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HOUSE BILL 503

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Judy Vanderstar Russell

AN ACT

**RELATING TO ELEMENTARY AND SECONDARY EDUCATION; PROVIDING FOR
ADDITIONAL PROCEDURES WHEN A LOCAL SCHOOL BOARD IS SUSPENDED
FROM AUTHORITY; ASSISTING PUBLIC SCHOOLS THAT FAIL TO MEET
EDUCATION STANDARDS; AUTHORIZING REDEMPTION OF VOUCHERS AT
PUBLIC AND PRIVATE SCHOOLS BY STUDENTS ATTENDING PUBLIC
SCHOOLS THAT FAIL TO MEET STATE EDUCATION STANDARDS; ENACTING
THE CHILDREN'S EDUCATIONAL GUARANTEE ACT; AMENDING AND
ENACTING SECTIONS OF THE PUBLIC SCHOOL CODE.**

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

**Section 1. Section 22-2-6 NMSA 1978 (being Laws 1967,
Chapter 16, Section 9, as amended) is amended to read:**

**"22-2-6. DEPARTMENT OF EDUCATION--DUTIES.--Subject to
the policies of the state board and the supervision and
direction of the state superintendent, the department of**

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1 education shall have the following duties:

2 A. supervise all schools and school officials
3 coming under the jurisdiction of the state board, including
4 taking over the control and management of a public school or
5 school district that has failed to meet requirements of law or
6 education standards adopted and promulgated by the state
7 board;

8 B. advise boards of regents of state educational
9 institutions on matters concerning the Public School Code;

10 C. prescribe, print and distribute forms to carry
11 out the duties of the state board pursuant to the Public
12 School Code;

13 D. annually, prior to December 1, prepare and
14 publish a report on public and private education in the state
15 and distribute the report to the governor and the legislature;

16 E. keep accurate records of all money received by
17 the state superintendent or the department of education;

18 F. publish and distribute copies of the Public
19 School Code and ~~[regulations]~~ rules promulgated by the state
20 board to local school boards in the state;

21 G. confer with local school boards and certified
22 school personnel on matters concerning education in the state;

23 H. prepare and distribute patriotic material to
24 schools in the state; and

25 I. evaluate all educational programs in state

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1 institutions under the authority of the secretary of [~~the~~]
2 health [~~and environment department~~]. "

3 Section 2. Section 22-2-14 NMSA 1978 (being Laws 1978,
4 Chapter 129, Section 1, as amended) is amended to read:

5 "22-2-14. EDUCATION REQUIREMENTS-- ENFORCEMENT--
6 PROCEDURES. --

7 A. Money budgeted by a school district shall be
8 spent first to attain and maintain the requirements for a
9 school district as prescribed by law and by standards and
10 [~~regulations~~] rules as prescribed by the state board. The
11 state superintendent shall give written notification to a
12 local school board, the local superintendent and a school
13 principal, if applicable, of any failure to meet requirements
14 by any part of the school district under the control of the
15 local school board. The notice shall specify the deficiency.
16 Instructional units or administrative functions may be
17 disapproved for such deficiencies. The state superintendent
18 shall disapprove instructional units or administrative
19 functions [~~which~~] that he determines to be detrimental to the
20 educational process.

21 B. Within thirty days after receipt of the notice
22 of failure to meet requirements, the local school board, local
23 superintendent and school principal, if applicable, shall:

24 (1) comply with the specific and attendant
25 requirements in order to remove the cause for disapproval; or

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1 (2) submit plans satisfactory to the state
2 superintendent to meet requirements and remove the cause for
3 disapproval.

4 C. The state board shall suspend from authority
5 and responsibility [~~any~~] a local school board, [~~which~~] local
6 superintendent and school principal, if applicable, that has
7 had notice of disapproval and fails to comply with procedures
8 of Subsection B of this section. The state superintendent
9 shall act in lieu of the suspended local school board, local
10 superintendent and school principal, if applicable, until the
11 state board removes the suspension.

12 D. To suspend a local school board, local
13 superintendent or school principal, the state board shall
14 deliver to the local school board, local superintendent or
15 school principal an alternative order of suspension, stating
16 the cause for the suspension and the effective date and time
17 the suspension will begin. The alternative order shall also
18 contain notice of a time, date and place for a public hearing,
19 prior to the beginning of suspension, to be held by the state
20 board, at which the local school board, local superintendent
21 or school principal may appear and show cause why [~~it should~~
22 ~~not be suspended~~] suspension should not be put into effect.
23 Within five days after the hearing, the state board shall make
24 permanent, modify or withdraw the alternative order.

25 E. The state superintendent may suspend a local

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1 school board, local superintendent or school principal pending
2 a hearing before the state board when the local school board,
3 local superintendent or school principal has been notified of
4 disapproval and when the state superintendent has sufficient
5 reason to believe that the educational process in the school
6 district or public school has been severely impaired or halted
7 as a result of deficiencies so severe as to warrant
8 disapproved status before the question of suspension can be
9 presented to the state board for a hearing.

10 F. The state superintendent, while acting in lieu
11 of a suspended local school board, local superintendent or
12 school principal, shall execute all the legal authority of the
13 local school board, local superintendent or school principal
14 and assume all the responsibilities of [~~that board~~] the local
15 school board, local superintendent or school principal.

16 G. The provisions of this section shall be invoked
17 at any time the state superintendent finds the school district
18 has failed to attain and maintain the requirements of law or
19 state board standards and [~~regulations~~] rules."

20 Section 3. Section 22-2-15 NMSA 1978 (being Laws 1978,
21 Chapter 129, Section 2, as amended) is amended to read:

22 "22-2-15. HEARINGS--SUSPENSION CONTINUANCE AND
23 DISCONTINUANCE--APPEALS.--

24 A. Within ten days after suspension, or within a
25 reasonable time as the suspended local school board, local

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1 superintendent or school principal may request, the state
2 board shall give a hearing to the local school board, local
3 superintendent or school principal. At this hearing, the
4 local school board, local superintendent or school principal
5 may appear and show cause why the suspension should not be
6 continued. The state board employees who conducted
7 evaluations upon which the suspension was based shall appear
8 and give testimony.

9 B. After the hearing, the state board shall
10 continue or discontinue the suspension of the local school
11 board, local superintendent or school principal.

12 C. Any local school board, local superintendent or
13 school principal aggrieved by the decision of the state board
14 may appeal to the district court pursuant to the provisions of
15 Section 39-3-1.1 NMSA 1978. "

16 Section 4. A new section 22-2-15.1 NMSA 1978 is enacted
17 to read:

18 "22-2-15.1. [NEW MATERIAL] INDEPENDENT ASSISTANCE
19 TEAM --

20 A. The state superintendent, acting in lieu of a
21 suspended local school board, local superintendent or school
22 principal in accordance with the provisions of Section 22-2-14
23 NMSA 1978, shall appoint an independent assistance team to
24 independently assess school districts and public schools and
25 to make recommendations to the state board following the

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1 suspension of a local school board, local superintendent or
2 school principal for failure to maintain the requirements of
3 law or state board education standards and rules. No more
4 than one assistance team may be appointed for each suspension
5 of a local school board, local superintendent or local
6 principal.

7 B. The independent assistance team shall be
8 composed of no less than three and no more than five members.
9 Individuals with expertise in business, education and human
10 resources shall serve on the independent assistance team.
11 Members of the team shall not be employed by a state agency
12 while serving on the team.

13 C. For every local school board, local
14 superintendent or school principal suspended, the independent
15 assistance team shall assess and report to the state board on
16 the following:

17 (1) public school operational functions and
18 school district functions, including:

- 19 (a) business operations;
- 20 (b) educational operations; and
- 21 (c) human resource operations;

22 (2) compliance with the state board-adopted
23 criteria for rating school districts and public schools;

24 (3) compliance with state and federal laws
25 applicable to the operation of a public school, school

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1 district and local school board;

2 (4) provisions of the Public School Code or
3 state board adopted rules that impede the school district's or
4 school's ability to comply with the requirements of law or
5 state board education standards and rules; and

6 (5) other considerations impeding the school
7 district or public school from complying with the requirements
8 of law or state board education standards and rules.

9 D. From the date of appointment, the independent
10 assistance team shall report to the state board on the
11 progress and needs of school districts and schools that are
12 failing to comply with the requirements of law or state board
13 education standards and rules. The team shall continue to
14 report to the state board until the local school board, local
15 superintendent or school principal is removed from suspension
16 and found in compliance with the requirements of law or state
17 board education standards and rules.

18 E. The state board shall establish guidelines for
19 the implementation and operation of the independent assistance
20 team.

21 F. In order to provide for independent assistance
22 team members, the state board may contract for the services of
23 the team members in accordance with the provisions of the
24 Procurement Code. "

25 Section 5. Section 22-8-2 NMSA 1978 (being Laws 1978,

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1 Chapter 128, Section 3, as amended) is amended to read:

2 "22-8-2. DEFINITIONS.--As used in the Public School
3 Finance Act:

4 A. "ADM" or "MEM" means membership;

5 B. "membership" means the total enrollment of
6 qualified students on the current roll of a class or school on
7 a specified day and all students who have qualified for
8 receipt of vouchers pursuant to the Children's Educational
9 Guarantee Act. The current roll is established by the
10 addition of original entries and reentries minus withdrawals.
11 Withdrawals of students, in addition to students formally
12 withdrawn from the public school, include students absent from
13 the public school for as many as ten consecutive school days;

14 C. "basic program ADM" or "basic program MEM"
15 means the MEM of qualified students but excludes the full-
16 time-equivalent MEM in early childhood education and three-
17 and four-year-old students receiving special education
18 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 state
24 department of public education;

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
3 programs;

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

10 H. "operating budget" means the annual financial
11 plan required to be submitted by a local school board;

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
18 to determine the number of program units to which a school
19 district is entitled, including but not limited to MEM, full-
20 time-equivalent MEM, 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
24 money from public or private sources received by a local
25 school board or officer or employee of a local school board

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1 for public use;

2 M "qualified student" means a public school
3 student who:

4 (1) has not graduated from high school;

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

8 (3) is at least five years of age prior to
9 12:01 a.m. on September 1 of the school year; or

10 (4) is at least three years of age at any
11 time during the school year and is receiving special education
12 services pursuant to ~~[regulation]~~ rule of the state board; or

13 (5) has not reached his twenty-second
14 birthday on the first day of the school year and is receiving
15 special education services pursuant to ~~[regulation]~~ rule of
16 the state board; and

17 N. "state superintendent" means the superintendent
18 of public instruction or his designee. "

19 Section 6. A new section of the Public School Code is
20 enacted to read:

21 "[NEW MATERIAL] SHORT TITLE. --Sections 6 through 13 of
22 this act may be cited as the "Children's Educational Guarantee
23 Act". "

24 Section 7. A new section of the Public School Code is
25 enacted to read:

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1 " [NEW MATERIAL] LEGISLATIVE FINDINGS AND PURPOSE. --

2 A. The legislature finds that a student eligible
3 for enrollment at a public elementary or secondary school that
4 fails to meet the education standards adopted and promulgated
5 by the state board:

6 (1) should not be forced to attend a school
7 that fails to meet state education standards;

8 (2) should be guaranteed the best educational
9 opportunities that the state can offer;

10 (3) should have the option to take immediate
11 advantage of the best educational opportunities available; and

12 (4) should be provided a choice between
13 schools; thus leading to competition that benefits the student
14 and improves the quality of public schools.

15 B. The purpose of the Children's Educational
16 Guarantee Act is to establish a program that provides a New
17 Mexico student eligible for enrollment at a public elementary
18 or secondary school that fails to meet the education standards
19 adopted and promulgated by the state board with the
20 opportunity to attend a public elementary or secondary school
21 that meets state board education standards or a private school
22 to best suit his individual needs and interests. "

23 Section 8. A new section of the Public School Code is
24 enacted to read:

25 " [NEW MATERIAL] DEFINITIONS. -- As used in the Children's

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1 Educational Guarantee Act:

2 A. "local school district" means the school
3 district where a student resides;

4 B. "program" means the children's educational
5 guarantee program; and

6 C. "voucher" means a note that will be issued to a
7 qualifying parent through the department of education that can
8 be used to educate his child at a public or eligible private
9 school as defined in the Public School Code. "

10 Section 9. A new section of the Public School Code is
11 enacted to read:

12 "[NEW MATERIAL] ADMINISTRATION OF THE PROGRAM - ADOPTING
13 RULES. --

14 A. The department of education shall establish and
15 bear the cost of administering the program.

16 B. The state board shall establish guidelines for
17 the implementation and operation of the program.

18 C. A private school shall not be required to
19 participate in the program.

20 D. The department of education, in cooperation
21 with the school districts, shall embark on a public awareness
22 campaign to inform the public about the program using the
23 schools, other government agencies and the media. "

24 Section 10. A new section of the Public School Code is
25 enacted to read:

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1 " [NEW MATERIAL] ELIGIBLE STUDENTS. --

2 A. A student is eligible to participate in the
3 program if, in accordance with the provisions of Section
4 22-1-4 NMSA 1978, the student qualifies for enrollment at a
5 public elementary or secondary school that for the preceding
6 or current school year has failed to meet the education
7 standards adopted and promulgated by the state board and the
8 student:

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

12 (2) becomes a resident of New Mexico during
13 the school year; or

14 (3) is a developmentally disabled three- or
15 four-year-old child.

16 B. A student who elects to receive a voucher in
17 accordance with the provisions of Subsection A of this section
18 shall continue to be eligible for a voucher until the student
19 graduates from an elementary, junior high, middle or high
20 school.

21 C. A student who receives a voucher pursuant to
22 the Children's Educational Guarantee Act shall participate in
23 the testing required by Subsection B of Section 22-1-6 NMSA
24 1978. The testing shall be administered by the school
25 district in which the student who receives the voucher

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1 resides. "

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

4 "[NEW MATERIAL] ELIGIBLE PRIVATE SCHOOLS. --

5 A. To be eligible to participate in the program, a
6 private school shall:

7 (1) register with the superintendent of a
8 school district as an eligible private school;

9 (2) maintain or develop antidiscrimination
10 policies to prevent discrimination on the basis of race,
11 color, national origin or ancestry;

12 (3) develop policies that do not discriminate
13 against students who are recipients of elementary and
14 secondary school vouchers; and

15 (4) demonstrate that the private school is
16 accredited by a national school accreditation program.

17 B. A private school that accepts students who are
18 participants in the program shall not be required to comply
19 with rules that apply to public schools promulgated by either
20 the state board or the local school board. "

21 Section 12. A new section of the Public School Code is
22 enacted to read:

23 "[NEW MATERIAL] PROCEDURES FOR USING VOUCHERS. --

24 A. A parent may use a voucher to enroll his child
25 in a public school outside of the school district in which the

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1 child resides.

2 B. A school district shall adopt specific, written
3 standards for acceptance and rejection of vouchers provided
4 for in the Children's Educational Guarantee Act based on the
5 capacity of a program, class size, grade level or school
6 buildings.

7 C. Not earlier than March 1 and not later than
8 July 1 prior to the beginning of a school year, a student's
9 parent or legal guardian may apply to the school district
10 superintendent to participate in the program. The school
11 district superintendent may waive the application deadline.
12 The application shall contain the following information:

- 13 (1) the student's name and address;
- 14 (2) the student's date of birth;
- 15 (3) the student's social security number;
- 16 (4) the student's school attendance zone;
- 17 (5) the student's grade level;
- 18 (6) the name and address of the student's
19 parent or legal guardian who is residing with the child;
- 20 (7) whether the student was enrolled in a
21 class A, B, C or D special education program in the prior
22 school year or, for a child entering school for the first
23 time, whether the child has a diagnosed developmental
24 disability or learning disorder;
- 25 (8) whether the student speaks a language

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1 other than English as his principal language; and

2 (9) the name, tuition, fees and address of
3 the public or private school to which the student intends to
4 apply.

5 D. No later than forty-five days after the
6 application is received, the school district superintendent
7 shall act on the application, notify the parent or legal
8 guardian of the value of the voucher and issue the voucher if
9 the application is approved.

10 E. The voucher shall be issued to the student in
11 the care of the student's parent or legal guardian. The
12 voucher shall not be issued to the private school or school
13 district containing the public school that the student chooses
14 to attend.

15 F. The student and his parent or legal guardian
16 shall solely select the public or private school the student
17 chooses to attend. The state shall not decide which school a
18 student may attend. The state shall not advise or influence
19 the student's selection of a school.

20 G. Not later than August 15 of each year, the
21 school district superintendent shall report to the department
22 of education the ages, school attendance zones and voucher
23 values of students participating in the program."

24 Section 13. A new section of the Public School Code is
25 enacted to read:

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1 " [NEW MATERIAL] VOUCHERS-- REDEMPTION. --

2 A. The value of the voucher shall be equal to the
3 amount of money generated by the student through the state
4 equalization guarantee distribution provided in the Public
5 School Finance Act and a proportionate per student amount for
6 transportation expenses if the student had attended a public
7 school in his school attendance zone. The value of the
8 voucher shall also include a proportionate allocation for the
9 local school district's at-risk funding. The department of
10 education shall calculate the value of a student's voucher
11 using the state equalization guarantee distribution formula.

12 B. Subject to the value of the voucher set forth
13 in Subsection A of this section, the voucher redemption value
14 shall not exceed the tuition and fees charged by a private
15 school for students not participating in the program unless
16 the cost of educating the student presenting the voucher is
17 greater than the tuition and fees charged, in which case the
18 value of the voucher shall not exceed those costs.

19 C. Within fifteen days after receiving a voucher,
20 a private school shall, in writing, certify the enrollment of
21 the student named on the voucher and shall, in writing,
22 certify the amount of tuition and fees charged by the private
23 school to the department of education.

24 D. A private school or public school district,
25 located outside of the student's attendance zone, shall redeem

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1 the value of the voucher from the school district in the
2 following installments: twenty-five percent of the value
3 determined in Subsection A of this section in September,
4 twenty-five percent of the value determined in Subsection A of
5 this section in November, twenty-five percent of the value
6 determined in Subsection A of this section in February and
7 twenty-five percent of the value determined in Subsection A of
8 this section in May. The installments shall be paid on the
9 first day of the applicable month.

10 E. If a private school disenrolls a student during
11 the school year or if the student is absent for ten
12 consecutive days without explanation from his parent or legal
13 guardian, the private school shall, in writing, notify the
14 school district, and the voucher redemption shall cease.

15 F. If a parent or legal guardian disenrolls a
16 student from a private school and enrolls the student in
17 another private school or in a public school during the school
18 year, the parent or legal guardian shall, in writing, notify
19 the school district. Upon receipt of proof of enrollment in
20 another private school and certification of tuition and fees
21 charged by the new private school, the remaining scholarship
22 redemption installments shall be made to the new private
23 school. Upon proof of enrollment in a public school, the
24 remaining redemption installments shall be made to the school
25 district in which the public school is located."