

1 SENATE BILL 401

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

3 INTRODUCED BY

4 Michael Padilla

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10 AN ACT

11 RELATING TO PUBLIC EDUCATION; DEFINING THE DUTIES OF THE PUBLIC
12 EDUCATION COMMISSION; ASSIGNING OVERSIGHT FOR CAREER TECHNICAL
13 EDUCATION TO THE PUBLIC EDUCATION DEPARTMENT.

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

16 SECTION 1. Section 9-24-9 NMSA 1978 (being Laws 2004,
17 Chapter 27, Section 9) is amended to read:

18 "9-24-9. PUBLIC EDUCATION COMMISSION.--

19 A. The "public education commission" is created
20 pursuant to Article 12, Section 6 of the constitution of New
21 Mexico. The commission shall be administratively attached to
22 the department, with administrative staff provided by the
23 department. Additional requests for staff services and
24 equipment shall be made through the secretary. The commission
25 [~~shall advise the department on policy matters and shall~~

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1 ~~perform other functions as provided by law] is the chartering~~

2 authority for state-chartered charter schools.

3 B. The commission shall consist of ten members

4 elected from public education districts as provided in the

5 decennial educational redistricting act. Members shall be

6 entitled to receive per diem and mileage as provided in the Per

7 Diem and Mileage Act, but shall receive no other perquisite,

8 compensation or allowance.

9 C. The commission shall annually elect a [~~chairman~~]

10 chair, vice [~~chairman~~] chair and secretary from among its

11 membership. A majority of the members constitutes a quorum for

12 the conduct of business. The commission shall keep a record of

13 all proceedings of the commission.

14 D. The commission shall meet at the call of the

15 [~~chairman~~] chair at least quarterly. Meetings of the

16 commission shall be held in Santa Fe and at other sites within

17 the state at the direction of the commission. The [~~chairman~~]

18 chair in consultation with the secretary shall call a meeting

19 at the request of a majority of the members. Commission

20 members shall not vote by proxy.

21 E. No member of the commission shall be appointed

22 secretary or be employed by the department on either a full- or

23 part-time basis.

24 F. The commission shall be represented by the

25 attorney general and shall not contract for legal services."

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

3 "22-2-14. LOCAL SCHOOL BOARDS--PUBLIC SCHOOLS--
4 SUSPENSION--PROCEDURES.--

5 A. Money budgeted by a school district shall be
6 spent first to attain and maintain the requirements for a
7 school district as prescribed by law and by standards and rules
8 as prescribed by the department. The department shall give
9 written notification to a local school board, local
10 superintendent and school principal, as applicable, of any
11 failure to meet requirements by any part of the school district
12 under the control of the local school board. The notice shall
13 specify the deficiency. Instructional units or administrative
14 functions may be disapproved for such deficiencies. The
15 department shall disapprove instructional units or
16 administrative functions that it determines to be detrimental
17 to the educational process.

18 B. Within thirty days after receipt of the notice
19 of failure to meet requirements, the local school board, local
20 superintendent and school principal, as applicable, shall:

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

23 (2) submit plans satisfactory to the
24 department to meet requirements and remove the cause for
25 disapproval.

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1 C. The secretary [~~after consultation with the~~
2 ~~commission~~] shall suspend from authority and responsibility a
3 local school board, local superintendent or school principal
4 that has had notice of disapproval and fails to comply with
5 procedures of Subsection B of this section. The department
6 shall act in lieu of the suspended local school board, local
7 superintendent or school principal until the department removes
8 the suspension.

9 D. To suspend a local school board, local
10 superintendent or school principal, the secretary shall deliver
11 to the local school board an alternative order of suspension,
12 stating the cause for the suspension and the effective date and
13 time the suspension will begin. The alternative order shall
14 also contain notice of a time, date and place for a public
15 hearing, prior to the beginning of suspension, to be held by
16 the department, at which the local school board, local
17 superintendent or school principal may appear and show cause
18 why the suspension should not be put into effect. Within five
19 days after the hearing, the secretary shall make permanent,
20 modify or withdraw the alternative order.

21 E. The secretary may suspend a local school board,
22 local superintendent or school principal when the local school
23 board, local superintendent or school principal has been
24 notified of disapproval and when the department has sufficient
25 reason to believe that the educational process in the school

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1 district or public school has been severely impaired or halted
2 as a result of deficiencies so severe as to warrant disapproved
3 status before a public hearing can be held.

4 F. The department, while acting in lieu of a
5 suspended local school board, local superintendent or school
6 principal, shall execute all the legal authority of the local
7 school board, local superintendent or school principal and
8 assume all the responsibilities of the local school board,
9 local superintendent or school principal.

10 G. The provisions of this section shall be invoked
11 at any time the secretary [~~after consultation with the~~
12 ~~commission~~] finds that the school district or public school has
13 failed to attain and maintain the requirements of law or
14 department standards and rules.

15 [~~H. The commission shall consult with the secretary~~
16 ~~and may recommend alternative actions for the secretary's~~
17 ~~consideration.~~

18 ~~F.]~~ H. A local school board, local superintendent
19 or school principal aggrieved by a decision of the secretary
20 may appeal to the district court pursuant to the provisions of
21 Section 39-3-1.1 NMSA 1978."

22 SECTION 3. Section 22-8B-9 NMSA 1978 (being Laws 1999,
23 Chapter 281, Section 9, as amended) is amended to read:

24 "22-8B-9. CHARTER SCHOOL CONTRACT--CONTENTS--RULES.--

25 A. The chartering authority shall enter into a
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1 contract with the governing body of the applicant charter
2 school within thirty days of approval of the charter
3 application. The charter contract shall be the final
4 authorization for the charter school and shall be part of the
5 charter. If the chartering authority and the applicant charter
6 school fail to agree upon the terms of or enter into a contract
7 within thirty days of the approval of the charter application,
8 either party may appeal to the secretary to finalize the terms
9 of the contract; provided that such appeal must be provided in
10 writing to the secretary within forty-five days of the approval
11 of the charter application. Failure to enter into a charter
12 contract or appeal to the secretary pursuant to this section
13 precludes the chartering authority from chartering the school.

14 B. The charter contract shall include:

15 (1) all agreements regarding the release of
16 the charter school from department and local school board rules
17 and policies, including discretionary waivers provided for in
18 Section 22-8B-5 NMSA 1978;

19 (2) any material term of the charter
20 application as determined by the parties to the contract;

21 (3) the mission statement of the charter
22 school and how the charter school will report on implementation
23 of its mission;

24 (4) the chartering authority's duties to the
25 charter school and liabilities of the chartering authority as

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1 provided in Section 22-8B-5.3 NMSA 1978;

2 (5) a statement of admission policies and
3 procedures;

4 (6) signed assurances from the charter
5 school's governing body members regarding compliance with all
6 federal and state laws governing organizational, programmatic
7 and financial requirements applicable to charter schools;

8 (7) the criteria, processes and procedures
9 that the chartering authority will use for ongoing oversight of
10 operational, financial and academic performance of the charter
11 school;

12 [~~(8)~~] a detailed description of how the
13 chartering authority will use the withheld two percent of the
14 school-generated program cost as provided in Section 22-8B-13
15 NMSA 1978;

16 ~~(9)~~] (8) the types and amounts of insurance
17 liability coverage to be obtained by the charter school;

18 [~~(10)~~] (9) the term of the contract;

19 [~~(11)~~] (10) the process and criteria that the
20 chartering authority intends to use to annually monitor and
21 evaluate the fiscal, overall governance and student performance
22 of the charter school, including the method that the chartering
23 authority intends to use to conduct the evaluation as required
24 by Section 22-8B-12 NMSA 1978;

25 [~~(12)~~] (11) the dispute resolution processes

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1 agreed upon by the chartering authority and the charter school,
2 provided that the processes shall, at a minimum, include:

3 (a) written notice of the intent to
4 invoke the dispute resolution process, which notice shall
5 include a description of the matter in dispute;

6 (b) a time limit for response to the
7 notice and cure of the matter in dispute;

8 (c) a procedure for selection of a
9 neutral third party to assist in resolving the dispute;

10 (d) a process for apportionment of all
11 costs related to the dispute resolution process; and

12 (e) a process for final resolution of
13 the issue reviewed under the dispute resolution process;

14 [~~(13)~~] (12) the criteria, procedures and time
15 lines, agreed upon by the charter school and the chartering
16 authority, addressing charter revocation and deficiencies found
17 in the annual status report pursuant to the provisions of
18 Section 22-8B-12 NMSA 1978;

19 [~~(14)~~] (13) if the charter school contracts
20 with a third-party provider, the criteria and procedures for
21 the chartering authority to review the provider's contract and
22 the charter school's financial independence from the provider;

23 [~~(15)~~] (14) all requests for release of the
24 charter school from department rules or the Public School Code.
25 Within ten days after the contract is approved by the local

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1 school board, any request for release from department rules or
2 the Public School Code shall be delivered by the local school
3 board to the department. If the department grants the request,
4 it shall notify the local school board and the charter school
5 of its decision. If the department denies the request, it
6 shall notify the local school board and the charter school that
7 the request is denied and specify the reasons for denial;

8 [~~(16)~~] (15) an agreement that the charter
9 school will participate in the public school insurance
10 authority;

11 [~~(17)~~] (16) if the charter school is a state-
12 chartered charter school, a process for qualification of and
13 review of the school as a qualified board of finance and
14 provisions for assurance that the school has satisfied any
15 conditions imposed by the commission;

16 [~~(18)~~] (17) a listing of the charter school's
17 nondiscretionary waivers; and

18 [~~(19)~~] (18) any other information reasonably
19 required by either party to the contract.

20 C. The process for revision or amendment to the
21 terms of the charter contract shall be made only with the
22 approval of the chartering authority and the governing body of
23 the charter school. If they cannot agree, either party may
24 appeal to the secretary as provided in Subsection A of this
25 section."

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1 SECTION 4. Section 22-14-2 NMSA 1978 (being Laws 1967,
2 Chapter 16, Section 192, as amended) is amended to read:

3 "22-14-2. [~~VOCATIONAL~~] CAREER AND TECHNICAL EDUCATION--
4 STATE GOVERNING AUTHORITY.--

5 A. The [~~commission~~] department is the governing
6 authority and shall establish policies for the conduct of all
7 programs of the state and state plans established relating to
8 [~~vocational~~] career and technical education unless otherwise
9 provided by law.

10 B. The [~~commission~~] department is the sole agency
11 of the state for the administration or for the supervision of
12 the administration of any state plan relating to [~~vocational~~]
13 career and technical education or for any federal aid funds,
14 except as may otherwise be provided by law.

15 ~~[C. The commission may delegate to the department~~
16 ~~its administrative functions relating to vocational~~
17 ~~education.]"~~

18 SECTION 5. Section 22-14-3 NMSA 1978 (being Laws 1967,
19 Chapter 16, Section 193, as amended) is amended to read:

20 "22-14-3. STATE AGENCY FOR [~~VOCATIONAL~~] CAREER AND
21 TECHNICAL EDUCATION--AUTHORITY.--The [~~commission~~] department is
22 the sole agency of the state for the supervision of the
23 administration of federal aid funds relating to [~~vocational~~]
24 career and technical education. The [~~commission~~] department
25 may:

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1 A. enter into an agreement with the appropriate
2 federal agency to procure for the state the benefits of the
3 federal statute;

4 B. establish a state plan, if required by the
5 federal statute, that meets the requirements of the federal
6 statute to qualify the state for the benefits of the federal
7 statute;

8 C. provide for reports to be made to the federal
9 agency as may be required;

10 D. provide for reports to be made to the
11 [~~commission or the~~] department from agencies receiving federal
12 aid funds;

13 E. make surveys and studies in cooperation with
14 other agencies to determine the needs of the state in the areas
15 where the federal aid funds are to be applied;

16 F. establish standards to which agencies must
17 conform in receiving federal aid funds;

18 G. give technical advice and assistance to any
19 agency in connection with that agency obtaining federal aid
20 funds;

21 H. coordinate as required by the federal agency
22 with the state workforce development board; and

23 I. as required by the federal agency, make
24 available a list of all school dropout, post-secondary and
25 adult programs assisted pursuant to the state plan."

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1 SECTION 6. Section 22-14-5 NMSA 1978 (being Laws 1967,
2 Chapter 16, Section 195, as amended) is amended to read:

3 "22-14-5. [~~INSTRUCTIONAL SUPPORT AND VOCATIONAL EDUCATION~~
4 ~~DIVISION~~] COLLEGE AND CAREER READINESS BUREAU--POWERS--
5 DUTIES.--Subject to the policies of the [~~commission~~]
6 department, the [~~instructional support and vocational education~~
7 ~~division~~] college and career readiness bureau of the department
8 shall:

9 A. provide [~~vocational~~] career and technical
10 education to qualified persons;

11 B. act as the representative of the [~~commission~~]
12 department in administering any state plan or federal aid funds
13 relating to [~~vocational~~] career and technical education;

14 C. cooperate and make agreements with public or
15 private agencies to establish or to maintain a [~~vocational~~]
16 career and technical education program;

17 D. enter into reciprocal agreements with other
18 states to provide [~~vocational~~] career and technical education;

19 E. accept gifts or grants to be used for
20 [~~vocational~~] career and technical education;

21 F. enforce rules for the administration of laws
22 relating to [~~vocational~~] career and technical education; and

23 G. conduct research and compile statistics relating
24 to [~~vocational~~] career and technical education."

25 SECTION 7. Section 22-15C-10 NMSA 1978 (being Laws 2003,
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1 Chapter 149, Section 10, as amended) is amended to read:

2 "22-15C-10. REPORTS--BUDGETS.--~~[A.]~~ Annually, the
3 department shall submit a budget for the next fiscal year to
4 the department of finance and administration showing
5 expenditures for school library material to be paid from the
6 fund, including reasonable shipping and handling charges and
7 library material processing expenses.

8 ~~[B. Upon request, the department shall make reports~~
9 ~~to the public education commission concerning the~~
10 ~~administration and execution of the School Library Material~~
11 ~~Act.]"~~

12 SECTION 8. Section 22-23A-6 NMSA 1978 (being Laws 2003,
13 Chapter 151, Section 6, as amended by Laws 2007, Chapter 295,
14 Section 5 and by Laws 2007, Chapter 296, Section 5) is amended
15 to read:

16 "22-23A-6. ADVISORY COUNCIL.--

17 A. The "Indian education advisory council" is
18 created and shall advise the secretary and assistant secretary
19 on implementation of the provisions of the Indian Education
20 Act. The council consists of sixteen members as follows:

21 (1) four representatives from the Navajo
22 Nation;

23 (2) two representatives, one from the
24 Mescalero Apache Tribe and one from the Jicarilla Apache
25 Nation;

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1 (3) four representatives, two from the
2 southern pueblos and two from the northern pueblos;

3 (4) three urban Indians representing urban
4 areas, including Albuquerque, Gallup and Farmington; and

5 (5) three at-large representatives, one from
6 the federal bureau of Indian affairs, one from a head start
7 organization and one from the general public, at least one of
8 whom shall be nontribal, but all of whom shall have knowledge
9 of and involvement in the education of tribal students.

10 B. Members shall be appointed by the secretary with
11 input from New Mexico tribes and organizations involved in the
12 education of tribal students for staggered terms so that the
13 terms of the at-large members and of one-half of each of the
14 tribal representatives end on December 31, 2009 and the terms
15 of the remaining members end on December 31, 2011. Thereafter,
16 appointments shall be for terms of four years. The terms of
17 existing members shall expire on [~~the effective date of this~~
18 ~~2007 act~~] June 15, 2007.

19 C. A majority of the members of the Indian
20 education advisory council constitutes a quorum. The advisory
21 council shall elect a chair from its membership.

22 D. On a semiannual basis, representatives from all
23 New Mexico tribes, [~~members of the commission~~] the office of
24 the governor, the Indian affairs department, the legislature,
25 the secretary, the assistant secretary and the Indian education

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1 advisory council shall meet to assist in evaluating,
2 consolidating and coordinating all activities relating to the
3 education of tribal students.

4 E. Members of the Indian education advisory council
5 may receive per diem and mileage as provided for nonsalaried
6 public officers in the Per Diem and Mileage Act."

7 SECTION 9. Section 22-23B-4 NMSA 1978 (being Laws 2010,
8 Chapter 108, Section 4 and Laws 2010, Chapter 114, Section 4)
9 is amended to read:

10 "22-23B-4. HISPANIC EDUCATION LIAISON--CREATED--DUTIES.--

11 A. The "Hispanic education liaison" is created in
12 the department.

13 B. The liaison shall:

14 (1) focus on issues related to Hispanic
15 education and advise the secretary on the development and
16 implementation of policy regarding the education of Hispanic
17 students;

18 (2) advise the department [~~and the commission~~]
19 on the development and implementation of the five-year
20 strategic plan for public elementary and secondary education in
21 the state as the plan relates to Hispanic student education;

22 (3) assist and be assisted by other staff in
23 the department to improve elementary, secondary and post-
24 secondary educational outcomes for Hispanic students;

25 (4) serve as a resource to enable school

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1 districts and charter schools to provide equitable and
2 culturally relevant learning environments, educational
3 opportunities and culturally relevant instructional materials
4 for Hispanic students enrolled in public schools;

5 (5) support and consult with the Hispanic
6 education advisory council; and

7 (6) support school districts and charter
8 schools to recruit parents on site-based and school district
9 committees that represent the ethnic diversity of the
10 community."

11 SECTION 10. REPEAL.--

12 A. Section 22-2-2.2 NMSA 1978 (being Laws 2004,
13 Chapter 27, Section 17) is repealed.

14 B. Laws 2010, Chapter 108, Section 4 is repealed.