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HOUSE BILL 459

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Ray Begaye

AN ACT

RELATING TO SCHOOL PERSONNEL; REQUIRING LOCAL SCHOOL BOARD
APPROVAL OF THE LOCAL SUPERINTENDENT'S EMPLOYMENT
RECOMMENDATIONS OF DISTRICTWIDE ADMINISTRATORS; CHANGING THE
FUNCTIONAL STATUS OF THE LOCAL SUPERINTENDENT; DEFINING A TERM;
PROVIDING FOR THE REVIEW OF PERSONNEL ACTIONS AFFECTING THE
SCHOOL BUDGET.

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) 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

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1 adopted by the department based on federal requirements to
2 assess the progress that a public school or school district or
3 the state makes toward improving student achievement;

4 C. "commission" means the public education
5 commission;

6 D. "department" means the public education
7 department;

8 E. "districtwide administrator" means a person who
9 is engaged in districtwide administrative functions for more
10 than one-half of the person's employment time, including
11 deputy, associate or assistant superintendent; program
12 director, manager or coordinator; and department head;

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

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

25 [~~G.~~] H. "licensed school employee" means teachers,

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1 school administrators and instructional support providers;

2 [H.] I. "local school board" means the policy-
3 setting body of a school district;

4 [I.] J. "local superintendent" means the chief
5 [~~executive officer~~] instructional leader of a school district;

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

8 [K.] L. "private school" means a school, other than
9 a home school, that offers on-site programs of instruction and
10 that is not under the control, supervision or management of a
11 local school board;

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

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

22 [N.] O. "school administrator" means a person
23 licensed to administer in a school district and includes school
24 principals and central district administrators;

25 [O.] P. "school-age person" means a person who is

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

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

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

16 ~~[R-]~~ S. "school district" means an area of land
17 established as a political subdivision of the state for the
18 administration of public schools and segregated geographically
19 for taxation and bonding purposes;

20 ~~[S-]~~ T. "school employee" includes licensed and
21 nonlicensed employees of a school district;

22 ~~[T-]~~ U. "school principal" means the chief
23 instructional leader and administrative head of a public
24 school;

25 ~~[U-]~~ V. "school year" means the total number of

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1 contract days offered by public schools in a school district
2 during a period of twelve consecutive months;

3 ~~[V.]~~ W. "secretary" means the secretary of public
4 education;

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

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

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

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

25 ~~[AA.]~~ BB. "certified school instructor" means a

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1 teacher or instructional support provider; and
2 [BB-] CC. "certified school employee" or "certified
3 school personnel" means a licensed school employee."

4 SECTION 2. Section 22-5-4 NMSA 1978 (being Laws 1967,
5 Chapter 16, Section 28, as amended) is amended to read:

6 "22-5-4. LOCAL SCHOOL BOARDS--POWERS--DUTIES.--A local
7 school board shall have the following powers or duties:

8 A. subject to the rules of the department, develop
9 educational policies for the school district;

10 B. employ a local superintendent for the school
11 district and fix the superintendent's salary;

12 C. approve or disapprove the local superintendent's
13 recommendation for employment, salary and term of contract for
14 districtwide administrators or may delegate the function to the
15 local superintendent;

16 [G-] D. review and approve the annual school
17 district budget;

18 [D-] E. acquire, lease and dispose of property;

19 [E-] F. have the capacity to sue and be sued;

20 [F-] G. acquire property by eminent domain pursuant
21 to the procedures provided in the Eminent Domain Code;

22 [G-] H. issue general obligation bonds of the
23 school district;

24 [H-] I. provide for the repair of and maintain all
25 property belonging to the school district;

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1 ~~[H.]~~ J. for good cause and upon order of the
2 district court, subpoena witnesses and documents in connection
3 with a hearing concerning any powers or duties of the local
4 school board;

5 ~~[J.]~~ K. except for expenditures for salaries,
6 contract for the expenditure of money according to the
7 provisions of the Procurement Code;

8 ~~[K.]~~ L. adopt rules pertaining to the
9 administration of all powers or duties of the local school
10 board;

11 ~~[L.]~~ M. accept or reject any charitable gift,
12 grant, devise or bequest. The particular gift, grant, devise
13 or bequest accepted shall be considered an asset of the school
14 district or the public school to which it is given;

15 ~~[M.]~~ N. offer and, upon compliance with the
16 conditions of such offer, pay rewards for information leading
17 to the arrest and conviction or other appropriate disciplinary
18 disposition by the courts or juvenile authorities of offenders
19 in case of theft, defacement or destruction of school district
20 property. All such rewards shall be paid from school district
21 funds in accordance with rules promulgated by the department;
22 and

23 ~~[N. give prior approval for]~~ O. approve any
24 educational program in a public school in the school district
25 that is to be conducted, sponsored, carried on or caused to be

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1 carried on by a private organization or agency before the
2 program may be conducted."

3 SECTION 3. Section 22-5-14 NMSA 1978 (being Laws 2003,
4 Chapter 153, Section 25) is amended to read:

5 "22-5-14. LOCAL SUPERINTENDENT--POWERS AND DUTIES.--

6 A. The local superintendent is the chief [~~executive~~
7 ~~officer~~] instructional leader of the school district.

8 B. The local superintendent shall:

9 (1) carry out the educational policies and
10 rules of the [~~state board~~] department and local school board;

11 (2) administer and supervise the school
12 district;

13 (3) except as provided in Subsection C of
14 Section 22-5-4 NMSA 1978, employ, fix the salaries of and
15 assign, terminate or discharge all employees of the school
16 district;

17 (4) prepare the school district budget based
18 on public schools' recommendations for review and approval by
19 the local school board and the department. The local
20 superintendent shall tell each school principal the approximate
21 amount of money that may be available for [~~his~~] the principal's
22 school and provide a school budget template to use in making
23 school budget recommendations; [~~and~~]

24 (5) submit all salary increases and contract
25 extensions for districtwide administrators to the local school

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1 board for approval to ensure compliance with the budget and
2 salary schedules; and

3 [~~5~~] (6) perform other duties as required by
4 law, the department or the local school board.

5 C. The local superintendent may apply to the [~~state~~
6 ~~board~~] department for a waiver of certain provisions of the
7 Public School Code relating to length of school day, staffing
8 patterns, subject area or the purchase of instructional
9 materials for the purpose of implementing a collaborative
10 school improvement program for an individual public school."

11 SECTION 4. Section 22-10A-21 NMSA 1978 (being Laws 1967,
12 Chapter 16, Section 113, as amended) is amended to read:

13 "22-10A-21. EMPLOYMENT CONTRACTS--DURATION.--

14 A. All employment contracts between local school
15 boards and [~~certified~~] licensed school personnel and between
16 governing authorities of state agencies and [~~certified~~]
17 licensed school [~~instructors~~] employees shall be in writing on
18 forms approved by the [~~state board~~] department. These forms
19 shall contain and specify the term of service, the salary to be
20 paid, the method of payment, the causes for termination of the
21 contract and other provisions required by the [~~regulations of~~
22 ~~the state board~~] rules of the department.

23 B. All employment contracts between local school
24 boards and [~~certified~~] licensed school personnel and between
25 governing authorities of state agencies and [~~certified~~]

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1 licensed school [~~instructors~~] employees shall be for a period
2 of one school year except:

3 (1) contracts for less than one school year
4 are permitted to fill personnel vacancies [~~which~~] that occur
5 during the school year;

6 (2) contracts for the remainder of a school
7 year are permitted to staff programs when the availability of
8 funds for the programs is not known until after the beginning
9 of the school year;

10 (3) contracts for less than one school year
11 are permitted to staff summer school programs and to staff
12 federally funded programs in which the federally approved
13 programs are specified to be conducted for less than one school
14 year;

15 (4) contracts not to exceed three years are
16 permitted for [~~certified~~] school administrators in public
17 schools who are engaged in administrative functions for more
18 than one-half of their employment time; [~~and~~]

19 (5) contracts not to exceed three years are
20 permitted at the discretion of the local school board for
21 [~~certified~~] licensed school [~~instructors~~] employees in public
22 schools who have been employed in the school district for three
23 consecutive school years; and

24 (6) contracts for districtwide administrators
25 shall not extend past the contract term of the superintendent

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1 unless otherwise recommended by the local superintendent and
2 approved by the local school board.

3 C. Persons employed under contracts for periods of
4 less than one school year as provided in Paragraphs (1) and (2)
5 of Subsection B of this section shall be accorded all the
6 duties, rights and privileges of the [~~Certified~~] School
7 Personnel Act.

8 D. In determination of eligibility for unemployment
9 compensation rights and benefits for [~~certified~~] licensed
10 school [~~instructors~~] employees where those rights and benefits
11 are claimed to arise from the employment relationship between
12 governing authorities of state agencies or local school boards
13 and [~~certified~~] licensed school [~~instructors~~] employees, that
14 period of a year not covered by a school year shall not be
15 considered an unemployment period.

16 E. Except as provided in Section [~~22-10-12~~] 22-10A-22
17 NMSA 1978, a person employed by contract pursuant to this section
18 has no legitimate objective expectancy of reemployment, and no
19 contract entered into pursuant to this section shall be construed
20 as an implied promise of continued employment pursuant to a
21 subsequent contract."