexico Constitution. [Note also, Article 4, Section 27, which provides: "No law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made; nor shall the compensation of any officer be increased or diminished during his term of office, except as otherwise provided in this constitution. "]

Not included in your question is the type of funding proposed for the payment. It is assumed that a district's operational funds are being considered.

For the reasons stated above, a district cannot use its operational funds to pay increased salaries to district employees whose salaries were reduced because of a legislative change in the amount of their contributions to the ERA.

Thank you.

HS/rmw