

1 HOUSE BILL 454

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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5 D. Wonda Johnson and Elizabeth "Liz" Thomson  
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10 AN ACT

11 RELATING TO PUBLIC SCHOOLS; IMPOSING REQUIREMENTS ON SCHOOL  
12 DISTRICTS OFFERING GIFTED EDUCATION; AMENDING THE PUBLIC SCHOOL  
13 CODE DEFINITION OF "SCHOOL-AGE PERSON"; AMENDING THE DEFINITION  
14 OF "QUALIFIED STUDENT" IN THE PUBLIC SCHOOL FINANCE ACT.  
15

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

17 SECTION 1. Section 22-1-2 NMSA 1978 (being Laws 2003,  
18 Chapter 153, Section 3, as amended by Laws 2015, Chapter 58,  
19 Section 2 and by Laws 2015, Chapter 108, Section 1) is amended  
20 to read:

21 "22-1-2. DEFINITIONS.--As used in the Public School Code:

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

25 B. "charter school" means a school authorized by a

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1 chartering authority to operate as a public school;

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

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

6 E. "home school" means the operation by the parent  
7 of a school-age person of a home study program of instruction  
8 that provides a basic academic educational program, including  
9 reading, language arts, mathematics, social studies and  
10 science;

11 F. "instructional support provider" means a person  
12 who is employed to support the instructional program of a  
13 school district, including educational assistant, school  
14 counselor, social worker, school nurse, speech-language  
15 pathologist, psychologist, physical therapist, occupational  
16 therapist, recreational therapist, marriage and family  
17 therapist, interpreter for the deaf and diagnostician;

18 G. "licensed school employee" means teachers,  
19 school administrators and instructional support providers;

20 H. "local school board" means the policy-setting  
21 body of a school district;

22 I. "local superintendent" means the chief executive  
23 officer of a school district;

24 J. "parent" includes a guardian or other person  
25 having custody and control of a school-age person;

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1           K. "private school" means a school, other than a  
2 home school, that offers on-site programs of instruction and  
3 that is not under the control, supervision or management of a  
4 local school board;

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

12           M. "school" means a supervised program of  
13 instruction designed to educate a student in a particular  
14 place, manner and subject area;

15           N. "school administrator" means a person licensed  
16 to administer in a school district and includes school  
17 principals, central district administrators and charter school  
18 head administrators;

19           O. "school-age person" means a person who is at  
20 least five years of age prior to 12:01 a.m. on September 1 of  
21 the school year and who has not received a high school diploma  
22 or its equivalent; provided that a student who has been  
23 identified as qualifying for gifted education services pursuant  
24 to Section 22-13-6.1 NMSA 1978 may begin kindergarten early as  
25 part of an academic acceleration program pursuant to Section

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1 22-13-6.1 NMSA 1978. A maximum age of twenty-one shall be used  
2 for a person who is classified as special education membership  
3 as defined in Section 22-8-21 NMSA 1978 or as a resident of a  
4 state institution;

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

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

13 R. "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 geographically  
16 for taxation and bonding purposes;

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

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

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

24 V. "secretary" means the secretary of public  
25 education;

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

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

12           Y. "substitute teacher" means a person who holds a  
13 certificate to substitute for a teacher in the classroom;

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

20           AA. "certified school instructor" means a teacher  
21 or instructional support provider; and

22           BB. "certified school employee" or "certified  
23 school personnel" means a licensed school employee."

24           SECTION 2. Section 22-8-2 NMSA 1978 (being Laws 1978,  
25 Chapter 128, Section 3, as amended) is amended to read:

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- 1 "22-8-2. DEFINITIONS.--As used in the Public School  
2 Finance Act:
- 3 A. "ADM" or "MEM" means membership;
- 4 B. "membership" means the total enrollment of  
5 qualified students on the current roll of a class or school on  
6 a specified day. The current roll is established by the  
7 addition of original entries and reentries minus withdrawals.  
8 Withdrawals of students, in addition to students formally  
9 withdrawn from the public school, include students absent from  
10 the public school for as many as ten consecutive school days;  
11 provided that withdrawals do not include students in need of  
12 early intervention and habitual truants the school district is  
13 required to intervene with and keep in an educational setting  
14 as provided in Section 22-12-9 NMSA 1978;
- 15 C. "basic program ADM" or "basic program MEM" means  
16 the MEM of qualified students but excludes the full-time-  
17 equivalent MEM in early childhood education and three- and  
18 four-year-old students receiving special education services;
- 19 D. "cost differential factor" is the numerical  
20 expression of the ratio of the cost of a particular segment of  
21 the school program to the cost of the basic program in grades  
22 four through six;
- 23 E. "department" or "division" means the public  
24 education department;
- 25 F. "early childhood education ADM" or "early

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1 childhood education MEM" means the full-time-equivalent MEM of  
2 students attending approved early childhood education programs;

3 G. "full-time-equivalent ADM" or "full-time-  
4 equivalent MEM" is that membership calculated by applying to  
5 the MEM in an approved public school program the ratio of the  
6 number of hours per school day devoted to the program to six  
7 hours or the number of hours per school week devoted to the  
8 program to thirty hours;

9 H. "operating budget" means the annual financial  
10 plan required to be submitted by a local school board or  
11 governing body of a state-chartered charter school;

12 I. "program cost" is the product of the total  
13 number of program units to which a school district is entitled  
14 multiplied by the dollar value per program unit established by  
15 the legislature;

16 J. "program element" is that component of a public  
17 school system to which a cost differential factor is applied to  
18 determine the number of program units to which a school  
19 district is entitled, including MEM, full-time-equivalent MEM,  
20 teacher, classroom or public school;

21 K. "program unit" is the product of the program  
22 element multiplied by the applicable cost differential factor;

23 L. "public money" or "public funds" means all money  
24 from public or private sources received by a school district or  
25 state-chartered charter school or officer or employee of a

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1 school district or state-chartered charter school for public  
2 use;

3 M. "qualified student" means a public school  
4 student who:

5 (1) has not graduated from high school;

6 (2) is regularly enrolled in one-half or more  
7 of the minimum course requirements approved by the department  
8 for public school students; and

9 (3) in terms of age:

10 (a) is at least five years of age prior  
11 to 12:01 a.m. on September 1 of the school year;

12 (b) is at least three years of age at  
13 any time during the school year and is receiving special  
14 education services pursuant to rules of the department; ~~or~~

15 (c) has not reached the student's  
16 twenty-second birthday on the first day of the school year and  
17 is receiving special education services pursuant to rules of  
18 the department; or

19 (d) is less than five years of age prior  
20 to 12:01 a.m. on September 1 of the school year and is  
21 participating in kindergarten as part of an academic  
22 acceleration program pursuant to Section 22-13-6.1 NMSA 1978;

23 N. "staffing cost multiplier" means:

24 (1) for fiscal year 2019, the instructional  
25 staff training and experience index;

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1 (2) for fiscal year 2020, the weighted average  
2 of the instructional staff training and experience index at  
3 seventy-five percent and the teacher cost index at twenty-five  
4 percent;

5 (3) for fiscal year 2021, the weighted average  
6 of the instructional staff training and experience index at  
7 fifty percent and the teacher cost index at fifty percent;

8 (4) for fiscal year 2022, the weighted average  
9 of the instructional staff training and experience index at  
10 twenty-five percent and the teacher cost index at seventy-five  
11 percent; and

12 (5) for fiscal year 2023 and subsequent fiscal  
13 years, the teacher cost index; and

14 0. "state superintendent" means the secretary of  
15 public education or the secretary's designee."

16 SECTION 3. Section 22-13-6.1 NMSA 1978 (being Laws 1994,  
17 Chapter 25, Section 2, as amended) is amended to read:

18 "22-13-6.1. GIFTED CHILDREN--DETERMINATION.--

19 A. The department shall adopt standards pertaining  
20 to the determination of who is a gifted child and shall publish  
21 those standards as part of the educational standards for New  
22 Mexico schools.

23 B. In adopting standards to determine who is a  
24 gifted child, the department shall provide for the evaluation  
25 of selected school-age ~~children~~ persons by multidisciplinary

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1 teams from each child's school district. That team shall be  
2 vested with the authority to designate a child as gifted. The  
3 team shall consider information regarding a child's cultural  
4 and linguistic background and socioeconomic background in the  
5 identification, referral and evaluation process. The team also  
6 shall consider any disabling condition in the identification,  
7 referral and evaluation process.

8 C. Each school district offering a gifted education  
9 program shall create one or more advisory committees of  
10 parents, community members, students and school staff members.  
11 The school district may create as many advisory committees as  
12 there are high schools in the district or may create a single  
13 districtwide advisory committee. The membership of each  
14 advisory committee shall reflect the cultural diversity of the  
15 enrollment of the school district or the schools the committee  
16 advises. The advisory committee shall regularly review the  
17 goals and priorities of the gifted program, including the  
18 operational plans for student identification, evaluation,  
19 placement and service delivery and shall demonstrate support  
20 for the gifted program.

21 D. In determining whether a child is gifted, the  
22 multidisciplinary team shall consider diagnostic or other  
23 evidence of the child's:

- 24 (1) creativity or divergent-thinking ability;  
25 (2) critical-thinking or problem-solving

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1 ability;

2 (3) intelligence; and

3 (4) achievement.

4 E. School districts offering a gifted education  
5 program shall:

6 (1) consider the potential need for social  
7 work services, transportation costs and occupational therapy  
8 for students identified as gifted pursuant to this section;

9 (2) adopt an academic acceleration policy  
10 that allows all of the following:

11 (a) a range of options such as: 1)  
12 early entry into kindergarten; 2) skipping grades; 3)  
13 facilitated enrollment in concurrent high school and college  
14 credit courses; 4) credit for demonstrated mastery of subject  
15 matter; and 5) other research-based interventions for gifted  
16 and high-ability learners as a priority for expending federal  
17 Every Student Succeeds Act funding;

18 (b) specified nondiscrimination and  
19 inclusiveness of all students, including those with  
20 disabilities, language differences and socioeconomic  
21 differences;

22 (c) provisions that the individual  
23 education plan team may make acceleration decisions for  
24 students identified as gifted and that the student assistance  
25 team may make acceleration decisions for other advanced

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1 students not identified as gifted; and

2 (d) inclusion of procedures for: 1)  
3 appeal and due process; and 2) safe reversion of placement  
4 within a reasonable time frame if the acceleration is  
5 ineffective;

6 (3) uphold the student's right to accelerate  
7 through a dual-credit or concurrent credit course in the  
8 event that the student's home school offers the course that  
9 would allow the student to earn credit toward graduation;

10 (4) provide special supports for  
11 disadvantaged and disabled students who are also identified  
12 as gifted pursuant to this section to participate in  
13 acceleration; and

14 (5) accept accelerated credit or college  
15 credit earned at accredited schools toward graduation from  
16 the student's home high school.

17 F. A twice-exceptional student shall continue to  
18 be eligible for special education and related services even  
19 though the child achieves a high score on an intelligence  
20 test. For purposes of this section, "twice exceptional"  
21 means a student who qualifies as a gifted student and meets  
22 the criteria for a disability under federal law."