

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 319

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

William W. Fuller

AN ACT

RELATING TO SCHOOL CHOICE; AUTHORIZING THE EDUCATION OF  
STUDENTS AT CERTAIN PUBLIC AND PRIVATE SCHOOLS; CREATING THE  
PARENTAL CHOICE ACT; AMENDING AND ENACTING SECTIONS OF THE  
PUBLIC SCHOOL CODE.

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

Section 1. A new section of the Public School Code is  
enacted to read:

"[NEW MATERIAL] SHORT TITLE. -- Sections 1 through 8 of  
this act may be cited as the "Parental Choice Act". "

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

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

A. The legislature finds that:

(1) every family in New Mexico should have

underscored material = new  
[bracketed material] = delete

1 the option to take advantage of the best educational  
2 opportunities available to their children;

3 (2) providing families in New Mexico a choice  
4 between schools leads to competition that benefits students  
5 and improves the quality of public schools;

6 (3) students should be allowed to improve  
7 their learning potential through educational opportunities  
8 that are best suited to their individual needs and interests;  
9 and

10 (4) low-income families should not be denied  
11 educational choices for their children.

12 B. The purpose of the Parental Choice Act is to  
13 establish a program that provides New Mexico's students the  
14 opportunity to attend their choice of public or private  
15 schools in order to best suit their individual needs and  
16 interests. "

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

19 "[NEW MATERIAL] DEFINITIONS. -- As used in the Parental  
20 Choice Act:

21 A. "family income" means the income of a student's  
22 parent or legal guardian who resides with the student at the  
23 student's principal residence;

24 B. "federal poverty guidelines" means the level of  
25 income defining poverty by family size published annually in

underscored material = new  
[bracketed material] = delete

1 the federal register by the United States department of health  
2 and human services;

3 C. "local school district" means the school  
4 district where a student resides;

5 D. "program" means the parental choice program;  
6 and

7 E. "certificate" means a note issued to a  
8 qualifying parent through the department of education used to  
9 educate his child at a public school or eligible private  
10 school. "

11 Section 4. A new section of the Public School Code is  
12 enacted to read:

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

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

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

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

21 D. No more than ten percent of the public school  
22 population in a municipality with a population greater than  
23 four hundred thousand according to the 2000 federal decennial  
24 census shall receive certificates.

25 E. The department of education, in cooperation

. 140599. 1

underscored material = new  
[bracketed material] = delete

1 with the school districts, shall embark on a public awareness  
2 campaign to inform the public about the program using the  
3 schools, other government agencies and the media. "

4 Section 5. A new section of the Public School Code is  
5 enacted to read:

6 "[NEW MATERIAL] ELIGIBLE STUDENTS. --

7 A. A student who is a resident of a municipality  
8 in New Mexico with a population greater than four hundred  
9 thousand according to the 2000 federal decennial census and is  
10 at least five years of age prior to 12:01 a.m. September 1 of  
11 the school year or is a developmentally disabled three- or  
12 four-year-old child is eligible to participate in the program  
13 if his family income is at or below one hundred eighty-five  
14 percent of the federal poverty guidelines.

15 B. A student who receives a certificate pursuant  
16 to the Parental Choice Act shall participate in the testing  
17 required by Subsection B of Section 22-1-6 NMSA 1978. The  
18 testing shall be administered by the school district in which  
19 the student who receives the certificate resides. "

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

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

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

25 (1) register with the superintendent of a

. 140599. 1

underscored material = new  
[bracketed material] = delete

1 local school district as an eligible private school;

2 (2) maintain or develop antidiscrimination  
3 policies to prevent discrimination on the basis of race,  
4 color, national origin or ancestry; and

5 (3) develop policies that do not discriminate  
6 against students who are recipients of certificates.

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

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

13 "[NEW MATERIAL] PROCEDURES FOR USING CERTIFICATES. --

14 A. A parent or legal guardian may use a  
15 certificate to enroll his child in a public school outside of  
16 the school district in which the child resides or in an  
17 eligible private school.

18 B. A school district shall adopt specific, written  
19 standards for acceptance and rejection of certificates  
20 provided for in the Parental Choice Act based on the capacity  
21 of class size, grade level or school buildings.

22 C. Not earlier than March 1 and not later than  
23 July 1 prior to the beginning of a school year, a student's  
24 parent or legal guardian may apply to the local school  
25 district superintendent to participate in the program. The

. 140599. 1

1 local school district superintendent may waive the application  
2 deadline. The application shall contain the following  
3 information:

- 4 (1) the student's name and address;
- 5 (2) the student's date of birth;
- 6 (3) the student's social security number;
- 7 (4) the student's school attendance zone;
- 8 (5) the student's grade level;
- 9 (6) the name and address of the student's  
10 parent or legal guardian who is residing with the child;

11 (7) for a parent or legal guardian who  
12 resides with the student at the student's principal residence,  
13 when required by the local school district superintendent,  
14 proof of income eligibility through copies of:

- 15 (a) the student's, parent's or legal  
16 guardian's three most recent paycheck receipts for all  
17 employment;
- 18 (b) a signed statement by the parent's  
19 or legal guardian's employer indicating his weekly, biweekly  
20 or annual net earnings; or
- 21 (c) a signed statement by the parent or  
22 legal guardian indicating that he is self-employed and that  
23 includes his annual net earnings, with a copy of his most  
24 recent income tax return attached;

25 (8) whether the student was enrolled in a

underscored material = new  
[bracketed material] = delete

1 class A, B, C or D special education program in the prior  
2 school year or, for a child entering school for the first  
3 time, whether the child has a diagnosed developmental  
4 disability or learning disorder;

5 (9) whether the student speaks a language  
6 other than English as his principal language; and

7 (10) the name, tuition, fees and address of  
8 the public or private school to which the student intends to  
9 apply.

10 D. No later than forty-five days after the  
11 application is received, the local school district  
12 superintendent shall act on the application, notify the parent  
13 or legal guardian of the value of the certificate and issue  
14 the certificate if the application is approved.

15 E. The certificate shall be issued to the student  
16 in the care of the student's parent or legal guardian. The  
17 certificate shall not be issued to the private school or  
18 school district containing the public school that the student  
19 chooses to attend.

20 F. The student and his parent or legal guardian  
21 shall solely select the public or private school the student  
22 chooses to attend. The state shall not decide which school a  
23 student may attend. The state shall not advise or influence  
24 the student's selection of a school.

25 G. Not later than August 15 of each year, the

underscored material = new  
[bracketed material] = delete

1 local school district superintendent shall report to the  
2 department of education the ages, schools, school attendance  
3 zones and certificate values of students participating in the  
4 program "

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

7 "[NEW MATERIAL] CERTIFICATES--REDEMPTION.--

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

19 B. Subject to the value of the certificate set  
20 forth in Subsection A of this section, the certificate  
21 redemption value shall not exceed the tuition and fees charged  
22 by a private school for students not participating in the  
23 program unless the cost of educating the student presenting  
24 the certificate is greater than the tuition and fees charged,  
25 in which case the value of the certificate shall not exceed

. 140599. 1



underscored material = new  
[bracketed material] = delete

1 those costs.

2 C. Within fifteen days after receiving a  
3 certificate, a private school shall, in writing, certify the  
4 enrollment of the student named on the certificate and shall,  
5 in writing, certify the amount of tuition and fees charged by  
6 the private school to the department of education.

7 D. A private school or a school district located  
8 outside of the student's attendance zone shall redeem the  
9 value of the certificate from the local school district in the  
10 following installments: twenty-five percent of the value  
11 determined in Subsection A of this section in September,  
12 twenty-five percent of the value determined in Subsection A of  
13 this section in November, twenty-five percent of the value  
14 determined in Subsection A of this section in February and  
15 twenty-five percent of the value determined in Subsection A of  
16 this section in May. The installments shall be paid on the  
17 first day of the applicable month.

18 E. If a private school disenrolls a student during  
19 the school year or if the student is absent for ten  
20 consecutive days without explanation from his parent or legal  
21 guardian, the private school shall, in writing, notify the  
22 local school district, and the certificate redemption shall  
23 cease.

24 F. If a parent or legal guardian disenrolls a  
25 student from a private school and enrolls the student in

. 140599. 1

underscored material = new  
[bracketed material] = delete

1 another private school or in a public school during the school  
2 year, the parent or legal guardian shall, in writing, notify  
3 the local school district. Upon receipt of proof of  
4 enrollment in another private school and certification of  
5 tuition and fees charged by the new private school, the  
6 remaining scholarship redemption installments shall be made to  
7 the new private school. Upon proof of enrollment in a public  
8 school, the remaining redemption installments shall be made to  
9 the school district in which the public school is located."

10 Section 9. Section 22-1-6 NMSA 1978 (being Laws 1989,  
11 Chapter 308, Section 1, as amended) is amended to read:

12 "22-1-6. ANNUAL SCHOOL DISTRICT ACCOUNTABILITY REPORT  
13 REQUIRED. --

14 A. School districts are required to publish an  
15 annual school district accountability report to provide  
16 district-wide data for the previous school year. The state  
17 board shall establish the format for the accountability  
18 reports and ensure that the relevant data is provided annually  
19 to parents, students, educators, policymakers, legislators,  
20 the governor and business and economic development  
21 organizations. The department of education shall establish  
22 the following five indices through which public school  
23 performance shall be measured and reported to school  
24 districts:

25 (1) student achievement as measured by a

underscored material = new  
[bracketed material] = delete

1 nationally norm-referenced test approved by the department of  
2 education or through a performance-based instrument to measure  
3 proficiency;

4 (2) school safety;

5 (3) the dropout rate;

6 (4) attendance; and

7 (5) parent and community involvement.

8 The department of education shall establish the  
9 methodology for measuring each of the five indices.

10 B. Effective July 1, 1999, school districts shall  
11 annually administer a nationally norm-referenced test or a  
12 standards-based assessment to all students in grades three  
13 through nine enrolled in a public school [~~in grades three~~  
14 ~~through nine~~] or receiving a certificate pursuant to the  
15 Parental Choice Act. Only students with disabilities deemed  
16 incapable of taking the test as determined on their individual  
17 educational programs shall be exempted from this requirement.  
18 Students who have been assessed as non-English or limited  
19 English proficient using state approved language assessments  
20 and meeting required thresholds shall be exempted from this  
21 test and provided an alternative norm-referenced or standards-  
22 based assessment in their primary language. School districts  
23 shall report the following to the department of education and  
24 the parent or legal guardian of a student receiving a  
25 certificate pursuant to the Parental Choice Act:

. 140599. 1

underscored material = new  
[bracketed material] = delete

1 (1) the results of the norm-referenced test  
2 or standards-based assessment;

3 (2) the number of enrolled students who did  
4 not take the test, the school in which they are enrolled and  
5 the reason for the exemption from the test; and

6 (3) separately and as part of the aggregate  
7 report, the results of assessments of students enrolled in  
8 special education class A, B, C and D programs who took the  
9 test and the school in which they are enrolled, except in  
10 cases where the number of students being reported is less than  
11 ten.

12 C. School districts shall set two-, four- and six-  
13 year benchmarks in each of the five indices for each public  
14 school. Local school boards may establish additional indices,  
15 if reviewed by the department of education, through which to  
16 measure the school district's performance in other areas.

17 D. The annual accountability report shall also  
18 include the results of a survey of parents' views of the  
19 quality of their children's school. The survey shall be  
20 conducted each year in time to include the results in the  
21 annual accountability report. The survey shall compile the  
22 results of a written questionnaire that shall be sent home  
23 with the students to be given to their parents. The survey  
24 may be completed anonymously. The survey shall be no more  
25 than one page, shall be clearly and concisely written and

underscored material = new  
[bracketed material] = delete

1 shall include not more than twenty questions that shall be  
2 answered with options of a simple sliding scale ranging from  
3 "strongly agree" to "strongly disagree" and shall include the  
4 optional response "don't know". The survey shall also include  
5 a request for optional written comments, which may be written  
6 on the back of the questionnaire form. The questionnaire  
7 shall include questions in the following areas:

8 (1) parent-teacher-school relationship and  
9 communication;

10 (2) quality of educational and  
11 extracurricular programs;

12 (3) instructional practices and techniques;

13 (4) resources;

14 (5) school personnel, including the school  
15 principal; and

16 (6) parents' view of teaching staff  
17 expectations for the students.

18 The state board shall develop no more than ten of the  
19 questions, which shall be reviewed by the legislative  
20 education study committee prior to implementation. No more  
21 than five questions shall be developed by the local school  
22 board and no more than five questions shall be developed by  
23 the staffs of each individual school site; provided that at  
24 least half of those questions shall be developed by teachers  
25 rather than administrators, in order to gather information

. 140599. 1

underscored material = new  
[bracketed material] = delete

1 that is specific to the particular community surveyed. The  
2 questionnaires shall indicate the public school site and shall  
3 be tabulated by the department of education within thirty days  
4 of receipt and shall be returned to the respective schools to  
5 be disseminated to all parents.

6 E. The annual accountability report shall also  
7 include a report of all federal funds distributed directly to  
8 the school district or received by the district from the  
9 department of education. For each distribution, the purpose  
10 for which the money was received shall be stated with a  
11 detailed accounting of the purposes for which the funds were  
12 expended.

13 F. The annual accountability report for each  
14 school district shall be adopted by the local school board,  
15 may be published no later than November 15 of each year and  
16 may be published at least once each school year in a newspaper  
17 of general circulation in the county where the school district  
18 is located. In publication, the report shall be titled "The  
19 School District Report Card" and disseminated in accordance  
20 with guidelines established by the state board to ensure  
21 effective communication with parents, students, educators,  
22 local policymakers and business and community organizations.

23 G. The department of education shall create an  
24 accountability data system through which data from each public  
25 school and each school district may be compiled and reviewed.

underscored material = new  
[bracketed material] = delete

1 The department of education shall provide the resources to  
2 train school district personnel in the use of the  
3 accountability data system.

4 H. The department of education shall verify data  
5 submitted by the school districts.

6 I. The state board shall measure the performance  
7 of every public school in New Mexico. Public schools  
8 achieving the highest level of performance shall be eligible  
9 for supplemental incentive funding. The state board shall  
10 establish the corrective actions and interventions necessary  
11 for public schools whose performance level is low.

12 J. The school district shall submit a copy of its  
13 annual accountability report to the legislative finance  
14 committee, the legislative education study committee and the  
15 library of the legislative council service. "

16 Section 10. Section 22-8-2 NMSA 1978 (being Laws 1978,  
17 Chapter 128, Section 3, as amended) is amended to read:

18 "22-8-2. DEFINITIONS.--As used in the Public School  
19 Finance Act:

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

21 B. "membership" means the total enrollment of  
22 qualified students and all students who have received  
23 certificates pursuant to the Parental Choice Act on the  
24 current roll of a class or school on a specified day. The  
25 current roll is established by the addition of original

. 140599. 1

1 entries and reentries minus withdrawals. Withdrawals of  
2 students, in addition to students formally withdrawn from the  
3 public school, include students absent from the public school  
4 for as many as ten consecutive school days;

5 C. "basic program ADM" or "basic program MEM"  
6 means the MEM of qualified students but excludes the full-  
7 time-equivalent MEM in early childhood education and three-  
8 and four-year-old students receiving special education  
9 services;

10 D. "cost differential factor" is the numerical  
11 expression of the ratio of the cost of a particular segment of  
12 the school program to the cost of the basic program in grades  
13 four through six;

14 E. "department" or "division" means the state  
15 department of public education;

16 F. "early childhood education ADM" or "early  
17 childhood education MEM" means the full-time-equivalent MEM of  
18 students attending approved early childhood education  
19 programs;

20 G. "full-time-equivalent ADM" or "full-time-  
21 equivalent MEM" is that membership calculated by applying to  
22 the MEM in an approved public school program the ratio of the  
23 number of hours per school day devoted to the program to six  
24 hours or the number of hours per school week devoted to the  
25 program to thirty hours;



underscored material = new  
[bracketed material] = delete

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

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  
9 to determine the number of program units to which a school  
10 district is entitled, including but not limited to MEM, full-  
11 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  
15 money from public or private sources received by a local  
16 school board or officer or employee of a local school board  
17 for public use;

18           M "qualified student" means a public school  
19 student who:

20                   (1) has not graduated from high school;

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

24                   (3) is at least five years of age prior to  
25 12:01 a.m. on September 1 of the school year; or

. 140599. 1

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

(5) has not reached his twenty-second birthday on the first day of the school year and is receiving special education services pursuant to regulation of the state board; and

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

Section 11. DELAYED REPEAL. -- Sections 1 through 8 of this act are repealed effective January 1, 2006.