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SENATE BILL 112

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Howie Morales

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; AMENDING THE PUBLIC SCHOOL  
CODE TO CLARIFY THE DEFINITION OF "SCHOOL-AGE PERSON".

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

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

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

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

B. "adequate yearly progress" means the measure  
adopted by the department based on federal requirements to  
assess the progress that a public school or school district or  
the state makes toward improving student achievement;

C. "commission" means the public education

1 commission;

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

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

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

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

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

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

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

24 K. "private school" means a school, other than a  
25 home school, that offers on-site programs of instruction and

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1 that is not under the control, supervision or management of a  
2 local school board;

3 L. "public school" means that part of a school  
4 district that is a single attendance center in which  
5 instruction is offered by one or more teachers and is  
6 discernible as a building or group of buildings generally  
7 recognized as either an elementary, middle, junior high or high  
8 school or any combination of those and includes a charter  
9 school;

10 M. "school" means a supervised program of  
11 instruction designed to educate a student in a particular  
12 place, manner and subject area;

13 N. "school administrator" means a person licensed  
14 to administer in a school district and includes school  
15 principals and central district administrators;

16 O. "school-age person" means a person who is at  
17 least five years of age prior to 12:01 a.m. on September 1 of  
18 the school year, ~~[and]~~ who has not received a high school  
19 diploma or its equivalent ~~[A maximum age of twenty-one shall be  
20 used for a person who is classified as special education  
21 membership as defined in Section 22-8-21 NMSA 1978 or as a  
22 resident of a state institution]~~ and who has not reached the  
23 person's twenty-second birthday on the first day of the school  
24 year;

25 P. "school building" means a public school, an

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1 administration building and related school structures or  
2 facilities, including teacher housing, that is owned, acquired  
3 or constructed by the school district as necessary to carry out  
4 the functions of the school district;

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

8 R. "school district" means an area of land  
9 established as a political subdivision of the state for the  
10 administration of public schools and segregated geographically  
11 for taxation and bonding purposes;

12 S. "school employee" includes licensed and  
13 nonlicensed employees of a school district;

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

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

19 V. "secretary" means the secretary of public  
20 education;

21 W. "state agency" or "state institution" means the  
22 New Mexico military institute, New Mexico school for the blind  
23 and visually impaired, New Mexico school for the deaf, New  
24 Mexico boys' school, girls' welfare home, New Mexico youth  
25 diagnostic and development center, Sequoyah adolescent

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1 treatment center, Carrie Tingley crippled children's hospital,  
2 New Mexico behavioral health institute at Las Vegas and any  
3 other state agency responsible for educating resident children;

4 X. "state educational institution" means an  
5 institution enumerated in Article 12, Section 11 of the  
6 constitution of New Mexico;

7 Y. "substitute teacher" means a person who holds a  
8 certificate to substitute for a teacher in the classroom;

9 Z. "teacher" means a person who holds a level one,  
10 two or three-A license and whose primary duty is classroom  
11 instruction or the supervision, below the school principal  
12 level, of an instructional program or whose duties include  
13 curriculum development, peer intervention, peer coaching or  
14 mentoring or serving as a resource teacher for other teachers;

15 AA. "certified school instructor" means a teacher  
16 or instructional support provider; and

17 BB. "certified school employee" or "certified  
18 school personnel" means a licensed school employee."

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

21 "22-1-4. FREE PUBLIC SCHOOLS--EXCEPTIONS--WITHDRAWING AND  
22 ENROLLING--OPEN ENROLLMENT.--

23 A. Except as provided by Section 24-5-2 NMSA 1978,  
24 a free public school education shall be available to any  
25 school-age person who is a resident of this state, [~~and~~] who

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1 has not received a high school diploma or its equivalent and  
2 who has not reached the person's twenty-second birthday on the  
3 first day of the school year.

4 B. A free public school education in those courses  
5 already offered to persons pursuant to the provisions of  
6 Subsection A of this section shall be available to any person  
7 who is a resident of this state and has received a high school  
8 diploma or its equivalent if there is available space in such  
9 courses.

10 C. Any person entitled to a free public school  
11 education pursuant to the provisions of this section may enroll  
12 or re-enroll in a public school at any time and, unless  
13 required to attend school pursuant to the Compulsory School  
14 Attendance Law, may withdraw from a public school at any time.

15 D. In adopting and promulgating rules concerning  
16 the enrollment of students transferring from a home school or  
17 private school to the public schools, the local school board  
18 shall provide that the grade level at which the transferring  
19 student is placed is appropriate to the age of the student or  
20 to the student's score on a student achievement test  
21 administered according to the statewide assessment and  
22 accountability system.

23 E. A local school board shall adopt and promulgate  
24 rules governing enrollment and re-enrollment at public schools  
25 other than charter schools within the school district. These

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1 rules shall include:

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

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

11 (3) priorities for enrollment of students as  
12 follows:

13 (a) first, students residing within the  
14 school district and within the attendance area of a public  
15 school and students who had resided in the attendance area  
16 prior to a parent who is an active duty member of the armed  
17 forces of the United States or member of the national guard  
18 being deployed and whose deployment has required the student to  
19 relocate outside the attendance area for custodial care;

20 (b) second, students enrolled in a  
21 school ranked as a school that needs improvement or a school  
22 subject to corrective action;

23 (c) third, students who previously  
24 attended the public school; and

25 (d) fourth, all other applicants;

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

3 (5) rules pertaining to grounds for denial of  
4 enrollment or re-enrollment at schools within the school  
5 district and the school district's hearing and appeals process  
6 for such a denial. Grounds for denial of enrollment or re-  
7 enrollment shall be limited to:

8 (a) a student's expulsion from any  
9 school district or private school in this state or any other  
10 state during the preceding twelve months; or

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

15 F. In adopting and promulgating rules governing  
16 enrollment and re-enrollment at public schools other than  
17 charter schools within the school district, a local school  
18 board may establish additional enrollment preferences for rules  
19 admitting students in accordance with the third and fourth  
20 priorities of enrollment set forth in Subparagraphs (c) and (d)  
21 of Paragraph (3) of Subsection E of this section. The  
22 additional enrollment preferences may include:

23 (1) after-school child care for students;

24 (2) child care for siblings of students  
25 attending the public school;

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- 1 (3) children of employees employed at the  
2 public school;  
3 (4) extreme hardship;  
4 (5) location of a student's previous school;  
5 (6) siblings of students already attending the  
6 public school; and  
7 (7) student safety.

8 G. As long as the maximum allowable class size  
9 established by law or by rule of a local school board,  
10 whichever is lower, is not met or exceeded in a public school  
11 by enrollment of first- and second-priority persons, the public  
12 school shall enroll other persons applying in the priorities  
13 stated in the school district rules adopted pursuant to  
14 Subsections E and F of this section. If the maximum would be  
15 exceeded by enrollment of an applicant in the second through  
16 fourth priority, the public school shall establish a waiting  
17 list. As classroom space becomes available, persons highest on  
18 the waiting list within the highest priority on the list shall  
19 be notified and given the opportunity to enroll."

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

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

- 24 A. "ADM" or "MEM" means membership;  
25 B. "membership" means the total enrollment of

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1 qualified students on the current roll of a class or school on  
2 a specified day. The current roll is established by the  
3 addition of original entries and reentries minus withdrawals.  
4 Withdrawals of students, in addition to students formally  
5 withdrawn from the public school, include students absent from  
6 the public school for as many as ten consecutive school days;  
7 provided that withdrawals do not include students in need of  
8 early intervention and habitual truants the school district is  
9 required to intervene with and keep in an educational setting  
10 as provided in Section 22-12-9 NMSA 1978;

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

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

19 E. "department" or "division" means the public  
20 education department;

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

24 G. "full-time-equivalent ADM" or "full-time-  
25 equivalent MEM" is that membership calculated by applying to

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1 the MEM in an approved public school program the ratio of the  
2 number of hours per school day devoted to the program to six  
3 hours or the number of hours per school week devoted to the  
4 program to thirty hours;

5 H. "operating budget" means the annual financial  
6 plan required to be submitted by a local school board or  
7 governing body of a state-chartered charter school;

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

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

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

19 L. "public money" or "public funds" means all money  
20 from public or private sources received by a school district or  
21 state-chartered charter school or officer or employee of a  
22 school district or state-chartered charter school for public  
23 use;

24 M. "qualified student" means a public school  
25 student who:

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

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

8 (b) is at least three years of age at  
9 any time during the school year and is receiving special  
10 education services pursuant to rules of the department; or

11 (c) has not reached the student's  
12 twenty-second birthday on the first day of the school year [~~and~~  
13 ~~is receiving special education services pursuant to rules of~~  
14 ~~the department~~]; and

15 N. "state superintendent" means the secretary of  
16 public education or the secretary's designee."