

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR

SENATE BILL 313

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,  
2000**

AN ACT

RELATING TO PUBLIC ASSISTANCE; ENACTING THE EDUCATION WORKS  
ACT; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the  
"Education Works Act".

Section 2. DEFINITIONS.--As used in the Education Works  
Act:

A. "benefit group" means a pregnant woman or a  
group of people that includes a pregnant woman or at least  
one dependent child living with a parent, legal guardian or  
relative within the fifth degree of consanguinity;

B. "cash assistance" means cash payments disbursed  
from the maintenance of effort funds of the state and not  
from funds from the temporary assistance for needy families  
block grant;

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underscored material = new  
~~[bracketed material] = delete~~

1           C. "department" means the human services  
2 department;

3           D. "dependent child" means a natural or adopted  
4 child or ward who is seventeen years of age or younger;

5           E. "earned income" means cash or payment in kind  
6 that is received as wages from employment or payment in lieu  
7 of wages; or earnings from self-employment or earnings  
8 acquired from the direct provision of services, goods or  
9 property, production of goods, management of property or  
10 supervision of services;

11           F. "federal act" means the federal Social Security  
12 Act and rules promulgated pursuant to that act;

13           G. "federal poverty guidelines" means the level of  
14 income defining poverty by family size published annually in  
15 the federal register by the United States department of  
16 health and human services;

17           H. "household group" means a group of people that  
18 consists of a benefit group and any other person who resides  
19 in a household regardless of whether they are related or have  
20 a legal support responsibility for a member of the benefit  
21 group, but does not include:

22                   (1) landlords;

23                   (2) tenants; or

24                   (3) members of a registered nonprofit  
25 organization or church who provide shelter to a benefit group  
through a program sponsored by the nonprofit organization or  
church;

1 I. "landlord" means the owner of an estate in land  
2 or rental property who has leased it to another person called  
3 the tenant;

4 J. "parent" means natural parent, adoptive parent,  
5 stepparent or legal guardian;

6 K. "person" means an individual;

7 L. "recipient" means a person who receives cash  
8 assistance or services pursuant to the Education Works Act;

9 M. "secretary" means the secretary of the  
10 department;

11 N. "services" means child-care assistance and cash  
12 assistance for education- or employment-related  
13 transportation costs and one-time payment per year for  
14 education costs;

15 O. "tenant" means a person who pays rent for the  
16 use and occupancy of real property owned by a landlord; and

17 P. "unearned income" means old age, survivors' and  
18 disability insurance; railroad retirement benefits; veterans'  
19 administration compensation or pension; military retirement;  
20 pensions, annuities and retirement benefits; lodge or  
21 fraternal benefits; shared shelter payments; settlement  
22 payments; individual Indian money; child support;  
23 unemployment compensation benefits; union benefits, either  
24 cash or in-kind resulting from union membership; gifts;  
25 contributions; and real property income.

Section 3. APPLICATION.--

A. Application for cash assistance or services

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1 shall be made to the department's county office in the county  
2 or district in which an applicant resides. The application  
3 shall be in writing or reduced to writing in the manner and  
4 on the form prescribed by the department. The application  
5 shall be made under oath by an applicant having custody of or  
6 residing with a dependent child who is a household group  
7 member and shall contain a statement of the age of the child,  
8 the child's residence, a complete statement of the amount of  
9 property in which the applicant has an interest, a statement  
10 of all income that he and other household group members have  
11 at the time of the filing of the application and other  
12 information required by the department.

13 B. At the time of application for cash assistance  
14 and services, an applicant shall identify household group  
15 members who are to be counted in the benefit group. Once an  
16 application is approved, the recipient shall advise the  
17 department if there are any changes in the membership of the  
18 household group or benefit group.

19 C. An applicant shall report to the department the  
20 names of all of the members of the applicant's household  
21 group or benefit group. A household group may contain more  
22 than one benefit group.

23 D. Not later than forty-five days after an  
24 application is filed, the department shall provide to an  
25 applicant a resource planning session to ascertain his  
immediate needs, assess financial and nonfinancial options,  
make referrals, act on the application and develop an

1 individual responsibility plan.

2 E. The applicant shall immediately be referred to  
3 the children, youth and families department to apply for  
4 child-care services.

5 F. Whenever the department receives an application  
6 for assistance, a verification and record of the applicant's  
7 circumstances shall promptly be made to ascertain the facts  
8 supporting the application and to obtain other information  
9 required by the department. The verification may include a  
10 visit to the home of the applicant, as long as the department  
11 gives adequate prior notice of the visit to the applicant.

12 G. The department shall meet semi-annually with a  
13 recipient to review the current financial eligibility of a  
14 household group and to review and revise his individual  
15 responsibility plan.

16 H. The number of recipients in the education works  
17 program shall be limited to that number for which funding is  
18 available.

19 Section 4. ELIGIBILITY--RESTRICTIONS--REQUIREMENTS.--

20 A. A recipient is eligible if he demonstrates  
21 that:

22 (1) at the time of application he does not  
23 have a bachelor's degree;

24 (2) he has been accepted or has been  
25 determined to be eligible to enroll in a two- or four-year  
post-secondary degree program;

(3) he has the ability to succeed in the

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1 educational program that he has chosen; and

2 (4) the degree he will receive will increase  
3 his ability to engage in full-time paid employment.

4 B. A recipient shall not receive any cash  
5 assistance or services funded by the temporary assistance for  
6 needy families block grant.

7 C. A recipient shall apply for all financial  
8 grants or scholarships available.

9 D. A recipient shall meet the requirements of the  
10 educational institution during the twenty-four months that  
11 the recipient receives services pursuant to the Education  
12 Works Act. The department shall assume that a recipient  
13 spends one and one-half hours studying for every hour of  
14 class time.

15 E. If a recipient does not attend summer school  
16 full time, he shall engage in work for at least twenty hours  
17 per week. A recipient may continue to attend school during  
18 the summer session.

19 F. A recipient may participate in a program  
20 pursuant to the Education Works Act for no more than twenty-  
21 four months. If the participant leaves the program for good  
22 cause, including a verifiable need to take care of a family  
23 member with special needs, a physical or mental health  
24 problem, illness, accident, death or a serious personal or  
25 family problem that necessitates reduced participation or  
time off from education, training or work, the recipient  
shall not be prohibited from resuming the program when the

1 recipient is able and ready to return to the program.

2 G. A recipient may only earn one degree through  
3 the Education Works Act program.

4 H. For the purposes of this section, "work" means  
5 work-study, training-related practicums, internships, paid  
6 employment, volunteering or any other activity approved by  
7 the department.

8 Section 5. FINANCIAL STANDARD OF NEED.--

9 A. The secretary shall adopt a financial standard  
10 of need based upon the availability of state funds.

11 B. The cash benefit level for a benefit group not  
12 living in government-subsidized housing or receiving  
13 government-subsidized housing payments shall be increased by  
14 an amount equal to that received by participants pursuant to  
15 the New Mexico Works Act.

16 C. The following income sources are exempt from  
17 the gross income test, the net income test and the cash  
18 payment calculation:

- 19 (1) medicaid;  
20 (2) food stamps;  
21 (3) government-subsidized foster care and  
22 adoption payments, if the child for whom the payment is  
23 received is excluded from the benefit group;  
24 (4) supplemental security income;  
25 (5) government-subsidized housing or housing  
payments;  
(6) federally excluded income;

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1                   (7) educational payments made directly to an  
2 educational institution;

3                   (8) government-subsidized child care;

4                   (9) earned and unearned income that belongs  
5 to a person seventeen years of age or younger who is not the  
6 head of household;

7                   (10) unearned income that belongs to the  
8 household group but not to the benefit group; and

9                   (11) other income sources as determined by  
10 the department.

11                   D. Earned income over one hundred thirty percent  
12 of the federal poverty guidelines that belongs to the  
13 household group but not to the benefit group is countable  
14 income. The department shall count the entire household  
15 group to determine family size when applying the federal  
16 poverty guidelines.

17                   E. The department shall count the entire household  
18 group to determine family size when applying the financial  
19 standard of need. For a benefit group to be eligible to  
20 participate:

21                   (1) gross countable earned income that  
22 belongs to the household group but not to the benefit group  
23 must not exceed one hundred eighty-five percent of the  
24 financial standard of need; and

25                   (2) net countable earned income that belongs  
to the household group must not equal or exceed the financial  
standard after applying the disregards set out in Paragraphs

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1 (1) through (4) of Subsection F of this section.

2 F. Subject to the availability of state funds, the  
3 department shall determine the cash payment of the benefit  
4 group by applying the following disregards to the benefit  
5 group's earned gross income:

6 (1) one hundred fifty dollars (\$150) of  
7 monthly earned income and one-half of the remainder, or for a  
8 two-parent family, two hundred fifty dollars (\$250) of  
9 monthly earned income and one-half of the remainder for each  
10 parent;

11 (2) monthly payments made for child care at  
12 a maximum of two hundred dollars (\$200) for a child under two  
13 years of age and at a maximum of one hundred seventy-five  
14 dollars (\$175) for a child two years of age or older;

15 (3) costs of self-employment income; and

16 (4) business expenses.

17 G. The department may recover overpayments of cash  
18 assistance on a monthly basis not to exceed fifteen percent  
19 of the financial standard of need applicable to the benefit  
20 group.

21 H. Cash assistance received pursuant to the  
22 Education Works Act shall be considered to be the same as  
23 cash assistance received pursuant to the New Mexico Works  
24 Act.

25 Section 6. RESOURCES.--

A. Liquid and nonliquid resources owned by the  
household group but not the benefit group shall not be

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1 counted in the eligibility determination.

2 B. A benefit group may at a maximum own the  
3 following resources:

4 (1) two thousand dollars (\$2,000) in  
5 nonliquid resources;

6 (2) one thousand five hundred dollars  
7 (\$1,500) in liquid resources;

8 (3) the value of the principal residence of  
9 the recipient;

10 (4) the value of burial plots and funeral  
11 contracts for family members;

12 (5) the value of work-related equipment up  
13 to one thousand dollars (\$1,000);

14 (6) in areas without public transportation,  
15 the value of one motor vehicle for each recipient enrolled in  
16 a two- or four-year post-secondary degree program; and

17 (7) in areas with public transportation, the  
18 value of one motor vehicle.

19 Section 7. INELIGIBILITY.--The following are ineligible  
20 to be members of a benefit group:

21 A. an inmate or patient of a nonmedical  
22 institution;

23 B. a person who, in the two years preceding  
24 application, assigned or transferred real property unless he:

25 (1) received or receives a reasonable  
return;

(2) attempted to or attempts to receive a

1 reasonable return; or

2 (3) attempted to or attempts to regain title  
3 to the real property;

4 C. a minor child who has been absent or is  
5 expected to be absent from the home for forty-five days;

6 D. a person who does not provide a social security  
7 number or who refuses to apply for one;

8 E. a person who is not a resident of New Mexico;

9 F. a person who fraudulently misrepresented  
10 residency to receive assistance in two or more states  
11 simultaneously except that such person shall be ineligible  
12 for only ten years;

13 G. a person who is a fleeing felon or a probation  
14 and parole violator;

15 H. a person concurrently receiving supplemental  
16 security income, tribal temporary assistance for needy  
17 families, bureau of Indian affairs general assistance or  
18 adoption subsidies; and

19 I. a parent who does not assist the department in  
20 establishing paternity or obtaining child support or who does  
21 not assign support rights to New Mexico, unless he  
22 demonstrates good cause.

23 Section 8. FAIR HEARING--REVIEW AND APPEAL.--

24 A. A recipient may request a hearing if:

25 (1) an application is not acted on within a  
reasonable time after the filing of the application;

(2) an application is denied in whole or in

1 part; or

2 (3) the cash assistance or services are  
3 modified, terminated or not provided.

4 B. The department shall notify the recipient of  
5 his rights under this section.

6 C. The department shall by rule establish  
7 procedures for the filing of a request for a hearing and the  
8 time limits within which a request may be filed; provided,  
9 however, that the department may grant reasonable extensions  
10 of the time limits. If the request is filed in a timely  
11 manner, cash assistance and services shall be provided until  
12 the appeal is resolved. If the request is not filed within  
13 the specified time for appeal or within whatever extension  
14 the department may grant, the department action is final.  
15 Upon receipt of a timely request, the department shall give  
16 the recipient reasonable notice of an opportunity for a fair  
17 hearing in accordance with the rules of the department.

18 D. The hearing shall be conducted by a hearing  
19 officer designated by the director of the income support  
20 division of the department. The powers of the hearing  
21 officer shall include administering oaths or affirmations to  
22 witnesses called to testify, taking testimony, examining  
23 witnesses, admitting or excluding evidence and reopening a  
24 hearing to receive additional evidence. The technical rules  
25 of evidence and the rules of civil procedure shall not apply.  
The hearing shall be conducted so that the contentions or  
defenses of each party to the hearing are amply and fairly

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1 presented. Each party may be represented by counsel or other  
2 representative and may conduct cross-examination. Oral or  
3 documentary evidence may be received, but the hearing officer  
4 may exclude irrelevant, immaterial or unduly repetitious  
5 evidence.

6 E. The director of the income support division  
7 shall review the record of the proceedings and shall make his  
8 final decision on the record. The recipient or his  
9 representative shall be notified in writing of the director's  
10 final decision and the reasons for the decision. The written  
11 notice shall inform the recipient of his right to judicial  
12 review pursuant to Section 39-3-1.1 NMSA 1978. The  
13 department shall be responsible for ensuring that the  
14 decision is enforced.

15 F. A recipient may appeal the final decision of  
16 the director of the income support division to district court  
17 pursuant to Section 39-3-1.1 NMSA 1978.

18 G. The department shall not authorize or allow  
19 expenditures in excess of the amounts previously appropriated  
20 by the legislature.

21 Section 9. SATISFACTORY PARTICIPATION.--

22 A. To maintain satisfactory participation, a  
23 recipient shall meet the standards of the school that he  
24 attends, including class attendance.

25 B. If a recipient falls below the standard of the  
school in one semester, then he will be placed on  
probationary status for one semester to improve his grades.

1 If a recipient's overall grade point average falls below 2.0,  
2 the department shall place him on a maximum of two  
3 probationary semesters to bring up the overall grade point  
4 average.

5 C. A recipient shall:

6 (1) report to the department anything that  
7 might affect his ability to participate in the Education  
8 Works Act program;

9 (2) provide the department with a copy of  
10 financial aid award letters; and

11 (3) provide the department with copies of  
12 his grades as they become available.

13 D. If a recipient does not comply with Subsection  
14 C of this section, the department may require the recipient  
15 to apply for public assistance pursuant to the New Mexico  
16 Works Act. This decision shall be made in writing and the  
17 recipient shall have the opportunity to appeal it.

18 Section 10. APPROPRIATION.--Two million dollars  
19 (\$2,000,000) is appropriated from the general fund to the  
20 human services department for expenditure in fiscal year 2001  
21 and subsequent fiscal years to carry out the purposes of the  
22 Education Works Act. Any unexpended or unencumbered balance  
23 remaining at the end of a fiscal year shall not revert to the  
24 general fund.