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**HOUSE BILL 96**

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

**INTRODUCED BY**

**Mimi Stewart**

**FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE**

**AN ACT**

**RELATING TO EDUCATION; CREATING THE PUBLIC EDUCATION DEPARTMENT; CREATING THE PUBLIC EDUCATION COMMISSION; PROVIDING POWERS AND DUTIES; ENACTING THE PUBLIC EDUCATION DEPARTMENT ACT; REMOVING LIBRARIANS FROM THE DEFINITION OF INSTRUCTIONAL SUPPORT PROVIDER; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978.**

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

**Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 12 of this act may be cited as the "Public Education Department Act".**

**Section 2. [NEW MATERIAL] PURPOSE. -- The purpose of the Public Education Department Act is to establish a single, unified department to administer laws and exercise functions formerly administered and exercised by the state board of**

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1 education and the state department of public education.

2 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the  
3 Public Education Department Act:

4 A. "commission" means the public education  
5 commi ssi on;

6 B. "department" means the public education  
7 department; and

8 C. "secretary" means the secretary of public  
9 education.

10 Section 4. [NEW MATERIAL] DEPARTMENT CREATED. --The  
11 "public education department" is created in the executive  
12 branch. The department is a cabinet department. The secretary  
13 may organize the department and divisions of the department and  
14 may transfer or merge functions between divisions and bureaus  
15 in the interest of efficiency and economy. The secretary shall  
16 make recommendations to the first session of the forty-seventh  
17 legislature on the statutory organization of the department,  
18 and until that time, references in law to the Indian education  
19 division, the vocational education division, the vocational  
20 rehabilitation division, the instructional material bureau or  
21 other statutorily created divisions and bureaus shall be deemed  
22 to be references to the appropriate organizational unit to  
23 which the secretary has assigned those statutory duties.

24 Section 5. [NEW MATERIAL] SECRETARY-- APPOINTMENT. --

25 A. The administrative head of the department is the

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1 "secretary of public education", who shall be appointed by the  
2 governor with the consent of the senate and who shall serve in  
3 the executive cabinet.

4 B. An appointed secretary shall serve and have all  
5 of the duties, responsibilities and authority of that office  
6 during the period of time prior to final action by the senate  
7 confirming or rejecting his appointment.

8 Section 6. [NEW MATERIAL] DIVISION DIRECTORS. --The  
9 secretary shall appoint, with the approval of the governor,  
10 directors of the divisions established within the department.  
11 Division directors are exempt from the Personnel Act.

12 Section 7. [NEW MATERIAL] BUREAU CHIEFS. --The secretary  
13 may establish within each division of the department such  
14 bureaus as he deems necessary to carry out the provisions of  
15 the Public Education Department Act. He shall employ a chief  
16 to be the administrative head of each bureau. The chiefs and  
17 all subsidiary employees of the department shall be covered by  
18 the Personnel Act.

19 Section 8. [NEW MATERIAL] SECRETARY-- DUTIES AND GENERAL  
20 POWERS. --

21 A. The secretary is responsible to the governor for  
22 the operation of the department. It is the secretary's duty to  
23 manage all operations of the department and to administer and  
24 enforce the laws with which he or the department is charged.

25 B. To perform his duties, the secretary has every

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1 power expressly enumerated in the law, whether granted to the  
2 secretary, the department or any division of the department,  
3 except when any division is explicitly exempted from the  
4 secretary's power by statute. In accordance with these  
5 provisions, the secretary shall:

6 (1) except as otherwise provided in the Public  
7 Education Department Act or the Public School Code, exercise  
8 general supervisory and appointing power over all department  
9 employees, subject to applicable personnel laws and rules;

10 (2) delegate power to subordinates as he deems  
11 necessary and appropriate, clearly delineating such delegated  
12 power and the limitations to that power;

13 (3) organize the department into  
14 organizational units as necessary to enable it to function most  
15 efficiently, subject to any provisions of law requiring or  
16 establishing specific organizational units;

17 (4) within the limitations of available  
18 appropriations and applicable laws, employ and fix the  
19 compensation of those persons necessary to discharge his  
20 duties;

21 (5) take administrative action by issuing  
22 orders and instructions, not inconsistent with law, to ensure  
23 implementation of and compliance with the provisions of law for  
24 which administration or execution he is responsible and to  
25 enforce those orders and instructions by appropriate

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1 administrative action in the courts;

2 (6) conduct research and studies that will  
3 improve the operation of the department and the provision of  
4 services to the citizens of the state;

5 (7) provide courses of instruction and  
6 practical training for employees of the department and other  
7 persons involved in the administration of programs with the  
8 objectives of improving the operations and efficiency of  
9 administration and of promoting comprehensive, coordinated and  
10 culturally sensitive services that address the education of the  
11 whole child;

12 (8) prepare an annual budget for the  
13 department; and

14 (9) provide cooperation, at the request of  
15 administratively attached agencies and adjunct agencies, in  
16 order to:

17 (a) minimize or eliminate duplication of  
18 services and jurisdictional conflicts;

19 (b) coordinate activities and resolve  
20 problems of mutual concern; and

21 (c) resolve by agreement the manner and  
22 extent to which the department shall provide budgeting, record  
23 keeping and related clerical assistance to administratively  
24 attached agencies.

25 C. The secretary may apply for and receive, with

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1 the governor's approval, in the name of the department, any  
2 public or private funds, including United States government  
3 funds, available to the department to carry out its programs,  
4 duties or services.

5 D. The secretary may make and adopt such reasonable  
6 and procedural rules as may be necessary to carry out the  
7 duties of the department and its divisions. No rule  
8 promulgated by the director of any division in carrying out the  
9 functions and duties of the division shall be effective until  
10 approved by the secretary. Unless otherwise provided by  
11 statute, no rule affecting any person or agency outside the  
12 department shall be adopted, amended or repealed without a  
13 public hearing on the proposed action before the secretary or a  
14 hearing officer designated by the secretary. The final public  
15 hearing on adoption, amendment or repeal of a rule shall be  
16 held in Santa Fe unless otherwise permitted by statute. Notice  
17 of the subject matter of the rule, the action proposed to be  
18 taken, the time and place of the hearing, the manner in which  
19 interested persons may present their views and the method by  
20 which copies of the proposed rule or proposed amendment or  
21 repeal of an existing rule may be obtained shall be published  
22 once at least thirty days prior to the hearing date in a  
23 newspaper of general circulation and mailed at least thirty  
24 days prior to the hearing date to all persons who have made a  
25 written request for advance notice of hearing. All rules shall

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1 be filed in accordance with the State Rules Act.

2 Section 9. [NEW MATERIAL] PUBLIC EDUCATION COMMISSION. --

3 A. The "public education commission" is created  
4 pursuant to Article 12, Section 6 of the constitution of New  
5 Mexico. The commission shall be administratively attached to  
6 the department, with administrative staff provided by the  
7 department. Additional requests for staff services shall be  
8 made through the secretary. The commission shall advise the  
9 department on policy matters and shall perform other functions  
10 as provided by law.

11 B. The commission shall consist of ten members  
12 elected from public education districts as provided in the  
13 decennial educational redistricting act. Members may receive  
14 per diem and mileage as provided in the Per Diem and Mileage  
15 Act, but shall receive no other perquisite, compensation or  
16 allowance.

17 C. The commission shall annually elect a chairman,  
18 vice chairman and secretary from among its membership. A  
19 majority of the members constitutes a quorum for the conduct of  
20 business.

21 D. The commission shall meet at the call of the  
22 chairman at least quarterly. The chairman in consultation with  
23 the secretary shall call a meeting at the request of a majority  
24 of the members. Commission members shall not vote by proxy.

25 Section 10. [NEW MATERIAL] ORGANIZATIONAL UNITS OF THE

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1 DEPARTMENT-- POWERS AND DUTIES SPECIFIED BY LAW - ACCESS TO  
2 INFORMATION. -- Those organizational units of the department and  
3 the officers of those units specified by law shall have all of  
4 the powers and duties enumerated in the specific laws involved.  
5 However, the carrying out of those powers and duties shall be  
6 subject to the direction and supervision of the secretary, who  
7 shall retain the final decision-making authority and  
8 responsibility for the administration of any laws as provided  
9 in Subsection B of Section 8 of the Public Education Department  
10 Act. The department shall have access to all records, data and  
11 information of other state departments, agencies and  
12 institutions, including its own organizational units, not  
13 specifically held confidential by law.

14 Section 11. [NEW MATERIAL] ADVISORY COMMITTEES. --

15 A. Advisory committees may be created. "Advisory"  
16 means furnishing advice, gathering information, making  
17 recommendations and performing such other activities as may be  
18 instructed or delegated and as may be necessary to fulfill  
19 advisory functions or to comply with federal or private funding  
20 requirements and does not extend to administering a program or  
21 function or setting policy unless specified by law. Advisory  
22 committees shall be appointed in accordance with the provisions  
23 of the Executive Reorganization Act.

24 B. All members of advisory committees appointed  
25 under the authority of this section shall receive as their sole



1 remuneration for services as a member those amounts authorized  
2 under the Per Diem and Mileage Act.

3 Section 12. [NEW MATERIAL] COOPERATION WITH THE FEDERAL  
4 GOVERNMENT--AUTHORITY OF SECRETARY-- SINGLE STATE AGENCY  
5 STATUS. --

6 A. The department is authorized to cooperate with  
7 the federal government in the administration of education  
8 programs in which financial or other participation by the  
9 federal government is authorized or mandated under state or  
10 federal laws, rules or orders. The secretary may enter into  
11 agreements with agencies of the federal government to implement  
12 education programs subject to availability of appropriated  
13 state funds and any provisions of state laws applicable to such  
14 agreements or participation by the state.

15 B. The governor or the secretary may by appropriate  
16 order designate the department or any organizational unit of  
17 the department as the single state agency for the  
18 administration of any public school program when that  
19 designation is a condition of federal financial or other  
20 participation in the program under applicable federal law, rule  
21 or order. Whether or not a federal condition exists, the  
22 governor may designate the department or any organizational  
23 unit of the department as the single state agency for the  
24 administration of any public school program. No designation of  
25 a single state agency under the authority granted in this

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1 section shall be made in contravention of state law.

2 Section 13. Section 22-1-2 NMSA 1978 (being Laws 2003,  
3 Chapter 153, Section 3) is amended to read:

4 "22-1-2. DEFINITIONS. --As used in the Public School Code:

5 A. "adequate yearly progress" means the measure  
6 adopted by the [~~state board~~] department based on federal  
7 requirements to assess the progress that a student, a public  
8 school or school district or the state makes toward improving  
9 student achievement;

10 [~~B. "commercial advertiser" means a person who  
11 advertises a product or service for profit or not for profit  
12 and has a permitted advertisement;~~]

13 B. "commission" means the public education  
14 commission;

15 C. "department" means the [~~state department of~~]  
16 public education department;

17 D. "forty-day report" means the report of qualified  
18 student membership of each school district and of those  
19 eligible to be qualified students but enrolled in a private  
20 school or a home school for the first forty days of school;

21 E. "home school" means the operation by the parent  
22 of a school-age person of a home study program of instruction  
23 that provides a basic academic educational program, including  
24 reading, language arts, mathematics, social studies and  
25 science;

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1 F. "instructional support provider" means a person  
2 who is employed to support the instructional program of a  
3 school district, including educational assistant, [~~librarian~~]  
4 school counselor, social worker, school nurse, speech-language  
5 pathologist, psychologist, physical therapist, occupational  
6 therapist, recreational therapist, interpreter for the deaf and  
7 diagnostician;

8 G. "licensed school employee" means teachers,  
9 school administrators and instructional support providers;

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

12 I. "local superintendent" means the chief executive  
13 officer of a school district;

14 J. "parent" includes a guardian or other person  
15 having custody and control of a school-age person;

16 K. "private school" means a school, other than a  
17 home school, that offers on-site programs of instruction and  
18 that is not under the control, supervision or management of a  
19 local school board;

20 L. "public school" means that part of a school  
21 district that is a single attendance center in which  
22 instruction is offered by one or more teachers and is  
23 discernible as a building or group of buildings generally  
24 recognized as either an elementary, middle, junior high or high  
25 school or any combination of those and includes a charter

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1 school;

2 M "school" means a supervised program of  
3 instruction designed to educate a student in a particular  
4 place, manner and subject area;

5 N. "school administrator" means a person licensed  
6 to administer in a school district and includes school  
7 principals and central district administrators;

8 O. "school-age person" means a person who is at  
9 least five years of age prior to 12:01 a.m. on September 1 of  
10 the school year and who has not received a high school diploma  
11 or its equivalent. A maximum age of twenty-one shall be used  
12 for a person who is classified as special education membership  
13 as defined in Section 22-8-2 NMSA 1978 or as a resident of a  
14 state institution;

15 P. "school building" means a public school, an  
16 administration building and related school structures or  
17 facilities, including teacher housing, that is owned, acquired  
18 or constructed by the school district as necessary to carry out  
19 the functions of the school district;

20 Q. "school bus private owner" means a person, other  
21 than a school district, the department, the state or any other  
22 political subdivision of the state, that owns a school bus;

23 R. "school district" means an area of land  
24 established as a political subdivision of the state for the  
25 administration of public schools and segregated geographically

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1 for taxation and bonding purposes;

2 S. "school employee" includes licensed and  
3 nonlicensed employees of a school district;

4 T. "school principal" means the chief instructional  
5 leader and administrative head of a public school;

6 U. "school year" means the total number of contract  
7 days offered by public schools in a school district during a  
8 period of twelve consecutive months;

9 V. "secretary" means the secretary of public  
10 education;

11 [~~V.-~~] W. "state agency" or "state institution" means  
12 the New Mexico military institute, New Mexico school for the  
13 visually handicapped, New Mexico school for the deaf, New  
14 Mexico boys' school, girls' welfare home, New Mexico youth  
15 diagnostic and development center, Sequoyah adolescent  
16 treatment center, Carrie Tingley crippled children's hospital,  
17 Las Vegas medical center and any other state agency responsible  
18 for educating resident children;

19 [~~W. "state board" means the state board of~~  
20 ~~education;~~]

21 X. "state educational institution" means an  
22 institution enumerated in Article 12, Section 11 of the  
23 constitution of New Mexico;

24 [~~Y. "state superintendent" means the superintendent~~  
25 ~~of public instruction;~~

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1           ~~Z.~~ Y. "substitute teacher" means a person who  
2 holds a certificate to substitute for a teacher in the  
3 classroom;

4           ~~AA.~~ Z. "teacher" means a person who holds a level  
5 one, two or three-A license and whose primary duty is classroom  
6 instruction or the supervision, below the school principal  
7 level, of an instructional program;

8           ~~BB.~~ AA. "certified school instructor" means a  
9 teacher or instructional support provider; and

10          ~~CC.~~ BB. "certified school employee" or "certified  
11 school personnel" means a licensed school employee. "

12          Section 14. Section 22-2-1 NMSA 1978 (being Laws 1990  
13 (1st S.S.), Chapter 9, Section 10, as amended) is amended to  
14 read:

15          "22-2-1. ~~[STATE BOARD]~~ SECRETARY AND DEPARTMENT--GENERAL  
16 POWERS. --

17           A. The ~~[state board]~~ secretary is the governing  
18 authority and shall have control, management and direction of  
19 all public schools, except as otherwise provided by law.

20           B. The ~~[state board]~~ department may:

21               (1) adopt, promulgate ~~[publish]~~ and enforce  
22 ~~[regulations]~~ rules to exercise its authority ~~[granted pursuant~~  
23 ~~to the Public School Code]~~ and the authority of the secretary;

24               (2) enter into contracts to carry out its  
25 duties;

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1                    [~~C. The state board may~~]

2                    (3) apply to the district court for an  
3 injunction, writ of mandamus or other appropriate relief to  
4 enforce the provisions of the Public School Code or [~~any of its~~  
5 ~~regulations~~] rules promulgated pursuant to the Public School  
6 Code; and

7                    [~~D. The state board may~~]

8                    (4) waive provisions of the Public School Code  
9 as authorized by law. "

10                  Section 15. Section 22-2-2 NMSA 1978 (being Laws 1967,  
11 Chapter 16, Section 5, as amended by Laws 2003, Chapter 153,  
12 Section 5 and by Laws 2003, Chapter 394, Section 2) is repealed  
13 and a new Section 22-2-2 NMSA 1978 is enacted to read:

14                  "22-2-2. [NEW MATERIAL] DEPARTMENT--GENERAL DUTIES. -- The  
15 department shall:

16                  A. properly and uniformly enforce the provisions of  
17 the Public School Code;

18                  B. determine policy for the operation of all public  
19 schools and vocational education programs in the state,  
20 including vocational programs that are part of a juvenile  
21 construction industries initiative for juveniles who are  
22 committed to the custody of the children, youth and families  
23 department;

24                  C. supervise all schools and school officials  
25 coming under its jurisdiction, including taking over the

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1 control and management of a public school or school district  
2 that has failed to meet requirements of law or department rules  
3 or standards, and, until such time as requirements of law,  
4 standards or rules have been met and compliance is ensured, the  
5 powers and duties of the local school board and local  
6 superintendent shall be suspended;

7 D. prescribe courses of instruction to be taught in  
8 all public schools in the state, requirements for graduation  
9 and standards for all public schools, for private schools  
10 seeking state accreditation and for the educational programs  
11 conducted in state institutions other than the New Mexico  
12 military institute;

13 E. provide technical assistance to local school  
14 boards and school districts;

15 F. assess and evaluate public schools for  
16 accreditation purposes to determine the adequacy of student  
17 gain in standards-required subject matter, adequacy of student  
18 activities, functional feasibility of public school and school  
19 district organization, adequacy of staff preparation and other  
20 matters bearing upon the education of the students;

21 G. assess and evaluate all state institutions and  
22 those private schools that desire state accreditation;

23 H. enforce requirements for home schools. Upon  
24 finding that a home school is not in compliance with law, the  
25 department may order that a student attend a public school or a

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1 private school;

2 I. require periodic reports on forms prescribed by  
3 it from all public schools and attendance reports from private  
4 schools;

5 J. determine the qualifications for and issue  
6 licenses to teachers, instructional support providers and  
7 school administrators according to law and according to a  
8 system of classification adopted and promulgated by rules of  
9 the department;

10 K. deny, suspend or revoke a license according to  
11 law for incompetency, moral turpitude or any other good and  
12 just cause;

13 L. approve or disapprove all rules promulgated by  
14 an association or organization attempting to regulate a public  
15 school activity and invalidate any rule in conflict with any  
16 rule promulgated by the department. The department shall  
17 require an association or organization attempting to regulate a  
18 public school activity to comply with the provisions of the  
19 Open Meetings Act and be subject to the inspection provisions  
20 of the Public Records Act. The department may require  
21 performance and financial audits of an association or  
22 organization attempting to regulate a public school activity.  
23 The department shall have no power or control over the rules or  
24 the bylaws governing the administration of the internal  
25 organization of the association or organization;

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1 M review decisions made by the governing board or  
2 officials of an organization or association regulating a public  
3 school activity, and any decision of the department shall be  
4 final in respect thereto;

5 N. require a public school under its jurisdiction  
6 that sponsors athletic programs involving sports to mandate  
7 that the participating student obtain catastrophic health and  
8 accident insurance coverage, such coverage to be offered  
9 through the school and issued by an insurance company duly  
10 licensed pursuant to the laws of New Mexico;

11 O. establish and maintain regional centers, at its  
12 discretion, for conducting cooperative services between public  
13 schools and school districts within and among those regions and  
14 for facilitating regulation and evaluation of school programs;

15 P. approve education curricula and programs offered  
16 in all two-year public post-secondary educational institutions,  
17 except those in Chapter 21, Article 12 NMSA 1978, that lead to  
18 alternative licenses for degreed persons pursuant to Section  
19 22-10A-8 NMSA 1978 or licensure for educational assistants;

20 Q. withhold program approval from a college of  
21 education or teacher preparation program that fails to offer a  
22 course on teaching reading that:

23 (1) is based upon current scientifically based  
24 reading research;

25 (2) aligns with department-adopted reading

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1 standards;

2 (3) includes strategies and assessment  
3 measures to ensure that beginning teachers are proficient in  
4 teaching reading; and

5 (4) was designed after seeking input from  
6 experts in the education field;

7 R. annually, prior to December 1, prepare and  
8 publish a report on public and private education in the state  
9 and distribute the report to the governor and the legislature;

10 S. solicit input from local school boards and  
11 school districts in the formulation and implementation of  
12 department rules; and

13 T. report to the legislature or any of its  
14 committees as requested and report findings of any educational  
15 research study made with public money to the legislature  
16 through its appropriate interim or standing committees. "

17 Section 16. Section 22-2-2.1 NMSA 1978 (being Laws 2003,  
18 Chapter 104, Section 1) is amended to read:

19 "22-2-2.1. ADDITIONAL [~~STATE BOARD~~] DEPARTMENT  
20 DUTIES--WAIVER OF CERTAIN REQUIREMENTS. --

21 A. The [~~state board~~] department shall approve all  
22 reasonable requests to waive the following for all public  
23 schools that exceed educational standards as determined by the  
24 [~~state board~~] department:

25 (1) accreditation review requirements as

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1 provided in Section 22-2-2 NMSA 1978;

2 (2) the length of the school day requirement  
3 as provided in Section 22-2-8.1 NMSA 1978;

4 (3) the individual class load requirement as  
5 provided in Section [~~22-2-8.2~~] 22-10A-20 NMSA 1978;

6 (4) the subject area requirement as provided  
7 in Section [~~22-2-8.3~~] 22-13-1 NMSA 1978; and

8 (5) purchase of instructional material from  
9 the [~~state board approved~~] department-approved multiple list  
10 requirement as provided in Section 22-15-8 NMSA 1978.

11 B. Upon receiving a waiver request from a school  
12 that exceeds educational standards and in addition to the  
13 requirements set forth in Subsection A of this section, the  
14 [~~state board~~] department may waive:

15 (1) the graduation requirement as provided in  
16 Section [~~22-2-8.4~~] 22-13-1.1 NMSA 1978;

17 (2) evaluation standards for school personnel;  
18 and

19 (3) other requirements of the Public School  
20 Code that impede innovation in education if the waiver request  
21 is supported by the teachers at the requesting school and the  
22 requesting school's local school board.

23 C. Waivers granted pursuant to this section shall  
24 begin in the school year following that in which a public  
25 school exceeds educational standards and may remain in effect

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1 as long as the school continues to exceed educational  
2 standards.

3 D. The ~~[state board]~~ department shall only waive  
4 requirements that do not conflict with the federal No Child  
5 Left Behind Act of 2001 or rules adopted pursuant to that  
6 act. "

7 Section 17. A new section of Chapter 22, Article 2 NMSA  
8 1978 is enacted to read:

9 "[NEW MATERIAL] COMMISSION--DUTIES. --

10 A. The commission shall work with the department  
11 to develop the five-year strategic plan for public elementary  
12 and secondary education in the state. The strategic plan  
13 shall be updated at least biennially. The commission shall  
14 solicit the input of persons who have an interest in public  
15 school policy, including local school boards, school  
16 districts and school employees; home schooling associations;  
17 parent-teacher associations; educational organizations; the  
18 commission on higher education; colleges, universities and  
19 vocational schools; state agencies responsible for educating  
20 resident children; juvenile justice agencies; work force  
21 development providers; and business organizations.

22 B. In addition to the duty provided in Subsection  
23 A of this section, the commission shall:

24 (1) solicit input from local school boards,  
25 school districts and the public on policy and governance

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1 issues and report its findings and recommendations to the  
2 secretary and the legislature;

3 (2) recommend to the secretary conduct and  
4 process guidelines and training curricula for local school  
5 boards; and

6 (3) hear appeals from decisions of the  
7 department as provided by law. "

8 Section 18. Section 22-2-14 NMSA 1978 (being Laws 1978,  
9 Chapter 129, Section 1, as amended) is amended to read:

10 "22-2-14. LOCAL SCHOOL BOARDS--PUBLIC SCHOOLS--  
11 SUSPENSION--PROCEDURES. --

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

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1           B. Within thirty days after receipt of the notice  
2 of failure to meet requirements, the local school board,  
3 local superintendent and school principal, as applicable,  
4 shall:

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

7                   (2) submit plans satisfactory to the [~~state~~  
8 ~~superintendent~~] department to meet requirements and remove  
9 the cause for disapproval.

10           C. The [~~state-board~~] department shall suspend  
11 from authority and responsibility a local school board, local  
12 superintendent or school principal that has had notice of  
13 disapproval and fails to comply with procedures of Subsection  
14 B of this section. The [~~state-superintendent~~] department  
15 shall act in lieu of the suspended local school board, local  
16 superintendent or school principal until the [~~state-board~~]  
17 department removes the suspension.

18           D. To suspend a local school board, local  
19 superintendent or school principal, the [~~state-board~~]  
20 department shall deliver to the local school board an  
21 alternative order of suspension, stating the cause for the  
22 suspension and the effective date and time the suspension  
23 will begin. The alternative order shall also contain notice  
24 of a time, date and place for a public hearing, prior to the  
25 beginning of suspension, to be held by the [~~state-board~~]

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1 department, at which the local school board, local  
2 superintendent or school principal may appear and show cause  
3 why the suspension should not be put into effect. Within  
4 five days after the hearing, the ~~[state board]~~ department  
5 shall make permanent, modify or withdraw the alternative  
6 order.

7 E. The ~~[state superintendent]~~ department may  
8 suspend a local school board, local superintendent or school  
9 principal ~~[pending a hearing before the state board]~~ when the  
10 local school board, local superintendent or school principal  
11 has been notified of disapproval and when the ~~[state~~  
12 ~~superintendent]~~ department has sufficient reason to believe  
13 that the educational process in the school district or public  
14 school has been severely impaired or halted as a result of  
15 deficiencies so severe as to warrant disapproved status  
16 before ~~[the question of suspension can be presented to the~~  
17 ~~state board for a hearing]~~ a public hearing can be held.

18 F. The ~~[state superintendent]~~ department, while  
19 acting in lieu of a suspended local school board, local  
20 superintendent or school principal, shall execute all the  
21 legal authority of the local school board, local  
22 superintendent or school principal and assume all the  
23 responsibilities of the local school board, local  
24 superintendent or school principal.

25 G. The provisions of this section shall be



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1 invoked at any time the [~~state superintendent~~] department  
2 finds the school district or public school has failed to  
3 attain and maintain the requirements of law or [~~state board~~]  
4 department standards and rules.

5 H. A local school board, local superintendent or  
6 school principal or the secretary aggrieved by a decision of  
7 the department may appeal to the public education  
8 commission. "

9 Section 19. Section 22-2-15 NMSA 1978 (being Laws 1978,  
10 Chapter 129, Section 2, as amended) is amended to read:

11 "22-2-15. HEARINGS--SUSPENSION CONTINUANCE AND  
12 DISCONTINUANCE-- APPEALS. --

13 A. Within ten days after suspension, or within a  
14 reasonable time as the suspended local school board, local  
15 superintendent or school principal may request, the [~~state~~  
16 ~~board shall give a hearing to the~~] local school board, local  
17 superintendent or school principal may appeal the  
18 department's suspension pursuant to Section 22-2-14 NMSA 1978  
19 to the commission. At [~~this~~] the appeal hearing, the local  
20 school board, local superintendent or school principal [~~may~~]  
21 shall appear and show cause why the suspension should not be  
22 continued. The department employees who conducted the  
23 evaluations upon which the suspension was based shall appear  
24 and give testimony.

25 B. After the hearing, the [~~state board~~]

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1 commission shall continue or discontinue the suspension of  
2 the local school board, local superintendent or school  
3 principal.

4 C. A local school board, local superintendent or  
5 school principal or the secretary aggrieved by the decision  
6 of the [~~state board~~] commission may appeal to the district  
7 court pursuant to the provisions of Section 39-3-1.1 NMSA  
8 1978. "

9 Section 20. Section 22-2C-11 NMSA 1978 (being Laws  
10 2003, Chapter 153, Section 20) is amended to read:

11 "22-2C-11. ASSESSMENT AND ACCOUNTABILITY SYSTEM  
12 REPORTING-- PARENT SURVEY-- DATA SYSTEM - FISCAL INFORMATION. --

13 A. The [~~state board~~] department shall:

14 (1) issue a state identification number for  
15 each public school student for use in the accountability data  
16 system;

17 (2) adopt the format for reporting  
18 individual student assessments to parents. The student  
19 assessments shall report each student's progress and academic  
20 needs as measured against state standards; and

21 [~~B. The state board shall~~]

22 (3) adopt the format for reporting annual  
23 yearly progress of public schools, school districts and the  
24 department. If the [~~state board~~] department has adopted a  
25 state improving schools program, the annual accountability

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1 report shall include the results of that program for each  
2 public school. The annual accountability report format shall  
3 be clear, concise and understandable to parents and the  
4 general public. All annual accountability reports shall  
5 ensure that the privacy of individual students is protected.

6 ~~[C.]~~ B. Local school boards may establish  
7 additional indicators through which to measure the school  
8 district's performance in areas other than adequate yearly  
9 progress.

10 C. The school district's annual accountability  
11 report shall include a report of graduation rates for each  
12 public high school in the school district. As part of the  
13 graduation rate data, the school district shall indicate  
14 contributing factors to nongraduation such as transfer out of  
15 the school district, pregnancy, dropout and other factors as  
16 known.

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

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

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

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

13 (3) instructional practices and techniques;

14 (4) resources;

15 (5) school employees, including the school  
16 principal; and

17 (6) parents' views of teaching staff  
18 expectations for the students.

19 E. The ~~[state board]~~ department shall develop no  
20 more than ten of the survey questions, which shall be  
21 reviewed by the legislative education study committee prior  
22 to implementation. No more than five survey questions shall  
23 be developed by the local school board, and no more than five  
24 survey questions shall be developed by the staffs of each  
25 public school; provided that at least one-half of those

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1 questions shall be developed by teachers rather than school  
2 administrators, in order to gather information that is  
3 specific to the particular community surveyed. The  
4 questionnaires shall indicate the public school site and  
5 shall be tabulated by the department within thirty days of  
6 receipt and shall be returned to the respective schools to be  
7 disseminated to all parents.

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

19 G. The annual accountability report shall include  
20 the names of those local school board members who failed to  
21 attend annual mandatory training.

22 H. The annual accountability report shall include  
23 data on expenditures for central office administration and  
24 expenditures for the public schools of the school district.

25 I. The department shall create an accountability

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1 data system through which data from each public school and  
2 each school district may be compiled and reviewed. The  
3 department shall provide the resources to train school  
4 district personnel in the use of the accountability data  
5 system.

6 J. The department shall verify data submitted by  
7 the school districts.

8 K. At the end of fiscal year 2005, after the  
9 budget approval cycle, the department shall produce a report  
10 to the legislature that shows for all school districts using  
11 performance-based program budgeting the relationship between  
12 that portion of a school district's program cost generated by  
13 each public school in the school district and the budgeted  
14 expenditures for each public school in the school district as  
15 reported in the district's performance-based program budget.  
16 At the end of fiscal year 2006 and subsequent fiscal years,  
17 after the budget approval cycle, the department shall report  
18 on this relationship in all public schools in all school  
19 districts in the state.

20 L. When all public schools are participating in  
21 performance-based budgeting, the department shall recommend  
22 annually to the legislature for inclusion in the general  
23 appropriation act the maximum percentage of appropriations  
24 that may be expended in each school district for central  
25 office administration.

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1 M The department shall disseminate its statewide  
2 accountability report to school districts; the governor,  
3 legislators and other policymakers; and business and economic  
4 development organizations. "

5 Section 21. Section 22-5-4 NMSA 1978 (being Laws 1967,  
6 Chapter 16, Section 28, as amended) is amended to read:

7 "22-5-4. LOCAL SCHOOL BOARDS--POWERS--DUTIES. --A local  
8 school board shall have the following powers or duties:

9 A. subject to the rules of the [~~state board~~]  
10 department, develop educational policies for the school  
11 district;

12 B. employ a local superintendent for the school  
13 district and fix his salary;

14 C. review and approve the school district budget;

15 D. acquire, lease and dispose of property;

16 E. have the capacity to sue and be sued;

17 F. acquire property by eminent domain pursuant to  
18 the procedures provided in the Eminent Domain Code;

19 G. issue general obligation bonds of the school  
20 district;

21 H. provide for the repair of and ~~maintain~~ all  
22 property belonging to the school district;

23 I. for good cause and upon order of the district  
24 court, subpoena witnesses and documents in connection with a  
25 hearing concerning any powers or duties of the local school

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1     ~~[boards]~~ board;

2             J.   except for expenditures for salaries, contract  
3     for the expenditure of money according to the provisions of  
4     the Procurement Code;

5             K.   adopt rules pertaining to the administration  
6     of all powers or duties of the local school board;

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

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

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

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

25            "22-8-2.   DEFINITIONS.--As used in the Public School

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1 Finance Act:

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

3 B. "membership" means the total enrollment of  
4 qualified students on the current roll of a class or school  
5 on a specified day. The current roll is established by the  
6 addition of original entries and reentries minus withdrawals.  
7 Withdrawals of students, in addition to students formally  
8 withdrawn from the public school, include students absent  
9 from the public school for as many as ten consecutive school  
10 days;

11 C. "basic program ADM" or "basic program MEM"  
12 means the MEM of qualified students but excludes the full-  
13 time-equivalent MEM in early childhood education and three-  
14 and four-year-old students receiving special education  
15 services;

16 D. "cost differential factor" is the numerical  
17 expression of the ratio of the cost of a particular segment  
18 of the school program to the cost of the basic program in  
19 grades four through six;

20 E. "department" or "division" means the [state  
21 ~~department of~~] public education department;

22 F. "early childhood education ADM" or "early  
23 childhood education MEM" means the full-time-equivalent MEM  
24 of students attending approved early childhood education  
25 programs;

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

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

9           I. "program cost" is the product of the total  
10 number of program units to which a school district is  
11 entitled multiplied by the dollar value per program unit  
12 established by the legislature;

13           J. "program element" is that component of a  
14 public school system to which a cost differential factor is  
15 applied to determine the number of program units to which a  
16 school district is entitled, including but not limited to  
17 MEM, full-time-equivalent MEM, teacher, classroom or public  
18 school;

19           K. "program unit" is the product of the program  
20 element multiplied by the applicable cost differential  
21 factor;

22           L. "public money" or "public funds" means all  
23 money from public or private sources received by a local  
24 school board or officer or employee of a local school board  
25 for public use;

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

3 (1) has not graduated from high school;  
4 (2) is regularly enrolled in one-half or  
5 more of the minimum course requirements approved by the  
6 ~~[state board]~~ department for public school students; and

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

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

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

17 N. "state superintendent" means the  
18 ~~[superintendent of public instruction]~~ secretary of public  
19 education or his designee. "

20 Section 23. Section 22-9-2 NMSA 1978 (being Laws 1967,  
21 Chapter 16, Section 102) is amended to read:

22 "22-9-2. FEDERAL AID TO EDUCATION-- STATE EDUCATIONAL  
23 AGENCY. --The ~~[state board]~~ department shall be the sole  
24 educational agency of the state for the administration or for  
25 the supervision of the administration of any state plan

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1 established or funds received by the state by virtue of any  
2 federal statute relating to aid for education, school  
3 construction or school lunch programs, except as is provided  
4 in Section [~~73-29-15 New Mexico Statutes Annotated, 1953~~  
5 ~~Compilation~~] 21-1-26 NMSA 1978 and as may otherwise be  
6 provided by law. "

7 Section 24. Section 22-9-3 NMSA 1978 (being Laws 1967,  
8 Chapter 16, Section 103) is amended to read:

9 "22-9-3. STATE EDUCATIONAL AGENCY-- POWERS-- DUTIES. --  
10 Whenever the [~~state board~~] department is the sole educational  
11 agency of the state pursuant to the provisions of Section  
12 [~~77-7-2 New Mexico Statutes Annotated, 1953 Compilation~~]  
13 22-9-2 NMSA 1978, it may:

14 A. enter into an agreement with the proper  
15 federal agency to procure for the state the benefits of the  
16 federal statute;

17 B. establish a state plan, if required by the  
18 federal statute, which meets the requirements of the federal  
19 statute to qualify the state for the benefits of the federal  
20 statute;

21 C. provide for reports to be made to the federal  
22 agency as may be required;

23 D. provide for reports to be made to the [~~state~~  
24 ~~board~~] department or its representative from agencies  
25 receiving federal funds;

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1 E. make surveys and studies in cooperation with  
2 other agencies to determine the needs of the state in the  
3 areas where the federal funds are to be applied;

4 F. establish standards to which agencies must  
5 conform in receiving federal funds; and

6 G. give technical advice and assistance to any  
7 local educational agency in connection with that agency  
8 obtaining federal funds. "

9 Section 25. Section 22-10A-17 NMSA 1978 (being Laws  
10 2003, Chapter 153, Section 48) is amended to read:

11 "22-10A-17. INSTRUCTIONAL SUPPORT PROVIDER LICENSES. --

12 A. The department shall license instructional  
13 support providers, including educational assistants,  
14 [~~librarians~~] school counselors, school social workers, school  
15 nurses, speech-language pathologists, psychologists, physical  
16 therapists, physical therapy assistants, occupational  
17 therapists, occupational therapy assistants, recreational  
18 therapists, interpreters for the deaf, diagnosticians and  
19 other service providers. The department may provide a  
20 professional licensing framework in which licensees can  
21 advance in their careers through the demonstration of  
22 increased competencies and the undertaking of increased  
23 duties.

24 B. The [~~state board~~] department shall provide by  
25 rule for the requirements for licensure of types of

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1 instructional support providers. If an instructional support  
2 provider practices a licensed profession, he shall provide  
3 evidence satisfactory to the department that he holds a  
4 current, unsuspended license in the profession for which he  
5 is applying to provide instructional support services. The  
6 instructional support provider shall notify the school  
7 district and department immediately if his professional  
8 license is suspended, revoked or denied. Suspension,  
9 revocation or denial of a professional license shall be just  
10 cause for discharge or termination and suspension, revocation  
11 or denial of the instructional support provider license."

12 Section 26. A new section of Chapter 22, Article 10A  
13 NMSA 1978 is enacted to read:

14 "[NEW MATERIAL] PROFESSIONAL DEVELOPMENT--SYSTEMIC  
15 FRAMEWORK-- REQUIREMENTS-- DEPARTMENT DUTIES. --

16 A. The department shall develop a systemic  
17 framework for professional development that provides training  
18 to ensure quality teachers, school principals and  
19 instructional support providers and that improves and  
20 enhances student achievement. The department shall work with  
21 licensed school employees, the commission on higher education  
22 and institutions of higher education to establish the  
23 framework.

24 B. The framework shall include:

25 (1) the criteria for school districts to

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1 apply for professional development funds, including an  
2 evaluation component that will be used by the department in  
3 approving school district professional development plans; and

4 (2) guidelines for developing extensive  
5 professional development activities for school districts  
6 that:

7 (a) improve teachers' knowledge of the  
8 subjects they teach and the ability to teach those subjects  
9 to all of their students;

10 (b) are an integral part of the public  
11 school and school district plans for improving student  
12 achievement;

13 (c) provide teachers, school  
14 administrators and instructional support providers with the  
15 strategies, support, knowledge and skills to help all  
16 students meet New Mexico academic standards;

17 (d) are high quality, sustained,  
18 intensive and focused on the classroom; and

19 (e) are developed and evaluated  
20 regularly with extensive participation of school employees  
21 and parents. "

22 Section 27. Section 22-11-2 NMSA 1978 (being Laws 1967,  
23 Chapter 16, Section 126, as amended) is amended to read:

24 "22-11-2. DEFINITIONS. -- As used in the Educational  
25 Retirement Act:

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1           A. "member" means an employee, except for a  
2 participant or a retired member, coming within the provisions  
3 of the Educational Retirement Act;

4           B. "regular member" means:

5                 (1) a person regularly employed as a  
6 teaching, nursing or administrative employee of a state  
7 educational institution, except for:

8                         (a) a participant; or

9                         (b) all employees of a general  
10 hospital or outpatient clinics thereof operated by a state  
11 educational institution named in Article 12, Section 11 of  
12 the constitution of New Mexico;

13                 (2) a person regularly employed as a  
14 teaching, nursing or administrative employee of a junior  
15 college or community college created pursuant to Chapter 21,  
16 Article 13 NMSA 1978, except for a participant;

17                 (3) a person regularly employed as a  
18 teaching, nursing or administrative employee of a technical  
19 and vocational institute created pursuant to the Technical  
20 and Vocational Institute Act, except for a participant;

21                 (4) a person regularly employed as a  
22 teaching, nursing or administrative employee of the New  
23 Mexico boys' school, the New Mexico girls' school, the Los  
24 Lunas medical center or a school district or as a [certified  
25 ~~school instructor~~] licensed school employee of a state

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1 institution or agency providing an educational program and  
2 holding a [~~standard or substandard certificate~~] license  
3 issued by the [~~state board~~] department, except for a  
4 participant;

5 (5) a person regularly employed by the  
6 department [~~of education or the board~~] holding a [~~standard or~~  
7 ~~substandard certificate~~] license issued by the [~~state board~~]  
8 department at the time of commencement of such employment;

9 (6) a member classified as a regular member  
10 in accordance with the rules of the board;

11 (7) a person regularly employed by the New  
12 Mexico activities association holding a [~~standard~~  
13 ~~certificate~~] license issued by the [~~state board~~] department  
14 at the time of commencement of such employment; or

15 (8) a person regularly employed by a  
16 regional education cooperative holding a [~~standard~~  
17 ~~certificate~~] license issued by the [~~state board~~] department  
18 at the time of commencement of such employment;

19 C. "provisional member" means a person not  
20 eligible to be a regular member but who is employed by a  
21 local administrative unit designated in Subsection B of this  
22 section; provided, however, that employees of a general  
23 hospital or outpatient clinics thereof operated by a state  
24 educational institution named in Article 12, Section 11 of  
25 the constitution of New Mexico are not provisional members;

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1           D. "local administrative unit" means an employing  
2 agency however constituted that is directly responsible for  
3 the payment of compensation for the employment of members or  
4 participants;

5           E. "beneficiary" means a person having an  
6 insurable interest in the life of a member or a participant  
7 designated by written instrument duly executed by the member  
8 or participant and filed with the director to receive a  
9 benefit pursuant to the Educational Retirement Act that may  
10 be received by someone other than the member or participant;

11           F. "employment" means employment by a local  
12 administrative unit that qualifies a person to be a member or  
13 participant;

14           G. "service employment" means employment that  
15 qualifies a person to be a regular member;

16           H. "provisional service employment" means  
17 employment that qualifies a person to be a provisional  
18 member;

19           I. "prior employment" means employment performed  
20 prior to the effective date of the Educational Retirement Act  
21 that would be service employment or provisional service  
22 employment if performed thereafter;

23           J. "service credit" means that period of time  
24 with which a member is accredited for the purpose of  
25 determining his eligibility for and computation of retirement

1 or disability benefits;

2 K. "earned service credit" means that period of  
3 time during which a member was engaged in employment or prior  
4 employment with which he is accredited for the purpose of  
5 determining his eligibility for retirement or disability  
6 benefits;

7 L. "allowed service credit" means that period of  
8 time during which a member has performed certain nonservice  
9 employment with which he may be accredited, as provided in  
10 the Educational Retirement Act, for the purpose of computing  
11 retirement or disability benefits;

12 M. "retirement benefit" means an annuity paid  
13 monthly to members whose employment has been terminated by  
14 reason of their age;

15 N. "disability benefit" means an annuity paid  
16 monthly to members whose employment has been terminated by  
17 reason of a disability;

18 O. "board" means the educational retirement  
19 board;

20 P. "fund" means the educational retirement fund;

21 Q. "director" means the educational retirement  
22 director;

23 R. "medical authority" means a medical doctor  
24 within the state or as provided in Subsection D of Section  
25 22-11-36 NMSA 1978 either designated or employed by the board

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1 to examine and report on the physical condition of applicants  
2 for or recipients of disability benefits;

3 S. "actuary" means a person trained and regularly  
4 engaged in the occupation of calculating present and  
5 projected monetary assets and liabilities under annuity or  
6 insurance programs;

7 T. "actuarial equivalent" means a sum paid as a  
8 current or deferred benefit that is equal in value to a  
9 regular benefit, computed upon the basis of interest rates  
10 and mortality tables;

11 U. "contributory employment" means employment for  
12 which contributions have been made by both a member and a  
13 local administrative unit pursuant to the Educational  
14 Retirement Act;

15 V. "qualifying state educational institution"  
16 means the university of New Mexico, New Mexico state  
17 university, New Mexico institute of mining and technology,  
18 New Mexico highlands university, eastern New Mexico  
19 university, western New Mexico university, Albuquerque  
20 technical-vocational institute, Clovis community college,  
21 Luna vocational-technical institute, Mesa technical college,  
22 New Mexico junior college, northern New Mexico state school,  
23 San Juan college and Santa Fe community college;

24 W. "participant" means:

25 (1) a person regularly employed as a faculty

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1 or professional employee of the university of New Mexico, New  
2 Mexico state university, New Mexico institute of mining and  
3 technology, New Mexico highlands university, eastern New  
4 Mexico university or western New Mexico university who first  
5 becomes employed with such an educational institution on or  
6 after July 1, 1991, or a person regularly employed as a  
7 faculty or professional employee of the Albuquerque  
8 technical-vocational institute, Clovis community college,  
9 Luna vocational-technical institute, Mesa technical college,  
10 New Mexico junior college, northern New Mexico state school,  
11 San Juan college or Santa Fe community college who is first  
12 employed by the institution on or after July 1, 1999 and who  
13 elects, pursuant to Section 22-11-47 NMSA 1978, to  
14 participate in the alternative retirement plan; and

15 (2) a person regularly employed who performs  
16 research or other services pursuant to a contract between a  
17 qualifying state educational institution and the United  
18 States government or any of its agencies who elects, pursuant  
19 to Section 22-11-47 NMSA 1978, to participate in the  
20 alternative retirement plan, provided that the research or  
21 other services are performed outside the state;

22 X. "salary" means the compensation or wages paid  
23 to a member or participant by any local administrative unit  
24 for services rendered. "Salary" includes payments made for  
25 annual or sick leave and payments for additional service

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underscored material = new  
[bracketed material] = delete

1 provided to related activities, but does not include payments  
2 for sick leave not taken unless the payment for the unused  
3 sick leave is made through continuation of the member on the  
4 regular payroll for the period represented by that payment  
5 and does not include allowances or reimbursements for travel,  
6 housing, food, equipment or similar items;

7 Y. "alternative retirement plan" means the  
8 retirement plan provided for in Sections 22-11-47 through  
9 22-11-52 NMSA 1978; and

10 Z. "retired member" means a person whose  
11 employment has been terminated by reason of age and who is  
12 receiving or is eligible to receive retirement benefits."

13 Section 28. TEMPORARY PROVISION--TRANSFERS--STATUTORY  
14 REFERENCES.--

15 A. All appropriations, money, personnel, records,  
16 files, furniture, equipment, supplies and other property of  
17 the state department of public education are transferred to  
18 the public education department.

19 B. All contractual obligations of the state  
20 department of public education shall be binding on the public  
21 education department.

22 C. All references in law to the state board of  
23 education shall be deemed to be references to the public  
24 education department. All references to the state department  
25 of public education or the department of education shall be

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1 deemed to be references to the public education department.  
2 All references in law to the state superintendent or the  
3 superintendent of public instruction shall be deemed to be  
4 references to the secretary of public education.

5 Section 29. TEMPORARY PROVISION--RECOMPILATION. --  
6 Sections 22-8-30.1 and 22-8-30.2 NMSA 1978 (being Laws 1995,  
7 Chapter 56, Sections 1 and 2, as amended) are recompiled into  
8 Chapter 21 NMSA 1978.

9 Section 30. REPEAL. --  
10 A. Laws 2003, Chapter 143 is repealed.  
11 B. Sections 22-1-6.1 and 22-2-3 through 22-2-6  
12 NMSA 1978 (being Laws 2003, Chapter 18, Section 1 and Laws  
13 1967, Chapter 16, Sections 6 through 9, as amended) are  
14 repealed.