

1 SENATE BILL 196

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 Mimi Stewart and George Dodge, Jr.

5
6
7 FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE AND
8 THE LEGISLATIVE FINANCE COMMITTEE

9
10 AN ACT

11 RELATING TO PUBLIC SCHOOL FINANCE; CHANGING THE DEFINITIONS OF
12 "SCHOOL-AGE PERSON" AND "QUALIFIED STUDENT" IN THE PUBLIC
13 SCHOOL CODE; MAKING RELATED TECHNICAL CHANGES.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

20 "22-1-2. DEFINITIONS.--As used in the Public School Code:

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

24 B. "certified school employee" or "certified school
25 personnel" means a licensed school employee;

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1 C. "certified school instructor" means a teacher or
2 instructional support provider;

3 [~~B.~~] D. "charter school" means a school authorized
4 by a chartering authority to operate as a public school;

5 [~~G.~~] E. "commission" means the public education
6 commission;

7 [~~D.~~] F. "department" means the public education
8 department;

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

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

21 [~~G.~~] I. "licensed school employee" means teachers,
22 school administrators and instructional support providers;

23 [~~H.~~] J. "local school board" means the policy-
24 setting body of a school district;

25 [~~F.~~] K. "local superintendent" means the chief

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1 executive officer of a school district;

2 [J-] L. "parent" includes a guardian or other
3 person having custody and control of a school-age person;

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

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

15 [M-] O. "school" means a supervised program of
16 instruction designed to educate a student in a particular
17 place, manner and subject area;

18 [N-] P. "school administrator" means a person
19 licensed to administer in a school district and includes school
20 principals, central district administrators and charter school
21 head administrators;

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

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1 ~~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]~~ and who has not reached the
4 person's twenty-second birthday on the first day of the school
5 year;

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

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

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

19 [S.] U. "school employee" includes licensed and
20 nonlicensed employees of a school district;

21 [T.] V. "school principal" means the chief
22 instructional leader and administrative head of a public
23 school;

24 [U.] W. "school year" means the total number of
25 contract days offered by public schools in a school district

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1 during a period of twelve consecutive months;

2 [V.] X. "secretary" means the secretary of public
3 education;

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

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

15 [Y.] AA. "substitute teacher" means a person who
16 holds a certificate to substitute for a teacher in the
17 classroom; and

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

24 [~~AA.~~ "~~certified school instructor~~" means a teacher
25 ~~or instructional support provider; and~~

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1 ~~BB. "certified school employee" or "certified~~
2 ~~school personnel" means a licensed school employee.]"~~

3 SECTION 2. Section 22-1-4 NMSA 1978 (being Laws 1975,
4 Chapter 338, Section 1, as amended) is amended to read:

5 "22-1-4. FREE PUBLIC SCHOOLS--EXCEPTIONS--WITHDRAWING AND
6 ENROLLING--OPEN ENROLLMENT.--

7 A. Except as provided by Section 24-5-2 NMSA 1978,
8 a free public school education shall be available to any
9 school-age person who is a resident of this state and has not
10 received a high school diploma or its equivalent.

11 ~~[B. A free public school education in those courses~~
12 ~~already offered to persons pursuant to the provisions of~~
13 ~~Subsection A of this section shall be available to any person~~
14 ~~who is a resident of this state and has received a high school~~
15 ~~diploma or its equivalent if there is available space in such~~
16 ~~courses.~~

17 ~~G.]~~ B. Any person entitled to a free public school
18 education pursuant to the provisions of this section may enroll
19 or re-enroll in a public school at any time and, unless
20 required to attend school pursuant to the Compulsory School
21 Attendance Law, may withdraw from a public school at any time.

22 ~~[D.]~~ C. In adopting and promulgating rules
23 concerning the enrollment of students transferring from a home
24 school or private school to the public schools, the local
25 school board shall provide that the grade level at which the

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1 transferring student is placed is appropriate to the age of the
2 student or to the student's score on a student achievement test
3 administered according to the statewide assessment and
4 accountability system.

5 ~~[E-]~~ D. A local school board shall adopt and
6 promulgate rules governing enrollment and re-enrollment at
7 public schools other than charter schools within the school
8 district. These rules shall include:

9 (1) definition of the school district boundary
10 and the boundaries of attendance areas for each public school;

11 (2) for each public school, definition of the
12 boundaries of areas outside the school district boundary or
13 within the school district but outside the public school's
14 attendance area and within a distance of the public school that
15 would not be served by a school bus route as determined
16 pursuant to Section 22-16-4 NMSA 1978 if enrolled, which areas
17 shall be designated as "walk zones";

18 (3) priorities for enrollment of students as
19 follows:

20 (a) first, students residing within the
21 school district and within the attendance area of a public
22 school and students who had resided in the attendance area
23 prior to a parent who is an active duty member of the armed
24 forces of the United States or member of the national guard
25 being deployed and whose deployment has required the student to

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1 relocate outside the attendance area for custodial care;

2 (b) second, students enrolled in a
3 school rated as "F" for two of the prior four years pursuant to
4 the A-B-C-D-F Schools Rating Act;

5 (c) third, students who previously
6 attended the public school; and

7 (d) fourth, all other applicants;

8 (4) establishment of maximum allowable class
9 size if smaller than that permitted by law; and

10 (5) rules pertaining to grounds for denial of
11 enrollment or re-enrollment at schools within the school
12 district and the school district's hearing and appeals process
13 for such a denial. Grounds for denial of enrollment or re-
14 enrollment shall be limited to:

15 (a) a student's expulsion from any
16 school district or private school in this state or any other
17 state during the preceding twelve months; or

18 (b) a student's behavior in another
19 school district or private school in this state or any other
20 state during the preceding twelve months that is detrimental to
21 the welfare or safety of other students or school employees.

22 [~~F-~~] E. In adopting and promulgating rules
23 governing enrollment and re-enrollment at public schools other
24 than charter schools within the school district, a local school
25 board may establish additional enrollment preferences for rules

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1 admitting students in accordance with the third and fourth
2 priorities of enrollment set forth in Subparagraphs (c) and (d)
3 of Paragraph (3) of Subsection [~~E~~] D of this section. The
4 additional enrollment preferences may include:

- 5 (1) after-school child care for students;
- 6 (2) child care for siblings of students
7 attending the public school;
- 8 (3) children of employees employed at the
9 public school;
- 10 (4) extreme hardship;
- 11 (5) location of a student's previous school;
- 12 (6) siblings of students already attending the
13 public school; and
- 14 (7) student safety.

15 [~~G-~~] F. As long as the maximum allowable class size
16 established by law or by rule of a local school board,
17 whichever is lower, is not met or exceeded in a public school
18 by enrollment of first- and second-priority persons, the public
19 school shall enroll other persons applying in the priorities
20 stated in the school district rules adopted pursuant to
21 Subsections [~~E and F~~] D and E of this section. If the maximum
22 would be exceeded by enrollment of an applicant in the second
23 through fourth priority, the public school shall establish a
24 waiting list. As classroom space becomes available, persons
25 highest on the waiting list within the highest priority on the

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1 list shall be notified and given the opportunity to enroll."

2 SECTION 3. Section 21-16-2 NMSA 1978 (being Laws 1963,
3 Chapter 108, Section 2, as amended) is amended to read:

4 "21-16-2. DEFINITIONS.--As used in Chapter 21, Article 16
5 NMSA 1978:

6 [~~A. "technical and vocational institute" means a~~
7 ~~public educational institution, including a post-secondary~~
8 ~~educational institution organized before July 1, 1999 as an~~
9 ~~area vocational school pursuant to Chapter 21, Article 17 NMSA~~
10 ~~1978 that provides not to exceed two years of vocational and~~
11 ~~technical curricula and, in addition, some appropriate courses~~
12 ~~and programs in the arts and sciences;~~

13 B.] A. "board" means the governing board of the
14 district;

15 B. "district" means a technical and vocational
16 institute district;

17 C. "full-time-equivalent student" means that term
18 as it is defined in Section 21-16-9 NMSA 1978;

19 D. "school district" means that term as it is
20 defined in [~~Subsection J of~~] Section 22-1-2 NMSA 1978; and

21 E. [~~"district" means a~~] "technical and vocational
22 institute" [district] means a public educational institution,
23 including a post-secondary educational institution organized
24 before July 1, 1999 as an area vocational school pursuant to
25 Chapter 21, Article 17 NMSA 1978 that provides not to exceed

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1 two years of vocational and technical curricula and, in
2 addition, some appropriate courses and programs in the arts and
3 sciences."

4 SECTION 4. Section 22-8-2 NMSA 1978 (being Laws 1978,
5 Chapter 128, Section 3, as amended) is amended to read:

6 "22-8-2. DEFINITIONS.--As used in the Public School
7 Finance Act:

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

9 ~~[B. "membership" means the total enrollment of~~
10 ~~qualified students on the current roll of a class or school on~~
11 ~~a specified day. The current roll is established by the~~
12 ~~addition of original entries and reentries minus withdrawals.~~
13 ~~Withdrawals of students, in addition to students formally~~
14 ~~withdrawn from the public school, include students absent from~~
15 ~~the public school for as many as ten consecutive school days;~~
16 ~~provided that withdrawals do not include students in need of~~
17 ~~early intervention and habitual truants the school district is~~
18 ~~required to intervene with and keep in an educational setting~~
19 ~~as provided in Section 22-12-9 NMSA 1978;~~

20 ~~G.]~~ B. "basic program ADM" or "basic program MEM"
21 means the MEM of qualified students but excludes the full-time-
22 equivalent MEM in early childhood education and three- and
23 four-year-old students receiving special education services;

24 ~~[D.]~~ C. "cost differential factor" is the numerical
25 expression of the ratio of the cost of a particular segment of

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1 the school program to the cost of the basic program in grades
2 four through six;

3 ~~[E-]~~ D. "department" or "division" means the public
4 education department;

5 ~~[F-]~~ E. "early childhood education ADM" or "early
6 childhood education MEM" means the full-time-equivalent MEM of
7 students attending approved early childhood education programs;

8 ~~[G-]~~ F. "full-time-equivalent ADM" or "full-time-
9 equivalent MEM" is that membership calculated by applying to
10 the MEM in an approved public school program the ratio of the
11 number of hours per school day devoted to the program to six
12 hours or the number of hours per school week devoted to the
13 program to thirty hours;

14 G. "membership" means the total enrollment of
15 qualified students on the current roll of a class or school on
16 a specified day. The current roll is established by the
17 addition of original entries and reentries minus withdrawals.
18 Withdrawals of students, in addition to students formally
19 withdrawn from the public school, include students absent from
20 the public school for as many as ten consecutive school days;
21 provided that withdrawals do not include students in need of
22 early intervention and habitual truants the school district is
23 required to intervene with and keep in an educational setting
24 as provided in Section 22-12-9 NMSA 1978;

25 H. "operating budget" means the annual financial

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1 plan required to be submitted by a local school board or
2 governing body of a state-chartered charter school;

3 I. "program cost" is the product of the total
4 number of program units to which a school district is entitled
5 multiplied by the dollar value per program unit established by
6 the legislature;

7 J. "program element" is that component of a public
8 school system to which a cost differential factor is applied to
9 determine the number of program units to which a school
10 district is entitled, including [~~but not limited to~~] MEM,
11 full-time-equivalent MEM, teacher, classroom or public school;

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

14 L. "public money" or "public funds" means all money
15 from public or private sources received by a school district or
16 state-chartered charter school or officer or employee of a
17 school district or state-chartered charter school for public
18 use;

19 M. "qualified student" means a public school
20 student who:

21 (1) has not graduated from high school;

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

25 (3) in terms of age and other criteria:

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

3 (b) is at least three years of age at
4 any time during the school year and is receiving special
5 education services pursuant to rules of the department; ~~[or]~~

6 (c) has not reached the student's
7 twenty-second birthday on the first day of the school year ~~[and~~
8 ~~is receiving special education services pursuant to rules of~~
9 ~~the department]~~; or

10 (d) has reached the student's twenty-
11 second birthday on the first day of the 2018-2019 school year,
12 is counted in a school district's or charter school's
13 membership count on the third reporting date of the 2017-2018
14 school year, is enrolled in the same school as the student was
15 enrolled in the 2017-2018 school year and has been continuously
16 enrolled since the third reporting date of the 2017-2018 school
17 year without disenrollment; and

18 N. "state superintendent" means the secretary of
19 public education or the secretary's designee."

20 SECTION 5. Section 22-8-23 NMSA 1978 (being Laws 1975,
21 Chapter 119, Section 1, as amended) is amended to read:

22 "22-8-23. SIZE ADJUSTMENT PROGRAM UNITS.--

23 A. An approved public school with a MEM of less
24 than 400, including early childhood education full-time-
25 equivalent MEM but excluding membership in class C and class D

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1 programs and excluding full-time-equivalent membership in
2 three- and four-year-old developmentally disabled programs, is
3 eligible for additional program units. Separate schools
4 established to provide special programs, including but not
5 limited to vocational and alternative education, shall not be
6 classified as public schools for purposes of generating size
7 adjustment program units. The number of additional program
8 units to which a school district is entitled under this
9 subsection is the sum of elementary-junior high units and
10 senior high units computed in the following manner:

11 Elementary-Junior High Units
12 200 - MEM
13 _____ x 1.0 x MEM = Units
14 200

15 where MEM is equal to the membership of an approved elementary
16 or junior high school, including early childhood education
17 full-time-equivalent membership but excluding membership in
18 class C and class D programs and excluding full-time-equivalent
19 membership in three- and four-year-old developmentally disabled
20 programs;

21 Senior High Units
22 200 - MEM
23 _____ x 2.0 x MEM = Units
24 200

25 or,

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Senior High Units

400 - MEM

$$\frac{\quad}{400} \times 1.6 \times \text{MEM} = \text{Units}$$

whichever calculation for senior high units is higher, where MEM is equal to the membership of an approved senior high school excluding membership in class C and class D programs.

B. A school district with total MEM of less than 4,000, including early childhood education full-time-equivalent MEM, is eligible for additional program units. The number of additional program units to which a school district is entitled under this subsection is the number of district units computed in the following manner:

District Units

4,000 - MEM

$$\frac{\quad}{4,000} \times 0.15 \times \text{MEM} = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time-equivalent membership.

C. A school district with over 10,000 MEM with a ratio of MEM to senior high schools less than 4,000:1 is eligible for additional program units based on the number of approved regular senior high schools that are not eligible for senior high units under Subsection A of this section. The number of additional program units to which an eligible school

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1 district is entitled under this subsection is the number of
2 units computed in the following manner:

3 4,000 - MEM

4 _____ x 0.50 = Units

5 Senior High Schools

6 where MEM is equal to the total district membership, including
7 early childhood education full-time-equivalent membership, and
8 where senior high schools are equal to the number of approved
9 regular senior high schools in the school district.

10 D. A school district, as defined in [~~Subsection R~~
11 ~~of~~] Section 22-1-2 NMSA 1978, with a MEM of less than 200,
12 including early childhood education full-time-equivalent MEM,
13 is eligible for additional program units, provided that the
14 department certifies that the school district has implemented
15 practices to reduce scale inefficiencies, including shared
16 service agreements with regional education cooperatives or
17 other school districts for noninstructional functions and
18 distance education. The number of additional program units to
19 which a school district is entitled under this subsection is
20 the number of units computed in the following manner:

21 200 - MEM = Units

22 where MEM is equal to the total district MEM, including early
23 childhood education full-time-equivalent MEM."

24 SECTION 6. Section 22-29-3 NMSA 1978 (being Laws 1986,
25 Chapter 94, Section 3, as amended by Laws 2007, Chapter 41,

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1 Section 1 and by Laws 2007, Chapter 236, Section 1) is amended
2 to read:

3 "22-29-3. DEFINITIONS.--As used in the Public School
4 Insurance Authority Act:

5 A. "authority" means the public school insurance
6 authority;

7 B. "board" means the board of directors of the
8 authority;

9 C. "charter school" means a school organized as a
10 charter school pursuant to the provisions of the Charter
11 Schools Act;

12 D. "director" means the director of the authority;

13 E. "due process reimbursement" means the
14 reimbursement of a school district's or charter school's
15 expenses for attorney fees, hearing officer fees and other
16 reasonable expenses incurred as a result of a due process
17 hearing conducted pursuant to the federal Individuals with
18 Disabilities Education Improvement Act;

19 F. "educational entities" means state educational
20 institutions as enumerated in Article 12, Section 11 of the
21 constitution of New Mexico and other state diploma, degree-
22 granting and certificate-granting post-secondary educational
23 institutions, regional education cooperatives and nonprofit
24 organizations dedicated to the improvement of public education
25 and whose membership is composed exclusively of public school

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1 employees, public schools or school districts;

2 G. "fund" means the public school insurance fund;

3 H. "group health insurance" means coverage that
4 includes life insurance, accidental death and dismemberment,
5 medical care and treatment, dental care, eye care and other
6 coverages as determined by the authority;

7 I. "risk-related coverage" means coverage that
8 includes property and casualty, general liability, auto and
9 fleet, workers' compensation and other casualty insurance; and

10 J. "school district" means a school district as
11 defined in [~~Subsection R of~~] Section 22-1-2 NMSA 1978,
12 excluding any school district with a student enrollment in
13 excess of sixty thousand students."

14 SECTION 7. TEMPORARY PROVISION.--It is the intent of the
15 legislature that a law be enacted in 2019 providing an
16 additional three million dollars (\$3,000,000) to the higher
17 education department in fiscal year 2020 to provide adults with
18 education services and materials and access to high school
19 equivalency testing.

20 SECTION 8. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2018.