

1 SENATE BILL 406

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Mimi Stewart

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9  
10 AN ACT

11 RELATING TO PUBLIC SCHOOLS; LIMITING MANAGEMENT CONTRACTS FOR  
12 PUBLIC SCHOOLS.

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 22-1-2 NMSA 1978 (being Laws 2003,  
16 Chapter 153, Section 3, as amended by Laws 2019, Chapter 206,  
17 Section 1 and by Laws 2019, Chapter 207, Section 1) is amended  
18 to read:

19 "22-1-2. DEFINITIONS.--As used in the Public School Code:

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

23 B. "charter school" means a school authorized by a  
24 chartering authority to operate as a public school;

25 C. "commission" means the public education

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1 commission;

2 D. "department" means the public education  
3 department;

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

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

16 G. "licensed school employee" means teachers,  
17 school administrators and instructional support providers;

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

20 I. "local superintendent" means the chief executive  
21 officer of a school district;

22 J. "management of a public school or school  
23 program" means receiving compensation from a school district in  
24 an amount equivalent to fifty percent or more of the state  
25 equalization guarantee distribution for a public school or

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1 school program and engaging in one or more of the following:

2 (1) the provision of fifty percent or more of  
3 a public school's or school program's curricula;

4 (2) decision making regarding the selection of  
5 a public school's or school program's curricula or  
6 extracurricular activities;

7 (3) the planning, operation, supervision or  
8 evaluation of the educational program or education-related  
9 activities;

10 (4) instructional leadership for a public  
11 school or school program;

12 (5) decision making regarding the instruction  
13 or assessment of students;

14 (6) decision making regarding the discipline  
15 of students;

16 (7) decision making regarding the operations  
17 of a public school or school program;

18 (8) decision making regarding the finances of  
19 a public school or school program;

20 (9) decision making regarding the  
21 administration or leadership of a public school or school  
22 program;

23 (10) day-to-day supervision or direction of  
24 the public school's or school program's employees, contractors,  
25 subcontractors or volunteers;

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1                   (11) employing, evaluating, promoting,  
2 disciplining, discharging, terminating, recruiting, training or  
3 assigning public school or school program employees,  
4 contractors or subcontractors;

5                   (12) developing the professional development  
6 plans or professional improvement plans of the public school's  
7 or school program's employees, contractors or subcontractors;

8                   (13) direction or direct facilitation of  
9 relationships between students' families and school faculty and  
10 administration;

11                   (14) sole creation of any improvement plan or  
12 corrective action plan for the public school, or any grade or  
13 student subgroup of the public school, whether academic,  
14 financial or operational;

15                   (15) sole creation of any performance  
16 framework for the public school, or any grade or student  
17 subgroup of the public school, whether academic, financial or  
18 operational;

19                   (16) acting as a representative of the public  
20 school in any legal, administrative or contractual capacity;

21                   (17) active recruitment of students to the  
22 public school via any medium of communication;

23                   (18) decision making regarding information  
24 presented to the local school board or governing body of a  
25 charter school; or

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1                    (19) developing any form of budget or budget  
2 proposal for a public school or school program;

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

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

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

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

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

23                    [~~O.~~] P. "school-age person" means a person who is  
24 at least five years of age prior to 12:01 a.m. on September 1  
25 of the school year, who has not received a high school diploma

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1 or its equivalent and who has not reached the person's twenty-  
2 second birthday on the first day of the school year and meets  
3 other criteria provided in the Public School Finance Act;

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

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

13 [R.] S. "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.] T. "school employee" includes licensed and  
18 nonlicensed employees of a school district;

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

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

25 [V.] W. "secretary" means the secretary of public

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1 education;

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

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

13           ~~[Y.]~~ Z. "substitute teacher" means a person who  
14 holds a certificate to substitute for a teacher in the  
15 classroom;

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

22           ~~[AA.]~~ BB. "certified school instructor" means a  
23 licensed school employee; and

24           ~~[BB.]~~ CC. "certified school employee" or "certified  
25 school personnel" means a licensed school employee."

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

3           "22-5-4. LOCAL SCHOOL BOARDS--POWERS--DUTIES.--

4           A. A local school board shall have the following  
5 powers or duties:

6                   ~~[A.]~~ (1) subject to the rules of the  
7 department, develop educational policies for the school  
8 district;

9                   ~~[B.]~~ (2) employ a local superintendent for the  
10 school district and fix the superintendent's salary;

11                   ~~[C.]~~ (3) review and approve the annual school  
12 district budget;

13                   ~~[D.]~~ (4) acquire, lease and dispose of  
14 property;

15                   ~~[E.]~~ (5) have the capacity to sue and be sued;

16                   ~~[F.]~~ (6) acquire property by eminent domain  
17 pursuant to the procedures provided in the Eminent Domain Code;

18                   ~~[G.]~~ (7) issue general obligation bonds of the  
19 school district;

20                   ~~[H.]~~ (8) provide for the repair of and  
21 maintain all property belonging to the school district;

22                   ~~[I.]~~ (9) for good cause and upon order of the  
23 district court, subpoena witnesses and documents in connection  
24 with a hearing concerning any powers or duties of the local  
25 school board;

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1                   [~~J.~~] (10) except for expenditures for  
2 salaries, contract for the expenditure of money according to  
3 the provisions of the Procurement Code;

4                   [~~K.~~] (11) adopt rules pertaining to the  
5 administration of all powers or duties of the local school  
6 board;

7                   [~~L.~~] (12) accept or reject any charitable  
8 gift, grant, devise or bequest. The particular gift, grant,  
9 devise or bequest accepted shall be considered an asset of the  
10 school district or the public school to which it is given;

11                   [~~M.~~] (13) offer and, upon compliance with the  
12 conditions of such offer, pay rewards for information leading  
13 to the arrest and conviction or other appropriate disciplinary  
14 disposition by the courts or juvenile authorities of offenders  
15 in case of theft, defacement or destruction of school district  
16 property. All such rewards shall be paid from school district  
17 funds in accordance with rules promulgated by the department;  
18 and

19                   [~~N.~~] (14) give prior approval for any  
20 educational program in a public school in the school district  
21 that is to be conducted, sponsored, carried on or caused to be  
22 carried on by a private organization or agency.

23                   B. A local school board shall not contract or  
24 otherwise form an agreement with a nongovernmental entity for  
25 the management of a public school or school program."

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

3           "22-5-14. LOCAL SUPERINTENDENT--POWERS AND DUTIES.--

4           A. The local superintendent is the chief executive  
5 officer of the school district.

6           B. The local superintendent shall:

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

9                   (2) administer and supervise the school  
10 district;

11                   (3) employ, fix the salaries of and assign,  
12 terminate or discharge all employees of the school district;

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

20                   (5) perform other duties as required by law,  
21 the department or the local school board.

22           C. The local superintendent may apply to the [~~state~~  
23 ~~board~~] department for a waiver of certain provisions of the  
24 Public School Code relating to length of school day, staffing  
25 patterns, subject area or the purchase of instructional

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1 materials for the purpose of implementing a collaborative  
2 school improvement program for an individual public school.

3 D. A local superintendent shall not contract or  
4 otherwise form an agreement with a nongovernmental entity for  
5 the management of a public school or school program."

6 SECTION 4. Section 22-8B-2 NMSA 1978 (being Laws 1999,  
7 Chapter 281, Section 2, as amended) is amended to read:

8 "22-8B-2. DEFINITIONS.--As used in the Charter Schools  
9 Act:

10 A. "charter school" means a conversion school or  
11 start-up school authorized by the chartering authority to  
12 operate as a public school;

13 B. "chartering authority" means either a local  
14 school board or the commission;

15 C. "commission" means the public education  
16 commission;

17 D. "conversion school" means an existing public  
18 school within a school district that was authorized by a local  
19 school board to become a charter school prior to July 1, 2007;

20 E. "division" means the charter schools division of  
21 the department;

22 F. "enrollment preference" means filling a charter  
23 school's openings with students, or siblings of students, who  
24 have already been admitted to the school through an appropriate  
25 admission process or are continuing through subsequent grades;

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1           G. "governing body" means the governing structure  
2 of a charter school as set forth in the school's charter;

3           H. "governing body training" means the training  
4 required pursuant to Section 22-8B-5.1 NMSA 1978 to educate  
5 governing body members and ensure compliance with all  
6 applicable laws, which training may be obtained from any  
7 source, individual or entity that has been approved by the  
8 department;

9           ~~[I. "management" means authority over the hiring,~~  
10 ~~termination and day-to-day direction of a school's employees or~~  
11 ~~contractors, whether they are licensed or not;~~

12           ~~J.]~~ I. "material violation" means the act of  
13 failing to accomplish a requirement of a law, rule or contract  
14 or a charter school's bylaws that substantially affects the  
15 charter school's employees' or students' rights or privileges;

16           ~~[K.]~~ J. "nondiscretionary waiver" means a waiver of  
17 requirements or rules and the provisions of the Public School  
18 Code that the department shall grant pursuant to Section  
19 22-8B-5 NMSA 1978 and for which a charter school shall not  
20 require separate approval by the department;

21           ~~[L.]~~ K. "performance indicator" means a measurement  
22 tool that enables selected issues or conditions to be monitored  
23 over time for the purposes of evaluating progress toward or  
24 away from a desired direction;

25           ~~[M.]~~ L. "performance target" means the specific

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1 rating to which the data from a school's performance indicators  
2 shall be compared to determine whether the school exceeds,  
3 meets, does not meet or falls far below that rating;

4 ~~[N.]~~ M. "siblings" means:

5 (1) students living in the same residence at  
6 least fifty percent of the time in a permanent or semipermanent  
7 situation, such as long-term foster care placements; or

8 (2) students related to each other by blood,  
9 marriage or cohabitation; and

10 ~~[O.]~~ N. "start-up school" means a public school  
11 developed by one or more parents, teachers or community members  
12 authorized by the chartering authority to become a charter  
13 school."

14 SECTION 5. Section 22-8B-4 NMSA 1978 (being Laws 1999,  
15 Chapter 281, Section 4, as amended) is amended to read:

16 "22-8B-4. CHARTER SCHOOLS' RIGHTS AND RESPONSIBILITIES--  
17 OPERATION.--

18 A. A charter school shall be subject to all federal  
19 and state laws and constitutional provisions prohibiting  
20 discrimination on the basis of disability, physical or mental  
21 handicap, serious medical condition, race, creed, color, sex,  
22 gender identity, sexual orientation, spousal affiliation,  
23 national origin, religion, ancestry or need for special  
24 education services.

25 B. A charter school shall be governed by a

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1 governing body in the manner set forth in the charter contract;  
2 provided that a governing body shall have at least five  
3 members; and provided further that no member of a governing  
4 body for a charter school that is initially approved on or  
5 after July 1, 2005 or whose charter is renewed on or after July  
6 1, 2005 shall serve on the governing body of another charter  
7 school. No member of a local school board shall be a member of  
8 a governing body for a charter school or employed in any  
9 capacity by a locally chartered charter school located within  
10 the local school board's school district during the term of  
11 office for which the member was elected or appointed.

12 C. A charter school shall be responsible for:

13 (1) its own operation, including preparation  
14 of a budget, subject to audits pursuant to the Audit Act; and

15 (2) contracting for services and personnel  
16 matters.

17 D. A charter school may contract with a school  
18 district, a university or college, the state, another political  
19 subdivision of the state, the federal government or one of its  
20 agencies, a tribal government or any other third party for the  
21 use of a facility, its operation and maintenance [~~and the~~  
22 ~~provision of any service or activity that the charter school is~~  
23 ~~required to perform in order]~~ of which is necessary to carry  
24 out the educational program described in its charter contract.  
25 Facilities used by a charter school shall meet the standards

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1 required pursuant to Section 22-8B-4.2 NMSA 1978.

2 E. A conversion school chartered before July 1,  
3 2007 may choose to continue using the school district  
4 facilities and equipment it had been using prior to conversion,  
5 subject to the provisions of Subsection F of this section.

6 F. The school district in which a charter school is  
7 geographically located shall provide a charter school with  
8 available facilities for the school's operations unless the  
9 facilities are currently used for other educational purposes.  
10 An agreement for the use of school district facilities by a  
11 charter school may provide for reasonable lease payments;  
12 provided that the payments do not exceed the sum of the lease  
13 reimbursement rate provided in Subparagraph (b) of Paragraph  
14 (1) of Subsection I of Section 22-24-4 NMSA 1978 plus any  
15 reimbursement for actual direct costs incurred by the school  
16 district in providing the facilities; and provided further that  
17 any lease payments received by a school district may be  
18 retained by the school district and shall not be considered to  
19 be cash balances in any calculation pursuant to Section 22-8-41  
20 NMSA 1978. The available facilities provided by a school  
21 district to a charter school shall meet all occupancy standards  
22 as specified by the public school capital outlay council. As  
23 used in this subsection, "other educational purposes" includes  
24 health clinics, daycare centers, teacher training centers,  
25 school district administration functions and other ancillary

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1 services related to a school district's functions and  
2 operations.

3 G. A locally chartered charter school may pay the  
4 costs of operation and maintenance of its facilities or may  
5 contract with the school district to provide facility operation  
6 and maintenance services.

7 H. Locally chartered charter school facilities are  
8 eligible for state and local capital outlay funds and shall be  
9 included in the school district's five-year facilities plan.

10 I. A locally chartered charter school shall  
11 negotiate with a school district to provide transportation to  
12 students eligible for transportation under the provisions of  
13 the Public School Code. The school district, in conjunction  
14 with the charter school, may establish a limit for student  
15 transportation to and from the charter school site not to  
16 extend beyond the school district boundary.

17 J. A charter school shall be a nonsectarian,  
18 nonreligious and non-home-based public school.

19 K. Except as otherwise provided in the Public  
20 School Code, a charter school shall not charge tuition or have  
21 admission requirements.

22 L. With the approval of the chartering authority, a  
23 single charter school may maintain separate facilities at two  
24 or more locations within the same school district; but, for  
25 purposes of calculating program units pursuant to the Public

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1 School Finance Act, the separate facilities shall be treated  
2 together as one school.

3 M. A charter school shall be subject to the  
4 provisions of Section 22-2-8 NMSA 1978 and the Assessment and  
5 Accountability Act.

6 N. Within constitutional and statutory limits, a  
7 charter school may acquire and dispose of property; provided  
8 that, upon termination of the charter, all assets of the  
9 locally chartered charter school shall revert to the local  
10 school board and all assets of the state-chartered charter  
11 school shall revert to the state, except that, if all or any  
12 portion of a state-chartered charter school facility is  
13 financed with the proceeds of general obligation bonds issued  
14 by a local school board, the facility shall revert to the local  
15 school board.

16 O. The governing body of a charter school may  
17 accept or reject any charitable gift, grant, devise or bequest;  
18 provided that no such gift, grant, devise or bequest shall be  
19 accepted if subject to any condition contrary to law or to the  
20 terms of the charter. The particular gift, grant, devise or  
21 bequest shall be considered an asset of the charter school to  
22 which it is given.

23 P. The governing body may contract and sue and be  
24 sued. A local school board shall not be liable for any acts or  
25 omissions of the charter school.

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1           Q. A charter school shall comply with all state and  
2 federal health and safety requirements applicable to public  
3 schools, including those health and safety codes relating to  
4 educational building occupancy.

5           R. A charter school is a public school that may  
6 contract with a school district or other party for provision of  
7 financial management, food services, transportation, facilities,  
8 education-related services or other services. The governing  
9 body shall not contract with a [~~for-profit~~] nongovernmental  
10 entity for the management of the charter school or charter  
11 school program.

12           S. To enable state-chartered charter schools to  
13 submit required data to the department, an accountability data  
14 system shall be maintained by the department.

15           T. A charter school shall comply with all  
16 applicable state and federal laws and rules related to  
17 providing special education services. Charter school students  
18 with disabilities and their parents retain all rights under the  
19 federal Individuals with Disabilities Education Act and its  
20 implementing state and federal rules. Each charter school is  
21 responsible for identifying, evaluating and offering a free  
22 appropriate public education to all eligible children who are  
23 accepted for enrollment in that charter school. The state-  
24 chartered charter school, as a local educational agency, shall  
25 assume responsibility for determining students' needs for

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1 special education and related services. The [~~division~~]  
2 department may promulgate rules to implement the requirements  
3 of this subsection."

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