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AN ACT

RELATING TO PUBLIC SCHOOLS; DISTINGUISHING A STUDENT'S
ACADEMIC PROFICIENCY FROM THE ADEQUATE YEARLY PROGRESS OF
PUBLIC SCHOOLS AND SCHOOL DISTRICTS; CONFORMING RANKINGS OF
SCHOOLS IN NEED OF IMPROVEMENT WITH FEDERAL REQUIREMENTS;
PROVIDING A PROCESS FOR REOPENING FAILING SCHOOLS AS
STATE-CHARTERED CHARTER SCHOOLS; PROVIDING FOR THE
DISAGGREGATION OF DATA BY GENDER; RECONCILING MULTIPLE
AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005.

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

Section 1. Section 22-1-2 NMSA 1978 (being Laws 2003,
Chapter 153, Section 3, as amended by Laws 2005, Chapter 313,
Section 3 and by Laws 2005, Chapter 315, Section 1) is
amended to read:

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

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

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

1 C. "commission" means the public education
2 commission;

3 D. "department" means the public education
4 department;

5 E. "forty-day report" means the report of
6 qualified student membership of each school district and of
7 those eligible to be qualified students but enrolled in a
8 private school or a home school for the first forty days of
9 school;

10 F. "home school" means the operation by the parent
11 of a school-age person of a home study program of instruction
12 that provides a basic academic educational program, including
13 reading, language arts, mathematics, social studies and
14 science;

15 G. "instructional support provider" means a person
16 who is employed to support the instructional program of a
17 school district, including educational assistant, school
18 counselor, social worker, school nurse, speech-language
19 pathologist, psychologist, physical therapist, occupational
20 therapist, recreational therapist, interpreter for the deaf
21 and diagnostician;

22 H. "licensed school employee" means teachers,
23 school administrators and instructional support providers;

24 I. "local school board" means the policy-setting
25 body of a school district;

1 J. "local superintendent" means the chief
2 executive officer of a school district;

3 K. "parent" includes a guardian or other person
4 having custody and control of a school-age person;

5 L. "private school" means a school, other than a
6 home school, that offers on-site programs of instruction and
7 that is not under the control, supervision or management of a
8 local school board;

9 M. "public school" means that part of a school
10 district that is a single attendance center in which
11 instruction is offered by one or more teachers and is
12 discernible as a building or group of buildings generally
13 recognized as either an elementary, middle, junior high or
14 high school or any combination of those and includes a
15 charter school;

16 N. "school" means a supervised program of
17 instruction designed to educate a student in a particular
18 place, manner and subject area;

19 O. "school administrator" means a person licensed
20 to administer in a school district and includes school
21 principals and central district administrators;

22 P. "school-age person" means a person who is at
23 least five years of age prior to 12:01 a.m. on September 1 of
24 the school year and who has not received a high school
25 diploma or its equivalent. A maximum age of twenty-one shall

1 be used for a person who is classified as special education
2 membership as defined in Section 22-8-21 NMSA 1978 or as a
3 resident of a state institution;

4 Q. "school building" means a public school, an
5 administration building and related school structures or
6 facilities, including teacher housing, that is owned,
7 acquired or constructed by the school district as necessary
8 to carry out the functions of the school district;

9 R. "school bus private owner" means a person,
10 other than a school district, the department, the state or
11 any other political subdivision of the state, that owns a
12 school bus;

13 S. "school district" means an area of land
14 established as a political subdivision of the state for the
15 administration of public schools and segregated
16 geographically for taxation and bonding purposes;

17 T. "school employee" includes licensed and
18 nonlicensed employees of a school district;

19 U. "school principal" means the chief
20 instructional leader and administrative head of a public
21 school;

22 V. "school year" means the total number of
23 contract days offered by public schools in a school district
24 during a period of twelve consecutive months;

25 W. "secretary" means the secretary of public

1 education;

2 X. "state agency" or "state institution" means the
3 New Mexico military institute, New Mexico school for the
4 blind and visually impaired, New Mexico school for the deaf,
5 New Mexico boys' school, girls' welfare home, New Mexico
6 youth diagnostic and development center, Sequoyah adolescent
7 treatment center, Carrie Tingley crippled children's
8 hospital, New Mexico behavioral health institute at Las Vegas
9 and any other state agency responsible for educating resident
10 children;

11 Y. "state educational institution" means an
12 institution enumerated in Article 12, Section 11 of the
13 constitution of New Mexico;

14 Z. "substitute teacher" means a person who holds a
15 certificate to substitute for a teacher in the classroom;

16 AA. "teacher" means a person who holds a level
17 one, two or three-A license and whose primary duty is
18 classroom instruction or the supervision, below the school
19 principal level, of an instructional program or whose duties
20 include curriculum development, peer intervention, peer
21 coaching or mentoring or serving as a resource teacher for
22 other teachers;

23 BB. "certified school instructor" means a teacher
24 or instructional support provider; and

25 CC. "certified school employee" or "certified

1 school personnel" means a licensed school employee."

2 Section 2. Section 22-2C-1 NMSA 1978 (being Laws 2003,
3 Chapter 153, Section 10) is amended to read:

4 "22-2C-1. SHORT TITLE.--Chapter 22, Article 2C NMSA
5 1978 may be cited as the "Assessment and Accountability
6 Act"."

7 Section 3. Section 22-2C-5 NMSA 1978 (being Laws 2003,
8 Chapter 153, Section 14) is amended to read:

9 "22-2C-5. STUDENT ACHIEVEMENT RATINGS--CALCULATION OF
10 ADEQUATE YEARLY PROGRESS.--The department shall adopt the
11 process and methodology for calculating adequate yearly
12 progress. The statewide standards-based assessments used to
13 assess adequate yearly progress shall be valid and reliable
14 and shall conform with nationally recognized professional and
15 technical standards. Academic performance shall be measured
16 by school and by the following subgroups:

- 17 A. ethnicity;
- 18 B. race;
- 19 C. limited English proficiency;
- 20 D. students with disabilities; and
- 21 E. poverty."

22 Section 4. Section 22-2C-6 NMSA 1978 (being Laws 1986,
23 Chapter 33, Section 7, as amended) is amended to read:

24 "22-2C-6. REMEDIATION PROGRAMS--PROMOTION POLICIES--
25 RESTRICTIONS.--

1 A. Remediation programs, academic improvement
2 programs and promotion policies shall be aligned with
3 school-district-determined assessment results and
4 requirements of the state assessment and accountability
5 program.

6 B. Local school boards shall approve
7 school-district-developed remediation programs and academic
8 improvement programs to provide special instructional
9 assistance to students in grades one through eight who do not
10 demonstrate academic proficiency. The cost of remediation
11 programs and academic improvement programs shall be borne by
12 the school district. Remediation programs and academic
13 improvement programs shall be incorporated into the school
14 district's educational plan for student success and filed
15 with the department.

16 C. The cost of summer and extended day remediation
17 programs and academic improvement programs offered in grades
18 nine through twelve shall be borne by the parent; however,
19 where parents are determined to be indigent according to
20 guidelines established by the department, the school district
21 shall bear those costs.

22 D. Diagnosis of weaknesses identified by a
23 student's academic achievement may serve as criteria in
24 assessing the need for remedial programs or retention.

25 E. A parent shall be notified no later than the

1 end of the second grading period that the parent's child is
2 not academically proficient, and a conference consisting of
3 the parent and the teacher shall be held to discuss possible
4 remediation programs available to assist the student in
5 becoming academically proficient. Specific academic
6 deficiencies and remediation strategies shall be explained to
7 the student's parent and a written intervention plan
8 developed containing time lines, academic expectations and
9 the measurements to be used to verify that a student has
10 overcome academic deficiencies. Remediation programs and
11 academic improvement programs include tutoring, extended day
12 or week programs, summer programs and other research-based
13 interventions and models for student improvement.

14 F. At the end of grades one through seven, three
15 options are available, dependent on a student's academic
16 proficiency:

17 (1) the student is academically proficient
18 and shall enter the next higher grade;

19 (2) the student is not academically
20 proficient and shall participate in the required level of
21 remediation. Upon certification by the school district that
22 the student is academically proficient, the student shall
23 enter the next higher grade; or

24 (3) the student is not academically
25 proficient after completion of the prescribed remediation

1 program and upon the recommendation of the teacher and school
2 principal shall either be:

3 (a) retained in the same grade for no
4 more than one school year with an academic improvement plan
5 developed by the student assistance team in order to become
6 academically proficient, at which time the student shall
7 enter the next higher grade; or

8 (b) promoted to the next grade if the
9 parent refuses to allow the child to be retained pursuant to
10 Subparagraph (a) of this paragraph. In this case, the parent
11 shall sign a waiver indicating the parent's desire that the
12 student be promoted to the next higher grade with an academic
13 improvement plan designed to address specific academic
14 deficiencies. The academic improvement plan shall be
15 developed by the student assistance team outlining time lines
16 and monitoring activities to ensure progress toward
17 overcoming those academic deficiencies. Students failing to
18 become academically proficient at the end of that year as
19 measured by grades, performance on school district
20 assessments and other measures identified by the school
21 district shall be retained in the same grade for no more than
22 one year in order to have additional time to achieve academic
23 proficiency.

24 G. At the end of the eighth grade, a student who
25 is not academically proficient shall be retained in the

1 eighth grade for no more than one school year to become
2 academically proficient or if the student assistance team
3 determines that retention of the student in the eighth grade
4 will not assist the student to become academically
5 proficient, the team shall design a high school graduation
6 plan to meet the student's needs for entry into the work
7 force or a post-secondary educational institution. If a
8 student is retained in the eighth grade, the student
9 assistance team shall develop a specific academic improvement
10 plan that clearly delineates the student's academic
11 deficiencies and prescribes a specific remediation plan to
12 address those academic deficiencies.

13 H. A student who does not demonstrate academic
14 proficiency for two successive school years shall be referred
15 to the student assistance team for placement in an
16 alternative program designed by the school district.
17 Alternative program plans shall be filed with the department.

18 I. Promotion and retention decisions affecting a
19 student enrolled in special education shall be made in
20 accordance with the provisions of the individual educational
21 plan established for that student.

22 J. For the purposes of this section:

23 (1) "academic improvement plan" means a
24 written document developed by the student assistance team
25 that describes the specific content standards required for a

1 certain grade level that a student has not achieved and that
2 prescribes specific remediation programs such as summer
3 school, extended day or week school and tutoring;

4 (2) "school-district-determined assessment
5 results" means the results obtained from student assessments
6 developed or adopted by a local school board and conducted at
7 an elementary grade level or middle school level;

8 (3) "educational plan for student success"
9 means a student-centered tool developed to define the role of
10 the academic improvement plan within the public school and
11 the school district that addresses methods to improve student
12 learning and success in school and that identifies specific
13 measures of a student's progress; and

14 (4) "student assistance team" means a group
15 consisting of a student's:

- 16 (a) teacher;
- 17 (b) school counselor;
- 18 (c) school administrator; and
- 19 (d) parent."

20 Section 5. Section 22-2C-7 NMSA 1978 (being Laws 2003,
21 Chapter 153, Section 16, as amended) is amended to read:

22 "22-2C-7. ADEQUATE YEARLY PROGRESS--SCHOOL IMPROVEMENT
23 PLANS--CORRECTIVE ACTION--RESTRUCTURING.--

24 A. A public school that fails to make adequate
25 yearly progress for two consecutive school years shall be

1 identified as a school in need of improvement. A school in
2 need of improvement shall be ranked as:

- 3 (1) school improvement 1;
- 4 (2) school improvement 2;
- 5 (3) corrective action;
- 6 (4) restructuring 1; or
- 7 (5) restructuring 2.

8 B. Within ninety days of being notified that a
9 public school within the school district has been identified
10 as a public school in need of improvement, the school
11 district shall submit an improvement plan for that public
12 school to the department. In developing the improvement
13 plan, the local superintendent, the president of the local
14 school board and the school principal of the public school in
15 need of improvement shall hold a public meeting to inform
16 parents and the public of the public school's rank. The
17 meeting shall be used to elicit suggestions from parents and
18 the public on how to improve the public school. After the
19 public meeting, the school district shall develop the public
20 school's improvement plan, and the local school board shall
21 approve the improvement plan before it is submitted to the
22 department. The improvement plan shall be approved by the
23 department within thirty days of its submission.

24 C. The improvement plan shall include:

- 25 (1) documentation of performance measures in

1 which the public school failed to make adequate yearly
2 progress;

3 (2) measurable objectives to indicate the
4 action that will be taken to address failed measures;

5 (3) benchmarks to be used to indicate
6 progress in meeting academic content and performance
7 standards;

8 (4) an estimate of the time and the
9 resources needed to achieve each objective in the improvement
10 plan;

11 (5) the support services that shall be
12 provided to students;

13 (6) applications that have been made for
14 federal and state funds; and

15 (7) any other information that the public
16 school that needs improvement, the local superintendent, the
17 local school board or the department deems necessary.

18 D. A public school in need of improvement may
19 apply to the department for financial or other assistance in
20 accordance with the improvement plan. The public school
21 shall make application for assistance substantially in the
22 form required by the department. The department shall
23 evaluate applications for assistance and may recommend
24 changes to an application or to an improvement plan if
25 warranted by the final application. The department shall

1 consider innovative methods to assist the public school in
2 meeting its improvement plan, including department or other
3 school employees serving as a mobile assistance team to
4 provide administrative, classroom, human resource and other
5 assistance to the public school that needs improvement as
6 needed and as provided in applications approved by the
7 department.

8 E. If a public school has failed to make adequate
9 yearly progress for two consecutive school years it shall be
10 placed in school improvement 1 and shall provide
11 transportation or pay the cost of transportation, within
12 available funds, for students who choose to enroll in a
13 higher ranked public school.

14 F. If a public school has failed to make adequate
15 yearly progress for three consecutive school years it shall
16 be placed in school improvement 2 and shall provide
17 supplemental services, including after-school programs,
18 tutoring and summer services to its Title I-eligible
19 students, within available funds.

20 G. The department shall adopt rules that govern
21 the priority for students for whom supplemental services
22 shall be provided and for students for whom transportation
23 costs are paid. The rules shall include the adoption of a
24 sliding-fee schedule based on the educational level of tutors
25 in New Mexico and require that providers use a pre- and

1 post-assessment instrument approved by the department to
2 measure the gains that students achieve through supplemental
3 services.

4 H. If a public school has failed to make adequate
5 yearly progress for four consecutive school years, it shall
6 be placed in corrective action and the school district, in
7 conjunction with the department, shall take one or more of
8 the following actions in addition to earlier improvements:

- 9 (1) replace staff as allowed by law;
- 10 (2) implement a new curriculum;
- 11 (3) decrease management authority of the
12 public school;
- 13 (4) appoint an outside expert to advise the
14 public school;
- 15 (5) extend the school day or year; or
- 16 (6) change the public school's internal
17 organizational structure.

18 I. If a public school has failed to make adequate
19 yearly progress for five consecutive school years, it shall
20 be placed in restructuring 1 and shall continue the
21 improvement measures implemented pursuant to Subsections B
22 through H of this section and begin planning for
23 restructuring of the public school if it fails to make
24 adequate yearly progress in the sixth year.

25 J. If a public school has failed to make adequate

1 yearly progress for six consecutive years, it shall be placed
2 in restructuring 2. The school district, in conjunction with
3 the department, shall take one or more of the following
4 actions in addition to other improvements:

5 (1) recommend reopening the public school as
6 a state-chartered charter school as provided in
7 Section 22-2C-7.1 NMSA 1978;

8 (2) replace all or most of the staff as
9 allowed by law;

10 (3) turn over the management of the public
11 school to the department; or

12 (4) make other governance changes.

13 K. A school district that has failed to make
14 adequate yearly progress for two consecutive school years may
15 be subject to the same requirements as a public school
16 subject to corrective action, as determined by the
17 department. A school district that fails to make adequate
18 yearly progress for four consecutive school years shall be
19 subject to corrective action.

20 L. The state, a school district or a charter
21 school shall not enter into management contracts with private
22 entities for the management of a public school or a school
23 district subject to corrective action.

24 M. If a public school that is identified as a
25 school in need of improvement makes adequate yearly progress

1 in the year that it has been placed in school improvement 1,
2 school improvement 2, corrective action or restructuring 1,
3 it shall not move to the next school improvement rank for one
4 year. If the public school makes adequate yearly progress
5 for a second consecutive year, it shall be removed from the
6 ranks of schools in need of improvement.

7 N. Nothing in this section shall be construed to
8 restrict the powers and duties of the secretary or the
9 department under the Public School Code."

10 Section 6. A new section of the Assessment and
11 Accountability Act, Section 22-2C-7.1 NMSA 1978, is enacted
12 to read:

13 "22-2C-7.1. FAILING SCHOOL SUBJECT TO REOPENING AS
14 STATE-CHARTERED CHARTER SCHOOL--REQUIREMENTS.--

15 A. If, pursuant to Subsections I and J of Section
16 22-2C-7 NMSA 1978, the school district in which a public
17 school that has failed to make adequate yearly progress for
18 five consecutive years recommends that the public school be
19 reopened as a state-chartered charter school, the department,
20 after holding a public hearing in the school district, may
21 take steps to have the public school reopened as a
22 state-chartered charter school.

23 B. To reopen as a state-chartered charter school:

24 (1) the school's current enrollment for all
25 grades cannot exceed ten percent of the total MEM of the

1 school district where it is located when the school district
2 has a total enrollment of less than one thousand three
3 hundred students;

4 (2) the department, after obtaining
5 information and community input during the public hearing,
6 shall find at least five qualified persons willing to serve
7 in an interim capacity as a governing body;

8 (3) the governing body shall employ a
9 qualified school administrator within thirty days of its
10 appointment by the department;

11 (4) the governing body shall qualify as a
12 board of finance and satisfy any conditions imposed by the
13 commission prior to commencing full operation;

14 (5) the governing body shall develop a
15 written plan and proposed charter that is satisfactory to the
16 commission and that at a minimum addresses the following
17 issues:

18 (a) the employment, discharge,
19 termination or displacement of current school employees,
20 including the effect of employment decisions on current
21 employment contracts and collective bargaining agreements;

22 (b) fiscal and records management;

23 (c) instructional and administrative
24 facilities;

25 (d) student transportation;

- 1 (e) special education;
2 (f) curriculum;
3 (g) education-related and other
4 services;
5 (h) accreditation;
6 (i) food service;
7 (j) graduation requirements, if a
8 waiver of state graduation requirements is sought;
9 (k) governance turnover; and
10 (l) student assessments and school
11 accountability;

12 (6) the governing body and the school shall
13 comply with any other substantive or procedural requirements
14 imposed on them by law or rule of the department; and

15 (7) the department and the governing body
16 shall have a plan to provide for an orderly transition.

17 C. If, within ninety days of its determination
18 that the school should be reopened as a state-chartered
19 charter school, the department is unable to constitute a
20 qualified governing body or the governing body does not have
21 its charter approved by the commission and does not find a
22 qualified school administrator able to commence operation of
23 the proposed state-chartered charter school, the failing
24 school shall not be reopened as a state-chartered charter
25 school. Failure to reopen the school as a state-chartered

1 charter school does not affect other actions that may be
2 taken to improve the school.

3 D. The provisions of the Charter Schools Act shall
4 apply to a public school that is reopened as a
5 state-chartered charter school."

6 Section 7. Section 22-2C-11 NMSA 1978 (being Laws 2003,
7 Chapter 153, Section 20, as amended) is amended to read:

8 "22-2C-11. ASSESSMENT AND ACCOUNTABILITY SYSTEM
9 REPORTING--PARENT SURVEY--DATA SYSTEM--FISCAL INFORMATION.--

10 A. The department shall:

11 (1) issue a state identification number for
12 each public school student for use in the accountability data
13 system;

14 (2) adopt the format for reporting
15 individual student assessments to parents. The student
16 assessments shall report each student's progress and academic
17 needs as measured against state standards;

18 (3) adopt the format for reporting annual
19 yearly progress of public schools, school districts and the
20 department. If the department has adopted a state improving
21 schools program, the annual accountability report shall
22 include the results of that program for each public school.
23 The annual accountability report format shall be clear,
24 concise and understandable to parents and the general public.
25 All annual accountability reports shall ensure that the

1 privacy of individual students is protected; and

2 (4) require that when public schools, school
3 districts and the state disaggregate and report school data
4 for demographic subgroups, they include data disaggregated by
5 gender.

6 B. Local school boards may establish additional
7 indicators through which to measure the school district's
8 performance in areas other than adequate yearly progress.

9 C. The school district's annual accountability
10 report shall include a report of graduation rates for each
11 public high school in the school district. As part of the
12 graduation rate data, the school district shall indicate
13 contributing factors to nongraduation such as transfer out of
14 the school district, pregnancy, dropout and other factors as
15 known.

16 D. The school district's annual accountability
17 report shall include the results of a survey of parents'
18 views of the quality of their children's school. The survey
19 shall be conducted each year in time to include the results
20 in the annual accountability report. The survey shall
21 compile the results of a written questionnaire that shall be
22 sent home with the students to be given to their parents.
23 The survey may be completed anonymously. The survey shall be
24 no more than one page, shall be clearly and concisely written
25 and shall include not more than twenty questions that shall

1 be answered with options of a simple sliding scale ranging
2 from "strongly agree" to "strongly disagree" and shall
3 include the optional response "don't know". The survey shall
4 also include a request for optional written comments, which
5 may be written on the back of the questionnaire form. The
6 questionnaire shall include questions in the following areas:

7 (1) parent-teacher-school relationship and
8 communication;

9 (2) quality of educational and
10 extracurricular programs;

11 (3) instructional practices and techniques;

12 (4) resources;

13 (5) school employees, including the school
14 principal; and

15 (6) parents' views of teaching staff
16 expectations for the students.

17 E. The department shall develop no more than ten
18 of the survey questions, which shall be reviewed by the
19 legislative education study committee prior to
20 implementation. No more than five survey questions shall be
21 developed by the local school board, and no more than five
22 survey questions shall be developed by the staffs of each
23 public school; provided that at least one-half of those
24 questions shall be developed by teachers rather than school
25 administrators, in order to gather information that is

1 specific to the particular community surveyed. The
2 questionnaires shall indicate the public school site and
3 shall be tabulated by the department within thirty days of
4 receipt and shall be returned to the respective schools to be
5 disseminated to all parents.

6 F. The school district's annual accountability
7 report shall be adopted by the local school board, shall be
8 published no later than November 15 of each year and shall be
9 published at least once each school year in a newspaper of
10 general circulation in the county where the school district
11 is located. In publication, the report shall be titled "The
12 School District Report Card" and disseminated in accordance
13 with guidelines established by the department to ensure
14 effective communication with parents, students, educators,
15 local policymakers and business and community organizations.

16 G. The annual accountability report shall include
17 the names of those local school board members who failed to
18 attend annual mandatory training.

19 H. The annual accountability report shall include
20 data on expenditures for central office administration and
21 expenditures for the public schools of the school district.

22 I. The department shall create an accountability
23 data system through which data from each public school and
24 each school district may be compiled and reviewed. The
25 department shall provide the resources to train school

1 district personnel in the use of the accountability data
2 system.

3 J. The department shall verify data submitted by
4 the school districts.

5 K. At the end of fiscal year 2005, after the
6 budget approval cycle, the department shall produce a report
7 to the legislature that shows for all school districts using
8 performance-based program budgeting the relationship between
9 that portion of a school district's program cost generated by
10 each public school in the school district and the budgeted
11 expenditures for each public school in the school district as
12 reported in the district's performance-based program budget.

13 At the end of fiscal year 2006 and subsequent fiscal years,
14 after the budget approval cycle, the department shall report
15 on this relationship in all public schools in all school
16 districts in the state.

17 L. When all public schools are participating in
18 performance-based budgeting, the department shall recommend
19 annually to the legislature for inclusion in the general
20 appropriation act the maximum percentage of appropriations
21 that may be expended in each school district for central
22 office administration.

23 M. The department shall disseminate its statewide
24 accountability report to school districts; the governor,
25 legislators and other policymakers; and business and economic

1 development organizations."

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