

HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 360

**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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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.

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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.