

# CHAPTER 22 PUBLIC SCHOOLS

## ARTICLE 1 GENERAL PROVISIONS

### 22-1-1. Public School Code.

Chapter 22 NMSA 1978 [except 22-4-16, 22-9-7 to 22-9-16 NMSA 1978 and Articles 13A and 18A NMSA 1978] may be cited as the "Public School Code".

**History:** 1953 Comp., § 77-1-1, enacted by Laws 1967, ch. 16, § 1; 1977, ch. 246, § 59.

### ANNOTATIONS

**Cross-references.** - For constitutional provisions relating to education, see N.M. Const., art. XII, § 1 et seq.

As to legislative school study committee, see 2-10-1 NMSA 1978 et seq.

**Temporary provisions.** - Laws 1992, ch. 89, §§ 1-7, effective March 9, 1992, make legislative findings, create the select education review and recodification committee, provide for the appointment of members and for duties of the committee, provide for subcommittees, provide for a report, and provide for committee staff.

**Compiler's note.** - Laws 1967, ch. 16, § 300, provided that the Public School Code, which Laws 1967, ch. 16, enacted, should be liberally construed to carry out its provisions and purposes. For disposition of Laws 1967, ch. 16, in NMSA 1978, see the Table of Disposition of Acts.

**Public School Code.** - This section, as it appeared in 1953 Comp., provided that "Chapter 77 NMSA 1953 may be cited as the 'Public School Code.'" When the New Mexico Statutes Annotated were recompiled in 1978, sections in former Chapter 77 were renumbered as present Chapter 22 (excluding 22-4-16, 22-9-7 to 22-9-16 and Articles 13A and 18A NMSA 1978) and present 11-8-1 to 11-8-11 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 1 to 274.

Use of public school premises for religious purposes during nonschool time, 79 A.L.R.2d 1148.

Public payment of tuition, scholarship, or the like, as respects sectarian school, 81 A.L.R.2d 1309.

Prayers in public schools, 86 A.L.R.2d 1304.

Use of school property for other than public school or religious purposes. 94 A.L.R.2d 1274.

De facto segregation of races in public schools, 11 A.L.R.3d 780.

Circumstances warranting judicial determination or declaration of unitary status with regard to schools operating under court-ordered or court-supervised desegregation plans and the effects of such declarations, 94 A.L.R. Fed. 667.

78 C.J.S. Schools and School Districts §§ 12 to 322; 79 C.J.S. Schools and School Districts §§ 323 to 512.

### **22-1-1.1. Legislative findings and purpose.**

A. The legislature finds that, although New Mexico has been in the forefront of educational reforms in many areas, additional improvements are necessary to enhance and upgrade the delivery of quality education in New Mexico.

B. The legislature further finds that enhancement of the educational system in New Mexico requires a renewed emphasis on the primary grades, recognizing especially the importance of the first grade to a child's future educational career.

C. The legislature further finds that teachers and administrators play a key role in any reform efforts and acknowledges their importance in the educational process.

D. The legislature further finds that the smorgasbord curriculum offered in many schools fails to provide students with the basic educational background necessary to provide them with indispensable life skills.

E. The legislature further finds that discipline in the schools is essential to provide an atmosphere conducive to effective learning.

F. It is the purpose of this reform legislation, among other things, to stress the importance of substantive academic subjects, provide for a greater emphasis on the primary grades, upgrade curriculum and graduation requirements, systematically evaluate instructional improvement and student progress, increase parental involvement in the public schools and recognize that teachers should be treated like other professionals.

**History:** Laws 1986, ch. 33, § 1.

### **22-1-2. Definitions.**

As used in the Public School Code:

- A. "state board" means the state board of education;
- B. "state superintendent" means the superintendent of public instruction;
- C. "department of education" means the state department of public education;
- D. "certified school instructor" means any person holding a valid certificate authorizing the person to teach, supervise an instructional program, counsel or provide special instructional services in the public schools of the state;
- E. "certified school administrator" means any person holding a valid certificate authorizing the person to administer in the public schools of the state;
- F. "certified school employee" or "certified school personnel" means any employee who is either a certified school instructor or a certified school administrator or both;
- G. "non-certified school employee" means any employee who is not a certified school employee;
- H. "certificate" means a certificate issued by the state board authorizing a person to teach, supervise an instructional program, counsel, provide special instructional services or administer in the public schools of the state;
- I. "chief" or "director" means the state superintendent or his designee unless the context clearly indicates otherwise;
- J. "private school" means a school offering programs of instruction not under the control, supervision or management of a local school board, exclusive of home instruction offered by the parent, guardian or one having custody of the student;
- K. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes;
- L. "local school board" means the governing body of a school district;
- M. "public school" means that part of a school district that is a single attendance center where instruction is offered by a certified school instructor or a group of certified school instructors and is discernible as a building or group of buildings generally recognized as either an elementary, secondary, junior high or high school or any combination thereof;
- N. "school year" means the total number of teaching days offered by public schools in a school district during a period of twelve consecutive months;

O. "consolidation" means the combination of part or all of the geographical area of an existing school district with part or all of the geographical area of one or more contiguous existing school districts;

P. "consolidated school district" means a school district created by order of the state board by combining part or all of the geographical area of an existing school district with part or all of the geographical area of one or more contiguous existing school districts;

Q. "state institution" means the New Mexico military institute, the New Mexico school for the visually handicapped, the New Mexico school for the deaf, the New Mexico boys' school, the New Mexico youth diagnostic and development center, the Los Lunas medical center, the Fort Stanton hospital, the Las Vegas medical center or the Carrie Tingley crippled children's hospital;

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

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

T. "school" means any supervised program of instruction designed to educate a person in a particular place, manner and subject area;

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

V. "home school" means the operation by a parent, guardian or other person having custody of a school-age person of a home study program that provides a basic academic educational program, including but not limited to reading, language arts, mathematics, social studies and science; and

W. "school building" means a public school, an administration building and related school structure or facilities, including teacher housing, as may be owned, acquired or constructed by the local school board and as necessary to carry out the powers and duties of the local school board.

**History:** 1953 Comp., § 77-1-2, enacted by Laws 1967, ch. 16, § 2; 1969, ch. 180, § 1; 1971, ch. 263, § 1; 1975, ch. 332, § 1; 1977, ch. 246, § 60; 1978, ch. 211, § 6; 1985, ch. 21, § 1; 1987, ch. 42, § 1; 1988, ch. 64, § 10; 1988, ch. 66, § 1; 1990, ch. 94, § 1; 1991, ch. 137, § 1; 1991, ch. 187, § 1.

## ANNOTATIONS

**Cross-references.** - As to state board of education generally, see 22-2-1 NMSA 1978 et seq.

As to local school boards generally, see 22-5-1 NMSA 1978 et seq.

For enumeration of state educational institutions, see N.M. Const., art. XII, § 11.

As to state superintendent generally, see N.M. Const., art. XII, § 6 and 22-2-4 to 22-2-7 NMSA 1978.

As to state department of education, see N.M. Const., art. XII, § 6 and 22-2-5 and 22-2-6 NMSA 1978.

**The 1988 amendments.** - Laws 1988, ch. 64, § 10, effective March 8, 1988, substituting "state superintendent or his designee" for "director of the office of education" in Subsection H and inserting "and development" in Subsection P, was approved March 4, 1988. However, Laws 1988, ch. 66, § 1, effecting the same changes but also deleting "provided however, that for purposes of the Public School Capital Improvements Act, an administrative building shall not be considered a 'school building'" from the end of Subsection V, was approved March 9, 1988. The section is set out as amended by Laws 1988, ch. 66, § 1. See 12-1-8 NMSA 1978.

**The 1990 amendment,** effective May 16, 1990, deleted "regular and handicapped" following "qualified" in Subsection R and "average daily" following "special education" in the second sentence of Subsection T.

**1991 amendments.** - Laws 1991, ch. 137, § 1, effective April 3, 1991, adding "or college-preparatory, residential, bureau of Indian affairs contract schools" at the end of Subsection I, was approved on April 3, 1991. However, Laws 1991, ch. 187, § 1, effective June 14, 1991, rewriting Subsection F which read " 'certified school personnel' means certified school instructors and certified school administrators", adding Subsections G and H, and redesignating former Subsections G to V as Subsections I to W, was approved on April 4, 1991. The section is set out as amended by Laws 1991, ch. 187, § 1. See 12-1-8 NMSA 1978.

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

**School districts are "state agencies"** covered by the Conflict of Interest Act. 1989 Op. Att'y Gen. No. 89-34.

**Limitations on legislator's contracts to school districts.** - The limitations on a legislator's contracts imposed under N.M. Const., art., IV, § 28 apply to contracts with the state, municipalities and school districts, but do not apply to counties. 1989 Op. Att'y Gen. No. 89-34.

**Compulsory school attendance law must bear rational relation to legitimate state interest.** - In the application of equal protection principles, the standard for reviewing the compulsory school attendance law is whether it bears some rational relation to a legitimate state interest. *State v. Edgington*, 99 N.M. 715, 663 P.2d 374 (Ct. App.), cert. denied, 464 U.S. 940, 104 S. Ct. 354, 78 L. Ed. 2d 318 (1983).

**And state may constitutionally prohibit home instruction by parent, guardian or custodian.** - The exclusion of home instruction by a parent, guardian or custodian of a child from satisfying the requirements of the compulsory school attendance law does not violate equal protection as guaranteed in the United States and New Mexico constitutions. *State v. Edgington*, 99 N.M. 715, 663 P.2d 374 (Ct. App.), cert. denied, 464 U.S. 940, 104 S. Ct. 354, 78 L. Ed. 2d 318 (1983).

**No distinction between "private" and family schools.** - The state legislature has not set teacher or curriculum standards for determining what qualifies an educational entity as a "private school", defined in Subsection I, as opposed to a family school. *Strosnider v. Strosnider*, 101 N.M. 639, 686 P.2d 981 (Ct. App. 1984).

**Certified school instructor.** - School districts which have included speech-language pathologists within the meaning of "certified school instructor" contained in Laws 1986, ch. 33, § 34 for purposes of granting a \$2,200 salary increase to those instructors are not in violation of law, provided all requirements of the Public School Finance Act [22-8-1 to 22-8-42 NMSA 1978] were met. 1987 Op. Att'y Gen. No. 87-70.

### **22-1-2.1. Home school; requirements.**

Any person operating or intending to operate a home school shall:

A. notify the superintendent of schools of the school district in which the person is a resident of the establishment of a home school within thirty days of its establishment and notify the superintendent of schools of the school district on or before April 1 of each subsequent year of operation;

B. maintain records of student attendance and disease immunization and furnish such records to the superintendent of schools of the school district;

C. provide instruction by a person possessing at least a baccalaureate degree, which requirement may be waived by the state superintendent upon a determination that such waiver is in the child's best interest;

D. test students annually, to assess student achievement according to the statewide and local school district testing programs as determined by the state superintendent. The home school child shall take such achievement tests at the time and place and in a manner consistent with the procedures established by the state superintendent.

**History:** 1978 Comp., § 22-1-2.1, enacted by Laws 1985, ch. 21, § 2.

### **22-1-3. Definitions; public schools; classifications.**

As used in the Public School Code:

A. "elementary school" means a public school providing instruction for grades kindergarten through eight, unless there is a junior high school program approved by the state board, in which case it means a public school providing instruction for grades kindergarten through six;

B. "secondary school" means a public school providing instruction for grades nine through twelve, unless there is a junior high school program approved by the state board, in which case it means a public school providing instruction for grades seven through twelve;

C. "junior high school" means a public school providing a junior high school program approved by the state board for grades seven through nine, or for grades seven and eight; and

D. "high school" means a public school providing instruction for any of the grades nine through twelve, unless there is a junior high school program approved by the state board for grades seven through nine, in which case it means a public school providing instruction for any of the grades ten through twelve.

**History:** 1953 Comp., § 77-1-3, enacted by Laws 1967, ch. 16, § 3; 1977, ch. 2, § 1.

#### **ANNOTATIONS**

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

### **22-1-4. Free public schools; exceptions; withdrawing and enrolling.**

A. Except as provided by Section 24-5-2 NMSA 1978, a free public school education shall be available to any school age person who is a resident of this state and has not received a high school diploma or its equivalent.

B. A free public school education in those courses already offered to persons under Subsection A of this section shall be available to any person who is a resident of this state and has received a high school diploma or its equivalent, if there is available space in such courses.

C. Any person entitled to a free public school education under this section may enroll or reenroll in a public school at any time, and, unless required to attend school pursuant to the Compulsory School Attendance Law [22-12-1 to 22-12-7 NMSA 1978], may withdraw from a public school at any time.

D. Local school boards shall promulgate regulations concerning the enrollment and reenrollment of all persons.

**History:** 1953 Comp., § 77-1-4, enacted by Laws 1975, ch. 338, § 1; 1978, ch. 211, § 7; 1979, ch. 16, § 1.

### **ANNOTATIONS**

**Cross-references.** - For constitutional provision relating to uniform system of free public schools, see N.M. Const., art. XII, § 1.

As to compulsory school attendance, see N.M. Const., art. XII, § 5 and 22-12-1 NMSA 1978 et seq.

### **22-1-5. Recompiled.**

### **ANNOTATIONS**

**Recompilations.** - Laws 1986, ch. 33, § 10 recompiles 22-1-5 NMSA 1978, relating to school employees, reporting drug and alcohol use, and release from liability, as 22-5-4.4 NMSA 1978, effective May 21, 1986.

### **22-1-6. Annual school district accountability report required.**

A. Each school district shall be required to publish an annual school district accountability report to provide district-wide data for the previous school year. The school district shall send to the state superintendent the required data with the year-end reports prior to August 15 each year. The state superintendent shall compile the district reports data and send a draft compilation report to the districts by October 15 each year and send a final compilation state report to the governor and legislature prior to November 15 each year.

B. The accountability report shall include a brief statement of the mission of the local school board, enrollment statistics, total expenditures per pupil for the school year, administrative expenditures per student for the school year, the average teacher salary, a summary of student scores on all state-mandated tests and college entrance exam scores, including the norm base year; the number of New Mexico scholars eligible for and receiving scholarships; the percentage of the graduating high school class applying for entrance into a four-year post-secondary institution; the percentage of seniors beginning the year who graduate; the percentage of ninth graders, plus any newcomers entering during grades nine through twelve, who graduate; the percentage of full-time-equivalent students participating in bilingual programs, chapter I programs, special education programs and other federally funded programs, with the percentage of the district budget attributable to each program; the percentage of the district budget utilized to employ certified teachers, administrators, support personnel and non-certified classified personnel; the number of students enrolled in advanced placement courses; a



concise annual budget report, including revenue and expense data; budget funding sources; the student drop-out rate; continual student progress follow-up study; a statement of school district goals for the upcoming year; an invitation to all citizens to participate in school planning and school activities; and other data and information that clearly communicates the activities and progress of the school district to the residents of that school district. The published accountability report shall compare district, state and national data whenever appropriate and shall include the rank of the school district among all of the school districts in the state, for all state-mandated tests and college exam scores, graduation percentages, drop-out rate, per-student administration expenditure, total per-student expenditure and average teacher salary data. The published report shall use tables and graphs to better communicate complex information and, using the ranking data, shall include a graphic representation of the school district's progress over the preceding three years.

C. The annual accountability report shall also include the results of a survey of parents' views of the quality of their children's school. The survey shall be conducted each year in time to include the results in the annual accountability report. The survey shall compile the results of a written questionnaire that shall be sent home with the students to be given to their parents. The survey may be completed anonymously. The survey shall be no more than one page, shall be clearly and concisely written and shall include not more than twenty questions that shall be answered with options of a simple sliding scale ranging from "strongly agree" to "strongly disagree", and shall include the optional response "don't know". The survey shall also include a request for optional written comments, which may be written on the back of the questionnaire form. The questionnaire shall include questions in the following areas:

- (1) parent-teacher-school relationship and communication;
- (2) quality of educational and extracurricular programs;
- (3) instructional practices and techniques;
- (4) resources;
- (5) school personnel, including the school principal; and
- (6) parents' view of teaching staff expectations for the students.

The state board shall develop no more than ten of the questions, which shall be reviewed by the legislative education study committee prior to implementation. No more than five questions shall be developed by the local school board and no more than five questions shall be developed by the staffs of each individual school site, provided that at least half of those questions are developed by teachers rather than administrators, in order to gather information that is specific to the particular community surveyed.

D. The annual accountability report for each school district shall be published no later than November 15 of each year and shall be published at least once each school year in a newspaper of general circulation in the county where the district is located. In publication, the report shall be titled "the school district report card".

**History:** Laws 1989, ch. 308, § 1; 1990 (1st S.S.), ch. 4, § 3; 1991, ch. 238, § 1.

### ANNOTATIONS

**The 1990 (1st S.S.) amendment,** effective June 18, 1990, added all of the language at the end of Subsection A beginning "to provide district-wide data for the previous school year", added the present Subsection B designation, rewriting that Subsection, and redesignated former Subsection B as present Subsection C, inserting therein "no later than November 15 of each year and shall be published" and the last sentence.

**The 1991 amendment,** effective June 14, 1991, added present Subsection C; redesignated former Subsection C as Subsection D; and made minor stylistic changes throughout the section.

**Effective dates.** - Laws 1989, ch. 308 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

### **22-1-7. Public schools; violence; vandalism; reporting.**

A. Any public school administrator, teacher or other employee of a local school board who observes or has direct knowledge from a participant or victim of an act of violence upon a public school administrator, teacher or other employee of a local school board in the lawful discharge of his duties or vandalism to public school property shall file a report describing the incident pursuant to procedures established by the state department of public education.

B. Any person who files an incident report pursuant to this section shall not be discriminated against in any manner or discharged by a local school board because he has filed that report.

C. The state department of public education shall establish uniform reporting procedures for incidents of violence or vandalism described in Subsection A of this section. The procedures shall include requirements for:

(1) incidents to be reported, incident description and report on action taken in response to the reported incident;

(2) annual reports by local school superintendents of all reported incidents to local school boards;

(3) annual reports by local school boards of all reported incidents to the superintendent of public instruction; and

(4) annual reports by the superintendent of public instruction of all reported incidents to the state board of education. The report filed with that board shall be summarized and submitted to an appropriate interim committee of the legislature with recommendations to decrease the incidence of violence and vandalism in the public schools.

**History:** Laws 1989, ch. 344, § 2.

## **ANNOTATIONS**

**Effective dates.** - Laws 1989, ch. 344 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

## **ARTICLE 2**

### **STATE BOARD OF EDUCATION**

#### **22-2-1. State board; powers.**

A. The state board is the governing authority and shall have control, management and direction of all public schools, except as otherwise provided by law.

B. The state board may promulgate, publish and enforce regulations to exercise its authority granted pursuant to the Public School Code.

C. The state board may apply to the district court for an injunction, writ of mandamus or other appropriate relief to enforce the provisions of the Public School Code or any of its regulations promulgated pursuant to the Public School Code.

D. The state board may approve a local school board's request to waive provisions of the Public School Code relating to length of school day, staffing patterns, subject areas or the purchase of instructional materials in order for the district to implement a collaborative school improvement program for an individual school. The state board may approve a request for a waiver upon a finding that the local school board has demonstrated accountability for student learning through alternative planning and that the participating teaching staff supports the implementation of a collaborative school improvement program. The local school board shall provide the state board with a program budget that shows the type and number of students served, the type and number of personnel involved and all expenditures of the waiver. The state board shall develop and adopt policies related to a review of the request for a waiver.

E. The state board may waive provisions of the Public School Code relating to staffing patterns, class and teaching loads, subject areas, curriculum, testing, instructional time or the purchase of instructional materials for schools authorized to implement and

receive funding for alternative structural and curricular programs pursuant to the Twenty-First Century Education Act [22-13B-1 to 22-13B-9 NMSA 1978].

**History:** 1978 Comp., § 22-2-1, enacted by Laws 1990 (1st S.S.), ch. 9, § 10; 1992, ch. 77, § 1.

## ANNOTATIONS

**Cross-references.** - For constitutional provision relating to state board of education, see N.M. Const., art. XII, § 6.

**Repeals and reenactments.** - Laws 1990 (1st S.S.), ch. 9, § 10 repeals former 22-2-1 NMSA 1978, as amended by Laws 1990, ch. 52, § 1, and enacts the above section, effective June 18, 1990. For provisions of former section, see 1990 Session Laws.

**The 1992 amendment,** effective May 20, 1992, inserted "or the purchase of instructional materials" in the first sentence of Subsection D and near the middle of Subsection E; and made minor stylistic changes throughout the section.

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

**Legislative power as to duties of state board.** - The authority granted the state board for the "control, management and direction of all public schools" under N.M. Const., art. XII, § 6 must be specifically defined by the legislature. And, if the state board's constitutional authority is so limited, then it would necessarily follow that the legislature may also divest the state board of duties previously defined. As the courts have construed it, N.M. Const., art. XII, § 6 does not, in itself, vest the state board with any particular duties and the legislature is empowered to determine the scope of the board's authority. 1977 Op. Att'y Gen. No. 77-6.

**State board has powers implied from statute.** - The authority of the state board in the rule- or regulation-making context is not limited to those powers expressly granted by statute, but includes all powers that may be fairly implied therefrom. *Redman v. Board of Regents*, 102 N.M. 234, 693 P.2d 1266 (Ct. App. 1984).

**Board may determine action not "good cause" for firing.** - It is within the province of the state board to decide that a private affair between consenting adults, an assistant principal and a school secretary, is not "good and just cause" to fire an employee. *Board of Educ. v. Jennings*, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity of local or state denial of public school courses or activities to private or parochial school students, 43 A.L.R.4th 776.

### 22-2-2. State board; duties.

Without limiting those powers granted to the state board pursuant to Section 22-2-1 NMSA 1978, the state board shall perform the following duties:

- A. properly and uniformly enforce the provisions of the Public School Code;
- B. determine policy for the operation of all public schools and vocational education programs in the state;
- C. appoint a state superintendent;
- D. purchase and loan instructional material to students pursuant to the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978];
- E. designate courses of instruction to be taught in all public schools in the state;
- F. assess and evaluate those private schools which desire state accreditation;
- G. determine the qualifications for and issue a certificate to any person teaching, assisting teachers, supervising an instructional program, counseling, providing special instructional services or administering in public schools according to law and according to a system of classification adopted and published by the state board;
- H. suspend or revoke a certificate held by a certified school instructor or certified school administrator according to law for incompetency, immorality or for any other good and just cause;
- I. make full and complete reports on consolidation of school districts to the legislature;
- J. prescribe courses of instruction, requirements for graduation and standards for all public schools, for private schools seeking state accreditation and for the educational programs conducted in state institutions under the authority of the secretary of health and environment;
- K. adopt regulations for the administration of all public schools and bylaws for its own administration;
- L. require periodic reports on forms prescribed by it from all public schools and attendance reports from private schools;
- M. authorize adult educational programs to be conducted in schools under its jurisdiction and promulgate and publish regulations governing all such adult educational programs;
- N. require any school under its jurisdiction which sponsors athletic programs involving sports to mandate that the participating student obtain catastrophic health and accident

insurance coverage, such coverage to be offered through the school and issued by an insurance company duly licensed pursuant to the laws of New Mexico;

O. require all accrediting agencies for public schools in the state to act with its approval;

P. accept and receive all grants of money from the federal government or any other agency for public school purposes and disburse the money in the manner and for the purpose specified in the grant;

Q. require prior approval for any educational program in a public school which is to be conducted, sponsored, carried on or caused to be carried on by a private organization or agency;

R. approve all rules or regulations promulgated by any association or organization attempting to regulate any public school activity and invalidate any rule or regulation in conflict with any regulation promulgated by the state board. The state board shall have no power or control over rules or regulations or the bylaws governing the administration of the internal organization of the association or organization;

S. review decisions made by the governing board or officials of any organization or association regulating any public school activity, and any decision of the state board shall be final in respect thereto;

T. accept or reject any charitable gift, grant, devise or bequest. The particular gift, grant, devise or bequest accepted shall be considered an asset of the state;

U. establish and maintain regional centers, at its discretion, for conducting cooperative services between public schools and school districts within and among those regions and to facilitate regulation and evaluation of school programs;

V. assess and evaluate for accreditation purposes at least one-third of all public schools each year through visits by department of public education personnel to investigate the adequacy of pupil gain in standard required subject matter, adequacy of pupil activities, functional feasibility of public school and school district organization, adequacy of staff preparation and other matters bearing upon the education of the students;

W. provide for management and other necessary personnel to operate any public school or school district which has failed to meet requirements of law, state board standards or state board regulations; provided that the operation of the public school or school district shall not include any consolidation or reorganization without the approval of the local board of that school district. Until such time as requirements of law, standards or regulations have been met and compliance is assured, the powers and duties of the local school board shall be suspended;

X. establish and implement a plan that provides for technical assistance to local school boards through workshops and other inservice training methods; provided, however,

that no plan shall require mandatory attendance by any member of a local school board; and

Y. submit a plan applying for funds available under Public Law 94-142 and disburse these funds in the manner and for the purposes specified in the plan; and

Z. enforce requirements for home schools. Upon finding that a home school is not in compliance with law, the state board shall have authority to order that a student attend a public school or a private school.

**History:** 1953 Comp., § 77-2-2, enacted by Laws 1967, ch. 16, § 5; 1969, ch. 180, § 2; 1971, ch. 263, § 2; 1975, ch. 332, § 2; 1978, ch. 211, § 8; 1979, ch. 51, § 1; 1984, ch. 39, § 1; 1985, ch. 21, § 3; 1987, ch. 77, § 1.

## ANNOTATIONS

**Cross-references.** - As to power to create and consolidate school districts, see 22-4-2 and 22-4-3 NMSA 1978.

As to duties with respect to federal aid, see 22-9-1 NMSA 1978 et seq.

As to duty to administer federal grants in aid of education, see 22-9-7 to 22-9-16 NMSA 1978.

As to power to prescribe subjects taught in public schools generally, see 22-13-1 NMSA 1978.

As to duty to regulate establishment of part-time schools, see 22-13-9 NMSA 1978.

As to duties with respect to Instructional Material Law, see 22-15-1 NMSA 1978 et seq.

As to approval of buildings erected near highways, see 22-20-2 NMSA 1978.

As to approval of certain school construction projects, see 22-20-3 NMSA 1978.

As to duties pertaining to Variable School Calendar Act, see 22-22-1 NMSA 1978 et seq.

As to duties pertaining to education and testing with respect to sickle cell trait and sickle cell anemia, see 24-3-1 NMSA 1978.

**Compiler's note.** - Public Law 94-142, referred to in Subsection Y, which is the federal Education for All Handicapped Children Act of 1975, appears mainly as 20 U.S.C. §§ 1411 to 1420.

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

**Health and environment department.** - Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment.

**Board may determine action not "good cause" for firing.** - It is within the province of the state board to decide that a private affair between consenting adults, an assistant principal and a school secretary, is not "good and just cause" to fire an employee. Board of Educ. v. Jennings, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982).

**And decision will be upheld unless unreasonable.** - Deciding whether or not an administrator is fit to perform his duties is a question of policy, and the appellate court will not alter the state board's decision unless the court is convinced it is unreasonable, not supported by substantial evidence or not in accordance with law. Board of Educ. v. Jennings, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982).

**Law reviews.** - For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

For comment, "Compulsory School Attendance - Who Directs the Education of a Child? State v. Edgington," see 14 N.M.L. Rev. 453 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 50 to 55.

Validity of statute or other regulations as to the use, or teaching, of foreign languages in schools, 7 A.L.R. 1695, 29 A.L.R. 1452.

Extent of legislative power with respect to curriculum, 39 A.L.R. 477, 53 A.L.R. 832.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Tort liability of public schools and institutions of higher learning for educational malpractice, 1 A.L.R.4th 1139.

Validity of state regulation of curriculum and instruction in private and parochial schools, 18 A.L.R.4th 649.

Validity of local or state denial of public school courses or activities to private or parochial school students, 43 A.L.R.4th 776.

AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.



Validity, construction, and effect of provision releasing school from liability for injuries to students caused by interscholastic and other extracurricular activities, 85 A.L.R.4th 344.

78 C.J.S. Schools and School Districts §§ 86 to 91.

### **22-2-3. Compensation.**

A. Each member of the state board shall be entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], and shall receive no other compensation, perquisite or allowance.

B. Per diem and mileage shall be paid to members of the state board by the department of education out of funds appropriated and budgeted for that purpose.

**History:** 1953 Comp., § 77-2-3, enacted by Laws 1967, ch. 16, § 6.

### **ANNOTATIONS**

**Payment for time spent away from duties with district.** - A local school district employee who serves on the state board of education may draw salary from the district and per diem and expenses from the state department of education; however, he may not be paid for time spent away from his duties with the district unless he takes authorized leave with pay. 1987 Op. Att'y Gen. No. 87-45.

### **22-2-4. Officers; meetings; proceedings; restrictions.**

A. From among its members, the state board shall elect a president, vice president and secretary. The secretary of the state board shall have authority to administer oaths to persons appearing as witnesses before the state board.

B. Meetings of the state board shall be held in Santa Fe and at other sites within the state at the direction of the state board.

C. The state superintendent shall keep a record of all proceedings of the state board.

D. No member of the state board shall be appointed state superintendent or be employed by the department of education on either a full- or part-time basis.

**History:** 1953 Comp., § 77-2-4, enacted by Laws 1967, ch. 16, § 7; 1969, ch. 4, § 1.

### **22-2-5. Delegation of administrative functions; duty of state superintendent.**

A. The state board may delegate administrative functions to the department of education.

B. Subject to the policies of the state board, the state superintendent shall be the chief administrative officer of the state board and shall supervise and direct the operation of the department of education.

**History:** 1953 Comp., § 77-2-5, enacted by Laws 1967, ch. 16, § 8.

### **ANNOTATIONS**

**Cross-references.** - As to bond of state superintendent, see 22-2-7 NMSA 1978.

### **22-2-6. Department of education; duties.**

Subject to the policies of the state board and the supervision and direction of the state superintendent, the department of education shall have the following duties:

A. supervise all schools and school officials coming under the jurisdiction of the state board;

B. advise boards of regents of state educational institutions on matters concerning the Public School Code;

C. prescribe, print and distribute forms to carry out the duties of the state board pursuant to the Public School Code;

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

E. keep accurate records of all money received by the state superintendent or the department of education;

F. publish and distribute copies of the Public School Code and regulations promulgated by the state board to local school boards in the state;

G. confer with local school boards and certified school personnel on matters concerning education in the state;

H. prepare and distribute patriotic material to schools in the state; and

I. evaluate all educational programs in state institutions under the authority of the secretary of the health and environment department.

**History:** 1953 Comp., § 77-2-6, enacted by Laws 1967, ch. 16, § 9; 1978, ch. 211, § 9.

### **ANNOTATIONS**

**Cross-references.** - As to Indian education division of department, see 22-2-11 NMSA 1978 et seq.

As to vocational rehabilitation division of department, see 22-14-6 NMSA 1978 et seq.

**Temporary provisions.** - Laws 1988, ch. 64, § 45, effective May 18, 1988, provides that on May 18, 1988, all money held by or to the credit of the office of education and all personnel, records, equipment, supplies and other property of any kind belonging to the office of education are transferred to the department of public education.

**Appropriations.** - Laws 1988, ch. 13, § 13, effective February 17, 1988, provides that all appropriations for each of the objects contained in the general fund column in Sections 4 and 5 of the General Appropriations Act of 1988 shall be reduced by one and one-half percent and, after the reductions are made, are appropriated at the revised level and provides that the department of education for public and vocational schools shall adjust all totals, unit values, rates of distribution and language accordingly.

Laws 1988, ch. 40, § 1, effective March 4, 1988, appropriates \$50,000 from the general fund to the state department of public education for the seventy-sixth and seventy-seventh fiscal years for the purpose of providing New Mexico law related education programs and provides that any unexpended or unencumbered balance remaining at the end of the seventy-seventh fiscal year shall revert to the general fund.

Laws 1988, ch. 48, § 2, effective May 18, 1988, appropriates \$150,000 from the general fund to the state department of public education for the seventy-seventh, seventy-eighth and seventy-ninth fiscal years for the purpose of establishing a three-year training program to train all certified school personnel and school nurses in the detection and reporting of child abuse and neglect and substance abuse and provides that any unexpended or unencumbered balance of the appropriation remaining at the end of the seventy-ninth fiscal year shall revert to the general fund.

Laws 1988, ch. 52, § 1, effective March 4, 1988, appropriates \$25,000 from the general fund to the state department of education for expenditure in the seventy-sixth and seventy-seventh fiscal years to implement a statewide child safety and information service center dealing with missing and exploited children and provides that any unencumbered or unexpended balance remaining at the end of the seventy-seventh fiscal year shall revert to the general fund.

Laws 1989, ch. 107, § 13, effective March 18, 1989, provides that all appropriations for each of the objects contained under the general fund column in Sections 4 and 5 of the General Appropriation Act of 1989 to the right of the decimal point shall be reduced to zero and that, for public schools, the state department of education shall adjust all totals, unit values, rates of distribution and language accordingly.

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

**Health and environment department.** - Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment.

### **22-2-6.1. Short title.**

This act [22-2-6.1 to 22-2-6.10 NMSA 1978] may be cited as the "Public School Insurance Authority Act".

**History:** 1978 Comp., § 22-2-6.1, enacted by Laws 1986, ch. 94, § 1.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1986, ch. 94, § 1 repeals former 22-2-6.1 NMSA 1978, as enacted by Laws 1985, ch. 237, § 1, relating to group insurance for public schools, and enacts the above section. For provisions of former section, see 1985 Cumulative Supplement to Pamphlet 40.

**The Public School Insurance Authority** is a state agency for purposes of the state budget laws. 1990 Op. Att'y Gen. No. 90-23.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools § 98.

78 C.J.S. Schools and School Districts § 274.

### **22-2-6.2. Purpose of act.**

The purpose of the Public School Insurance Authority Act [22-2-6.1 to 22-2-6.10 NMSA 1978] is to provide comprehensive core insurance programs for all participating public schools, school board members, school board retirees and public school employees and retirees by expanding the pool of subscribers to maximize cost containment opportunities for required insurance coverage.

**History:** 1978 Comp., § 22-2-6.2, enacted by Laws 1986, ch. 94, § 2.

### **22-2-6.3. Definitions.**

As used in the Public School Insurance Authority Act [22-2-6.1 to 22-2-6.10 NMSA 1978]:

A. "authority" means the public school insurance authority;

- B. "board" means the board of directors of the public school insurance authority;
- C. "director" means the director of the public school insurance authority;
- D. "educational entities" means state educational institutions as enumerated in Article 12, Section 11 of the constitution of New Mexico and other state diploma, degree-granting and certificate-granting post-secondary educational institutions;
- E. "fund" means the public school insurance fund;
- F. "group health insurance" means coverage which includes but is not limited to life insurance, accidental death and dismemberment, medical care and treatment, dental care, eye care and other coverages as determined by the authority;
- G. "risk-related coverage" means coverage which includes but is not limited to property and casualty, general liability, auto and fleet, workmen's compensation and other casualty insurance; and
- H. "school district" means a school district as defined in Subsection J [K] of Section 22-1-2 NMSA 1978, excluding any school district with a student enrollment in excess of sixty thousand students.

**History:** 1978 Comp., § 22-2-6.3, enacted by Laws 1986, ch. 94, § 3; 1991, ch. 142, § 1.

### **ANNOTATIONS**

**Bracketed material.** - The bracketed reference to Subsection K of 22-1-2 NMSA 1978 in Subsection H of this section was inserted by the compiler to correct an erroneous reference, in light of the 1991 amendment of 22-1-2 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

**The 1991 amendment,** effective June 14, 1991, added present Subsection C; redesignated former Subsections C to G as Subsections D to H; and inserted "state" preceding "diploma" in Subsection D.

### **22-2-6.4. Authority created.**

There is created the "public school insurance authority" which is established to provide for group health insurance and other risk-related coverage with the exception of the mandatory coverage provided by the risk management division on the effective date of the Public School Insurance Authority Act.

**History:** 1978 Comp., § 22-2-6.4, enacted by Laws 1986, ch. 94, § 4.

### **ANNOTATIONS**

**Compiler's note.** - The effective date of the Public School Insurance Authority Act, referred to above, is May 21, 1986.

### **22-2-6.5. Board created; membership; duties.**

A. There is created the "board of directors of the public school insurance authority". The board shall be composed of nine members, consisting of the following:

- (1) one member to be selected by the state board of education;
- (2) one school business official to be selected by the New Mexico school administrators;
- (3) one board member of the New Mexico school boards association to be selected by the association;
- (4) one superintendent to be selected by the New Mexico superintendents' association;
- (5) three members to be selected by the New Mexico national education association and the New Mexico federation of teachers with the intent that representation be proportional to their respective membership, provided that each of these three members be currently employed as public school teachers employed by participating entities;
- (6) one member to be selected by the board from lists submitted by the participating educational entities; and three members to be appointed by and serve at the pleasure of the governor; such members shall not be employed by or on behalf of or be contracting with an employer participating in or eligible to participate in the public school insurance authority.

B. Each member of the board shall serve at the pleasure of the party by which he has been appointed for a term not to exceed three years. Any board member who has been appointed and who misses four meetings of the board during a fiscal year shall be replaced and shall forfeit his position on the board, and his replacement shall be made by the organization affected. The board shall set minimum terms of appointment and shall elect from its membership a president, vice president and secretary.

C. The board has the authority to hire a director and appoint such other officers and employees as it may deem necessary and has the authority to contract with consultants or other professional persons or firms as may be necessary to carry out the provisions of the Public School Insurance Authority Act [22-2-6.1 to 22-2-6.10 NMSA 1978]. The board has the authority to provide for its full- and part-time employees, as it deems necessary, employee benefits insurance on the same basis as a member public school district may provide such employee benefits. In addition, the board has the authority to provide to members of the board and the employees risk coverages of the same scope and limitations as are allowed its member school districts to be provided to their local school boards. The board has the authority to provide employees an irrevocable option of qualifying for coverage under either the Educational Retirement Act [Chapter 22,

Article 11 NMSA 1978] or the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978].

D. The members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

**History:** 1978 Comp., § 22-2-6.5, enacted by Laws 1986, ch. 94, § 5; 1988, ch. 64, § 11; 1989, ch. 373, § 1; 1991, ch. 142, § 2.

### ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent or his designee" for "director of the office of education of the department of finance and administration" in Subsection A(1), "educational retirees" for "retired educators" in Subsection A(6), and "state superintendent" for "director of the office of education" in the first sentence in Subsection B.

**The 1989 amendment**, effective June 16, 1989, rewrote Subsection A(1), which formerly read "the state superintendent or his designee"; substituted "school business official" for "member" in Subsection A(2); in Subsection B deleted "Except for the state superintendent who serves by virtue of his office," at the beginning of the first sentence, and added the present second sentence; and in Subsection C added the second, third and fourth sentences.

**The 1991 amendment**, effective June 14, 1991, in Subsection A, deleted "public" preceding "education" in Paragraph (1), added the proviso at the end of Paragraph (5); deleted former Paragraph (6) which read "one member to be selected by the New Mexico association of educational retirees", added the language beginning "and three members" at the end of Paragraph (6) and made a related stylistic change; added "for a term not to exceed three years" at the end of the first sentence in Subsection B; and inserted "hire a director and" near the beginning of the first sentence in Subsection C.

### **22-2-6.6. Fund created; budget review; premiums.**

A. There is created the "public school insurance fund". All income earned on the fund shall be credited to the fund. The fund is appropriated to the authority to carry out the provisions of the Public School Insurance Authority Act [22-2-6.1 to 22-2-6.10 NMSA 1978]. Any funds remaining at the end of each fiscal year shall not revert to the general fund.

B. The board shall determine which money in the fund constitutes the long-term reserves of the authority. The state investment officer shall invest the long-term reserves of the authority in accordance with the provisions of Sections 6-8-1 through 6-8-16 NMSA 1978. The state treasurer shall invest the money in the fund that does not

constitute the long-term reserves of the fund in accordance with the applicable provisions of Chapter 6, Article 10.

C. All appropriations of funds shall be subject to budget review through the department of education, the state budget division of the department of finance and administration and the legislative finance committee.

D. The authority shall provide that premiums are collected from school districts participating in the authority sufficient to provide the required insurance coverage and to pay the expenses of the authority. All premiums shall be credited to the fund.

E. Any reserves remaining at the termination of an insurance contract shall be disbursed to the individual school districts and other participating entities on a pro rata basis.

F. Disbursements from the fund for purposes other than procuring and paying for insurance or insurance-related services, including, but not limited to, third-party administration, premiums, claims and cost containment activities, shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director or his designee; provided that the chairman of the board may sign vouchers if the position of director is vacant.

**History:** 1978 Comp., § 22-2-6.6, enacted by Laws 1986, ch. 94, § 6; 1989, ch. 373, § 2; 1991, ch. 142, § 3.

## ANNOTATIONS

**The 1989 amendment**, effective June 16, 1989, in Subsection B substituted "department of education" for "office of education" and "state budget division" for "budget division"; in Subsection C substituted "fund" for "public school insurance fund" in the second sentence; and substituted all of the present language of Subsection D beginning with "school" for "districts on a pro rata basis".

**The 1991 amendment**, effective June 14, 1991, deleted "deposited in a segregated account and invested in securities eligible for investment by the educational retirement board pursuant to Section 22-11-13 NMSA 1978" at the end of the first sentence in Subsection A; added Subsections B and F; and redesignated former Subsections B to D as Subsections C to E.

**"Budget review"** as used in Subsection B means approval of the Public School Insurance Authority's proposed budget. 1990 Op. Att'y Gen. No. 90-23.

### **22-2-6.7. Authority; duties.**

In order to effectuate the purposes of the Public School Insurance Authority Act [22-2-6.1 to 22-2-6.10 NMSA 1978], the authority has the power to:



A. employ the services of the state fiscal agent or select its own fiscal agent pursuant to regulations adopted by the board provided that, for the purposes of disbursing all money other than that in the fund, the secretary of finance and administration shall be the fiscal agent for the authority;

B. enter into professional services and consulting contracts or agreements as necessary;

C. collect, provide for the investment of and disburse money in the fund;

D. collect all current and historical claims and financial information necessary for effective procurement of lines of insurance coverage;

E. promulgate necessary rules, regulations and procedures for implementation of the Public School Insurance Authority Act;

F. negotiate new insurance policies covering additional or lesser benefits as determined appropriate by the authority, but the authority shall maintain all coverage levels required by federal and state law for each participating member. In the event it is practical to wholly self-insure a particular line of coverage, the authority may do so;

G. procure lines of insurance coverage in compliance with the competitive sealed proposal process of the Procurement Code;

H. purchase, renovate, equip and furnish a building for the board. The board shall consider purchasing a building in a community with a population of forty thousand or less; and

I. loan from its seventy-eighth fiscal year budget to the retiree health care authority an amount not exceeding five hundred thousand dollars (\$500,000) to be used for retiree health care authority start-up costs. The loan shall bear interest at a rate equal to the rate of return or yield for ten-year United States treasury bonds existing on the date of the loan closing. Principal and interest shall be paid back before the end of the seventy-ninth fiscal year.

**History:** 1978 Comp., § 22-2-6.7, enacted by Laws 1986, ch. 94, § 7; 1989, ch. 373, § 3; 1990, ch. 6, § 21; 1991, ch. 142, § 4.

## ANNOTATIONS

**The 1989 amendment**, effective June 16, 1989, added Subsections H and I.

**The 1990 amendment**, effective February 13, 1990, added "and" at the end of Subsections G and H and, in Subsection I, substituted "seventy-eighth fiscal year" for "seventy-seventh fiscal year" in the first sentence and "seventy-ninth fiscal year" for "seventy-eighth fiscal year" at the end of the second sentence.

**The 1991 amendment**, effective June 14, 1991, added the proviso at the end of Subsection A; rewrote Subsection C which read "collect, invest and disburse funds"; and deleted "the authority is authorized to" at the beginning of Subsection I.

**Procurement Code.** - See 13-1-28 NMSA 1978 and notes thereto.

### **22-2-6.8. Receipts and disbursements; issuance of warrants, purchase orders and contracts; deposit of funds.**

A. All premiums and other money collected by the authority shall be deposited in the fund. Except as provided in Subsection F of Section 22-2-6.6 NMSA 1978, funds shall be disbursed directly by the authority, but receipts and disbursements are subject to audit by the state auditor. Except as provided in that subsection, the authority is not required to submit proposed vouchers, purchase orders or contracts to the department of finance and administration as otherwise provided by law. The department of finance and administration shall not require the authority to rebid or to disapprove any contractual arrangements determined by the board to be in the best interests of the authority.

B. Except as provided in Subsection F of Section 22-2-6.6 NMSA 1978, the board shall issue warrants in the name of the authority against funds of the authority in payment of its lawful obligations, issue purchase orders and contract for goods or services in the name of the authority. The authority shall provide its own warrant, purchase order and contract forms as well as other supplies and equipment.

**History:** 1978 Comp., § 22-2-6.8, enacted by Laws 1986, ch. 94, § 8; 1991, ch. 142, § 5.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, in Subsection A, substituted the first two sentences for a sentence which read "All premiums and other money collected by the authority shall be received and disbursed directly by the authority, but receipts and disbursements are subject to audit by the state auditor", added the exception at the beginning of the third sentence and added the final sentence and, in Subsection B, added the exception at the beginning.

### **22-2-6.9. Participation; waivers.**

A. A school district shall participate in the authority unless the school district is granted a waiver by the board.

B. In determining whether a waiver should be granted, the board shall establish minimum benefit and financial standards for the desired line of coverage. These minimum benefit and financial standards and the proposed time schedule for responsive offers shall be sent to all school districts at the time the request for proposals for the

desired line of coverage is issued. Any school district seeking a waiver of coverage shall match the minimum benefit and financial standards set forth in the request for proposals for the desired line of coverage. School districts shall submit documentation of their proposals matching the board's minimum benefit and financial requirements prior to the deadline established by the board. The authority has the power to approve or disapprove a waiver of participation based on the documentation submitted by the school district regarding the benefit and financial standards established by the board. The board shall grant a waiver to a school district that requests a waiver and that has met the minimum benefit and financial standards within the time schedule established by the board. Once the board awards the insurance contract, no school district shall be granted a waiver for the entire term of the contract.

C. Any school district granted a waiver of participation for health insurance shall be required to petition for participation in other kinds of group insurance coverage and shall be required to meet the requirements established by the authority prior to participation in other kinds of group insurance coverage. A school district which has been granted a waiver shall be prohibited from participating in the coverage for which a waiver was granted for the entire term of the authority's insurance contract. Provided, however, that if the authority contracts for a line or lines of coverage for a period of eight years, the board may establish procedures and preconditions for authorizing a school district which has been granted a waiver to again participate in the coverage after the expiration of the first four years of coverage.

D. Any school district granted a waiver of participation for workmen's compensation shall be required to petition for participation in other risk-related coverages and shall be required to meet the requirements established by the authority prior to participation in other kinds of risk-related coverages. A school district which has been granted a waiver shall be prohibited from participating in the coverage for which a waiver was granted for the entire term of the authority's insurance contract.

E. Educational entities may petition the authority for permission to participate in the insurance coverage provided by the authority. To protect the stability of the fund, the authority shall establish reasonable terms and conditions for participation by educational entities.

F. A participating school district may separately provide for coverage additional to that offered by the authority.

G. The local school districts or the authority, as appropriate, may provide for marketing and servicing to be done by licensed insurance agents or brokers who should receive reasonable compensation for their services.

**History:** 1978 Comp., § 22-2-6.9, enacted by Laws 1986, ch. 94, § 9; 1989, ch. 373, § 4.

## **ANNOTATIONS**

**The 1989 amendment**, effective June 16, 1989, in Subsection B substituted "proposals" for "proposal" in the second and third sentences; added the third sentence of Subsection C; and in Subsection G substituted all of the present language preceding "may provide" for "Whenever appropriate, the local school districts", and inserted "or brokers".

**Appropriation act allowing participation.** - The language in Laws 1988, ch. 13, § 4 (p. 235), part of the 1988 General Appropriation Act, which allows Albuquerque public schools to participate in the public school insurance authority, clearly violates N.M. Const., art. IV, § 16, which restricts the contents of general appropriation acts. 1988 Op. Att'y Gen. No. 88-58.

## **22-2-6.10. Group insurance contributions.**

A. Group insurance contributions for school districts and participating entities in the public school insurance authority shall be made as follows:

(1) seventy-five percent of the cost of the insurance of an employee whose annual salary is less than fifteen thousand dollars (\$15,000);

(2) seventy percent of the cost of the insurance of an employee whose annual salary is fifteen thousand dollars (\$15,000) or more but less than twenty thousand dollars (\$20,000);

(3) sixty-five percent of the cost of the insurance of an employee whose annual salary is twenty thousand dollars (\$20,000) or more but less than twenty-five thousand dollars (\$25,000); or

(4) sixty percent of the cost of the insurance of an employee whose annual salary is twenty-five thousand dollars (\$25,000) or more.

B. Whenever a school district or participating entity in the public school insurance authority offers to its employees alternative health plan benefit options including but not limited to health maintenance organizations, preferred provider organizations or panel doctor plans, the school district or participating entity may pay an amount on behalf of the employee and family member for the indemnity health insurance plan sufficient to result in equal employee monthly costs to the cost of the health maintenance organization plans, preferred provider organizations plans or panel doctor plans, regardless of the percentage limitations in the Public School Insurance Authority Act [22-2-6.1 to 22-2-6.10 NMSA 1978]. School districts and participating entities in the public schools insurance authority may pay up to one hundred percent of the first fifty thousand dollars (\$50,000) of term life insurance.

**History:** 1978 Comp., § 22-2-6.10, enacted by Laws 1989, ch. 373, § 5.

## **ANNOTATIONS**

**Effective dates.** - Laws 1989, ch. 373 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

## **22-2-7. Surety bonds.**

The state board may require that the state superintendent and designated employees of the department of education obtain an official bond prior to assuming the duties of office. The bonds obtained shall be payable to the state and conditioned upon the faithful performance of their duties during their term of office. The bonds shall be executed by a corporate surety company authorized to do business in this state. The amount of the bonds shall be fixed by the state board. The state board may elect to obtain a schedule or blanket corporate surety bond covering members of the state board, the state superintendent and employees of the department of education for any period not exceeding four years. The cost of a bond obtained pursuant to this section shall be paid from the administrative fund of the department of education. Any bond obtained shall be approved by the state board and filed with the secretary of state.

**History:** 1953 Comp., § 77-2-7, enacted by Laws 1967, ch. 16, § 10.

### **ANNOTATIONS**

**Requiring excess bonds.** - The state board of education may not, pursuant to the terms of this section, require that the state superintendent of public instruction and designated employees of the state department of education obtain bonds in excess of those obtained pursuant to the Surety Bond Act, 10-2-13 et seq. NMSA 1978. 1987 Op. Att'y Gen. No. 87-42.

## **22-2-8. Educational standards.**

The state board shall prescribe minimum educational standards for all public schools in the state. A copy of these educational standards shall be furnished by the department of education to each local school board. The educational standards shall include minimum standards for the following areas:

- A. curriculum;
- B. organization and administration of education;
- C. the keeping of records, other than financial records prescribed by the chief;
- D. membership accounting;
- E. teacher preparation;
- F. the physical condition of public school buildings and grounds; and

G. educational facilities of public schools including laboratories and libraries.

**History:** 1953 Comp., § 77-2-8, enacted by Laws 1967, ch. 16, § 11.

### **ANNOTATIONS**

**School board may allocate attendance within district.** - So long as the statutory and constitutional minimum educational standards are satisfied, the local school board may allocate attendance within the district. 1979 Op. Att'y Gen. No. 79-36.

#### **22-2-8.1. Length of school day; minimum.**

A. Regular students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

- (1) kindergarten, two and one-half hours per day or 450 hours per year;
- (2) grades one through six, five and one-half hours per day or 990 hours per year; and
- (3) grades seven through twelve, six hours per day or 1,080 hours per year.

B. Nothing in this section precludes a local school board from setting length of school days in excess of the minimum requirements established by Subsection A of this section.

C. The state superintendent may waive the minimum length of school days in those districts where such minimums would create undue hardships as defined by the state board.

D. The provisions of this section shall be effective with the 1987-88 school year.

**History:** 1978 Comp., § 22-2-8.1, enacted by Laws 1986, ch. 33, § 2.

#### **22-2-8.2. Staffing patterns; class load; teaching load.**

A. The individual class load for elementary school teachers shall not exceed twenty students for kindergarten and grade one, provided that any teacher in kindergarten and grade one with a class load of fifteen to twenty students shall be entitled to the assistance of an instructional assistant; twenty-two students for grade two; twenty-four students for grade three; and twenty-five students for grades four through six.

B. The daily teaching load per teacher for grades seven through twelve shall not exceed one hundred sixty students, except the daily teaching load for teachers of required English courses in grades seven and eight shall not exceed one hundred thirty-five with a maximum of twenty-seven students per class, and the daily teaching load for teachers

of required English courses in grades nine through twelve shall not exceed one hundred fifty students with a maximum of thirty students per class.

C. The provisions of Subsection A of this section shall be phased in as follows:

(1) effective with the 1990-91 school year, the class load and instructional assistant entitlement for kindergarten;

(2) effective with the 1991-92 school year, the class load for grade one;

(3) effective with the 1993-94 school year, the instructional assistant entitlement for grade one;

(4) effective with the 1994-95 school year, the class load for grade two;

(5) effective with the 1995-96 school year, the class load for grade three;

(6) effective with the 1996-97 school year, the class load for grade four;

(7) effective with the 1997-98 school year, the class load for grade five; and

(8) effective with the 1998-99 school year, the class load for grade six.

D. Prior to the dates established in Subsection C of this section, local school districts may either comply with the provisions of Subsection A of this section or they may opt, upon the approval of the state superintendent, to phase in the class load requirements as follows:

(1) through the 1990-91 school year, the individual class load for grade one teachers shall not exceed twenty-six students, provided that any grade one teacher with a class load greater than twenty-two shall be entitled to the assistance of an instructional assistant;

(2) through the 1993-94 school year, the individual class load for grade two teachers shall not exceed twenty-nine students, provided that grade two teachers with a class load greater than twenty-three shall be entitled to the assistance of an instructional assistant; and

(3) for grade three, the class load shall not be greater than twenty-six, and for grades four through six, the class load shall not be greater than twenty-nine.

E. The provisions of Subsection B of this section shall be effective with the 1988-89 school year.

F. The state superintendent may waive the individual class load requirements established in Subsection A of this section for isolated and essential schools or school

districts with a membership of four hundred or less in emergency situations as defined by the state board.

G. The state superintendent may waive the individual class load requirements established in Subsection A of this section if a school district demonstrates that:

- (1) a critical need exists for additional classrooms;
- (2) the critical need cannot be met by the public school capital outlay fund;
- (3) no portable classrooms are available;
- (4) it is bonded to capacity and cannot issue additional general obligation bonds;
- (5) it has imposed the capital improvements tax pursuant to the Public School Capital Improvements Act [22-25-1 to 22-25-10 NMSA 1978];
- (6) no other available sources of funding exist to meet its need for additional classrooms; and
- (7) the district is planning alternatives to increase building capacity, for implementation within two years.

H. The state board may waive the individual class load and teaching load requirements established in this section upon a demonstration of a viable alternative curricular plan and a finding by the state board that the plan is in the best interest of the district and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff. The department of education shall evaluate the impact of each alternative curricular plan annually. Annual reports shall be made to the legislative education study committee.

I. Effective with the 1987-88 school year, certified school instructors shall not be required to perform noninstructional duties except in emergency situations as defined by the state board. For purposes of this subsection, "noninstructional duties" means noon hall duty, cafeteria duty, ground duty and bus duty. It is the intent of the legislature to maintain the provision of this subsection; provided, however, that for the 1992-93 school year, "noninstructional duties" shall mean only noon hall duty, noon ground duty and noon cafeteria duty.

**History:** 1978 Comp., § 22-2-8.2, enacted by Laws 1986, ch. 33, § 3; 1987, ch. 320, § 1; 1988, ch. 105, § 1; 1990 (1st S.S.), ch. 3, § 1; 1991, ch. 85, § 1; 1992, ch. 86, § 1.

## ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "instructional assistant" for "aide" in Subsections A, C(1), D(1), D(2), and D(4); substituted "twenty-two" for "twenty-



three" in Subsection D(2); added present Subsection D(3) and redesignated former Subsection D(3) as present Subsection D(4); substituted "grades three through six" for "grades two through six" in Subsection 4; added present Subsection H and redesignated former Subsection H as present Subsection I; and inserted "and the 1988-89 school year" in present Subsection I.

**The 1990 (1st S.S.) amendment**, effective July 1, 1990, in Subsection C, updated the school year dates, made changes in the grade level references, and added Paragraphs (5) to (7); rewrote Subsection D; in Subsection F, substituted "with a membership of four hundred or less" for "with an ADM of four hundred or less"; in Subsection G, deleted "for a period not to exceed two years" following "in Subsection A of this section" near the beginning; substituted present Subsection H for the former subsection which read "The state superintendent may waive the individual class load requirements established in Subsection B of this section for a period not to exceed two years upon a demonstration of necessary alternative curricular planning or a temporary shortage of classroom facilities"; and, in Subsection I, substituted "for the 1990-91 school year" for "for the 1987-88 school year and the 1988-89 school year" in the last sentence.

**The 1991 amendment**, effective June 14, 1991, in Subsection C, deleted "and instructional assistant entitlement" following "class load" in Paragraph (2), added present Paragraph (3), redesignated former Paragraphs (3) to (7) as Paragraphs (4) to (8) and substituted "1993-94" for "1992-93" in Paragraph (4), "1994-95" for "1993-94" in Paragraph (5), "1995-96" for "1994-95" in Paragraph (6), "1996-97" for "1995-96" in Paragraph (7), and "1997-98" for "1996-97" in Paragraph (8); substituted "1992-93" for "1991-92" in Paragraph (2) of Subsection D; and substituted "1991-92" for "1990-91" in Subsection I.

**The 1992 amendment**, effective May 20, 1992, substituted "four hundred" for "400" in Subsection F and "1993-94 school year" for "1992-93 school year" several times throughout the section.

**Temporary provisions.** - Laws 1987, ch. 320, § 7, effective June 19, 1987, provides that the state department of public education shall monitor the progress of local school districts regarding the implementation of the class load requirements established in this section and present annual reports to the legislature through the final implementation date in 1992.

**Amendments to section made in General Appropriations Act were not proper.** - Amendments to this section made in the General Appropriations Act of 1989 were not proper, where the 1989 appropriations measure changed the effective dates for various actions under the statute and enlarged the authority of the state superintendent to waive class load requirements. The amendments constituted general legislation which, though necessary or desirable, could not constitutionally be included in an appropriations bill. 1989 Op. Att'y Gen. No. 89-26.

### **22-2-8.3. Subject areas; minimum instructional areas required; accreditation.**

A. The state board shall require instruction in specific subject areas as provided in Subsections B through F of this section. Any public school or school district failing to meet these minimum requirements shall not be accredited by the state board.

B. All first and second grade classes shall provide daily instruction in language arts skills, including phonics, and mathematics.

C. All third grade classes shall provide daily instruction in language arts skills and mathematics.

D. All fourth, fifth and sixth grade classes shall provide instruction in language arts skills, with an emphasis on writing and editing; mathematics; science and social studies, including geography. The following subject areas shall be offered in the remaining instructional time: art, music, physical education, health and computer literacy, including a general familiarization with computers and support in the areas of mathematics and writing through word processing.

E. All seventh grade classes shall provide instruction in English, with an emphasis on grammar and writing; communication skills or science; New Mexico history and geography; mathematics; and physical fitness. Remaining instructional time may be used for electives listed in Subsection G of this section.

F. All eighth grade classes shall provide instruction in English, mathematics, United States history and science. Remaining instructional time may be used for electives listed in Subsection G of this section.

G. The electives authorized in Subsections E and F of this section are art, industrial arts, chorus, band, home economics, typing, creative writing, speech, drama, Spanish, computer literacy and other electives approved by the state board.

H. The provisions of this section shall be effective with the 1987-88 school year.

**History:** 1978 Comp., § 22-2-8.3, enacted by Laws 1986, ch. 33, § 4; 1990 (1st S.S.), ch. 3, § 2.

#### **ANNOTATIONS**

**The 1990 (1st S.S.) amendment**, effective July 1, 1990, rewrote Subsections A to D; deleted former Subsection E, relating to the classes of instruction for those sixth grade classes not included in an elementary school; and redesignated former Subsections F to I as present Subsections E to H.

### **22-2-8.4. Graduation requirements.**

A. At the end of the eighth grade or during the ninth grade, each student shall prepare an individual program of study for grades nine through twelve. The program of study shall be signed by a student's parent or guardian.

B. Beginning with students entering the ninth grade in the 1986-87 school year, successful completion of a minimum of twenty-three units shall be required for graduation. These units shall be as follows:

(1) four units in English, with major emphasis on grammar and literature;

(2) three units in mathematics;

(3) two units in science, one of which shall have a laboratory component;

(4) three units in social science, which shall include United States history and geography, world history and geography, and government and economics;

(5) one unit in physical fitness;

(6) one unit in communication skills, with major emphasis on writing and speaking, which may include a language other than English; and

(7) nine elective units. Only the following elective units shall be counted toward meeting the requirements for graduation: fine arts, i.e., music, band, chorus and art; practical arts; physical education; languages other than English; speech; drama; vocational education; mathematics; science; English; R.O.T.C.; social science; computer science; health education; and other electives approved by the state board.

C. Effective with the 1987-88 school year, final examinations shall be administered to all students in all classes offered for credit.

D. Beginning with students entering the ninth grade in the 1986-87 school year, no student shall receive a high school diploma who has not passed a state competency examination in the subject areas of reading, English, math, science and social science. If a student exits from the school system at the end of grade twelve without having passed a state competency examination, he shall receive an appropriate state certificate indicating the number of credits earned and the grade completed.

E. The state board may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code.

**History:** 1978 Comp., § 22-2-8.4, enacted by Laws 1986, ch. 33, § 5; 1987, ch. 320, § 2; 1988, ch. 105, § 2; 1989, ch. 220, § 1; 1990 (1st S.S.), ch. 3, § 3.

## ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, inserted "or during the ninth grade" in Subsection A and added Subsection E.

**The 1989 amendment**, effective June 16, 1989, added "which may include a language other than English" at the end of Subsection B(6).

**The 1990 (1st S.S.) amendment**, effective July 1, 1990, deleted "in grades nine through twelve" following "twenty-three units" near the beginning of Subsection B.

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

### **22-2-8.5. Additional statewide testing.**

A. The state board shall expand the program of educational accountability established through its educational standards by adding reading assessments and writing production tests to its existing uniform statewide system of assessment to determine pupil status, progress and degree of achievement of basic skills and of essential educational competencies.

B. The department of education shall involve local school district personnel, especially certified elementary reading specialists, in the development of methods on a statewide basis to measure student reading performance in order to assist school districts in the assessment of student problem areas in the first and second grades.

C. The department of education shall involve local school district personnel, especially certified school instructors in the fourth and sixth grades, in the development or selection of a uniform statewide writing production test for school districts, which shall be administered in grades four and six to measure student writing performance in order to assist school districts in the assessment of student problem areas.

D. The provisions of this section shall be effective with the 1987-88 school year.

**History:** 1978 Comp., § 22-2-8.5, enacted by Laws 1986, ch. 33, § 6; 1989, ch. 270, § 1.

### **ANNOTATIONS**

**The 1989 amendment**, effective April 6, 1989, in Subsection B, substituted the present language beginning with "of methods on a statewide basis" for "or selection of a statewide, nationally normed reading assessment instrument for school districts, which shall be administered in the spring of the first and second grades to measure student reading performance in order to assist school districts in the assessment of student problem areas".

**Cross-references.** - As to annual report card, see 22-1-6 NMSA 1978.

## **22-2-8.6. Essential competencies; remediation programs; promotion policies; exception.**

A. The state board shall identify measurable essential competencies and determine the criteria for mastery of the essential competencies as established in the state educational standards.

B. Local school boards shall develop remediation programs to provide special instructional assistance to students in grades one through eight who fail to master the essential competencies as established by the state board. Remediation programs may include but not be limited to tutoring or summer programs. The cost of school district-approved remediation programs shall be borne by the school district. Remediation plans shall be filed with the state board.

C. The cost of summer and after-school remediation programs offered in grades nine through twelve shall be borne by the parent or guardian; however, where parents are determined to be indigent according to guidelines established by the state board of education, the local school board shall bear those costs.

D. Diagnosis of weaknesses identified by the reading assessment instrument administered pursuant to Section 22-2-8.5 NMSA 1978 shall serve as a criterion in assessing the need for remedial programs or retention.

E. At the end of grades one through eight, there are three options available dependent on a student's mastery of essential competencies:

(1) the student has mastered the essential competencies and shall enter the next higher grade;

(2) the student has not mastered the essential competencies and may participate in remediation. Upon certification by the school district that the student has successfully mastered his areas of deficiency, he shall enter the next higher grade; or

(3) the student has not mastered the essential competencies and upon the recommendation of the certified school instructor and school principal shall be retained in the same grade for no more than one school year in order to have an additional opportunity to master the essential competencies, at which time the student shall enter the next higher grade.

F. Any student who has participated in remediation programs pursuant to Paragraph (2) of Subsection E of this section and for whom retention is recommended shall be afforded an opportunity for a parent-teacher conference for the purpose of outlining the options available for the student and explaining the grounds for the recommendation of retention. A parent or guardian who refuses to allow his child to be retained pursuant to Paragraph (3) of Subsection E of this section shall sign a waiver indicating that the

child's promotion is against the specific advice and recommendation of the certified school instructor and the school principal.

G. Any student who fails to master the essential competencies for two successive school years shall be referred to an alternative program designed by the school district. Alternative program plans shall be filed with the state board.

H. The provisions of Subsection A of this section shall take effect in the 1987-88 school year.

I. The provisions of Subsections B through G of this section shall take effect beginning in the 1989-90 school year.

**History:** 1978 Comp., § 22-2-8.6, enacted by Laws 1986, ch. 33, § 7; 1987, ch. 320, § 3.

## **ANNOTATIONS**

**Cross-references.** - For Tutor-Scholars Program Act, see ch. 22, art. 2A.

**Constitutionality.** - Subsection C does not offend the "free school guaranty" of N.M. Const., art. XII, § 1, as that provision is construed by the New Mexico Supreme Court. 1990 Op. Att'y Gen. No. 90-06.

### **22-2-8.7. Certification requirements.**

A. The state board shall require any person seeking certification in elementary and secondary education to complete the following minimum requirements in the college of arts and sciences:

- (1) twelve hours in English;
- (2) twelve hours in history, including American history and western civilization;
- (3) six hours in mathematics;
- (4) six hours in government, economics or sociology;
- (5) twelve hours in science, including biology, chemistry, physics, geology, zoology and botany; and
- (6) six hours in fine arts.

B. The state board shall require, prior to certification, no less than fourteen weeks of student teaching, a portion of which shall occur in the first thirty credit hours taken in the college of education and shall be under the direct supervision of a certified school

instructor and a portion of which shall occur in the student's senior year with the student teacher being directly responsible for the classroom.

C. Nothing in this section shall preclude the state board from establishing or accepting equivalent requirements for purposes of reciprocal certification or minimum requirements for alternative certification.

D. The requirements in Subsections A and B of this section shall apply to students first entering a college or university beginning in the fall of 1986.

E. Vocational teacher preparatory programs may be exempt from Subsections A and B of this section upon a determination by the state board that other certification requirements are more appropriate for vocational teacher preparatory programs.

**History:** 1978 Comp., § 22-2-8.7, enacted by Laws 1986, ch. 33, § 8; 1987, ch. 225, § 1.

### **22-2-9. United States [and New Mexico] flag[s]; display regulations.**

The flag of the United States and the flag of the State of New Mexico shall be displayed in each classroom and on or within all public school buildings of this state according to the regulations adopted by the state board.

**History:** 1953 Comp., § 77-2-9, enacted by Laws 1967, ch. 16, § 12; 1979, ch. 18, § 1; 1989, ch. 37, § 1.

### **ANNOTATIONS**

**The 1989 amendment,** effective June 16, 1989, inserted "and the flag of the State of New Mexico" and substituted "in each classroom and on or within all" for "on or within".

**Law reviews.** - For comment, "Official Symbols: Use and Abuse," see 1 N.M. L. Rev. 352 (1971).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Patriotic ritual, such as oath of allegiance or salute the flag, power to require performance of, by pupils, 110 A.L.R. 383, 120 A.L.R. 665, 127 A.L.R. 1502, 141 A.L.R. 1030, 147 A.L.R. 698.

### **22-2-10. Educational research reports.**

The findings of any educational research study made with public money shall be reported to the legislature or any of its committees upon request of the legislature or any of its committees. The legislature or any of its committees may require quarterly or more frequent progress reports concerning any such research.

**History:** 1953 Comp., § 77-2-10, enacted by Laws 1967, ch. 16, § 13.

### **22-2-11. Indian education section [division] created.**

The "Indian education division" is created within the state department of education.

**History:** 1953 Comp., § 77-2-11, enacted by Laws 1975 (1st S.S.), ch. 8, § 1.

### **22-2-12. Appointment of division head.**

The superintendent shall appoint an assistant for Indian education.

**History:** 1953 Comp., § 77-2-12, enacted by Laws 1975 (1st S.S.), ch. 8, § 2.

### **22-2-13. Duties and responsibilities.**

The Indian education division shall:

- A. provide direct assistance to meet the educational needs of Indian students;
- B. provide direct assistance to local school districts in the planning, development, implementation and evaluation of curricula designed for Indian students; and
- C. establish an advisory council consisting of not more than seven Indian educators and others to assist in evaluating, consolidating and coordinating all activities relating to education of Indian students. Members of the council shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** 1953 Comp., § 77-2-13, enacted by Laws 1975 (1st S.S.), ch. 8, § 3.

### **22-2-14. Education requirements; enforcement; procedures.**

A. Money budgeted by a school district shall be spent first to attain and maintain the requirements for a school district as prescribed by law and by standards and regulations as prescribed by the state board. The state superintendent shall give written notification to a local school board of any failure to meet requirements by any part of the school district under the control of the local school board. The notice shall specify the deficiency. Instructional units or administrative functions may be disapproved for such deficiencies. The state superintendent shall disapprove instructional units or administrative functions which he determines to be detrimental to the educational process.

B. Within thirty days after receipt of the notice of failure to meet requirements, the local school board shall:



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

(2) submit plans satisfactory to the state superintendent to meet requirements and remove the cause for disapproval.

C. The state board shall suspend from authority and responsibility any local school board which has had notice of disapproval and fails to comply with procedures of Subsection B of this section. The state superintendent shall act in lieu of the suspended local school board until the state board removes the suspension.

D. To suspend a local school board, the state board shall deliver to the local school board an alternative order of suspension, stating the cause for the suspension and the effective date and time the suspension will begin. The alternative order shall also contain notice of a time, date and place for a public hearing, prior to the beginning of suspension, to be held by the state board, at which the local school board may appear and show cause why it should not be suspended. Within five days after the hearing, the state board shall make permanent, modify or withdraw the alternative order.

E. The state superintendent may suspend a local school board pending a hearing before the state board when the local school board has been notified of disapproval and when the state superintendent has sufficient reason to believe that the educational process in the school district has been severely impaired or halted as a result of deficiencies so severe as to warrant disapproved status before the question of suspension can be presented to the state board for a hearing.

F. The state superintendent while acting in lieu of a suspended local school board, shall execute all the legal authority of the local school board and assume all the responsibilities of that board.

G. The provisions of this section shall be invoked at any time the state superintendent finds the school district has failed to attain and maintain the requirements of law or state board standards and regulations.

**History:** 1953 Comp., § 77-6-10, enacted by Laws 1967, ch. 16, § 64; 1969, ch. 180, § 7; 1972, ch. 89, § 1; reenacted by 1978, ch. 129, § 1; 1979, ch. 52, § 1; 1988, ch. 64, § 12.

## ANNOTATIONS

**Cross-references.** - As to courses of instruction generally, see 22-13-1 NMSA 1978 et seq.

**The 1988 amendment,** effective May 18, 1988, deleted former Subsection C which read "A copy of all disapproval notices shall be sent to the director" and redesignated succeeding subsections accordingly; deleted "and director" following "state

superintendent" in the second sentence in present Subsection C and in Subsection F; inserted "school" preceding "district" in present Subsection E; substituted "local school board" for "local board of education" in present Subsection F; and made minor stylistic changes throughout the section.

## **22-2-15. Hearings; suspension continuance and discontinuance.**

A. Within ten days after suspension, or within a reasonable time as the suspended local school board may request, the state board shall give a hearing to the local school board. At this hearing the local school board may appear and show cause why suspension should not be continued. The state board employees who conducted evaluations upon which the suspension was based shall appear and give testimony.

B. After the hearing the state board shall continue or discontinue the suspension of the local school board.

C. Any local school board aggrieved by the decision of the state board of education may within thirty days from the date of the decision appeal such decision to the court of appeals. If the court finds that the decision of the state board was prejudicial to the school district because the state board's findings, inferences or conclusions are:

(1) in violation of the constitution;

(2) in excess of statutory authority;

(3) made upon unlawful procedure; or

(4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion,

it shall remand the proceedings to the state board for the taking and consideration of further evidence or testimony, or it shall reverse the decision of the state board and terminate the suspension.

**History:** 1953 Comp., § 77-6-10.1, enacted by Laws 1969, ch. 180, § 8; reenacted by 1978, ch. 129, § 2.

## **22-2-16. Reports.**

The state superintendent shall report all actions taken under provisions of Sections 22-2-14 and 22-2-15 NMSA 1978 to the legislative school study committee. The state superintendent and director shall report all actions taken under provisions of Section 22-8-30 NMSA 1978 to the legislative school study committee.

**History:** 1953 Comp., § 77-6-10.2, enacted by Laws 1969, ch. 180, § 9; reenacted by 1978, ch. 129, § 3.

# ARTICLE 2A

## TUTOR-SCHOLARS PROGRAM

### **22-2A-1. Short title. (Repealed effective June 30, 1994.)**

This act [22-2A-1 to 22-2A-8 NMSA 1978] may be cited as the "Tutor-Scholars Program Act".

**History:** Laws 1991, ch. 126, § 1.

### ANNOTATIONS

**Delayed repeals.** - Laws 1991, ch. 126, § 9 repeals 22-2A-1 to 22-2A-8 NMSA 1978, as enacted by Laws 1991, ch. 126, §§ 1 to 8, effective June 30, 1994.

**Cross-references.** - As to essential competencies as established in the state educational standards, remediation programs, and promotion policies, see 22-2-8.6 NMSA 1978.

As to matriculation and tuition fees for state educational institutions, see 21-1-2 NMSA 1978.

For University Endowment Act, see ch. 21, art. 1A NMSA 1978.

For New Mexico Scholars Act, see 21-21H-1 NMSA 1978.

**Effective dates.** - Laws 1991, ch. 126 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

### **22-2A-2. Purpose. (Repealed effective June 30, 1994.)**

The purpose of the Tutor-Scholars Program Act [22-2A-1 to 22-2A-8 NMSA 1978] is to create a tutor-scholars program whereby qualified New Mexico high school students can earn credits toward a scholarship at any New Mexico public post-secondary institution by tutoring marginal students.

**History:** Laws 1991, ch. 126, § 2.

### ANNOTATIONS

**Delayed repeals.** - Laws 1991, ch. 126, § 9 repeals 22-2A-1 to 22-2A-8 NMSA 1978, as enacted by Laws 1991, ch. 126, §§ 1 to 8, effective June 30, 1994.

**Effective dates.** - Laws 1991, ch. 126 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

### **22-2A-3. Definitions. (Repealed effective June 30, 1994.)**

As used in the Tutor-Scholars Program Act [22-2A-1 to 22-2A-8 NMSA 1978]:

A. "donations" means any funds received or pledged by grant or gift from any foundation or public or private entity;

B. "marginal students" means those students who are deemed at-risk academically and who could benefit from the peer assistance of a tutor-scholar; and

C. "qualified students" means students who meet the conditions for eligibility set forth in the Tutor-Scholars Program Act and by participating in this program earn credits as tutor-scholars.

**History:** Laws 1991, ch. 126, § 3.

#### **ANNOTATIONS**

**Delayed repeals.** - Laws 1991, ch. 126, § 9 repeals 22-2A-1 to 22-2A-8 NMSA 1978, as enacted by Laws 1991, ch. 126, §§ 1 to 8, effective June 30, 1994.

**Effective dates.** - Laws 1991, ch. 126 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

### **22-2A-4. Authorization; compensation. (Repealed effective June 30, 1994.)**

The state board of education is authorized to create a tutor-scholars program whereby selected qualified high school students will tutor marginal students. Compensation for tutoring shall be in the form of a credit at a rate of seven dollars fifty cents (\$7.50) per hour. The maximum credit any student shall receive in the first year of the program is two thousand five hundred dollars (\$2,500), and the maximum credit in subsequent years shall be three thousand dollars (\$3,000). In no instance shall more than ten percent of the total participation in this program be from a single school district.

**History:** Laws 1991, ch. 126, § 4.

#### **ANNOTATIONS**

**Delayed repeals.** - Laws 1991, ch. 126, § 9 repeals 22-2A-1 to 22-2A-8 NMSA 1978, as enacted by Laws 1991, ch. 126, §§ 1 to 8, effective June 30, 1994.

**Effective dates.** - Laws 1991, ch. 126 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

### **22-2A-5. Funds. (Repealed effective June 30, 1994).**

Funds donated to the tutor-scholars program shall be deposited with the state board of education pursuant to Section 22-2-2 NMSA 1978.

**History:** Laws 1991, ch. 126, § 5.

#### **ANNOTATIONS**

**Delayed repeals.** - Laws 1991, ch. 126, § 9 repeals 22-2A-1 to 22-2A-8 NMSA 1978, as enacted by Laws 1991, ch. 126, §§ 1 to 8, effective June 30, 1994.

**Effective dates.** - Laws 1991, ch. 126 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

### **22-2A-6. Scholarship credits. (Repealed effective June 30, 1994.)**

Qualified students who receive scholarship credits under the tutor-scholars program are eligible to initially use these credits as a scholarship during the 1992-1993 academic year in any public post-secondary school in New Mexico.

**History:** Laws 1991, ch. 126, § 6.

#### **ANNOTATIONS**

**Delayed repeals.** - Laws 1991, ch. 126, § 9 repeals 22-2A-1 to 22-2A-8 NMSA 1978, as enacted by Laws 1991, ch. 126, §§ 1 to 8, effective June 30, 1994.

**Effective dates.** - Laws 1991, ch. 126 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

### **22-2A-7. Maximum number of tutor-scholars. (Repealed effective June 30, 1994.)**

On or before November 1 of each year of the program, the state board of education shall notify the superintendents of all school districts of the amount of funds available as credits through the tutor-scholars program and, therefore, the maximum number of tutor-scholars who may participate for that year.

**History:** Laws 1991, ch. 126, § 7.

#### **ANNOTATIONS**

**Delayed repeals.** - Laws 1991, ch. 126, § 9 repeals 22-2A-1 to 22-2A-8 NMSA 1978, as enacted by Laws 1991, ch. 126, §§ 1 to 8, effective June 30, 1994.

**Effective dates.** - Laws 1991, ch. 126 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

### **22-2A-8. Pledges; donations. (Repealed effective June 30, 1994.)**

Funds for this program shall be raised by donations. There is no maximum amount that may be received, though there is a goal of one hundred thousand dollars (\$100,000) in pledges or donations before November 1, 1991.

**History:** Laws 1991, ch. 126, § 8.

#### **ANNOTATIONS**

**Delayed repeals.** - Laws 1991, ch. 126, § 9 repeals 22-2A-1 to 22-2A-8 NMSA 1978, as enacted by Laws 1991, ch. 126, §§ 1 to 8, effective June 30, 1994.

**Effective dates.** - Laws 1991, ch. 126 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 14, 1991.

## **ARTICLE 3 EDUCATIONAL APPORTIONMENT**

### **22-3-1 to 22-3-16. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1983, ch. 65, § 16, repeals 22-3-1 to 22-3-16 NMSA 1978, as enacted by Laws 1972, ch. 24, §§ 1 to 16, relating to educational apportionment, effective June 17, 1983. For provisions of former sections, see 1981 replacement pamphlet. For present provisions, see 22-3-37 to 22-3-54 NMSA 1978.

### **22-3-17. Short title.**

Sections 22-3-17 through 22-3-35 NMSA 1978 may be cited as the "Educational Apportionment Act".

**History:** Laws 1983, ch. 65, § 1; 1987, ch. 99, § 1.

#### **ANNOTATIONS**

**Cross-references.** - For constitutional provision pertaining to state board of education, see N.M. Const., art. XII, § 6.

**Repeals.** - Laws 1991 (1st S.S.), ch. 4 § 19 repeals 22-3-17 to 22-3-30 and 22-3-32 to 22-3-36 NMSA 1978, as enacted by Laws 1983, ch. 65, §§ 3 and 5 to 14 and Laws

1987, ch. 99, §§ 2 and 4 to 8, and as amended by Laws 1987, ch 99, §§ 1 and 3, relating to the Educational Apportionment Act, effective December 18, 1991. Those sections remain set out until 1995 since, pursuant to 22-3-54 NMSA 1978, the present appointed and elected members of the state board of education currently serving on the board shall serve the entirety of their remaining terms.

### **22-3-18. Findings of fact.**

The legislature finds that the provisions of Article 12, Section 6 of the constitution of New Mexico require:

A. that ten elected members of the state board of education shall be elected for staggered terms of four years as provided by law and that such members shall be residents of the districts from which elected;

B. that five appointed members of the state board of education shall be nominated by and with the consent of the senate and appointed by the governor from five districts substantially equal in population for staggered four-year terms as provided by law;

C. that in order to comply with such constitutional requirements for initiating staggering for four-year terms instead of the previous six-year terms, it is necessary to initially change certain terms; and

D. that in the absence of any official census data later than the 1980 federal decennial census for precincts in Bernalillo and Santa Fe counties, it is necessary to rely on that data and those precincts and precinct boundaries used in those respective counties for the 1983 Educational Apportionment Act.

**History:** 1978 Comp., § 22-3-18, enacted by Laws 1987, ch. 99, § 2.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1987, ch. 99, § 2 repeals former 22-3-18 NMSA 1978, as enacted by Laws 1983, ch. 65, § 2, and enacts the above section, effective April 7, 1987. For provisions of the former section, see the 1986 Replacement Pamphlet.

**Repeals.** - See note with same catchline following 22-3-17 NMSA 1978.

**1983 Educational Apportionment Act.** - The 1983 Educational Apportionment Act, referred to in Subsection D, appeared as 22-3-17 to 22-3-31 NMSA 1978 and is set out in the 1986 Replacement Pamphlet.

### **22-3-19. Precincts.**

Precinct designations and boundaries used in the Educational Apportionment Act [22-3-17 to 22-3-35 NMSA 1978] are those precinct designations and boundaries set by the boards of county commissioners of the respective counties for the 1982 general election unless otherwise specifically stated.

**History:** Laws 1983, ch. 65, § 3.

#### **ANNOTATIONS**

**Repeals.** - See note with same catchline following 22-3-17 NMSA 1978.

#### **22-3-20. State board of education; membership.**

The state board of education is composed of ten elected members and five appointed members, one member elected from each elective board of education district and one member appointed from each of five appointive districts.

**History:** Laws 1983, ch. 65, § 4; 1987, ch. 99, § 3.

#### **ANNOTATIONS**

**Cross-references.** - For constitutional provision pertaining to composition of state board of education, see N.M. Const., art. XII, § 6.

Election, appointment and terms of board members, see 22-3-37 to 22-3-54 NMSA 1978.

**Repeals.** - See note with same catchline following 22-3-17 NMSA 1978.

#### **22-3-21. First board of education district.**

The first board of education district consists of the following precincts in Bernalillo county: 4, 5, 7, 8, 11 through 13, 17, 20, 21, 30 through 49, 61 through 67, 71 through 77, 90 through 97, 104 through 107, 121 through 124, 134, 135, 151 through 155, 161 through 166, 181 through 187, 191 through 197 and 226.

**History:** Laws 1983, ch. 65, § 5.

#### **ANNOTATIONS**

**Repeals.** - See note with same catchline following 22-3-17 NMSA 1978.

#### **22-3-22. Second board of education district.**

The second board of education district consists of the following precincts in Bernalillo county: 288 through 290, 294 through 299, 400 through 409, 411 through 417, 419



through 421, 439, 461 through 467, 471 through 474, 480, 484, 488 through 509, 511 through 526, 528, 530 through 536, 540, 544 through 557 and 560.

**History:** Laws 1983, ch. 65, § 6.

#### **ANNOTATIONS**

**Repeals.** - See note with same catchline following 22-3-17 NMSA 1978.

#### **22-3-23. Third board of education district.**

The third board of education district consists of the following precincts in Bernalillo county: 14 through 16, 18, 101 through 103, 125, 131 through 133, 211 through 217, 221 through 225, 241 through 246, 251 through 256, 271 through 277, 281 through 287, 291 through 293, 311 through 317, 321 through 327, 341 through 347, 351 through 358, 371 through 375, 381 through 387, 431 through 438, 441 through 446, 475 through 478 and 541 through 543.

**History:** Laws 1983, ch. 65, § 7.

#### **ANNOTATIONS**

**Repeals.** - See note with same catchline following 22-3-17 NMSA 1978.

#### **22-3-24. Fourth board of education district.**

The fourth board of education district consists of Sandoval county; the following precincts in Bernalillo county: 1 through 3, 6, 9, 10, 19, 410, 418, 422, 483, 485 through 487, 510, 527, 529, 537 through 539; and the following precincts in Santa Fe county: 41, 42, 51 through 55, 61 through 64, 71 through 74, 81, 91 through 93, 101 through 106, 111 through 115, 121 through 124, 131 through 133, 141 through 145, 151 through 157, 161 through 168, 171 through 178, 181, 182, 191, 192 and 201 through 203.

**History:** Laws 1983, ch. 65, § 8.

#### **ANNOTATIONS**

**Repeals.** - See note with same catchline following 22-3-17 NMSA 1978.

#### **22-3-25. Fifth board of education district.**

The fifth board of education district consists of San Juan and McKinley counties.

**History:** Laws 1983, ch. 65, § 9.

#### **ANNOTATIONS**

**Repeals.** - See note with same catchline following 22-3-17 NMSA 1978.

### **22-3-26. Sixth board of education district.**

The sixth board of education district consists of Cibola, Valencia, Catron, Socorro, Grant, Sierra, Hidalgo and Luna counties.

**History:** Laws 1983, ch. 65, § 10.

#### **ANNOTATIONS**

**Repeals.** - See note with same catchline following 22-3-17 NMSA 1978.

### **22-3-27. Seventh board of education district.**

The seventh board of education district consists of Dona Ana and Otero counties.

**History:** Laws 1983, ch. 65, § 11.

#### **ANNOTATIONS**

**Repeals.** - See note with same catchline following 22-3-17 NMSA 1978.

### **22-3-28. Eighth board of education district.**

The eighth board of education district consists of Torrance, Lincoln, DeBaca, Chaves and Eddy counties.

**History:** Laws 1983, ch. 65, § 12.

#### **ANNOTATIONS**

**Repeals.** - See note with same catchline following 22-3-17 NMSA 1978.

### **22-3-29. Ninth board of education district.**

The ninth board of education district consists of Quay, Curry, Roosevelt and Lea counties.

**History:** Laws 1983, ch. 65, § 13.

#### **ANNOTATIONS**

**Repeals.** - See note with same catchline following 22-3-17 NMSA 1978.

### **22-3-30. Tenth board of education district.**

The tenth board of education district consists of Rio Arriba, Taos, Los Alamos, Colfax, Union, Mora, Harding, San Miguel and Guadalupe counties and the following precincts in Santa Fe county: 1 through 3, 11 through 13, 21, 22 and 31 through 33.

**History:** Laws 1983, ch. 65, § 14.

#### **ANNOTATIONS**

**Repeals.** - See note with same catchline following 22-3-17 NMSA 1978.

### **22-3-31. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 99, § 9 repeals 22-3-31 NMSA 1978, as enacted by Laws 1983, ch. 65, § 15, effective April 7, 1987, relating to election and terms of board members. For provisions of former section, see 1986 replacement pamphlet. For present provisions, see 22-3-37 to 22-3-54 NMSA 1978.

### **22-3-32. Appointed [Appointive] board of education districts.**

For the purpose of appointing members of the state board of education, five districts are created as follows:

- A. appointive district A consists of state board of education districts two and four;
- B. appointive district B consists of state board of education districts one and three;
- C. appointive district C consists of state board of education districts five and ten;
- D. appointive district D consists of state board of education districts six and seven; and
- E. appointive district E consists of state board of education districts eight and nine.

**History:** 1978 Comp., § 22-3-32, enacted by Laws 1987, ch. 99, § 4.

#### **ANNOTATIONS**

**Repeals.** - See note with same catchline following 22-3-17 NMSA 1978.

### **22-3-33. Residence.**

Any candidate for the office of board of education member shall reside in the district for which he files a declaration of candidacy at the time of such filing. If any elected or appointed board member permanently removes his residence from or maintains no residence in the district from which he was elected or appointed, he shall be deemed to have resigned and his successor shall be selected as provided in Sections 22-3-34 and 22-3-35 NMSA 1978.

**History:** 1978 Comp., § 22-3-33, enacted by Laws 1987, ch. 99, § 5.

#### **ANNOTATIONS**

**Repeals.** - See note with same catchline following 22-3-17 NMSA 1978.

#### **22-3-34. Elected members; staggered terms.**

A. Elected members of the state board of education shall be elected for staggered terms of four years.

B. Board members shall be elected at the general election for terms commencing on January 1 next succeeding their election.

C. The governor shall by appointment fill vacancies in the office of an elected member of the state board of education. All appointments to fill such vacancies shall be for a term ending on January 1 subsequent to the next general election at which election a person shall be elected to fill any remainder of the unexpired term.

**History:** 1978 Comp., § 22-3-34, enacted by Laws 1987, ch. 99, § 6.

#### **ANNOTATIONS**

**Repeals.** - See note with same catchline following 22-3-17 NMSA 1978.

#### **22-3-35. Appointed members; staggered terms.**

A. One member of the state board of education shall be appointed by the governor by and with the consent of the senate from each of the five state board of education districts.

B. Terms of appointed members shall expire on the first day of January.

C. If a vacancy occurs in the office of an appointed member of the state board of education, it shall be filled by appointment of the governor by and with the consent of the senate for the remainder of the term of the member creating the vacancy.

**History:** 1978 Comp., § 22-3-35, enacted by Laws 1987, ch. 99, § 7.

## ANNOTATIONS

**Repeals.** - See note with same catchline following 22-3-17 NMSA 1978.

### **22-3-36. Temporary provision; initial terms of board members.**

A. Terms of the members of the state board of education shall be initially staggered as follows:

(1) members elected or appointed from districts 1, 4, 8 and 10 shall be elected at the general election in 1988 for terms that expire in 1992;

(2) members to be elected from districts 2, 3, 5, 6, 7 and 9 at the general election in 1990 shall be elected for terms that expire in 1994; provided that in the event vacancies should occur prior to January 1, 1988 in one or more offices of members from these districts, the appointment to fill the first of such vacancies to occur shall be for a term expiring in 1988 and the person elected to fill such vacancy shall be elected for a term expiring in 1992. All other vacancies in offices from these districts prior to January 1, 1988 shall be appointed for terms ending in 1988 to be elected for terms expiring in 1990;

(3) in the event there is no such vacancy in district 2, 3, 5, 6, 7 or 9 prior to January 1, 1988, the state board of education not later than six weeks prior to the filing date for the primary election shall meet and draw by lot to determine which district shall have a term expiring in 1992; and

(4) thereafter each member shall be elected for a four-year term.

B. At the time all five of such initial appointments are made by the governor and confirmed by the senate, the appointed members shall meet at a time and place set by the secretary of state and determine by lot which three members shall serve an initial term of four years and which two shall serve an initial term of two years. Thereafter, all members shall each be appointed for a term of four years.

**History:** Laws 1987, ch. 99, § 8.

## ANNOTATIONS

**Repeals.** - See note with same catchline following 22-3-17 NMSA 1978.

### **22-3-37. Short title.**

This act [22-3-37 to 22-3-54 NMSA 1978] may be cited as the "1991 Educational Redistricting Act".

**History:** Laws 1991 (1st S.S.), ch. 4, § 1.

## ANNOTATIONS

**Effective dates.** - Laws 1991 (1st S.S.), ch. 4 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on December 18, 1991.

### **22-3-38. Precincts.**

A. Precinct designations and boundaries used in the 1991 Educational Redistricting Act [22-3-37 to 22-3-54 NMSA 1978] are those precinct designations and boundaries established pursuant to the Precinct Boundary Adjustment Act [1-3-10 to 1-3-14 NMSA 1978] and revised and approved pursuant to that act by the secretary of state as of August 16, 1991.

B. The boards of county commissioners shall not create any precinct that lies in more than one state board of education district, nor shall the boards of county commissioners divide any precinct so that the divided parts of the precinct are situated in two or more state board of education districts. Votes cast in any general, primary or other statewide election from precincts created or divided in violation of this subsection shall be invalid and shall not be counted or canvassed.

**History:** Laws 1991 (1st S.S.), ch. 4, § 2.

## ANNOTATIONS

**Effective dates.** - Laws 1991 (1st S.S.), ch. 4 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on December 18, 1991.

### **22-3-39. State board of education; membership.**

The state board of education is composed of ten elected members and five appointed members, one member elected from each elective board of education district and one member appointed from each of five appointive districts.

**History:** Laws 1991 (1st S.S.), ch. 4, § 3.

## ANNOTATIONS

**Effective dates.** - Laws 1991 (1st S.S.), ch. 4 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on December 18, 1991.

### **22-3-40. Board of education district one.**

Board of education district one is composed of Bernalillo county precincts number 1, 2, 3, 4, 5, 7, 8, 11, 12, 13, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 61, 62, 63, 64, 65, 66, 67, 71, 72, 73, 74, 75, 76, 77, 80, 81, 82, 83, 84, 85, 88, 89, 90, 91, 92, 94,

95, 96, 97, 98, 99, 104, 105, 106, 107, 121, 122, 123, 124, 134, 135, 151, 152, 153, 154, 161, 162, 163, 164, 165, 166, 181, 182, 183, 184, 185, 186, 187, 191, 192, 193, 194, 195, 196, 197 and 226.

**History:** Laws 1991 (1st S.S.), ch. 4, § 4.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1991 (1st S.S.), ch. 4 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on December 18, 1991.

### **22-3-41. Board of education district two.**

Board of education district two is composed of Bernalillo county precincts number 289, 290, 294, 295, 296, 297, 298, 299, 301, 302, 303, 304, 305, 306, 307, 308, 330, 331, 332, 333, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 411, 412, 413, 414, 415, 416, 417, 419, 420, 421, 428, 429, 430, 439, 440, 451, 452, 453, 454, 461, 462, 463, 464, 465, 466, 467, 471, 472, 473, 474, 480, 481, 482, 483, 484, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 538, 540, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 557, 561, 562, 563, 564, 565, 566 and 568.

**History:** Laws 1991 (1st S.S.), ch. 4, § 5.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1991 (1st S.S.), ch. 4 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on December 18, 1991.

### **22-3-42. Board of education district three.**

Board of education district three is composed of Bernalillo county precincts number 6, 9, 10, 14, 15, 16, 18, 86, 101, 102, 103, 125, 131, 132, 133, 211, 212, 213, 214, 215, 216, 217, 221, 222, 223, 224, 225, 241, 242, 243, 244, 245, 246, 251, 252, 253, 254, 255, 256, 257, 258, 271, 272, 273, 274, 275, 276, 277, 278, 280, 281, 282, 283, 284, 285, 286, 287, 291, 292, 293, 300, 311, 312, 313, 314, 315, 316, 317, 318, 319, 321, 322, 323, 324, 325, 326, 327, 328, 329, 341, 342, 343, 344, 345, 346, 347, 351, 352, 353, 354, 355, 356, 357, 358, 371, 372, 373, 374, 375, 381, 382, 383, 384, 385, 386, 387, 410, 418, 422, 423, 424, 425, 431, 432, 433, 434, 435, 436, 437, 438, 441, 442, 443, 444, 445, 446, 475, 476, 477, 478, 485, 486, 510, 541, 542 and 543.

**History:** Laws 1991 (1st S.S.), ch. 4, § 6.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1991 (1st S.S.), ch. 4 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on December 18, 1991.

### **22-3-43. Board of education district four.**

Board of education district four is composed of Bernalillo county precincts number 426, 427, 537, 539, 556, 567 and 569; Sandoval county precincts number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50; and Santa Fe county precincts number 8, 9, 10, 11, 12, 13, 14, 15, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 60, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77 and 78.

**History:** Laws 1991 (1st S.S.), ch. 4, § 7.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1991 (1st S.S.), ch. 4 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on December 18, 1991.

### **22-3-44. Board of education district five.**

Board of education district five is composed of McKinley county; Sandoval county precincts number 21, 22, 23, 24, 25 and 26; and San Juan county precincts number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 56, 57, 58, 61, 68, 69, 70, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 83.

**History:** Laws 1991 (1st S.S.), ch. 4, § 8.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1991 (1st S.S.), ch. 4 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on December 18, 1991.

### **22-3-45. Board of education district six.**

Board of education district six is composed of Catron, Cibola, Grant, Hidalgo, Luna, Socorro and Valencia counties; Bernalillo county precincts number 31 and 93; and Torrance county precincts number 1, 2, 3, 4, 7, 8, 9 and 10.

**History:** Laws 1991 (1st S.S.), ch. 4, § 9.

#### **ANNOTATIONS**



**Effective dates.** - Laws 1991 (1st S.S.), ch. 4 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on December 18, 1991.

### **22-3-46. Board of education district seven.**

Board of education district seven is composed of Dona Ana and Sierra counties; and Otero county precinct number 1.

**History:** Laws 1991 (1st S.S.), ch. 4, § 10.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1991 (1st S.S.), ch. 4 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on December 18, 1991.

### **22-3-47. Board of education district eight.**

Board of education district eight is composed of Chaves, De Baca and Lincoln counties; Eddy county precincts number 1, 2, 3, 4, 5, 6, 7, 8, 39, 40, 41, 42 and 43; Guadalupe county precinct number 4; Otero county precincts number 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37; Roosevelt county precinct number 5; Santa Fe county precincts number 16, 17, 18, 19 and 73; and Torrance county precincts number 5, 6, 11, 12 and 13.

**History:** Laws 1991 (1st S.S.), ch. 4, § 11.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1991 (1st S.S.), ch. 4 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on December 18, 1991.

### **22-3-48. Board of education district nine.**

Board of education district nine is composed of Curry, Lea and Quay counties; Eddy county precincts number 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 44; and Roosevelt county precincts number 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18.

**History:** Laws 1991 (1st S.S.), ch. 4, § 12.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1991 (1st S.S.), ch. 4 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on December 18, 1991.

## **22-3-49. Board of education district ten.**

Board of education district ten is composed of Colfax, Harding, Los Alamos, Mora, Rio Arriba, San Miguel, Taos and Union counties; Guadalupe county precincts number 1, 2, 3 and 5; Sandoval county precinct number 51; San Juan county precincts number 60, 62, 63, 64, 65, 66, 67, 71 and 72; and Santa Fe county precincts number 1, 2, 3, 4, 5, 6, 7, 58, 59, 61 and 79.

**History:** Laws 1991 (1st S.S.), ch. 4, § 13.

### **ANNOTATIONS**

**Effective dates.** - Laws 1991 (1st S.S.), ch. 4 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on December 18, 1991.

## **22-3-50. Appointive board of education districts.**

For the purposes of appointing members of the state board of education, five districts are created as follows:

- A. appointive district A consists of state board of education districts two and four;
- B. appointive district B consists of state board of education districts one and three;
- C. appointive district C consists of state board of education districts five and ten;
- D. appointive district D consists of state board of education districts six and seven; and
- E. appointive district E consists of state board of education districts eight and nine.

**History:** Laws 1991 (1st S.S.), ch. 4, § 14.

### **ANNOTATIONS**

**Effective dates.** - Laws 1991 (1st S.S.), ch. 4 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on December 18, 1991.

## **22-3-51. Residence.**

Any candidate for the office of state board of education member shall reside in the district for which he files a declaration of candidacy at the time of such filing. If any elected or appointed board member permanently removes his residence from or maintains no residence in the district from which he was elected or appointed, he shall be deemed to have resigned and his successor shall be selected as provided in Sections 16 and 17 [22-3-52 and 22-3-53 NMSA 1978] of the 1991 Educational Redistricting Act.

**History:** Laws 1991 (1st S.S.), ch. 4, § 15.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1991 (1st S.S.), ch. 4 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on December 18, 1991.

#### **22-3-52. Elected members; staggered terms.**

A. Elected members of the state board of education shall be elected for staggered terms of four years.

B. Board members shall be elected at the general election for terms commencing on January 1 next succeeding their election.

C. Board members from districts one, four, eight, nine and ten shall be elected at the general election in 1992 for terms that expire in 1996.

D. Board members from districts two, three, five, six and seven shall be elected at the general election in 1994 for terms that expire in 1998.

E. The governor shall by appointment fill a vacancy in the office of an elected member of the state board of education. All appointments to fill such a vacancy shall be for a term ending on January 1 subsequent to the next general election at which election a person shall be elected to fill any remainder of the unexpired term.

**History:** Laws 1991 (1st S.S.), ch. 4, § 16.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1991 (1st S.S.), ch. 4 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on December 18, 1991.

#### **22-3-53. Appointed members; staggered terms.**

A. One member of the state board of education shall be appointed by the governor by and with the consent of the senate from each of the five state board of education appointive districts.

B. Appointed members shall be appointed for staggered terms of four years.

C. Terms of appointed members shall expire on the first day of January.

D. If a vacancy occurs in the office of an appointed member of the state board of education, it shall be filled by appointment of the governor by and with the consent of the senate for the remainder of the term of the member creating the vacancy.

**History:** Laws 1991 (1st S.S.), ch. 4, § 17.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1991 (1st S.S.), ch. 4 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on December 18, 1991.

#### **22-3-54. Temporary provision; current terms.**

It is the intent of the legislature that appointed and elected members of the state board of education currently serving on the board shall serve the entirety of their remaining terms, pursuant to the provisions of Sections 22-3-17 through 22-3-30 and 22-3-22 [22-3-32] through 22-3-36 NMSA 1978.

**History:** Laws 1991 (1st S.S.), ch. 4, § 18.

#### **ANNOTATIONS**

**Bracketed material.** - The bracketed reference in this section was inserted by the compiler to correct an apparently erroneous reference. The bracketed material was not enacted by the legislature and is not part of the law.

**Effective dates.** - Laws 1991 (1st S.S.), ch. 4 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on December 18, 1991.

## **ARTICLE 4 CREATION, CONSOLIDATION AND ANNEXATION OF SCHOOL DISTRICTS**

### **22-4-1. School districts.**

A. Every public school in the state shall be located within the geographical boundaries of a school district.

B. A school district shall be created, exist or be consolidated only pursuant to the provisions of law.

C. The geographical boundaries of a school district shall not coincide or overlap the geographical boundaries of another school district except as may be provided by law.

**History:** 1953 Comp., § 77-3-1, enacted by Laws 1967, ch. 16, § 14.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Constitutionality of statute which leaves to determination of private individuals the boundaries of territory to be erected into school district, 70 A.L.R. 1062.

Separate independent political unit within rule permitting separate computation of constitutional debt limit notwithstanding overlapping or identical boundaries, school district as, 171 A.L.R. 732.

## **22-4-2. New school districts; creation.**

The state board may order the creation of a new school district within an existing school district upon receipt of and according to a resolution requesting the creation of the new school district by the local school board of the existing school district or, after review by the local school board, and upon receipt of a petition bearing signatures verified by the county clerk of affected area of sixty percent of the registered voters residing within the geographic area desiring creation of a new school district and after a hearing to be held within ninety (90) days after filing of petition by the state board to determine that:

A. the existing school district and the new school district to be created will each have a minimum average daily membership of five hundred;

B. a high school program is to be taught in the existing school district and in the new school district to be created, unless an exception is granted to this requirement by the state board; and

C. creating the new school district is in the best interest of public education in the existing school district and in the new school district to be created, and in the best interest of public education in the state.

**History:** 1953 Comp., § 77-3-2, enacted by Laws 1967, ch. 16, § 15; 1981, ch. 26, § 1.

### **ANNOTATIONS**

**Cross-references.** - As to contents and publication of order creating new school district, see 22-4-10 and 22-4-11 NMSA 1978.

As to interim school board of newly created district, see 22-4-12 NMSA 1978.

As to election of local school board for newly created district, see 22-4-13 and 22-4-14 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Constitutionality of statute for formation of school districts as affected by objection that it confers nondelegable powers or imposes nonjudicial functions upon courts, 69 A.L.R. 288.

### **22-4-3. Consolidation; request; districts without junior or senior high schools; standards.**

A. The state board may order consolidation of school districts upon receipt of and according to identical resolutions requesting consolidation from each local school board of each school district affected by the consolidation only if it determines that such consolidation:

(1) will help to equalize the educational opportunities for public school students in each school district affected by the consolidation;

(2) will make the most advantageous and economical use of public school facilities;

(3) takes into consideration the convenience and welfare of the public school students in each school district affected by the consolidation; and

(4) is in the best interest of public education in each school district affected by the consolidation and in the best interest of the public education in the state.

B. The state board may also order consolidation of a school district which has not maintained either a junior or senior high school program for two consecutive years prior to consolidation with an adjacent district which has maintained such programs for the students of both districts upon receipt of and according to identical resolutions requesting consolidation from each local school board of each school district affected by the consolidation.

C. The state board may bring an action in the district court for an order of consolidation of two or more school districts when:

(1) all attempts to obtain an agreement between the local school boards to consolidate such school districts under Subsection A of this section have failed;

(2) one or more schools within the school districts proposed to be consolidated have received a disapproval accreditation status from the state department of education; and

(3) after public hearing on such proposed consolidation, the state board makes findings of fact:

(a) that such consolidation will meet the criteria specified in Paragraphs (1) through (4) of Subsection A of this section; and

(b) that one or more schools within a school district proposed to be consolidated are deficient in their ability to provide the necessary educational opportunities for public school students in that district.

D. Notice of public hearing shall be given by the state board at least thirty days prior to the hearing date by two consecutive publications one week apart in a newspaper of general circulation in the deficient school district proposed to be consolidated. The notice shall state:

- (1) the subject of the hearing;
- (2) the time and place of the hearing; and
- (3) the manner in which interested persons may present their views.

E. The public hearing shall be held in a suitable and convenient location within the deficient school district proposed to be consolidated. At the hearing, the state board shall allow all interested persons a reasonable opportunity to submit data, views or arguments, orally or in writing, and to examine witnesses testifying at the hearing.

F. Within ten days from the date the hearing is concluded the state board shall make its determination in writing and if such determination includes an intention to bring an action for consolidation in the district court, such intention shall be included in the written determination. A copy of the written determination of the state board shall be sent to each of the school boards concerned.

G. Within sixty days from the date of the issuance of its written determination, the state board may bring an action for a court order of consolidation in the district court of any judicial district in which the deficient school district is located. A copy of the petition for such action shall be served upon each of the local school boards affected by the consolidation. Such local school boards shall be parties to the action. The director shall authorize the necessary transfers and expenditures in the budgets of the concerned school districts to cover all necessary costs incurred by them in such action. Upon request of any of the parties to the action, a jury trial shall be allowed. The state board shall have the burden of establishing the existence of conditions required under Subsection C of this section and of proving that such consolidation will meet the criteria specified in Paragraphs (1) through (4) of Subsection A of this section. The court may deny the order for consolidation if it is found that:

- (1) the conditions prescribed in Paragraphs (1) and (2) of Subsection C of this section do not exist;
- (2) such proposed consolidation will not meet the criteria specified in Paragraphs (1) through (4) of Subsection A of this section; or
- (3) that the alleged deficiency in the school district's ability to provide the necessary educational opportunities for public school students in such district does not exist.

H. In the event the court denies the order for consolidation, the state board shall not again initiate such action for consolidation affecting the same or substantially the same school districts for one year after the date of the denial of such order.

I. In the event the court orders the consolidation, such consolidation shall not become effective until the end of the current school term.

J. Any final order of the district court is reviewable by the court of appeals in the same manner as provided under the rules of civil procedure.

**History:** 1953 Comp., § 77-3-3, enacted by Laws 1967, ch. 16, § 16; 1970, ch. 4, § 1; 1973, ch. 106, § 1; 1977, ch. 246, § 61.

### ANNOTATIONS

**Cross-references.** - As to alternate method of consolidation, see 22-4-5 to 22-4-9 NMSA 1978.

As to contents and publication of order consolidating school districts, see 22-4-10 and 22-4-11 NMSA 1978.

As to interim school board of newly consolidated district, see 22-4-12 NMSA 1978.

As to election of local school board for newly created district, see 22-4-13 and 22-4-14 NMSA 1978.

**Constitutionality of Subsection B.** - See State ex rel. Apodaca v. New Mexico State Bd. of Educ., 82 N.M. 558, 484 P.2d 1268 (1971).

**Where school consolidation was ordered pursuant to Subsection B, the provisions of 22-4-4 NMSA 1978 were controlling** as to the board which should govern the consolidated district, and the provisions of 22-4-10 to 22-4-14 NMSA 1978 were inapplicable. State ex rel. Apodaca v. New Mexico State Bd. of Educ., 82 N.M. 558, 484 P.2d 1268 (1971).

### **22-4-4. [Consolidation of district without junior or senior high schools; governing board.]**

Where consolidation is ordered under Subsection B hereof [22-4-3 B NMSA 1978], the governing board of the district maintaining the junior and senior high school programs shall become the governing board of the consolidated district, the board of the district consolidated shall be dissolved, and the provisions of Sections 22-4-10 through 22-4-14 NMSA 1978 relating to appointment of an interim board and the holding of special elections shall not be applicable.

**History:** 1953 Comp., § 77-3-3.1, enacted by Laws 1970, ch. 4, § 2.



## ANNOTATIONS

**Where school consolidation was ordered pursuant to Subsection B of 22-4-3 NMSA 1978, the provisions of this section were controlling** as to the board which should govern the consolidated district, and the provisions of 22-4-10 to 22-4-14 NMSA 1978 were inapplicable. State ex rel. Apodaca v. New Mexico State Bd. of Educ., 82 N.M. 558, 484 P.2d 1268 (1971).

### **22-4-5. Alternate method of consolidation.**

Sections 22-4-6 through 22-4-9 NMSA 1978 shall be an alternative method of consolidation to that provided in Section 22-4-3 NMSA 1978.

**History:** 1953 Comp., § 77-3-4, enacted by Laws 1967, ch. 16, § 17.

### **22-4-6. Alternate method; survey; report; submission to the state board.**

A. Upon receipt of a request from a local school board, the state board shall cause a school district survey to be made to study the feasibility of a consolidation.

B. A school district survey shall be made by a school district survey committee. The school district survey committee shall submit a written report on a school district survey, along with any recommendations made by the committee, to each local school board of each school district affected by the survey. The report shall be accompanied by all maps, records and material supporting the recommendations.

C. Any local school board of a school district affected by the survey may suggest alterations to the report and the recommendations. If these alterations are approved by each local school board of each school district affected by the survey and the school district survey committee, the alterations shall become part of the final report and recommendations of the school district survey committee. If local school boards of all school districts affected by the survey approve the final report and recommendations of the school district survey committee, the final report and recommendations shall be submitted to the state board.

**History:** 1953 Comp., § 77-3-5, enacted by Laws 1967, ch. 16, § 18.

### **22-4-7. Alternate method; survey committee.**

To make a school district survey to determine the feasibility of a consolidation, the school district survey committee shall consist of the following members:

A. one person designated by the state transportation director from the state transportation division;

B. one person appointed by the state board for each school district affected by the survey. Each person appointed by the state board shall reside outside of every school district affected by the school district survey; and

C. one person appointed by each local school board of a school district affected by the school district survey.

**History:** 1953 Comp., § 77-3-6, enacted by Laws 1967, ch. 16, § 19.

### **22-4-8. Alternate method; survey committee; compensation.**

Members of a school district survey committee shall serve without compensation but shall be entitled to reimbursement of expenses incurred in the performance of committee duties out of funds of the department of education.

**History:** 1953 Comp., § 77-3-7, enacted by Laws 1967, ch. 16, § 20.

### **22-4-9. Alternate method; standards for consolidation.**

The state board may order consolidation according to the recommendations contained in a final report and recommendations of the school district survey committee approved by each local school board of each school district affected by the survey only if it determines that such consolidation:

A. will help to equalize the educational opportunities for public school students in each school district affected by the consolidation;

B. will make the most advantageous and economical use of public school facilities;

C. takes into consideration the convenience and welfare of the public school students in each school district affected by the survey; and

D. is in the best interest of public education in each school district affected by the consolidation and in the best interest of public education in the state.

**History:** 1953 Comp., § 77-3-8, enacted by Laws 1967, ch. 16, § 21.

## **ANNOTATIONS**

**Cross-references.** - As to standards for consolidation generally, see 22-4-3 NMSA 1978.

As to contents and publication of order consolidating school districts, see 22-4-10 and 22-4-11 NMSA 1978.

**Applicability of section to consolidation under Subsection B of 22-4-3 NMSA**

**1978.** - Where school consolidation was ordered pursuant to Subsection B of 22-4-3 NMSA 1978, the provisions of 22-4-4 NMSA 1978 were controlling as to the board which should govern the consolidated district, and the provisions of this section and 22-4-10 to 22-4-14 NMSA 1978 were inapplicable. State ex rel. Apodaca v. New Mexico State Bd. of Educ., 82 N.M. 558, 484 P.2d 1268 (1971).

**22-4-10. Order of state board.**

A. Any order of the state board for creation of a new school district or for consolidation shall contain the following:

(1) an accurate description of the geographical boundaries of all school districts affected by the order;

(2) the disposition of all property affected by the order;

(3) the dissolution of the elected local school board of each school district affected by the order of consolidation; and

(4) the appointment of three qualified electors of the state who are residents of the new school district created by the order or the consolidated school district to be members of an interim local school board to govern the new or consolidated school district.

B. A certified copy of the order of the state board shall be kept on permanent file with the department of education.

C. One certified copy of the order of the state board shall be furnished to each local school board affected by the order, to each county assessor of a county having a school district within it affected by the order, to the chief [director of public school finance], to the state tax commission [property tax division of the taxation and revenue department], to the oil and gas accounting commission [audit and compliance division of the taxation and revenue department] and to each member appointed to the interim local school board.

D. Any creation of a new school district or consolidation ordered by the state board shall take effect upon the issuance of the order. However, for taxation purposes, creation of a new school district or consolidation shall be effective on January 1 following the date of the issuance of the order by the state board.

**History:** 1953 Comp., § 77-3-9, enacted by Laws 1967, ch. 16, § 22.

**ANNOTATIONS**

**Bracketed material.** - The bracketed material in Subsection C was inserted by the compiler. The provisions relating to the state tax commission, referred to in this section,

were repealed by Laws 1970, ch. 31, § 22. Laws 1970, ch. 31, created the property appraisal department. The provisions of Laws 1970, ch. 31, relating to the property appraisal department, were repealed by Laws 1973, ch. 258, § 156. Laws 1973, ch. 258, created the property tax department. The property tax department and the oil and gas accounting commission were abolished by Laws 1977, ch. 249, § 5. Laws 1977, ch. 249, § 4, established the taxation and revenue department, which now consists of, inter alia, the revenue division, the property tax division and the audit and compliance division.

**Executive branch reorganization.** - The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

#### **22-4-11. [Publication of order; actions attacking order.]**

After adoption of an order of the state board for creation of a new school district or for consolidation of school districts, the state superintendent of public instruction shall forthwith cause a copy of such order to be published in a newspaper of general circulation in each county within which any part of the new or consolidated school district may be located.

Actions to attack the validity of any such order shall be filed within thirty days from the date of such publication, but not afterwards. Such actions shall be filed in Santa Fe county district court and the state board of education shall be an indispensable party thereto.

**History:** 1953 Comp., § 77-3-9.1, enacted by Laws 1970, ch. 4, § 3.

#### **22-4-12. Interim local school board; special election.**

A. The interim local school board of a newly created or consolidated school district has all the powers and duties of a local school board. The interim local school board shall hold office only until the local school board is elected and qualified.

B. For the purpose of electing five members to the local school board of a newly created or consolidated school district, the interim local school board shall call a special school district election to be held not less than forty-five days nor more than ninety days from the date of the issuance of the order of the state board appointing members to the interim local school board. If the date for a regular school district election occurs during this period, the interim local school board shall give notice of the regular school district election for the purpose of electing five members to the local school board of the newly

created or consolidated school district instead of calling a special school district election.

C. The interim local school board shall appoint a superintendent of schools to perform the administrative and supervisory functions of the interim local school board and to also conduct the school district election. The term of office of the superintendent of schools appointed by the interim local school board shall coincide with the term of office of the interim local school board.

**History:** 1953 Comp., § 77-3-10, enacted by Laws 1967, ch. 16, § 23.

### **22-4-13. Special school district election; term of office.**

The term of office of members of a local school board elected at a special school district election for a newly created or consolidated school district shall be as follows:

A. three members shall be elected for terms expiring at the next regular school district election; and

B. two members shall be elected for terms expiring two years after the next regular school district election.

**History:** 1953 Comp., § 77-3-11, enacted by Laws 1967, ch. 16, § 24; 1985, ch. 142, § 1.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Applicability and application of § 2 of Voting Rights Act of 1965 (42 USCS § 1973) to members of school board, 105 A.L.R. Fed. 254.

### **22-4-14. Regular school district election; term of office.**

If the interim local school board calls for the election of members to the local school board of a newly created or consolidated school district at a regular school district election, the terms of office of the members elected shall be as follows:

A. three members shall be elected for terms of two years; and

B. two members shall be elected for terms of four years.

**History:** 1953 Comp., § 77-3-12, enacted by Laws 1967, ch. 16, § 25; 1985, ch. 142, § 2.

## **22-4-15. Consolidated school districts; outstanding contracts; indebtedness.**

A. All contracts entered into by a local school board of a school district prior to consolidation shall be honored by the consolidated school district. The acquiring of tenure rights and tenure rights that have been obtained shall not be affected by consolidation.

B. Any outstanding school district bonds or other indebtedness of a school district shall not be affected by consolidation. Whenever a school district included within a consolidation has outstanding school district bonds or certificates of indebtedness, the school district shall retain its identity for the purpose of paying any debt service until the bonds or certificates are paid in full. No school district included within a consolidation shall become responsible for the debt service of any other school district included within the consolidation.

**History:** 1953 Comp., § 77-3-13, enacted by Laws 1967, ch. 16, § 26.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Indebtedness and property of individual districts as affected by unionization, centralization, or consolidation of school districts, 121 A.L.R. 826.

## **22-4-16. [Existing school districts validated.]**

That the organization, existence or consolidation of all school districts heretofore ordered by the state board of education of the state of New Mexico are hereby validated and their existence as ordered by the state board of education is hereby validated and confirmed, provided that the passage of this act [22-4-16 NMSA 1978] shall not affect any consolidations upon which an action is pending contesting such consolidation at the time this act becomes effective.

**History:** 1953 Comp., § 73-15-9, enacted by Laws 1955, ch. 76, § 1.

### **ANNOTATIONS**

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

## **22-4-17. Annexation of area for school district purposes; resolutions; approval; filing.**

A. Whenever it becomes economically feasible for students residing in one school district to attend school in another school district, whether or not that school district is

within the same county as the school district of residence, the local school boards of the school districts may provide for annexation of the appropriate area by resolution of each of the local school boards concerned. The resolutions shall be submitted to the state board of education for its approval.

B. Prior to adopting such resolution, the local school board proposing to annex the area within another school district shall furnish an accurate legal description of the area to be annexed and the net taxable value of the property within the area to the chief, public school finance division [director of public school finance]. The chief shall furnish to each local school board concerned a statement of the financial implication of the annexation.

C. After resolutions are adopted by each of the local school boards concerned and approved by the state board of education, copies of the resolutions shall be filed with:

(1) the county commission of the county where the principal office of each local school board is located and the county commissions of those other counties in which area is affected;

(2) the county assessor of the county where the principal office of each local school board is located and the county assessors of those other counties in which area is affected;

(3) state board of education; and

(4) department of finance and administration.

**History:** 1953 Comp., § 77-3-2.1, enacted by Laws 1977, ch. 213, § 1.

## **ANNOTATIONS**

**Executive branch reorganization.** - The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

### **22-4-18. Validation of previous annexation.**

Every member of a local school board of a local school district which has been a party to an annexation similar to that authorized in Section 1 [22-4-17 NMSA 1978] of this act but occurring prior to the effective date of this act is determined to have been a legally authorized governing authority and such annexation is validated as of the date of the resolution adopting such action.

**History:** 1953 Comp., § 77-3-2.2, enacted by Laws 1977, ch. 213, § 2.

## **ARTICLE 4A**

### **ADVISORY REFERENDA**

#### **22-4A-1. Short title.**

This act [22-4A-1 to 22-4A-3 NMSA 1978] may be cited as the "Advisory Referendum Act".

**History:** Laws 1987, ch. 191, § 1.

#### **22-4A-2. Purpose.**

The purpose of the Advisory Referendum Act [22-4A-1 to 22-4A-3 NMSA 1978] is to enable registered voters of an affected area, who may ultimately be called upon to vote on bond issues for capital projects for a new district, to express the extent of their support for the formation of that new public school district.

**History:** Laws 1987, ch. 191, § 2.

#### **22-4A-3. Advisory referendum authorized; effect of referendum.**

A. The governing body of any school district having a student membership in excess of seventy-six thousand and the governing body of any school district any part of which is proposed to be incorporated in a new school district shall conduct an advisory referendum in any municipality or in any precinct of a school district which is proposed to be included in a new school district.

B. An "advisory referendum" as used in the Advisory Referendum Act [22-4A-1 to 22-4A-3 NMSA 1978] means an election at which the proposal of creating a new school district that includes the territory in which the municipality is located is submitted to the voters of the municipality as a question of supporting the proposal or opposing the proposal. The result of the vote shall be advisory only as a statement of public opinion on the proposed creation of a new school district and shall not constitute any election required by law pertaining to the creation of a district. The results of the referendum may be used by the voters of the existing and proposed district encompassed within the boundaries of the municipality or of another school district to better determine desirability and feasibility of forming the new public school district.

C. The election for the advisory referendum shall be conducted and canvassed substantially in the same manner as special school district elections are conducted and canvassed.

**History:** Laws 1987, ch. 191, § 3.



# ARTICLE 5

## LOCAL SCHOOL BOARDS

### **22-5-1. Local school boards; members.**

A local school board shall be composed of five qualified electors of the state residing within the school district.

**History:** 1953 Comp., § 77-4-1, enacted by Laws 1967, ch. 16, § 27.

#### **ANNOTATIONS**

**Cross-references.** - For constitutional provision as to residence of public officers, see N.M. Const., art. V, § 13.

As to school district elections, see 1-22-1 NMSA 1978 et seq.

As to recall of local school board members, see 22-7-1 NMSA 1978 et seq.

### **22-5-1.1. Local school board members; elected from districts.**

Notwithstanding any other provision of the Public School Code, members of local school boards in districts having a population in excess of sixteen thousand shall reside in and be elected from single-member districts. Once, following every federal decennial census, the local school board shall divide the school district into a number of election districts equal in number to the number of members on the school board. Such election districts shall be contiguous and compact and as equal in population as is practicable; provided that the local school board of any district having a population of sixteen thousand or less may provide for single-member districts as provided in this section.

**History:** 1978 Comp., § 22-5-1.1, enacted by Laws 1985, ch. 202, § 1.

#### **ANNOTATIONS**

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

### **22-5-2. Purpose of act.**

The purpose of this act [22-5-2, 22-5-3 NMSA 1978] is to permit local school districts to increase the membership of their local school boards.

**History:** 1953 Comp., § 77-4-1.2, enacted by Laws 1969, ch. 103, § 1.

### **22-5-3. School board membership; optional form.**

A. The local school board of any school district in this state may by resolution provide for the local board of that district to be composed of seven qualified electors of the state who reside within the district. The resolution shall provide that the board consist of seven separate positions and each such position shall be designated by number. Qualified electors seeking election to the school board shall file and run for only one of the numbered positions.

B. If the resolution provided for in this section is adopted, it shall go into effect within thirty days after its adoption unless a petition signed by the qualified electors of the school district in a number equal to twenty percent of all the voters in the district voting at the last regular school board election is presented to the local board within such thirty days asking that an election be held on the question of increasing the membership of the local board to seven members.

C. Upon receipt and verification of the petition the local school board shall within thirty days call a special school election to vote upon the question of increasing the membership of the local school board in that district to seven members.

D. If the voters of the school district approve the increase in the local school board's membership to seven members, the resolution shall be in effect.

E. A resolution adopted pursuant to Subsection A of this section shall conform to the requirements of Section 22-6-3 NMSA 1978 and shall provide for the election of two additional school board members at a special school district election. One new member shall be elected to serve until the second regular school board election following the special school district election. The second new member shall be elected to serve until the third regular school board election following such special school district election. Thereafter, persons elected to fill the additional new positions on the board shall be elected for terms as provided by law.

**History:** 1953 Comp., § 77-4-1.3, enacted by Laws 1969, ch. 103, § 2; 1981, ch. 316, § 1.

## **ANNOTATIONS**

**Cross-references.** - As to school district elections generally, see 1-22-1 NMSA 1978 et seq.

**Compiler's note.** - Section 22-6-3 NMSA 1978, cited in Subsection E, was repealed by Laws 1985, ch. 168, § 22. For the present comparable provision, see 1-22-5 NMSA 1978.

**Provisions of former Subsection B (now Subsection E) are constitutional and valid.** 1971 Op. Att'y Gen. No. 71-29.

**22-5-3.1. Local school boards; reversion to five members.**

A. Any seven-member local school board of a school district in the state may by resolution provide for the local board of that district to be composed of five qualified electors of the state who reside within the district.

B. If the resolution specified in Subsection A of this section is adopted, the existing local school board at the first election at which the terms of three members expire shall by lot:

(1) eliminate two positions if the next succeeding election is one at which the terms of two members expire;

(2) eliminate two positions if the next succeeding election is one at which the term of one member expires, and at the next election at which the terms of three members expire designate one position for a two-year term; provided that thereafter all terms shall be six-year terms; or

(3) eliminate two positions if the next succeeding election is one at which the terms of three members expire and at the succeeding election designate one position for a two-year term, provided that thereafter all terms shall be six-year terms.

C. Any resolution adopted pursuant to the provisions of this section shall be effective thirty days after its adoption unless a petition signed by the qualified electors of the school district in a number equal to at least twenty percent of all voters in the district voting at the last regular school board election is presented to the local school board on or before the thirtieth day asking that an election be held on the question of decreasing the membership of the local board to five members.

D. Upon receipt and verification of the petition, the local school board shall within thirty days call a special school election to vote upon the question of decreasing the membership of the local school board in that district to five members.

E. If the voters of the school district approve the decrease in the local school board's membership to five members, the resolution shall be in effect and the elimination of two members at subsequent elections as provided in Subsection B of this section shall be valid.

**History:** 1978 Comp., § 22-5-3.1, enacted by Laws 1981, ch. 302, § 1.

#### **22-5-4. Local school boards; powers; duties.**

A local school board shall have the following powers or duties:

A. subject to the regulations of the state board, supervise and control all public schools within the school district and all property belonging to or in the possession of the school district;

B. employ a superintendent of schools for the school district and fix his salary;

- C. delegate administrative and supervisory functions of the local school board to the superintendent of schools;
- D. subject to the provisions of law, approve or disapprove the employment, termination or discharge of all employees and certified school personnel of the school district upon a recommendation of employment, termination or discharge by the superintendent of schools. Any employment, termination or discharge without the prior recommendation of the superintendent is void;
- E. apply to the state board for a waiver of certain provisions of the Public School Code relating to length of school day, staffing patterns, subject area or the purchase of instructional materials for the purpose of implementing a collaborative school improvement program for an individual school;
- F. fix the salaries of all employees and certified school personnel of the school district;
- G. contract, lease, purchase and sell for the school district;
- H. acquire and dispose of property;
- I. have the capacity to sue and be sued;
- J. acquire property by eminent domain as pursuant to the procedures provided in the Eminent Domain Code [42A-1-1 to 42A-1-33 NMSA 1978];
- K. issue general obligation bonds of the school district;
- L. repair and maintain all property belonging to the school district;
- M. for good cause and upon order of the district court, subpoena witnesses and documents in connection with a hearing concerning any powers or duties of the local school boards;
- N. except for expenditures for salaries, contract for the expenditure of money according to the provisions of the Procurement Code;
- O. adopt regulations pertaining to the administration of all powers or duties of the local school board;
- P. accept or reject any charitable gift, grant, devise or bequest. The particular gift, grant, devise or bequest accepted shall be considered an asset of the school district or the public school to which it is given; and
- Q. offer and, upon compliance with the conditions of such offer, pay rewards for information leading to the arrest and conviction or other appropriate disciplinary disposition by the courts or juvenile authorities of offenders in case of theft, defacement

or destruction of school district property. All such rewards shall be paid from school district funds in accordance with regulations that shall be promulgated by the department of education.

**History:** 1953 Comp., § 77-4-2, enacted by Laws 1967, ch. 16, § 28; 1973, ch. 3, § 1; 1979, ch. 335, § 3; 1981, ch. 116, § 1; 1981, ch. 125, § 48; 1990, ch. 52, § 2; 1992, ch. 77, § 2.

## ANNOTATIONS

**Cross-references.** - As to requirement of reports as to membership in schools, see 22-8-13 NMSA 1978.

As to reemployment or termination of certified school instructors, see 22-10-12 NMSA 1978 et seq.

As to request for operation under variable school calendar, see 22-22-4 NMSA 1978.

As to preparation and review of bilingual instruction programs, see 22-23-5 NMSA 1978.

As to lease of state lands, see 19-7-55 NMSA 1978.

**The 1990 amendment**, effective May 16, 1990, added present Subsection E, redesignated former Subsections E to P as present Subsections F to Q, substituted "Procurement Code" for "Public Purchasers Act" at the end of present Subsection N, and, in present Subsection Q, deleted "local" preceding "school district property" at the end of the first sentence and "of the public school finance division" at the end of the second sentence.

**The 1992 amendment**, effective May 20, 1992, inserted "or the purchase of instructional materials" in Subsection E; substituted "department of education" for "director" in the second sentence of Subsection Q; and made minor stylistic changes throughout the section.

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

**Procurement Code.** - See 13-1-28 NMSA 1978 and notes thereto.

**Section makes local board's supervision and control of public school in district "subject to the regulations of state board."** Morgan v. New Mexico State Bd. of Educ., 83 N.M. 106, 488 P.2d 1210 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971).

**School board attendance allocation proper.** - So long as the statutory and constitutional minimum educational standards are satisfied, the local school board may allocate attendance within the district. 1979 Op. Att'y Gen. No. 79-36.

**Conditions under which private group may use facilities.** - A local board of education may permit a particular religious denomination or private group to use public school buildings or facilities after school hours where such use, in the opinion of the school board, will not interfere with normal school activities, but the board may not in any respect sanction or give endorsement to such religious denominational programs. 1963-64 Op. Att'y Gen. No. 63-106 (opinion rendered under former law).

**Include equal treatment of all groups.** - A local school board must, in exercising its discretion as to whether a particular religious denomination may use public school facilities after school hours, either make the use of school facilities available to all religious groups on an equal basis and without preference as to any particular group or not permit such use at all. 1963-64 Op. Att'y Gen. No. 63-106 (opinion rendered under former law).

**And reimbursement of school's actual expenses.** - Since a school district may not in any manner lend its financial or other support to any private religious denominations, it is incumbent upon school authorities to obtain reimbursement for any actual expenses occasioned from a religious group's private use of public school facilities. 1963-64 Op. Att'y Gen. No. 63-106 (opinion rendered under former law).

**Payment for time spent away from district by district employee.** - A local school district employee who serves on the state board of education may draw salary from the district and per diem and expenses from the state department of education; however, he may not be paid for time spent away from his duties with the district unless he takes authorized leave with pay. 1987 Op. Att'y Gen. No. 87-45.

**Character of private use determines whether state approval required.** - Where a local school board desires to enter into a lease of real property to any private party or religious group and proposes to give exclusive right of possession and occupancy to school lands or buildings, the state board of finance must give its approval pursuant to 13-6-2 NMSA 1978. Where, however, the use permitted is temporary or brief and limited to hours when the property is not needed for school purposes, the approval of the state board of finance is not necessary, and the local board of education may or may not authorize such usage according to its discretion. 1963-64 Op. Att'y Gen. No. 63-106 (opinion rendered under former law).

**School boards have authority to enact reasonable regulations** relating to the suspension or expulsion of students. 1959-60 Op. Att'y Gen. No. 59-214.

A rule or regulation prohibiting married students from participating in band, glee club, dramatic events, school newspapers, school clubs, school sponsored trips and school athletics is arbitrary and unreasonable and therefore void. 1967 Op. Att'y Gen. No. 67-117.

A rule which would require the withdrawal of a student when it is known that she is pregnant and when the school officials do not believe that such attendance is proper

clearly violates the compulsory attendance law; therefore if the girl is physically capable of attending school, the local school board may not prohibit her attendance by rule or regulation merely because she is pregnant. 1967 Op. Att'y Gen. No. 67-117.

**Health club memberships for employees.** - A school district may spend public funds to provide its full time employees with membership in a private health club if the membership is provided in return for services rendered to the district. 1989 Op. Att'y Gen. No. 89-20.

**School board president's authority.** - A local school board president has authority to deny citizens the right to address the local school board during a meeting of the board, if he is authorized to do so by rules promulgated by the board and he does not exercise that authority arbitrarily or capriciously. 1990 Op. Att'y Gen. No. 90-26.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 15 to 21, 23, 24.

Power to require construction or repair of school buildings, 1 A.L.R. 1559.

Comfort and convenience of teachers and pupils, extent of power of school district to provide for, 7 A.L.R. 791, 52 A.L.R. 249.

Regulations as to use of foreign languages in schools, 7 A.L.R. 1695, 29 A.L.R. 1452.

Necessity, sufficiency and effect of minutes or record of meeting of school board, 12 A.L.R. 235.

Power of school authorities to employ physicians, nurses, oculists, and dentists, 12 A.L.R. 922.

Interruption of school session as affecting contract other than with teacher, 15 A.L.R. 725.

Free textbooks and other school supplies for individual use of pupils, 17 A.L.R. 299, 67 A.L.R. 1196.

"Schoolhouse" as a public building, 19 A.L.R. 545.

Regulations forbidding leaving school grounds during school hours, 32 A.L.R. 1342, 48 A.L.R. 659.

Suspension or expulsion of pupil for smoking, 33 A.L.R. 1180.

Negligence or incompetency, 49 A.L.R. 482.

Eating place, operation of, by school authorities, 63 A.L.R. 100.

Transportation of school pupils at expense of public, 63 A.L.R. 413, 118 A.L.R. 806, 146 A.L.R. 625.

Discretion of administrative officers as to changing boundaries of school district, 65 A.L.R. 1523, 135 A.L.R. 1096.

Gymnasium or athletic field and equipment for same, power of school authorities to provide, 69 A.L.R. 871.

Hiring or leasing schoolhouse to private person for occasional use, 86 A.L.R. 1175.

Right of school district as to challenging acts or proceedings by which its boundaries are affected, 86 A.L.R. 1376.

Misapportionment of school money, right of school district to maintain action based on, 105 A.L.R. 1273.

Right of legislature or school authorities to prescribe and enforce oath of allegiance, "salute to flag" or other ritual of a patriotic character, 110 A.L.R. 383, 120 A.L.R. 655, 127 A.L.R. 1502, 141 A.L.R. 1030, 147 A.L.R. 698.

Lease of school property, power of school or local authorities as to grant of, 111 A.L.R. 1051.

Discretion of school authorities to deny to pupils or teachers scholarship, certificate, diploma, license or other like privilege to which otherwise they would be entitled by law, 121 A.L.R. 1471, 11 A.L.R.4th 1182.

Right of school district to enforce against other party contract which was in excess of former's powers or which did not comply with the conditions of its power in that regard, 122 A.L.R. 1370.

Constitutionality of statute providing school-bus service for pupils of parochial or private schools, 168 A.L.R. 1434.

Absence of member of board or commission from hearing on removal or discharge as affecting validity thereof, 171 A.L.R. 175.

Releasing public school pupils from attendance for purpose of attending religious education classes, 2 A.L.R.2d 1371.

Persons on whom notice of injury or claim against public schools may or must be served, 23 A.L.R.2d 990.

Trust for school children as charitable, or merely benevolent, 25 A.L.R.2d 1114.



Operation of garage for maintenance and repair of municipal vehicles as governmental function, 26 A.L.R.2d 944.

Rejection of public schoolteacher because of disloyalty, 27 A.L.R.2d 487.

Title to buildings when school lands revert for nonuse for school purposes, 28 A.L.R.2d 564.

Personal liability of public school officers or other employees for negligence, 32 A.L.R.2d 712.

Validity, as a charity, of trust to lend money to students, 33 A.L.R.2d 1183.

Hearing on charges before suspension or expulsion from educational institution, 58 A.L.R.2d 903.

Waiver of, or estoppel to assert, failure to give required notice of claim of injury to school district or authorities, 65 A.L.R.2d 1278.

Malicious prosecution, civil liability of school officials for, 66 A.L.R.2d 749.

Tax: rescission of vote authorizing school district expenditure or tax, 68 A.L.R.2d 1041.

Power of school district to employ counsel, 75 A.L.R.2d 1339.

Age: power of public school authorities to set minimum or maximum age requirements for pupils in absence of specific statutory authority, 78 A.L.R.2d 1021.

Constitutionality, construction, and application of statutes declaring that school buildings are civic centers or otherwise providing for use of such buildings for other than school purposes, 79 A.L.R.2d 1148.

Attendance: determination of school attendance, enrollment, or pupil population for purpose of apportionment of funds, 80 A.L.R.2d 953.

Elections - What is a "public place" within requirements as to posting of school election notices, 90 A.L.R.2d 1212.

Use of school property for other than public school or religious purposes, 94 A.L.R.2d 1274.

Elections - Inclusion or exclusion of first and last days in computing time for giving notice of school district election, which must be given a certain number of days before a known future date, 98 A.L.R.2d 1392.

Regulations as to fraternities and similar associations connected with educational institution, 10 A.L.R.3d 389.

Marriage or pregnancy of public school student as ground for expulsion or exclusion, or of restriction of activities, 11 A.L.R.3d 996.

Validity of regulation by school authorities as to clothes or personal appearance of pupils, 14 A.L.R.3d 1201.

Local improvements: exemption of public school property from assessments for local improvements, 15 A.L.R.3d 847.

Participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college, 32 A.L.R.3d 864.

Public schools: modern status of doctrine of sovereign immunity as applied to public schools and institutions of higher learning, 33 A.L.R.3d 703.

Tax exemption: garage or parking lot as within tax exemption extended to property of educational, charitable, or hospital organizations, 33 A.L.R.3d 938.

Tort liability of public schools and institutions of higher learning from accidents due to condition of buildings or equipment, 34 A.L.R.3d 1166.

Transportation: tort liability of public schools and institutions of higher learning for accidents associated with transportation of students, 34 A.L.R.3d 1210.

Athletic events: tort liability of public schools and institutions of higher learning for accident occurring during school athletic events, 35 A.L.R.3d 725.

Vocational training: liability of public schools and institutions of higher learning for accidents associated with chemistry experiments, shopwork and manual or vocational training, 35 A.L.R.3d 758.

Fellow students: tort liability of public schools and institutions of higher learning for injuries caused by acts of fellow students, 36 A.L.R.3d 330.

Physical education: tort liability of public schools and institutions of higher learning for accidents occurring during physical education classes, 36 A.L.R.3d 361.

Nonschool purposes: tort liability of public schools and institutions of higher learning for accidents occurring during use of premises and equipment for other than school purposes, 37 A.L.R.3d 712.

Playground: tort liability of public schools and institutions of higher learning for injuries due to condition of grounds, walks, and playgrounds, 37 A.L.R.3d 738.

Tort liability of public schools and institutions of higher learning for injuries resulting from lack or insufficiency of supervision, 38 A.L.R.3d 880.

Fees: validity of exaction of fees from children attending elementary or secondary public schools, 41 A.L.R.3d 752.

Property taxes: validity of basing public school financing system on local property taxes, 41 A.L.R.3d 1220.

Search: admissibility, in criminal case, of evidence obtained by search conducted by school official, teacher, 49 A.L.R.3d 978.

Loitering or trespass: validity and construction of statute or ordinance forbidding unauthorized persons to enter upon or remain in school buildings or premises, 50 A.L.R.3d 340.

Tax exemption: charitable or educational organization from sales or use taxes, 53 A.L.R.3d 748.

Discipline of pupil for conduct away from school grounds, 53 A.L.R.3d 1124.

Residence for purpose of admission to public school, 56 A.L.R.3d 641.

Zoning regulations as applied to schools, colleges, universities, and the like, 64 A.L.R.3d 1087, 64 A.L.R.3d 1138, 74 A.L.R.3d 14, 74 A.L.R.3d 136.

Sex education: validity of sex education programs in public schools, 82 A.L.R.3d 579.

AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher, 60 A.L.R.4th 260.

Validity, construction, and effect of municipal residency requirements for teachers, principals, and other school employees, 75 A.L.R.4th 272.

Lunches and nutrition: construction and application of National School Lunch Act (42 U.S.C.S. §§ 1751 et seq.) and Child Nutrition Act of 1966 (42 U.S.C.S. §§ 1771 et seq.), 14 A.L.R. Fed. 634.

Freedom of press: validity, under federal Constitution, of public school or state college regulation of student newspapers, magazines, or other publications - federal cases, 16 A.L.R. Fed. 182.

Attorneys' fees: construction and application of § 718 of Education Amendments Act of 1972 (20 U.S.C.S. § 1617) authorizing court to allow prevailing party, other than United

States, reasonable attorneys' fee as part of costs in school desegregation case, 22 A.L.R. Fed. 688.

Tax exemption: construction and application of so-called "charitable and educational exemption" of Copyright Act (17 U.S.C.S. § 104), 23 A.L.R. Fed. 974.

78 C.J.S. Schools and School Districts § 99.

### **22-5-4.1. Local school boards; additional powers.**

Each local school board may authorize a period of silence not to exceed one minute at the beginning of the school day. This period may be used for contemplation, meditation or prayer, provided that silence is maintained and no activities are undertaken.

**History:** Laws 1981, ch. 296, § 1.

### **ANNOTATIONS**

**Section unconstitutional.** - This section, and its implementation in a public school system, violates N.M. Const., art. II, § 11, in that it gives a preference by law to a particular mode of worship. *Duffy v. Las Cruces Pub. Schs.*, 557 F. Supp. 1013 (D.N.M. 1983).

**As preeminent purpose of section is to establish devotional exercise in the classrooms** of New Mexico public schools. *Duffy v. Las Cruces Pub. Schs.*, 557 F. Supp. 1013 (D.N.M. 1983).

**And as primary effect of section's enactment and implementation is advancement of religion.** *Duffy v. Las Cruces Pub. Schs.*, 557 F. Supp. 1013 (D.N.M. 1983).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Constitutionality of regulation or policy governing prayer, meditation, or "moment of silence" in public schools, 110 A.L.R. Fed. 211.

### **22-5-4.2. Child abuse; report coordination; confirmation.**

A. A local school board may adopt policies providing for the coordination and internal tracking of reports made by school district personnel pursuant to Section 32-1-15 NMSA 1978. Such policies, however, shall not require any notification to school district personnel before the report is made to one of the offices listed in Subsection A of that section. No policy shall purport to relieve any person having a duty to report under that section from that duty.

B. After a report is made to a county social services office of the human services department pursuant to Section 32-1-15 NMSA 1978, by any school district personnel, that office shall notify the person making the report within five days after the report was

made that the office is investigating the matter. Mailing a notice within five days shall constitute compliance with this subsection.

**History:** Laws 1985, ch. 94, § 1.

### **22-5-4.3. School discipline policies.**

A. Local school boards shall establish student discipline policies and shall file them with the department of education. The local school board shall involve parents, school personnel and students in the development of these policies, and public hearings shall be held during the formulation of these policies in the high school attendance areas within each district or on a district-wide basis for those districts which have no high school.

B. Each school district discipline policy shall establish rules of conduct governing areas of student and school activity, detail specific prohibited acts and activities and enumerate possible disciplinary sanctions, which sanctions may include corporal punishment, in-school suspension, school service, suspension or expulsion.

C. An individual school within a district may establish a school discipline policy, provided that parents, school personnel and students are involved in its development and a public hearing is held in the school prior to its adoption. If an individual school adopts a discipline policy in addition to the local school board's district discipline policy, it shall submit its policy to the local school board for approval.

D. No school employee who in good faith reports any known or suspected violation of the school discipline policy or in good faith attempts to enforce the policy shall be held liable for any civil damages as a result of such report or of his efforts to enforce any part of the policy.

E. The policies adopted pursuant to this section shall go into effect no later than the beginning of the 1987-88 school year; provided, however, that existing school discipline policies shall be reviewed pursuant to the procedures established in this section by the beginning of the 1987-88 school year.

**History:** 1978 Comp., § 22-5-4.3, enacted by Laws 1986, ch. 33, § 9.

### **22-5-4.4. School employees; reporting drug and alcohol use; release from liability.**

A. A school employee who knows or in good faith suspects any student of using or abusing alcohol or drugs shall report such use or abuse pursuant to procedures established by the local school board.

B. No school employee who in good faith reports any known or suspected instances of alcohol or drug use or abuse shall be held liable for any civil damages as a result of

such report or his efforts to enforce any school policies or regulations regarding drug or alcohol use or abuse.

**History:** 1978 Comp., § 22-1-5, enacted by Laws 1985, ch. 180, § 1; recompiled as 1978 Comp., § 22-5-4.4 by Laws 1986, ch. 33, § 10.

#### **22-5-4.5. Pledge of allegiance.**

Local school boards shall provide that the pledge of allegiance shall be recited daily in each public school in the school district according to regulations adopted by the state board.

**History:** 1978 Comp., § 22-5-4.5, enacted by Laws 1986, ch. 33, § 11.

#### **22-5-4.6. Collaborative school improvement programs.**

A. A local school board may approve an individual school's plan to implement a collaborative school improvement program upon a finding that the plan is in the best interest of the school and is supported by the participating teaching staff.

B. The input and concerns of parents, students, school personnel and members of the community shall be solicited and considered in the development and adoption of a collaborative school improvement program.

C. If necessary for the implementation of a collaborative school improvement program, the local school board may apply to the state board for a waiver of Public School Code provisions relating to length of school day, staffing patterns or subject areas.

D. A teacher participating in the development and implementation of a collaborative school improvement program, may contact the state board to comment on the local school board's waiver request if he communicated his opinion in writing to the local school board at the time the local school board approved implementation of the program.

**History:** 1978 Comp., § 22-5-4.6, enacted by Laws 1990, ch. 52, § 3.

### **ANNOTATIONS**

**Effective dates.** - Laws 1990, ch. 52 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 16, 1990.

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

#### **22-5-5. Compensation; prohibited employment.**

A. The members of a local school board shall serve without compensation.

B. No member of a local school board shall be employed in any capacity by a school district governed by that local school board during the term of office for which the member was elected or appointed.

**History:** 1953 Comp., § 77-4-3, enacted by Laws 1967, ch. 16, § 29.

### ANNOTATIONS

**Member of local school board cannot resign from such office and thereafter be appointed superintendent** of schools or be otherwise employed by that school district, during the term for which he or she was elected or appointed. 1974 Op. Att'y Gen. No. 74-17.

### 22-5-6. Nepotism prohibited.

A. No local school board shall initially employ or approve the initial employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter or daughter-in-law of a member of such local school board.

B. Nothing in this section shall prohibit the continued employment of a person employed on or before March 1, 1981.

**History:** 1953 Comp., § 77-4-3.1, enacted by Laws 1971, ch. 199, § 1; 1981, ch. 86, § 1.

### ANNOTATIONS

**Object of section is to prevent nepotism in initial hiring** of school employees. The hiring of a teacher closely related to a member of the school board justifiably arouses public suspicion that the teacher was hired on the basis of relationship rather than merit. Such suspicions, however, relate only to the initial hiring of the teacher. There is no reason to suspect nepotism in the continued employment of a tenured teacher whose competency has been established by years of service, merely because a family member is elected to the school board at some time during the teacher's career. *New Mexico State Bd. of Educ. v. Board of Educ.*, 95 N.M. 588, 624 P.2d 530 (1981)(decided prior to 1981 amendment).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity, construction, and effect of state constitutional or statutory provision regarding nepotism in the public service, 11 A.L.R.4th 826.

### 22-5-7. Officers; surety bonds.

A. From among its members, a local school board shall elect a president, a vice-president and a secretary.

B. Before assuming the duties of office, the president and secretary of a local school board and the superintendent of schools of a school district shall each obtain an official bond payable to the school district and conditioned upon the faithful performance of their duties during their terms of office. The bonds shall be executed by a corporate surety company authorized to do business in this state. The amount of each bond required shall be fixed by the local school board but shall not be less than five thousand dollars (\$5,000).

C. A local school board may elect to obtain a schedule or blanket corporate surety bond covering all local school board members and school district administrators and employees for any period not exceeding four years.

D. The cost of bonds obtained pursuant to this section shall be paid from the operational fund of the school district. The bonds shall be approved by the director of the public school finance division and filed with the secretary of finance and administration.

**History:** 1953 Comp., § 77-4-4, enacted by Laws 1967, ch. 16, § 30; 1977, ch. 247, § 202; 1980, ch. 151, § 45.

### **22-5-8. Term of office.**

A. The full term of office of a member of a local school board shall be four years from March 1 succeeding his election to office at a regular school district election.

B. Notwithstanding the provisions of Subsection A of this section, the term of office for a member elected to a local school board prior to March 1, 1985 shall be six years.

C. Further notwithstanding the provisions of Subsection A of this section, in any five-member school board where the operation of Subsections A and B of this section would result in coinciding terms for four members of the board, one of the terms, to be chosen by lot, beginning March 1, 1987, shall be for a period of two years; provided that such position shall revert to a four-year term in 1989.

D. Further notwithstanding the provisions of Subsection A of this section, in any seven-member school board where the operation of Subsections A and B of this section would result in coinciding terms for five members of the board, one of the terms, to be chosen by lot, beginning March 1, 1987, shall be for a period of two years; provided that such position shall revert to a four-year term in 1989.

E. Any member of a local school board whose term of office has expired shall continue in that office until his successor is elected and qualified.

**History:** 1953 Comp., § 77-4-5, enacted by Laws 1967, ch. 16, § 31; 1985, ch. 142, § 3.

### **ANNOTATIONS**



**Defeated incumbent who is still a member of an existing five-man board may vote** on the resolution to increase the board membership to seven. While he is what is commonly referred to as a lame duck, he still exercises the full powers of his office for his term of office. 1971 Op. Att'y Gen. No. 71-17. See also 22-5-3 NMSA 1978.

### **22-5-8.1. Term of office for board members of certain districts.**

A. The full term of office of a member of a local school board of a district located in a class A county shall be four years from March 1 succeeding his election to office at a regular school district election.

B. Notwithstanding the provisions of Subsection A of this section, the term of office for a member elected to a local school board prior to March 1, 1983 shall be six years.

C. Further, notwithstanding the provisions of Subsection A of this section, in any seven-member school board where the operation of Subsection A would result in coinciding terms for five members of the board, one of the terms, to be chosen by lot prior to the election, beginning March 1, 1985 shall be for a period of two years; provided that such position shall revert to a four-year term in 1987.

D. Any member of a local school board in a class A county whose term of office has expired shall continue in that office until his successor is elected and qualified.

**History:** 1978 Comp., § 22-5-8.1, enacted by Laws 1983, ch. 237, § 1.

### **22-5-9. Local school board vacancies.**

A. A vacancy occurring in the membership of a local school board shall be filled at an open meeting at which a quorum of the membership is present, by a majority vote of the remaining members appointing a qualified person to fill the vacancy.

B. A qualified person appointed to fill a vacancy occurring in the membership of a local school board shall hold that office until the next regular school district election when an election shall be held to fill the vacancy for the unexpired term.

C. If a qualified person is not appointed to fill the vacancy within forty-five days from the date the vacancy occurred, the state board shall appoint a qualified person to fill the vacancy until the next regular school district election.

D. In the event vacancies occur in a majority of the full membership of a local school board, the state board shall appoint qualified persons to fill the vacancies. Those persons appointed shall hold office until the next regular or special school district election when an election shall be held to fill the vacancies for the unexpired terms.

**History:** 1953 Comp., § 77-4-6, enacted by Laws 1967, ch. 16, § 32; 1979, ch. 335, § 4.

### **22-5-9.1. Oath of office.**

All elected or appointed members of local school boards shall take the oath of office prescribed by Article 20, Section 1 of the constitution of New Mexico.

**History:** Laws 1979, ch. 335, § 7.

### **22-5-10. Publications; advertisements.**

Except where otherwise specifically provided, whenever a local school board is required by law to make a publication or advertisement, the publication or advertisement shall be published in English in any newspaper published in the school district having general circulation within the school district. If there is no such newspaper, any newspaper published in the state having general circulation in the school district.

**History:** 1953 Comp., § 77-4-7, enacted by Laws 1967, ch. 16, § 33.

#### **ANNOTATIONS**

**Cross-references.** - As to publication of notice generally, see 14-11-1 NMSA 1978 et seq.

### **22-5-11. Local school boards; salary schedule.**

A. Prior to the beginning of the 1986-87 school year, each school board shall file its 1985-86 salary schedule and its 1986-87 salary schedule with the office of education. Prior to the beginning of each subsequent school year, each local school board shall file with the office of education a district salary schedule, which salary schedule shall incorporate any salary increases or compensation measures specifically mandated by the legislature.

B. No local school board shall reduce the district salary schedule established pursuant to Subsection A of this section without the prior written approval of the director of the office of education. The director of the office of education shall give written notice to the legislative finance committee and the department of finance and administration of any approved reduction of any school district's salary schedule, including the reasons for the request for reduction and the grounds for approval.

**History:** 1978 Comp., § 22-5-11, enacted by Laws 1986, ch. 33, § 12.

#### **ANNOTATIONS**

**Compiler's note.** - Laws 1979, ch. 54, § 1, repealed former 22-5-11 NMSA 1978, relating to annual reports by local school boards to the department of education. For provisions of former section, see 1978 original pamphlet.

## **ARTICLE 6**

### **SCHOOL DISTRICT ELECTIONS**

**22-6-1 to 22-6-4. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1985, ch. 168, § 22 repeals 22-6-1 to 22-6-4 NMSA 1978, as enacted by Laws 1967, ch. 16, § 35 and amended by Laws 1971, ch. 314, §§ 1 to 3, relating to regular and special school district elections, precincts and polling places, effective June 14, 1985. For provisions of former sections, see 1981 Replacement Pamphlet. For present comparable provisions, see 1-22-3 to 1-22-6 NMSA 1978.

**22-6-5. Qualifications for a candidate.**

A candidate for membership on a local school board must be a qualified elector of the state and a resident of the school district in which he is a candidate.

**History:** 1953 Comp., § 77-5-5, enacted by Laws 1967, ch. 16, § 39.

#### **ANNOTATIONS**

**Cross-references.** - For constitutional provision pertaining to residence of public officers, see N.M. Const., art. V, § 13.

For school election law, see 1-22-1 to 1-22-19 NMSA 1978.

**Person who lives outside school district may not serve on that district's school board.** 1969 Op. Att'y Gen. No. 69-16.

**22-6-6 to 22-6-34. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1985, ch. 168, § 22 repeals 22-6-6 to 22-6-34 NMSA 1978, relating to the candidacy for membership on a local school board, duties of the election officials and absentee voting, effective June 16, 1985. For provisions of former sections, see 1981 Replacement Pamphlet. For present comparable sections, see 1-22-7 to 1-22-19 NMSA 1978.

## **ARTICLE 7**

### **LOCAL SCHOOL BOARD MEMBER RECALL**

### **22-7-1. Short title.**

This act [22-7-1 to 22-7-16 NMSA 1978] may be cited as the "Local School Board Member Recall Act".

**History:** 1953 Comp., § 77-4A-1, enacted by Laws 1977, ch. 308, § 1.

### **ANNOTATIONS**

**Cross-references.** - For constitutional provision authorizing recall of local school board members, see N.M. Const., art. XII, § 14.

### **22-7-2. Purpose of act.**

The purpose of the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978] is to establish the methods and procedures by which a local school board member may be recalled as provided in Article 12, Section 14 of the constitution of New Mexico.

**History:** 1953 Comp., § 77-4A-2, enacted by Laws 1977, ch. 308, § 2.

### **22-7-3. Definitions.**

As used in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978]:

- A. "canvasser" means a registered voter who circulates a petition and collects signatures;
- B. "date of closure" means the date on which the county clerk receives signed petitions for the recall of one or more named members;
- C. "date of initiation" means the date on which the county clerk stamps the face sheet of the petition initiating the recall procedure;
- D. "face sheet" means the first page of a petition containing the information as provided in Subsections D and E of Section 22-7-6 NMSA 1978;
- E. "member" means any person elected to the local school board of a school district;
- F. "named member" means a local school board member named on a petition and subject to recall;
- G. "petition" means a document consisting of a completed face sheet or exact duplicate thereof and as many subsequent pages as are necessary for signatures;
- H. "petitioner" means a person, group or organization initiating the petition;

I. "registered voter" means any qualified elector who is registered to vote as provided in the Election Code [Chapter 1 NMSA 1978];

J. "signature" means the name of a person as written by himself;

K. "subsequent page" means the pages in a petition after the face sheet arranged as provided in Subsection G of Section 22-7-6 NMSA 1978; and

L. "county clerk" means the clerk of the county in which the school district is situate or, in the case of a multi-county school district, the clerk of the county in which the administrative office of the school district is situate.

**History:** 1953 Comp., § 77-4A-6, enacted by Laws 1977, ch. 308, § 3; 1985, ch. 169, § 1.

#### **22-7-4. Members subject to recall.**

Any elected member of the local school board of any school district may be recalled as provided in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978].

**History:** 1953 Comp., § 77-4A-4, enacted by Laws 1977, ch. 308, § 4.

#### **22-7-5. Expenses.**

The local school board shall ensure the payment of the cost of a special recall election and any costs incurred by the county clerk in carrying out his duties as provided in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978].

**History:** 1953 Comp., § 77-4A-5, enacted by Laws 1977, ch. 308, § 5; 1985, ch. 169, § 2.

#### **22-7-6. Petition.**

A. A separate petition shall be initiated for each named member.

B. The petition shall be on eight and one-half inch by fourteen inch paper.

C. All information written on the petition form shall be in compliance with the federal Voting Rights Act of 1965, as amended.

D. Each face sheet of a petition shall contain the following:

(1) a space for the initiation date;

(2) a notice at the top of the sheet stating: "Recall is a local decision to be funded by local money. Additional state funds will not be advanced to support recall.";

- (3) a space for the name of the named member;
- (4) a space for the name of the person, group or organization initiating the petition;
- (5) a space in which to list the specific charges in support of the recall of the named member that constitute malfeasance in office, misfeasance in office or violation of oath of office; and
- (6) a notice stating "Signatures are valid for a maximum of one hundred ten days from date of initiation."

E. The remaining portion of the face sheet shall be substantially in the following form:

**REFER TO THE BOOK FOR THE PROPER FORM**

F. One completed face sheet or duplicate thereof shall be the first page of all circulated petitions.

G. Each subsequent page of the petition shall have approximately twenty-five lines numbered one to twenty-five and shall be substantially in the form as provided in Subsection E of Section 6 [22-7-6 NMSA 1978] of the Local School Board Member Recall Act.

**History:** 1953 Comp., § 77-4A-6, enacted by Laws 1977, ch. 308, § 6.

**ANNOTATIONS**

**Cross-references.** - As to signatures on petition, see 22-7-10 NMSA 1978.

As to challenges to petition, see 22-7-12 NMSA 1978.

**Voting Rights Act of 1965.** - The federal Voting Rights Act of 1965 appears mainly as 42 U.S.C. §§ 1973 to 1973bb-1.

**22-7-7. Affidavit with petition; penalty.**

A. When submitted to the county clerk, each petition shall have a notarized affidavit attached. The affidavit shall state that the canvasser is a registered voter of the district and that the canvasser circulated that particular petition and witnessed each signer write his signature and any other information recorded on the petition.

B. According to the best information and belief of the canvasser, the canvasser shall insure the following:

- (1) each signature is the signature of the person whose name it purports to be;

(2) each signer is a registered voter of the county and school district listed on the petition;

(3) each signature was obtained on or after the date of initiation; and

(4) each signer had an opportunity to read the information on the completed face sheet or an exact duplicate thereof.

C. Any knowingly false statement made in the affidavit constitutes a fourth degree felony.

**History:** 1953 Comp., § 77-4A-7, enacted by Laws 1977, ch. 308, § 7; 1985, ch. 169, § 3.

### **22-7-8. Responsibilities of petitioner.**

A. The petitioner may obtain a face sheet form and a subsequent page form from the county clerk, or the petitioner may assemble both as provided in Section 22-7-6 NMSA 1978.

B. The petitioner shall complete the following portions of the face sheet:

(1) name of the named member; and

(2) name of the person, group or organization initiating the petition.

C. The petitioner shall cite the specific charges in support of the recall of the named member on the face sheet in compliance with the federal Voting Rights Act of 1965, as amended. The charges shall constitute misfeasance in office, malfeasance in office or violation of oath of office.

D. The petitioner shall submit the completed face sheet to the county clerk for affixing of the initiation date.

E. The petitioner shall duplicate the completed face sheet with the initiation date affixed.

F. The petitioner shall file all petitions collected to recall the named member with the county clerk on the same day within one hundred ten calendar days from the initiation date.

**History:** 1953 Comp., § 77-4A-8, enacted by Laws 1977, ch. 308, § 8; 1985, ch. 169, § 4.

### **ANNOTATIONS**

**Voting Rights Act of 1965.** - The federal Voting Rights Act of 1965 appears mainly as 42 U.S.C. §§ 1973 to 1973bb-1.

**Improper motive as component of misfeasance.** - When a public officer has a right to perform an act which is discretionary, the manner in which the discretion is exercised does not rise to the level of misfeasance unless the discretion is exercised with an improper or corrupt motive; therefore where the school board engaged in a site selection process spanning approximately two years, including consideration of 15 sites and a myriad of relevant factors, and nothing in the record indicated that any of the challenged board members acted out of an improper or corrupt motive, there was no misfeasance. *CAPS v. Board Members*, 113 N.M. 729, 832 P.2d 790 (1992).

## **22-7-9. Duties of county clerk.**

A. The county clerk shall perform the following duties:

(1) provide standard face sheet forms to include a place for the mailing address of the petitioner, standard subsequent page forms and standard affidavit forms to the general public upon request;

(2) affix the initiation date to the completed face sheet only after the district court has issued an order permitting the continuation of the recall process after a hearing pursuant to Section 22-7-9.1 NMSA 1978 on the sufficiency of facts supporting the charges of malfeasance or misfeasance in office or violation of oath of office;

(3) send one copy of the completed face sheet to the named member by registered mail, return receipt requested; and

(4) keep one copy of the completed face sheet on file.

B. Upon receipt of completed petitions, the county clerk shall stamp the petitions with the date of closure. All completed petitions for the recall of one or more named members shall be filed with the county clerk on the same day within one hundred ten calendar days from the date of initiation.

C. The county clerk shall verify the signatures on the completed petitions within ten working days.

D. Within five working days of the validation by the county clerk, the county clerk shall determine whether the verified signatures meet the minimum number required by Section 22-7-10 NMSA 1978.

E. If the county clerk determines that sufficient signatures have not been submitted, he shall notify the petitioner at the mailing address listed on the face sheet and the named member by registered mail, return receipt requested, within three working days after the determination.



F. If the county clerk determines that sufficient signatures have been submitted, he shall do the following within three working days after the determination:

(1) notify the petitioner at the mailing address listed on the face sheet and the named member by registered mail, return receipt requested; and

(2) initiate procedures for a special recall election as provided in Section 22-7-13 NMSA 1978.

**History:** 1953 Comp., § 77-4A-9, enacted by Laws 1977, ch. 308, § 9; 1979, ch. 277, § 1; 1985, ch. 169, § 5; 1987, ch. 142, § 1.

### **ANNOTATIONS**

**Exclusion of names on list by superintendent.** - Superintendent may exclude those signatures not listing a date, but his exclusion of signatures with names not "printed as registered" or with "city" not listed, as required by 22-7-6 NMSA 1978, was inconsistent with the purpose of 22-7-10D NMSA 1978 and was, therefore, improper. State ex rel. Citizens for Quality Educ. v. Gallagher, 102 N.M. 516, 697 P.2d 935 (1985).

**Name withdrawal petitions valid before final action on petition.** - Where superintendent received name withdrawal petitions after receiving clerk's certification of signatures, but before taking final action on petition, superintendent properly refused to count names to those persons who submitted name withdrawal petitions. State ex rel. Citizens for Quality Educ. v. Gallagher, 102 N.M. 516, 697 P.2d 935 (1985).

### **22-7-9.1. Court hearing.**

A. Prior to affixing the date of initiation to the completed face sheet, the county clerk shall file an application with the district court within five days from the date the completed face sheet is presented to the county clerk, requesting a hearing for a determination by the court of whether sufficient facts exist to allow the petitioner to continue with the recall process.

B. Upon the filing of the application, the district court shall set a hearing date on the issue of sufficiency of the facts alleged, which hearing shall be held not more than ten days from the date the application is filed by the county clerk. The court shall notify the petitioner at the mailing address listed on the face sheet of the time and place of the hearing.

C. Upon review of the completed face sheet together with affidavits submitted by the petitioner setting forth specific facts in support of the charges specified on the face sheet, the district court shall make a determination whether sufficient facts exist to allow petitioners to continue with the recall process.

D. Upon entry of an order by the court that sufficient facts exist to allow the petitioner to continue the recall process, the county clerk shall affix the date of initiation to the completed face sheet.

E. The district court's decision is appealable by the petitioner only to the supreme court, and notice of appeal shall be filed within five days after the decision of the district court. The supreme court shall hear and render a decision on the appeal forthwith.

**History:** 1978, Comp., § 22-7-9.1, enacted by Laws 1987, ch. 142, § 2.

## **22-7-10. Signatures.**

A. No signature may be signed on the petition prior to the initiation date.

B. Signatures are valid for a maximum of one hundred ten calendar days from the date of initiation.

C. Each signer of a recall petition shall sign but one petition unless more than one member is a named member, and in that case not more than the number of recall petitions equal to the number of named members shall be signed.

D. The signature shall not be counted unless the entire line is filled in full and is upon the form prescribed by the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978].

E. A signature shall be counted on a recall petition unless there is evidence presented that the person signing:

(1) is not a registered voter of the county and of the school district listed on the face sheet of the petition;

(2) has signed more than one recall petition for one named member or has signed one petition more than once; or

(3) is not the person whose name appears on the recall petition.

F. The minimum number of verified signatures needed to validate a petition is thirty-three and one-third percent of the number of registered voters who voted for the school board position of the named member at the last preceding school board election.

**History:** 1953 Comp., § 77-4A-10, enacted by Laws 1977, ch. 308, § 10; 1985, ch. 169, § 6.

## **ANNOTATIONS**

**Cross-references.** - As to petition generally, see 22-7-6 NMSA 1978.

**Subsection B is not intended to prevent withdrawal of signatures** but is intended to determine when signatures expire as a matter of law. State ex rel. Citizens for Quality Educ. v. Gallagher, 102 N.M. 516, 697 P.2d 935 (1985).

**Signer of petition has right to withdraw his name** before the superintendent has taken final action. State ex rel. Citizens for Quality Educ. v. Gallagher, 102 N.M. 516, 697 P.2d 935 (1985).

**Effect of incomplete lines on petition.** - Superintendent may exclude those signatures not listing a date, but his exclusion of signatures with names not "printed as registered" or with "city" not listed is inconsistent with the purpose of Subsection D and is, therefore, improper. State ex rel. Citizens for Quality Educ. v. Gallagher, 102 N.M. 516, 697 P.2d 935 (1985).

## **22-7-11. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1979, ch. 277, § 4, repeals 22-7-11 NMSA 1978, relating to duties of the attorney general in relation to a petition for a recall of a local school board member. For provisions of former section, see 1978 original pamphlet.

## **22-7-12. Recall petition; limitation on appeals of validity of recall petition.**

A. Any person filing any court action challenging a recall petition provided for in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978] shall do so within ten days after the determination of the county clerk as set forth in Section 22-7-9 NMSA 1978. Challenges to the recall petition shall be directed to:

- (1) the validity of the signatures on the petitions;
- (2) the determination of the county clerk as to the minimum number of signatures; or
- (3) the sufficiency of the charge.

Within ten days after the filing of the action, the district court shall hear and render a decision on the matter. The decision shall be appealable only to the supreme court, and notice of appeal shall be filed within five days after the decision of the district court. The supreme court shall hear and render a decision on the appeal forthwith.

B. For the purpose of an action challenging a recall petition, each petitioner filing a recall petition under the Local School Board Member Recall Act appoints the proper filing officer as his agent to receive service of process. Immediately upon receipt of process served upon the proper filing officer, that officer shall, by certified mail, return receipt requested, mail the process to the person.

**History:** 1953 Comp., § 77-4A-12, enacted by Laws 1977, ch. 308, § 12; 1979, ch. 277, § 2; 1985, ch. 169, § 7.

### **22-7-13. Special recall election.**

A. The date of the special recall election shall be set no later than ninety days after the date of the determination by the county clerk.

B. The question to be submitted to the voters at the special recall election shall be whether or not the named member shall be recalled.

C. A special recall election may be held in conjunction with a regular or a special school district election.

D. Whenever a special recall election is called, the county clerk shall give public notice of the special recall election by publishing information regarding the election once each week for four consecutive weeks. The first publication of the information shall be made between forty-five and sixty days before the date of the special recall election.

Information regarding the election shall be in compliance with the federal Voting Rights Act of 1965, as amended, and shall include the date when the special recall election will be held, the question to be submitted to the voters, a brief description of the boundaries of each precinct, the location of each polling place, the hours each polling place will be open and the date and time of the closing of the registration books by the county clerk as required by law.

E. The ballot shall be in compliance with the federal Voting Rights Act of 1965, as amended, and shall present the voter the choice of voting "for the removal of the named member" or "against the removal of the named member".

F. All special recall elections shall be held in compliance with the federal Voting Rights Act of 1965, as amended.

G. Except as otherwise provided in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978], special recall elections in a school district shall be conducted as provided in Sections 22-6-1 through 22-6-34 NMSA 1978.

**History:** 1953 Comp., § 77-4A-13, enacted by Laws 1977, ch. 308, § 13; 1979, ch. 277, § 3; 1985, ch. 169, § 8.

### **ANNOTATIONS**

**Compiler's note.** - Sections 22-6-1 to 22-6-4 and 22-6-6 to 22-6-34 NMSA 1978, cited in Subsection G, were repealed by Laws 1985, ch. 168, § 22. For the present school election law, see 1-22-1 et seq. NMSA 1978.

**Voting Rights Act of 1965.** - The federal Voting Rights Act of 1965 appears mainly as 42 U.S.C. §§ 1973 to 1973bb-1.

### **22-7-14. Vacancy.**

A. The vacancy created by a recalled member shall be filled as provided in Section 22-5-9 NMSA 1978.

B. Under no circumstances may a recalled member be appointed to fill any vacancy for the remainder of the term of office for which he was elected.

**History:** 1953 Comp., § 77-4A-14, enacted by Laws 1977, ch. 308, § 14.

### **22-7-15. Mandamus.**

If the county clerk or local school board fails or refuses to do or perform any of the acts required in the Local School Board Member Recall Act [22-7-1 to 22-7-16 NMSA 1978], the petitioner may apply to any district court for writ of mandamus to compel the performance of the required act, and the court shall entertain that application.

**History:** 1953 Comp., § 77-4A-15, enacted by Laws 1977, ch. 308, § 15; 1985, ch. 169, § 9.

## **ANNOTATIONS**

**Cross-references.** - As to failure, neglect or refusal of local public officer to perform duties of office as cause for removal, see 10-4-2 NMSA 1978.

### **22-7-16. Penalties.**

Any person violating Section 9 [22-7-9 NMSA 1978] of the Local School Board Member Recall Act is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 77-4A-16, enacted by Laws 1977, ch. 308, § 16.

## **ANNOTATIONS**

**Severability clauses.** - Laws 1977, ch. 308, § 17, provides for the severability of the act if any part or application thereof is held invalid.

## **ARTICLE 8 PUBLIC SCHOOL FINANCE**

### **22-8-1. Short title.**

Sections 22-8-1 through 22-8-42 NMSA 1978 may be cited as the "Public School Finance Act".

**History:** 1953 Comp., § 77-6-1, enacted by Laws 1967, ch. 16, § 55.

## **ANNOTATIONS**

**Cross-references.** - As to general obligation bonds of school districts, see 22-18-1 NMSA 1978 et seq.

As to school revenue bonds, see 22-19-1 NMSA 1978 et seq.

As to public school emergency capital outlay, see 22-24-1 NMSA 1978 et seq.

As to public school capital improvements, see 22-25-1 NMSA 1978 et seq.

**No contractual right to free public education.** - The right and privilege to a free public education does not give rise to a contractual relationship for which an individual may sue for breach of contract. *Rubio ex rel. Rubio v. Carlsbad Mun. School Dist.*, 106 N.M. 446, 744 P.2d 919 (Ct. App. 1987).

**Education of nonresidents without taking state allotment unconstitutional donation.** - To the extent that a local school district would undertake the total burden of educating nonresident students without benefit of state allotment as dispensed on the basis of average daily membership, the school district would still be making a donation in aid of those students in violation of N.M. Const., art. IX, § 14. 1978 Op. Att'y Gen. No. 78-14.

### **22-8-2. Definitions.**

As used in the Public School Finance Act [22-8-1 to 22-8-42 NMSA 1978]:

A. "ADM" means membership ("MEM");

B. "membership" means the total enrollment of qualified students on the current roll of class or school on a specified day. The current roll is established by the addition of original entries and re-entries minus withdrawals. Withdrawals of students, in addition to students formally withdrawn from the public school, includes students absent from the public school for as many as ten consecutive school days;

C. "basic program ADM" means the average daily membership of qualified students in the basic program and includes the ADM in special education program classes A and B, as defined in Section 22-8-21 NMSA 1978, but excludes the full-time-equivalent ADM in early childhood education programs and ADM in special education program classes C and D, as defined in Section 22-8-21 NMSA 1978;

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

E. "department" means the state department of public education;

F. "early childhood education ADM" means the full-time-equivalent ADM of students attending approved early childhood education programs;

G. "full-time-equivalent ADM" is that average daily membership calculated by applying to the ADM in an approved public school program the ratio of the number of hours per school day devoted to the program to six hours or the number of hours per school week devoted to the program to thirty hours;

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

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

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

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

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

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

(1) has not graduated from high school;

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

(3) is at least five years of age prior to 12:01 a.m. on September 1 of the school year; provided the provisions of this paragraph shall be effective with the 1987-88 school year;

N. "special education ADM" means the average daily membership of students who:

- (1) are at least five years of age prior to 12:01 a.m. on September 1 of the school year;
- (2) beginning on July 1, 1986, are at least four years of age prior to 12:01 a.m. on September 1 of the school year and classified as developmentally disabled according to the Developmental Disabilities Community Services Act [28-16-1 to 28-16-12 NMSA 1978]; or
- (3) beginning on July 1, 1987, are at least three years of age prior to 12:01 a.m. on September 1 of the school year and classified as developmentally disabled according to the Developmental Disabilities Community Services Act;
- (4) are not more than twenty-one years of age prior to 12:01 a.m. on September 1 of the school year;
- (5) are enrolled in approved special education programs as defined in Section 22-8-21 NMSA 1978; and

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

**History:** 1953 Comp., § 77-6-2, enacted by Laws 1967, ch. 16, § 56; Laws 1969, ch. 180, § 3; 1971, ch. 263, § 3; 1972, ch. 17, § 1; 1974, ch. 7, § 1; 1974, ch. 8, § 1; 1977, ch. 83, § 1; 1977, ch. 246, § 62; reenacted by 1978, ch. 128, § 3; 1980, ch. 151, § 46; 1983, ch. 301, § 68; 1985, ch. 93, § 1; 1986, ch. 33, § 13; 1988, ch. 64, § 13.

## ANNOTATIONS

**Cross-references.** - For definition of "state board," see 22-1-2 NMSA 1978.

**The 1988 amendment,** effective May 18, 1988, substituted " 'ADM' means membership ('MEM')" for " 'ADM' means average daily membership" in Subsection A; in Subsection B, deleted "average daily" preceding "membership" in the first sentence, substituted "qualified students on the current roll of class or school on a specified day" for "students for each school day of the school year used, minus withdrawals of students, divided by the number of school days used", and added the next-to-last sentence; substituted present Subsection E for the provisions of the former subsection which defined "division"; added Subsection O and made related changes in Subsection N.

### **22-8-3. Office of education abolished; functions transferred.**

The office of education in the department of finance and administration is abolished. On the effective date of this act, all powers and duties provided by law for the office of education are transferred to the state department of public education.

**History:** 1978 Comp., § 22-8-3, enacted by Laws 1988, ch. 64, § 14.



## ANNOTATIONS

**Cross-references.** - As to creation of the state department of public education, see N.M. Const., Art. XII, § 6.

**Repeals and reenactments.** - Laws 1988, ch. 64, § 14 repeals former 22-8-3 NMSA 1978, relating to creation of the office of education, as amended by Laws 1983, ch. 301, § 69 and enacts the above section, effective May 18, 1988. For provisions of former section, see 1986 Replacement Pamphlet.

**Temporary provisions.** - Laws 1988, ch. 64, § 45, effective May 18, 1988, provides that on May 18, 1988, all money held by or to the credit of the office of education and all personnel, records, equipment, supplies and other property of any kind belonging to the office of education are transferred to the department of public education.

**Appropriations.** - Laws 1990 (1st S.S.), ch. 1, § 8, effective June 18, 1990, appropriates \$35,000,000 from the general fund to the state department of public education for expenditure in the seventy-ninth fiscal year to be distributed by the state department of public education to fund salary increases and associated employee benefits for public school employees as specified and further provides that any unexpended or unencumbered balance remaining at the end of the seventy-ninth fiscal year shall revert to the general fund.

**"Effective date of this act".** - The phrase "effective date of this act" means May 18, 1988, the effective date of Laws 1988, Chapter 64.

### **22-8-4. Department; duties.**

In addition to other duties provided by law, the department shall:

A. prescribe the forms for and supervise and control the preparation of all budgets of all public schools and school districts; and

B. compile accurate information concerning public school finance and administration.

**History:** 1953 Comp., § 77-6-4, enacted by Laws 1967, ch. 16, § 58; 1969, ch. 180, § 4; 1974, ch. 8, § 2; 1978, ch. 127, § 2; 1979, ch. 305, § 1; 1988, ch. 64, § 15.

## ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "Department" for "Public school finance division" in the catchline; substituted "department" for "division" in the introductory paragraph; deleted Subsection C, regarding advising and consulting with the state superintendent in regard to financial matters, and made a related change.

**Discretionary substantive line item allocations.** - Supervision or control does not include grant of power to division or chief (now director) to make discretionary substantive line item allocations in estimated budgets. 1975 Op. Att'y Gen. No. 75-30.

## **22-8-5. Manual of accounting and budgeting.**

A. The department shall compile and publish a manual prescribing detailed regulations for a uniform system of accounting and budgeting of funds for all public schools and school districts of the state. The manual of regulations and any revision or amendments thereto shall become effective only upon approval by the state board of education and the legislative finance committee, filing with the state records center and publication. A copy shall also be filed with the department of finance and administration.

B. All public schools and school districts shall comply with the regulations prescribed in the manual of accounting and budgeting and shall, upon request, submit additional reports concerning finances to the department. In addition, upon request, all public schools and school districts shall file reports with the department containing pertinent details regarding applications for federal money or federal grants-in-aid, or regarding federal money or federal grants-in-aid received, including but not limited to details of programs, matching funds, personnel requirements, salary provisions and program numbers, as indicated in the catalog of federal domestic assistance, of the federal funds applied for and of those received.

C. Upon request by the department of finance and administration, the legislative finance committee or the legislative education study committee, the state department of public education shall timely furnish information and data obtained from public schools and school districts pursuant to Subsection B of this section.

**History:** 1953 Comp., § 77-6-5, enacted by Laws 1967, ch. 16, § 59; 1976 (S.S.), ch. 28, § 3; 1988, ch. 64, § 16.

### **ANNOTATIONS**

**Cross-references.** - As to filing with records center, see 14-4-4 NMSA 1978.

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "division" throughout the section; in Subsection A, inserted "state board of education and the" in the second sentence, substituted "state records center" for "supreme court law librarian", and added the last sentence; and added Subsection C.

## **22-8-6. Budgets; submission; failure to submit.**

A. Prior to April 15 of each year, each local school board shall submit to the department an estimated budget for the school district for the ensuing fiscal year. Upon written approval of the state superintendent, the date for the submission of the estimated

budget as required by this section may be extended to a later date fixed by the state superintendent.

B. The estimated budget required by this section may include:

(1) estimates of the cost of insurance policies for periods up to five years if a lower rate may be obtained by purchasing insurance for the longer term; or

(2) estimates of the cost of contracts for the transportation of students for terms extending up to four years.

C. If a local school board fails to submit a budget pursuant to this section, the department shall prepare the estimated budget for the school district for the ensuing fiscal year. A local school board shall be considered as failing to submit a budget pursuant to this section if the budget submitted exceeds the total projected resources of the school district or if the budget submitted does not comply with the law or the manual of accounting and budgeting of the department.

**History:** 1953 Comp., § 77-6-6, enacted by Laws 1967, ch. 16, § 60; 1988, ch. 64, § 17.

### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" and "state superintendent" for "chief" throughout the section.

**Legislative intent.** - The legislature obviously intended that a school board may purchase insurance policies not to exceed five years and, if prepayment of the entire premium in the initial policy year is necessary in order to obtain the insurance, then the school board may legally do so. 1975 Op. Att'y Gen. No. 75-3.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Insurance on school buildings, availability of proceeds of, for purpose other than restoring or replacing building damaged or destroyed, 65 A.L.R. 1124.

Right or duty to carry insurance on school property, 100 A.L.R. 600.

### **22-8-7. Budgets; form.**

All budgets submitted to the division by a school district shall be in a form specified by the manual of accounting and budgeting of the division.

**History:** 1953 Comp., § 77-6-7, enacted by Laws 1967, ch. 16, § 61; 1969, ch. 180, § 5.

### **22-8-8. Budgets; minimum student membership.**

Without prior approval of the state superintendent, no local school board shall maintain or provide a budget allowance for a public school having an average daily membership of less than eight.

**History:** 1953 Comp., § 77-6-8, enacted by Laws 1967, ch. 16, § 62; 1988, ch. 64, § 18.

### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "chief".

#### **22-8-9. Budgets; minimum requirements.**

A. No budget for a school district shall be approved by the department which does not provide for:

(1) a school year consisting of at least one hundred eighty full instructional days, or the equivalent thereof, exclusive of any release time for in-service training, effective with the 1987-88 school year; or

(2) a variable school year consisting of a minimum number of instructional hours established by the state board; and

(3) a pupil-teacher ratio or class or teaching load as provided in Section 22-2-8.2 NMSA 1978.

B. The state board shall, by regulation, establish the requirements for a teaching day, the standards for an instructional hour and the standards for a full-time certified classroom instructor and for the equivalent thereof.

C. The local school board shall submit a plan for the implementation of an alternate school year to the state superintendent for his approval.

D. The provisions of Subsection C and Paragraph (2) of Subsection A of this section shall be construed to apply only to school districts with an ADM of 1,000 or fewer.

**History:** 1953 Comp., § 77-6-9, enacted by Laws 1967, ch. 16, § 63; 1969, ch. 180, § 6; 1979, ch. 32, § 1; 1982, ch. 40, § 1; 1986, ch. 33, § 14; 1988, ch. 64, § 19.

### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" near the beginning of Subsection A and "an ADM of 1,000 or fewer" for "an ADM of 500 or fewer" in Subsection D.

#### **22-8-10. Budgets; fixing the estimated budget.**

Prior to June 20 of each year, each local school board shall, at a public hearing of which notice has been published by the local school board, fix the estimated budget for the school district for the ensuing fiscal year. At the discretion of the state superintendent or the local school board, the department may participate in the public hearing.

**History:** 1953 Comp., § 77-6-11, enacted by Laws 1967, ch. 16, § 65; 1988, ch. 64, § 20; 1989, ch. 225, § 1.

## ANNOTATIONS

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "chief".

**The 1989 amendment,** effective June 16, 1989, deleted "and the department" preceding "shall" in the first sentence, and added the second sentence.

### **22-8-11. Budgets; temporary; final.**

A. The department shall:

(1) on or before July 1 of each year, approve and certify to each local school board a temporary operating budget for use by the local school board pending approval by the department of a final budget;

(2) make corrections, revisions and amendments to the estimated budgets fixed by the local school boards and the state superintendent to conform the budgets to the requirements of law and to the manual of accounting and budgeting; and

(3) before the first Monday of September of each year, approve and certify to each local school board and to the board of county commissioners of the county in which the school district is situated a final budget for use by the local school board based upon the estimated budget fixed by the local school board and the state superintendent.

B. No school board or officer or employee of a school district shall make any expenditure or incur any obligation for the expenditure of public funds unless that expenditure or contractual obligation is made in accordance with an operating budget approved by the department but does not prohibit the transfer of funds between line items within series of a budget.

**History:** 1953 Comp., § 77-6-12, enacted by Laws 1967, ch. 16, § 66; 1978, ch. 128, § 4; 1988, ch. 64, § 21.

## ANNOTATIONS

**The 1988 amendment,** effective May 18, 1988, substituted "department" for "division" and "state superintendent" for "director" throughout the section and made minor stylistic changes.

## **22-8-12. Final budgets; alterations or amendments.**

Final budgets shall not be altered or amended after approval and certification by the department except for the following purposes and according to the following procedure:

A. upon written request of any local school board, the state superintendent may authorize transfer within the budget, or provide for items not included, when the total amount of the budget will not be increased thereby;

B. upon written request of any local school board, the state superintendent, in conformance with the regulations of the department may authorize an increase in any budget if the increase is necessary because of the receipt of revenue that was not anticipated at the time the budget was fixed and if the increase is directly related to a special project or program for which the additional revenue was received. The state superintendent shall make a written report to the legislative finance committee of any such budget increase;

C. upon written request of any local school board, the state superintendent may authorize an increase in a budget of not more than one thousand dollars (\$1,000); or

D. upon written request of any local school board, the state superintendent, after notice and a public hearing, may authorize an increase in a school budget in an amount exceeding one thousand dollars (\$1,000). The notice of the hearing shall designate the school district which proposes to alter or amend its budget, together with the time, place and date of the hearing. The notice of the hearing shall be published at least once a week for two consecutive weeks in a newspaper of general circulation in the county in which the school district is situated. The last publication of the notice shall be at least three days prior to the date set for the hearing.

**History:** 1953 Comp., § 77-6-13, enacted by Laws 1967, ch. 16, § 67; 1969, ch. 180, § 10; 1977, ch. 247, § 203; 1988, ch. 64, § 22.

### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" in the introductory paragraph; substituted "state superintendent" for "chief" throughout the section; and deleted "of finance and administration and with the approval of its secretary" following "regulations of the department" in the first sentence in Subsection B.

### **22-8-12.1. Budget requests.**

A. Each local school board shall submit annually on or before October 15 to the department:

(1) an estimate for the succeeding fiscal year of:

(a) the average daily membership of qualified students to be enrolled in the basic program;

(b) the full-time-equivalent average daily membership of students to be enrolled in approved early childhood education programs; and

(c) the average daily membership of students to be enrolled in approved special education programs;

(2) all other information necessary to calculate program costs; and

(3) any other information related to the financial needs of the school district as may be requested by the department.

B. The state board shall submit a budget request for the succeeding fiscal year for pupil transportation and textbooks to the secretary of finance and administration, annually, on or before October 15. The request shall include the formula or per-unit cost used to compute the budget request.

C. All information requested pursuant to Subsection A of this section shall be submitted on forms prescribed and furnished by the department and shall comply with the manual of accounting and budgeting published by the department.

D. The department shall:

(1) review the financial needs of each school district for the succeeding fiscal year; and

(2) submit annually, on or before November 30, to the secretary of finance and administration the recommendations of the state board for:

(a) amendments to the public school finance formula; and

(b) appropriations for the succeeding fiscal year to the public school fund for inclusion in the executive budget document.

**History:** 1953 Comp., § 77-6-13.1, enacted by Laws 1978, ch. 128, § 5; 1980, ch. 151, § 48; 1988, ch. 64, § 23.

## ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" throughout the section; substituted "department" for "director of the public school finance division" in Subsection D; and in Subsection D(2), substituted "November 30" for "November 15" and "state board" for "public school finance division".

**22-8-12.2. Budgets; earnings from investments; operational funds.**

Each local school board shall budget an amount to be expended for capital outlay at least equal to the amount the school district earns from investments of operational funds.

**History:** 1978 Comp., § 22-8-12.2, enacted by Laws 1978, ch. 149, § 1.

### **22-8-13. Reports.**

A. Each local school board shall require each public school in its school district to keep accurate records concerning membership in the public school. The superintendent of each school district shall maintain the following reports for each twenty-day reporting period:

- (1) the basic program MEM by grade in each public school;
- (2) the early childhood education MEM;
- (3) the special education MEM in each public school in class C and class D programs as defined in Section 22-8-21 NMSA 1978;
- (4) the number of class A and class B programs as defined in Section 22-8-21 NMSA 1978; and
- (5) the full-time-equivalent MEM for bilingual multicultural education programs.

B. The superintendent of each school district shall furnish to the department reports of the information required in Paragraphs (1) through (5) of Subsection A of this section for the first forty days of the school year. The forty-day report and all other reports required by law or by the state board shall be furnished within five days of the close of the reporting period.

C. All information required pursuant to this section shall be on forms prescribed and furnished by the department. A copy of any report made pursuant to this section shall be kept as a permanent record of the school district and shall be subject to inspection and audit at any reasonable time.

D. The department shall withhold allotments of funds to any school district where the superintendent has failed to comply until the superintendent complies with and agrees to continue complying with requirements of this section.

E. The provisions of this section may be modified or suspended by the department for any school district or school operating under the Variable School Calendar Act [22-22-1 to 22-22-6 NMSA 1978]. The department shall require MEM reports consistent with the calendar of operations of such school district or school and shall calculate an equivalent MEM for use in projecting school district revenue.



**History:** Laws 1967, ch. 16, § 68; 1953 Comp., § 77-6-14; Laws 1969, ch. 180, § 11; 1971, ch. 263, § 4; 1972, ch. 16, § 7; reenacted by 1974, ch. 8, § 3; 1975, ch. 90, § 1; 1976 (S.S.), ch. 32, § 1; 1978, ch. 128, § 6; 1988, ch. 64, § 24; 1990, ch. 94, § 2.

## ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "division" in Subsections B, D, and E; substituted "22-8-21 NMSA 1978" for "77-6-18.4 NMSA 1953" in Subsection A(3); added "as defined in Section 22-8-21 NMSA 1978" in Subsection A(4); deleted the last sentence of Subsection B regarding forty-day and eighty-day reports; and substituted "department" for "director" in Subsections D and E.

**The 1990 amendment**, effective May 16, 1990, substituted "MEM" for "ADM" throughout the section and, in Subsection B, deleted "the first eighty days of the school year and for the entire school year" at the end of the first sentence, substituted "The forty-day report and all other reports required by law or by the state board" for "The reports for the first forty days and the first eighty days" at the beginning of the second sentence and deleted a third sentence which read "The report for the entire school year shall be furnished not later than fifteen days following the end of each school year".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity of state or local government regulation requiring private school to report attendance and similar information to government - post-Yoder cases, 8 A.L.R.5th 875.

### **22-8-14. Public school fund.**

A. The "public school fund" is created.

B. This fund shall be distributed to school districts in the following parts:

(1) state equalization guarantee distribution;

(2) transportation distribution; and

(3) supplemental distributions:

(a) out-of-state tuition;

(b) emergency; and

(c) program enrichment.

C. The distributions of the public school fund shall be made by the department within limits established by law. The balance remaining in the public school fund at the end of each fiscal year shall revert to the general fund unless otherwise provided by law.

**History:** 1953 Comp., § 77-6-15, enacted by Laws 1967, ch. 16, § 69; 1969, ch. 180, § 12; 1971, ch. 263, § 5; 1972, ch. 87, § 1; 1973, ch. 351, § 1; 1974, ch. 8, § 4; 1975, ch. 342, § 1; 1988, ch. 64, § 25.

## ANNOTATIONS

**Cross-references.** - As to state equalization guarantee distributions, see 22-8-25 NMSA 1978.

As to transportation distributions, see 22-8-26 to 22-8-29 NMSA 1978.

As to supplemental distributions, see 22-8-30 NMSA 1978.

As to transfer of unencumbered balances in current school fund to public school fund, see 22-8-32 NMSA 1978.

As to transfer of federal mineral leasing funds to public school fund, see 22-8-34 NMSA 1978.

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "chief" in the first sentence in Subsection C.

**Proper entity to receive funding.** - Local school district within which Los Lunas hospital and training school is located is appropriate entity to receive funding pursuant to the Public School Finance Act for special education of exceptional children. 1977 Op. Att'y Gen. No. 77-4.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 85 to 98.

Misapportionment of school money, right of school district to maintain action based on, 105 A.L.R. 1273.

79 C.J.S. Schools and School Districts §§ 410 to 413.

### **22-8-15. Allocation limitation.**

The department shall determine the allocations to each school district from each of the distributions of the public school fund, subject to the limits established by law.

**History:** 1953 Comp., § 77-6-16, enacted by Laws 1967, ch. 16, § 70; 1974, ch. 8, § 5; 1988, ch. 64, § 26.

## ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "chief".

## **22-8-16. Payment to school districts.**

The department shall make payments of each distribution of the public school fund by warrant of the department of finance and administration drawn against the public school fund upon vouchers issued by the department. When payments are made to county treasurers for school districts within the county, the county treasurer shall hold and allocate these funds solely for the use and benefit of the specific school district and purpose for which the allocation was made.

**History:** 1953 Comp., § 77-6-17, enacted by Laws 1967, ch. 16, § 71; 1974, ch. 8, § 6; 1988, ch. 64, § 27.

### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "chief" twice in the first sentence.

## **22-8-17. Program cost determination; required information.**

A. The program cost for each school district shall be determined by the department in accordance with the provisions of the Public School Finance Act [22-8-1 to 22-8-42 NMSA 1978].

B. The department is authorized to require from each school district the information necessary to make an accurate determination of the district's program cost.

**History:** Laws 1969, ch. 180, § 13; 1953 Comp., § 77-6-18; reenacted by Laws 1974, ch. 8, § 7; 1988, ch. 64, § 28.

### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, substituted "department" for "chief" once in each subsection.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Determination of school attendance, enrollment, or pupil population for purpose of apportionment of funds, 80 A.L.R.2d 953.

Property taxes: validity of basing public school financing system on local property taxes, 41 A.L.R.3d 1220.

## **22-8-18. Program cost calculation; local school board responsibility.**

A. The total program units for the purpose of computing the program cost shall be calculated by multiplying the sum of the program units itemized as Paragraphs (1)

through (4) in this subsection by the instruction staff training and experience index and adding the program units itemized as Paragraphs (5) through (7) in this subsection. The itemized program units are as follows:

(1) early childhood education;

(2) basic education;

(3) special education, adjusted by subtracting the units derived from class D special education MEM in private, nonsectarian, nonprofit training centers;

(4) bilingual multicultural education;

(5) size adjustment;

(6) enrollment growth; and

(7) special education units derived from class D special education MEM in private, nonsectarian, nonprofit training centers.

B. The total program cost calculated as prescribed in Subsection A of this section includes the cost of early childhood, special, bilingual multicultural and vocational education and other remedial or enrichment programs. It is the responsibility of the local school board to determine its priorities in terms of the needs of the community served by that board. Funds generated under the Public School Finance Act [22-8-1 to 22-8-42 NMSA 1978] are discretionary to local school boards, provided that the special program needs as enumerated in this section are met.

**History:** Laws 1969, ch. 180, § 14; 1953 Comp., § 77-6-18.1, enacted by Laws 1971, ch. 263, § 6; reenacted by 1974, ch. 8, § 8; 1976 (S.S.), ch. 32, § 2; 1977, ch. 244, § 1; 1986, ch. 33, § 15; 1990 (1st S.S.), ch. 3, § 4.

## ANNOTATIONS

**The 1990 (1st S.S.) amendment**, effective July 1, 1990, in Subsection A, substituted "Paragraphs (5) through (7)" for "Paragraphs (5) and (6)" in the first sentence, "special education MEM" for "special education ADM" in Paragraph (3), added present Paragraph (6), and redesignated former Paragraph (6) as present Paragraph (7), substituting therein "special education MEM" for "special education ADM".

### **22-8-19. Early childhood education program units.**

The number of early childhood education program units is determined by multiplying the early childhood education MEM by the cost differential factor 1.44. No early childhood education student shall be counted for more than 0.5 early childhood education MEM.

**History:** Laws 1969, ch. 180, § 15; 1953 Comp., § 77-6-18.2; reenacted by Laws 1974, ch. 8, § 9; 1976 (S.S.), ch. 32, § 3; 1990 (1st S.S.), ch. 3, § 5.

## **ANNOTATIONS**

**The 1990 (1st S.S.) amendment**, effective July 1, 1990, substituted "childhood education MEM" for "childhood education ADM" in both occurrences and "cost differential factor 1.44" for "cost differential factor 1.3".

### **22-8-19.1. Temporary provision; preschool programs; selected districts.**

A. The state department of public education shall fund preschool programs for zero- to five-year-old children in selected school districts. The department, through the office of child development, shall distribute any appropriation for this purpose to local entities upon approval by the department of an application from an individual school district or community-based early childhood education program. The preschool programs shall collaborate, where possible, with existing headstart programs or with other appropriate early childhood education programs in the community, and the preschool programs shall use one of the following three models:

- (1) a community-based early childhood education program;
- (2) a school-based early childhood education program; or
- (3) a home-based early childhood education program.

School districts may choose to contract with licensed community-based early childhood education programs already in existence. School-based early childhood education programs may be housed in a school accredited by the department. A home-based early childhood education program may include a parents-as-teachers program, which supports parents in meeting the developmental learning and social growth needs of their young children.

B. Each preschool program shall have a strong parental involvement component, a staff development component and a procedural process to enable the office of child development to monitor and evaluate the program. The curriculum for each program shall comprehensively address the total developmental needs of the child, including physical, cognitive, social and emotional needs, and shall include aspects of health care, nutrition, safety, the needs of the family and multicultural sensitivity.

**History:** Laws 1992, ch. 83, § 1.

## **ANNOTATIONS**

**Emergency clauses.** - Laws 1992, ch. 83, § 2 makes the act effective immediately. Approved March 9, 1992.

## **22-8-20. Basic program units.**

The number of basic program units is determined by multiplying the basic program MEM in each grade by the corresponding cost differential factor as follows:

Differential Factor	Grades	Cost
-----	-----	-----
-----	-----	-----
-----	-----	-----
	1	1.42
	2 and 3	1.1
	4 through 6	1.0
	7 through 12	1.25.

**History:** 1978 Comp., § 22-8-20, enacted by Laws 1991, ch. 85, § 3.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1991, ch. 85, § 3 repeals former 22-8-20 NMSA 1978, as amended by Laws 1991, ch. 85, § 2, and enacts the above section, effective July 1, 1992.

## **22-8-21. Special education program units.**

A. For the purpose of the Public School Finance Act [22-8-1 to 22-8-42 NMSA 1978], special education programs for exceptional children are those approved by the department and classified as follows:

(1) class A programs, in which department certified individuals provide services to children whose individualized education programs require a minimal amount of special education and in which the ratio of students to professionals is regulated by the state board;

(2) class B programs, in which department certified individuals provide services to children whose individualized education programs require a moderate amount of special education and in which the ratio of students to professionals is regulated by the state board;

(3) class C programs, in which department certified individuals provide services to children whose individualized education programs require an extensive amount of

special education and in which the ratio of students to professionals is regulated by the state board;

(4) class D programs, in which department certified individuals provide services to children whose individualized education programs require a maximum amount of special education and in which the ratio of students to professionals is regulated by the state board. Students in class D programs may be enrolled in private, nonsectarian, nonprofit educational training centers in accordance with the provisions of Section 22-13-8 NMSA 1978; and

(5) programs for developmentally disabled three- and four-year-old children meeting standards approved by the state board.

B. All students assigned to the programs for exceptional children classified in Subsection A of this section shall have been so assigned as a result of diagnosis and evaluation performed in accordance with the standards of the department before the students may be counted in the determination of special education program units as provided in Subsection C of this section.

C. The number of special education program units is the sum of the following:

(1) for class A and class B programs as defined in Subsection A of this section, the product of the number of approved class A and class B programs requested by the local school board and certified by the department multiplied by the cost differential factor 20;

(2) the special education MEM in class C programs as defined in Subsection A of this section multiplied by the cost differential factor 1.9;

(3) the special education MEM in class D programs as defined in Subsection A of this section multiplied by the cost differential factor 3.5; and

(4) the special education MEM for developmentally disabled three- and four-year-old children as defined in Paragraph (5) of Subsection A of this section multiplied by the cost differential factor 3.5; provided that no developmentally disabled three- or four-year-old student shall be counted for additional ancillary service units.

**History:** Laws 1969, ch. 180, § 17; 1953 Comp., § 77-6-18.4; Laws 1971, ch. 263, § 7; 1972, ch. 87, § 2; 1973, ch. 351, § 2; reenacted by 1974, ch. 8, § 11; 1976 (S.S.), ch. 32, § 5; 1980, ch. 35, § 1; 1987, ch. 149, § 1; 1992, ch. 75, § 1; 1992, ch. 84, § 1.

## ANNOTATIONS

**1992 amendments.** - Identical amendments to this section were enacted by Laws 1992, ch. 75, § 1 and Laws 1992, ch. 84, § 1, both effective May 20, 1992, which deleted "of education" following "department" several times throughout the section; rewrote Subsections A(1) to A(4); deleted "to the division" following "certified" in

Subsection C(1); and substituted "MEM" for "ADM" several times in Subsections C(2) to C(4). The section is set out as amended by Laws 1992, ch. 84, § 1. See 12-1-8 NMSA 1978.

## **22-8-22. Bilingual multicultural education program units.**

The number of bilingual multicultural education program units is determined by multiplying the full-time-equivalent MEM in programs implemented in accordance with the provisions of the Bilingual Multicultural Education Act [22-23-1 to 22-23-6 NMSA 1978] by the cost differential factor 0.35, effective July 1, 1990; 0.4, effective July 1, 1991; .425, effective July 1, 1992; and 0.5 effective July 1, 1993.

**History:** 1953 Comp., § 77-6-18.6, enacted by Laws 1974, ch. 8, § 13; 1976 (S.S.), ch. 32, § 6; 1990 (1st S.S.), ch. 3, § 6; 1992, ch. 75, § 2.

### **ANNOTATIONS**

**The 1990 (1st S.S.) amendment**, effective July 1, 1990, substituted "full-time-equivalent MEM" for "full-time-equivalent ADM" and "differential factor 0.35" for "differential factor 0.3" and added at the end the language beginning "effective July 1, 1990".

**The 1992 amendment**, effective May 20, 1992, substituted ".425" for "0.45" near the end of the section.

## **22-8-23. Size adjustment program units.**

A. An approved public school with a MEM of less than 400, including early childhood education full-time equivalent MEM but excluding special education class C and class D MEM, is eligible for additional program units. Separate schools established to provide special programs, including but not limited to early childhood education, vocational and alternative education, shall not be classified as public schools for purposes of generating size adjustment program units. The number of additional program units to which a school district is entitled under this subsection is the sum of elementary-junior high units and senior high units computed in the following manner:

Elementary-Junior High Units

$$\frac{200 - \text{MEM}}{200} \times 1.0 \times \text{MEM} = \text{Units}$$

where MEM is equal to the membership of an approved elementary or junior high school, including early childhood education full-



time equivalent membership but excluding special education class C and class D membership;

$$\begin{array}{l} \text{Senior High Units} \\ \frac{200 - \text{MEM}}{200} \quad \times \quad 2.0 \times \text{MEM} = \text{Units} \end{array}$$

or,

$$\begin{array}{l} \text{Senior High Units} \\ \frac{400 - \text{MEM}}{400} \quad \times \quad 1.6 \times \text{MEM} = \text{Units} \end{array}$$

whichever calculation for senior high units is higher, where MEM is equal to the membership of an approved senior high school, excluding special education class C and class D membership.

B. A school district with total MEM of less than 4,000, including early childhood education full-time equivalent MEM and special education MEM, is eligible for additional program units. The number of additional program units to which a district is entitled under this subsection is the number of district units computed in the following manner:

$$\begin{array}{l} \text{District Units} \\ \frac{4000 - \text{MEM}}{4000} \quad \times \quad 0.15 \times \text{MEM} = \text{Units} \end{array}$$

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

C. A school district with over 10,000 MEM with a ratio of MEM to senior high schools less than 4,000:1 is eligible for additional program units based on the number of approved regular senior high schools which are not eligible for senior high units under Subsection A of this section. The number of additional program units to which an eligible school district is entitled under this subsection is the number of units computed in the following manner:

$$\frac{4000 - \text{MEM}}{\text{Senior High Schools}} \quad \times \quad 0.50 = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership, and where senior high schools are equal to the number of approved regular senior high schools in the district.

D. A school district with a total MEM of greater than ten

thousand but less than fifteen thousand, including early childhood education full-time equivalent MEM and special education MEM is eligible for additional program units. The number of additional program units to which an eligible district is entitled under this subsection is the number of units computed in the following manner:

$$\frac{\text{MEM} - 10,000}{10,000} \times .15 \times \text{MEM} = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

E. A school district with a total MEM of greater than fifteen thousand but less than thirty-five thousand, including early childhood education full-time equivalent MEM and special education MEM is eligible for additional program units. The number of additional program units to which an eligible district is entitled under this subsection is the number of units computed in the following manner:

$$\frac{\text{MEM} - 15,000}{15,000} \times .15 \times \text{MEM} = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

F. A school district with a total MEM of greater than thirty-five thousand, including early childhood education full-time equivalent MEM and special education MEM is eligible for additional program units. The number of additional program units to which an eligible district is entitled under this subsection is the number of units computed in the following manner:

$$\frac{\text{MEM} - 35,000}{35,000} \times .023 \times \text{MEM} = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

**History:** Laws 1974, ch. 8, § 14; 1953 Comp., § 77-6-18.7; reenacted by Laws 1975, ch. 119, § 1; 1976 (S.S.), ch. 32, § 7; 1977, ch. 82, § 1; 1979, ch. 276, § 1; 1981, ch. 87, § 1; 1989, ch. 221, § 1; 1991, ch. 85, § 4.

## ANNOTATIONS

**The 1989 amendment**, effective July 1, 1991, substituted "MEM" for "ADM" and deleted "average daily" preceding "membership" several times throughout the section, added Subsections D and E, and made minor stylistic changes throughout the section.

**The 1991 amendment**, effective July 1, 1991, in Subsection D, substituted "fifteen thousand" for "thirty-five thousand" near the beginning and ".15" for ".2" in the formula; added Subsection E; designated former Subsection E as Subsection F; and substituted ".023" for ".008" in the formula in Subsection F.

### **22-8-23.1. Enrollment growth program units.**

A school district with an increase in MEM equal to or greater than one percent, when compared with the immediately preceding year, is eligible for additional program units. The increase in MEM shall be calculated in the following manner:

$$\frac{(\text{Current Year MEM} - \text{Previous Year MEM})}{\text{Previous Year MEM}} \times 100 = \text{Percent Increase}$$

The number of additional program units to which an eligible district is entitled under this subsection is the number of units computed in the following manner:

$$(\text{MEM for current year} - \text{MEM for prior year}) \times .50 = \text{Units}$$

where MEM is equal to the total district membership, including early childhood education full-time equivalent membership and special education membership.

**History:** 1978 Comp., § 22-8-23.1, enacted by Laws 1990 (1st S.S.), ch. 3, § 7; 1990 (1st S.S.), ch. 3, § 8.

### **ANNOTATIONS**

**The 1990 (1st S.S.) amendment**, effective July 1, 1991, substituted ".50" for ".25" in the equation in the last paragraph.

### **22-8-24. Instructional staff training and experience index; definitions; factors; calculations.**

A. For the purpose of calculating the instructional staff training and experience index the following definitions and limitations shall apply:

(1) "instructional staff" means the personnel assigned to the instructional program of the school district, excluding principals, substitute teachers, instructional aides, secretaries and clerks;

(2) the number of instructional staff to be counted in calculating the instructional staff training and experience index is the actual number of full-time equivalent instructional staff on the October payroll;

(3) the number of years of experience to be used in calculating the instructional staff training and experience index is that number of years of experience allowed for salary increment purposes on the salary schedule of the school district; and

(4) the academic degree and additional credit hours to be used in calculating the instructional staff training and experience index is the degree and additional semester credit hours allowed for salary increment purposes on the salary schedule of the school district.

B. The factors for each classification of academic training by years of experience are provided in the following table:

Academic Classification	Years of Experience			
	0 - 2	3 - 5	6 - 8	9 - 15
Bachelor's degree or less than Bachelor's degree plus 15 credit hours	.75	.90	1.00	1.05
Bachelor's degree plus 15 credit hours	.80	.95	1.00	1.10
Master's degree or bachelor's degree plus 45 credit hours	.85	1.00	1.05	1.15

Master's degree plus 15 credit hours	.90	1.05	1.15	1.30	1.35
Post-master's degree or master's degree plus 45 credit hours	1.00	1.15	1.30	1.40	1.50

C. The instructional staff training and experience index for each school district shall be calculated in accordance with instructions issued by the chief [director]. The following calculations shall be computed:

(1) multiply the number of full-time equivalent instructional staff in each academic classification by the numerical factor in the appropriate "years of experience" column provided in the table in Subsection B of this section;

(2) add the products calculated in Paragraph (1) of this subsection; and

(3) divide the total obtained in Paragraph (2) of this subsection by the total number of full-time equivalent instructional staff.

D. In the event that the result of the calculation of the training and experience index is .95 or less, the district's factor shall be no less than .95.

**History:** 1953 Comp., § 77-6-18.8, enacted by Laws 1974, ch. 8, § 15; 1975, ch. 119, § 2; 1976 (S.S.), ch. 32, § 8.

### ANNOTATIONS

**Executive branch reorganization.** - The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

**22-8-25. State equalization guarantee distribution; definitions; determination of amount.**

A. The state equalization guarantee distribution is that amount of money distributed to each school district to insure that the school district's operating revenue, including its local and federal revenues as defined in this section, is at least equal to the school district's program cost.

B. "Local revenue", as used in this section, means ninety-five percent of receipts to the school district derived from that amount produced by a school district property tax applied at the rate of fifty cents (\$.50) to each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district and to the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act.

C. "Federal revenue", as used in this section, means ninety-five percent of receipts to the school district, excluding amounts which, if taken into account in the computation of the state equalization guarantee distribution, result, under federal law or regulations, in a reduction in or elimination of federal school funding otherwise receivable by the school district, derived from the following:

(1) the school district's share of forest reserve funds distributed in accordance with Section 22-8-33 NMSA 1978; and

(2) grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Sections 236 through 240 of Title 20 of the United States Code (commonly known as "PL 874 funds") or an amount equal to the revenue the district was entitled to receive if no application was made for such funds but deducting from those grants the additional amounts to which school districts would be entitled because of the provisions of Subparagraph (D) of Paragraph (2) of Subsection (d) of Section 238 of Title 20 of the United States Code.

D. To determine the amount of the state equalization guarantee distribution, the state superintendent shall:

(1) calculate the number of program units to which each school district is entitled using the membership of the fortieth day of the school year, except for school districts with a MEM of 200 or less where the number of program units shall be calculated on the fortieth day membership of either the prior year or the current year, whichever is greater, for all programs except special education, which shall be calculated by using the membership on December 1 of the school year; or

(2) calculate the number of program units to which a school district operating under an approved year-round school calendar is entitled using the membership on an appropriate date established by the state board;

(3) using the results of the calculations in Paragraph (1) or (2) of this subsection and the instructional staff training and experience index from the October report of the prior school year, establish a total program cost of the school district;

(4) calculate the local and federal revenues as defined in this section; and

(5) deduct the sum of the calculations made in Paragraph (4) of this subsection from the program cost established in Paragraph (3) of this subsection.

E. The amount of the state equalization guarantee distribution to which a school district is entitled is the balance remaining after the deduction made in Paragraph (5) of Subsection D of this section.

F. The state equalization guarantee distribution shall be distributed prior to June 30 of each fiscal year. The calculation shall be based on the local and federal revenues specified in this section received from June 1 of the previous fiscal year through May 31 of the fiscal year for which the state equalization guarantee distribution is being computed. In the event that a district has received more state equalization guarantee funds than its entitlement, a refund shall be made by the district to the state general fund.

G. Notwithstanding the methods of calculating the state equalization guarantee distribution in this section and Laws 1974, Chapter 8, Section 22, if a school district received funds under Section 2391 of Title 42 U.S.C.A. and if the federal government takes into consideration grants authorized by Sections 236 through 240 of Title 20 of the United States Code and all other revenues available to the school district in determining the level of federal support for the school district for the sixty-fourth and succeeding fiscal years, the state equalization guarantee distribution for school districts receiving funds under this subsection shall be computed as follows:

**REFER TO THE BOOK FOR THE PROPER FORM**

plus special education funding in accordance with Paragraphs (1) or (2) and (3) of Subsection D of this section and Section 22-8-21 NMSA 1978 plus an amount that would be produced by applying a rate of eight dollars forty-two and one-half cents (\$8.425) to each one thousand dollars (\$1,000) of net taxable value of property as defined in the Property Tax Code [Articles 35 to 38, Chapter 7 NMSA 19787] for property taxation purposes in the school district and to each one thousand dollars (\$1,000) of the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and upon the assessed value of equipment in the school district as determined under the Oil and Gas Production Equipment Ad Valorem Tax Act equals the fiscal year state equalization guarantee distribution for the year for which the state equalization guarantee distribution is being computed.

If at any time grants from the federal government as assistance to those areas affected by federal activity authorized in accordance with Sections 236 through 240 of Title 20 of the United States Code (commonly known as "PL 874 funds") are reduced or are no longer available, the state equalization guarantee distribution shall be computed by the formula contained in this subsection plus an increase by fifty percent of the amount the prior year's PL 874 funds exceed PL 874 funds for the year for which the state equalization guarantee distribution is being computed.

**History:** Laws 1969, ch. 180, § 19; 1953 Comp., § 77-6-19; Laws 1971, ch. 263, § 9; 1972, ch. 90, § 1; reenacted by 1974, ch. 8, § 16; 1975, ch. 119, § 3; 1979, ch. 268, § 2; 1979, ch. 278, § 1; reenacted by 1981, ch. 176, §§ 3, 4, 5; 1986, ch. 32, § 20; 1986, ch. 33, § 16; 1988, ch. 63, § 1; 1988, ch. 64, § 29; 1989, ch. 258, § 1; 1990, ch. 94, § 3.

## ANNOTATIONS

**Cross-references.** - As to state-support reserve fund, see 22-8-31 NMSA 1978.

**The 1988 amendments.** - Laws 1988, ch. 63, § 1, effective July 1, 1988, inserting new language at the end of Subsection C(2) beginning with "but deducting from", was approved on March 8, 1988. However, Laws 1988, ch. 64, § 29, effective July 1, 1988, making the same change but also adding "and" at the end of Subsection C(1), adding the language beginning "but deducting from those grants" at the end of Subsection C(2); deleting Subsection C(3) regarding grants from the federal government to public secondary schools; and substituting "state superintendent" for "director of the office of education" in Subsection D, was approved later on March 8, 1988. The section is set out as amended by Laws 1988, Chapter 64, § 29. See 12-1-8 NMSA 1978.

**The 1989 amendment,** effective June 16, 1989, inserted "upon the assessed value of equipment in the school district as determined under" near the end of Subsection B; substituted "a MEM" for "an ADM" near the middle of Subsection D(1); added present Subsection D(2); redesignated former Subsections D(2) through D(4) as present Subsections D(3) through D(5); in present Subsection D(3) inserted "or (2)"; in present Subsection D(5) substituted "Paragraph (4)" for "Paragraph (3)" and "Paragraph (3)" for "Paragraph (2)"; and in Subsection G substituted "Paragraphs (1) or (2) and (3)" for "Paragraphs (1) and (2)" near the middle of the first paragraph and inserted "upon the assessed value of equipment in the school district as determined under" near the end of that paragraph.

**The 1990 amendment,** effective May 16, 1990, substituted "on December 1 of the school year" for "the fortieth or eightieth day of the school year whichever is greater" at the end of Paragraph (1) of Subsection D.

**Nonseverability clauses.** - Laws 1981, ch. 176, § 8, provides that if any part or application of the act is held invalid, the remainder, or its application to other situations or persons, shall be likewise invalid. The provisions of this act are not severable.



**Compiler's notes.** - Laws 1981, ch. 37, § 84, as originally enacted, provided for an amendment to this section; however, § 84 was vetoed by the governor.

**Save harmless distribution.** - Laws 1974, ch. 8, § 22, referred to in Subsection G, provides: "A. The save harmless distribution is the sum appropriated by the legislature in amounts necessary to save harmless any school district from a decrease in available funds computed on a per average daily membership basis between the amount available to a district during the sixty-second fiscal year and the sixty-third fiscal year.

"B. For the save harmless distribution the chief (now director of public school finance) shall compute the sum of revenues received during the sixty-second fiscal year from the production of the district school tax based upon 2.225 mills, the county school tax of 6.7 mills allocated on the ADM percentage basis, the motor vehicle license fees allocated on the ADM percentage basis, P.L. 874, forest reserve and federal vocational allocations in addition to state distributions for basic program support and all supplemental distributions excluding out-of-state, emergency and program enrichment.

"C. The chief (now director of public school finance) shall take credit for ninety-five percent of the local and federal sources and one hundred percent of the state distributions designated. The result of the computations will be divided by each school district's forty-day certified ADM exclusive of special and early childhood education for the sixty-second fiscal year to determine the per ADM revenue available from these sources.

"D. The per ADM revenue available will be compared to the sixty-third fiscal year's applicable estimated revenue per ADM using the estimated ADM exclusive of special and early childhood education, computed in accordance with the Public School Finance Act to determine the difference between the sixty-second and sixty-third fiscal year's revenue available per ADM.

"E. If the sixty-third fiscal year's revenue per ADM is less than the sixty-second, an amount equal to the difference on a per ADM basis will be multiplied by the estimated ADM for the sixty-third fiscal year to determine the tentative save harmless allocation for budget purposes.

"F. After receipt of the actual ADM for the sixty-third fiscal year, the chief (now director of public school finance) shall recalculate the save harmless and adjust the save harmless distribution to insure that the correct revenue per ADM available is no less than one hundred percent of the appropriate prior year's revenue available per ADM.

"G. The save harmless assistance shall continue to be reduced each year in the same manner so that no save harmless will be allowed under this section for the sixty-ninth fiscal year."

**Subsection G held not to unconstitutionally conflict with Atomic Energy Community Act.** Los Alamos Sch. Bd. v. Wugalter, 557 F.2d 709 (10th Cir.), cert. denied, 434 U.S. 968, 98 S. Ct. 512, 54 L. Ed. 2d 455 (1977), (decided under prior law).

### **22-8-25.1. Additional per unit distribution from public school fund.**

The legislature shall maintain each year in the public school fund an amount equal to the amount of revenue produced by all school districts pursuant to Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978 for which credit is required to be taken pursuant to Section 22-8-25 NMSA 1978. Each year the department shall distribute to each school district an amount determined by the department on a per program unit basis which shall be included within the state equalization guarantee distribution made pursuant to the general appropriation act.

**History:** 1953 Comp., § 22-8-25.1, enacted by Laws 1985 (1st S.S.), ch. 15, § 17; 1988, ch. 64, § 30.

### **ANNOTATIONS**

**Cross-references.** - As to the public school fund, see 22-8-14 NMSA 1978.

**The 1988 amendment,** effective May 18, 1988, in the second sentence, substituted "department" for "director of the office of education" at the first occurrence of that word, "department" for "director" at the second occurrence, and "included within" for "in addition to".

### **22-8-26. Transportation distribution.**

A. Money in the transportation distribution of the public school fund shall be used only for the purpose of making payments to each school district for the to and from school transportation costs of students in grades kindergarten through twelve attending public school within the school district and of three- and four-year-old children who meet the state board approved criteria and definition of developmentally disabled. Except in unusual circumstances as determined by the local school board and confirmed by the state transportation director, midday bus routes for early childhood education students shall not be approved for funding in excess of twenty miles one-way.

B. Money in the vocational education transportation distribution of the public school fund shall be used for the purpose of making payments to school districts for transportation of students to and from their regular attendance centers and the place where vocational education programs are being offered pursuant to Section 22-16-4.1 NMSA 1978.

C. The transportation distribution shall be allocated to each school district according to an objective formula developed by the state transportation director and the state superintendent.

D. In the event the sum of the proposed transportation allocations to each school district exceeds the amounts in the transportation distribution, each school district to receive an allocation shall share in a reduction in the proportion that each school district's forty-day average daily membership bears to the forty-day average daily membership of all school districts to receive allocations.

E. Local school boards shall negotiate school bus contracts in accordance with regulations promulgated by the state transportation director with the approval of the state board.

F. Local school boards, with the approval of the state transportation director, may provide additional transportation services pursuant to Section 22-16-2 NMSA 1978 to meet established program needs.

**History:** 1953 Comp., § 77-6-22, enacted by Laws 1967, ch. 16, § 76; 1969, ch. 180, § 21; 1974, ch. 73, § 1; 1975, ch. 342, § 2; 1976 (S.S.), ch. 20, § 1; 1978, ch. 127, § 3; 1979, ch. 67, § 1; 1979, ch. 289, § 1; 1979, ch. 305, § 2; 1987, ch. 149, § 2; 1988, ch. 64, § 31.

## ANNOTATIONS

**Cross-references.** - As to transportation of students generally, see 22-16-1 NMSA 1978 et seq.

**The 1988 amendment,** effective May 18, 1988, deleted "of instruction" following "superintendent" at the end of Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Buses: constitutionality, under state constitutional provision forbidding financial aid to religious sects, of public provision of schoolbus service for private school pupils, 41 A.L.R.3d 344.

Free transportation: nature and extent of transportation that must be furnished under statute requiring free transportation of school pupils, 52 A.L.R.3d 1036.

### **22-8-27. Transportation of students; additional budget allowance; purchase of equipment.**

A. A local school board may make an additional budget allowance to pay the cost of transporting students to and from school where special equipment for the transportation of students is necessary or where special physical conditions exist within the school district.

B. With the approval of the state board, the state transportation director shall promulgate regulations relating to an additional budget allowance by a local school board for special equipment for the transportation of students and for special physical conditions within the school district.

C. Local school boards may, with the approval of the state transportation director and the state superintendent, establish a systematic program for the purchase of necessary school bus transportation equipment from the annual budget allocation for school transportation within the school district.

**History:** 1953 Comp., § 77-6-23, enacted by Laws 1967, ch. 16, § 77; 1988, ch. 64, § 32.

### ANNOTATIONS

**The 1988 amendment,** effective May 18, 1988, substituted "state superintendent" for "chief" in Subsection C.

### **22-8-28. Cost reports; submission.**

A. Upon request and prior to August 1 of each year each local school district operating a school bus and each school bus contractor shall submit school bus cost reports to the state transportation director. The reports shall be prepared in accordance with regulations developed by the school transportation division and approved by the state board of education and shall be submitted on forms furnished by the state transportation director. At the direction of the state transportation director the school bus cost reports shall be audited in accordance with regulations developed by the state transportation director and approved by the state board of education.

B. Failure to submit the report required in Subsection A of this section shall be cause for the allocation to the school district to be reduced. The reduction shall be the proportion of daily bus route miles for which the report is not submitted to the total daily bus route miles in the district. The reduction shall continue until the required report is submitted to the state transportation director in compliance with regulations.

**History:** 1953 Comp., § 77-6-23.1, enacted by Laws 1976 (S.S.), ch. 20, § 2; 1978, ch. 127, § 4; 1979, ch. 305, § 3.

### ANNOTATIONS

**Cost reports as basis for fraud charges.** - Where defendants were charged with fraud, there was sufficient evidence from which the jury could properly infer that each of the defendants was aware that the amounts paid to them for the cost of bus drivers and special education aides were based upon information submitted by them to the district and state. *State v. Crews*, 110 N.M. 723, 799 P.2d 592 (Ct. App. 1989).

### **22-8-29. Transportation distributions; reports; payments.**

A. Prior to November 15 of each year, each local school board of a school district maintaining a school bus route shall report to the state transportation director, upon

forms furnished by the state transportation director, the following information concerning the school year to and including October 30:

(1) the number and designation of school bus routes in operation in the school district which have been approved by the state transportation director;

(2) the number and capacity of all school buses in operation in the school district and the school bus route served by each school bus;

(3) the number of miles traveled by each school bus on each school bus route, showing the route mileage in accordance with the type of road surface traveled; and

(4) the number of students transported on each school bus route.

B. Each local school board of a school district maintaining a school bus route shall make further reports to the state transportation director concerning the information required by this section at other times specified by the state transportation director.

C. The state transportation director shall certify to the state superintendent the allocations from the transportation distributions to each school district based upon the formula established by the state transportation director and the state superintendent. The allocations for the first six months of a school year shall be based upon the approved final budget of the school district for the current fiscal year. Allocations to a school district for the remainder of the school year shall adjust the amount received by the school district so that it equals the amount the school district is entitled to receive for the entire school year according to its current approved report.

D. The department shall make periodic installment payments to school districts during the school year from the transportation distributions based upon the allocations certified by the state transportation director.

**History:** 1953 Comp., § 77-6-24, enacted by Laws 1967, ch. 16, § 78; 1974, ch. 73, § 2; 1978, ch. 127, § 5; 1979, ch. 305, § 4; 1988, ch. 64, § 33.

#### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, deleted the last sentence of Subsection B regarding required periods for reporting; in Subsection C, substituted "state superintendent" for "director" near the beginning of the first sentence and "state superintendent" for "director of the public school finance division" at the end of the first sentence; and substituted "department" for "director" and deleted "to him" following "certified" in Subsection D.

#### **22-8-30. Supplemental distributions.**

A. The state superintendent shall make supplemental distributions only for the following purposes:

(1) to pay the out-of-state tuition of students subject to the Compulsory School Attendance Law [22-12-1 to 22-12-7 NMSA 1978] who are attending school out-of-state because school facilities are not reasonably available in the school district of their residence;

(2) to make emergency distributions to school districts in financial need, but no money shall be distributed to any school district having cash and invested reserves, or other resources or any combination thereof, equaling five percent or more of the school district's operational budget;

(3) to make program enrichment distributions in the amount of actual program expense to school districts for the purpose of providing specific programs to meet particular educational requirements that cannot otherwise be financed;

(4) a special vocational education distribution to area vocational schools or state supported schools with state board approved vocational programs to reimburse those schools for the cost of vocational education programs for those students subject to the Compulsory School Attendance Law who are enrolled in such programs; and

(5) to make emergency capital outlay distributions to school districts that have experienced an unexpected capital outlay emergency demanding immediate attention.

B. The state superintendent shall account for all supplemental distributions and shall make full reports to the governor, legislative education study committee and legislative finance committee of payments made as authorized in Subsection A of this section.

C. The state superintendent may divert any unused or unneeded balances in any of the distributions made under the supplementary distribution authority to make any other distribution made pursuant to the same authority.

**History:** Laws 1967, ch. 16, § 83; 1953 Comp., § 77-6-29; Laws 1969, ch. 180, § 22; 1971, ch. 263, § 12; reenacted by 1974, ch. 8, § 17; 1978, ch. 148, § 1; 1988, ch. 64, § 34.

## ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "director" in Subsections A and C; deleted "with the approval of the state superintendent" at the beginning of Subsections A(3), (4) and (5); in Subsection B, deleted "and director" following "state superintendent" and substituted "legislative education study committee" for "legislative school study committee"; and deleted "directors" preceding "supplementary distribution authority" in Subsection C.

## **22-8-31. State-support reserve fund.**

A. The "state-support reserve fund" is created.

B. The state-support reserve fund shall be used only to augment the appropriations for the state equalization guarantee distribution in order to ensure, to the extent of the amount undistributed in the fund, that the maximum figures for such distribution established by law shall not be reduced.

C. The undistributed money in the state-support reserve fund shall be invested by the state treasurer in interest-bearing securities of the United States government or in certificates of deposit in qualified banks, and in savings and loans [loan] associations whose deposits are insured with an agency of the United States. The state treasurer may deposit money from the state-support reserve fund or any other fund in one or more accounts with any such bank or federally insured savings and loan association but the state treasurer, in any official capacity, shall not deposit money from said fund or any other fund in any one such federally insured savings and loan association the aggregate of which would exceed the amount of federal savings and loan insurance corporation insurance for a single public account. Income from these investments shall be periodically credited to the general fund.

D. At least forty-five days before the money is needed, the chief [director of public school finance] shall notify the state treasurer in writing of the amount that will be needed for distribution.

E. In the event that local or federal revenues as defined in Section 22-8-25 NMSA 1978 are received after May 31 of the fiscal year for which the state equalization guarantee distribution is being computed and it is therefore necessary to use money from the state support reserve fund to augment the appropriation for the state equalization guarantee distribution, the chief [director], upon receipt by the school district of the delayed local or federal revenues, shall deduct the appropriate amount from the current state equalization guarantee distribution to that school district and reimburse the state-support reserve fund in the amount of the deduction.

F. It is the intent of the legislature that the fund be reimbursed in the amount of the yearly distribution by appropriation in the year following the distribution so that the fund at the beginning of each fiscal year shall have a credit balance of at least ten million dollars (\$10,000,000).

G. Distribution from this fund shall be made in the same manner and on the same basis as the state equalization guarantee distribution.

**History:** 1953 Comp., § 77-6-30, enacted by Laws 1967, ch. 16, § 84; 1968, ch. 18, § 10; 1969, ch. 180, § 23; 1974, ch. 8, § 18; 1975, ch. 157, § 8; 1976 (S.S.), ch. 32, § 9.

## **ANNOTATIONS**

**Cross-references.** - As to state equalization guarantee distribution generally, see 22-8-25 NMSA 1978.

**Severability clauses.** - Laws 1976 (S.S), ch. 32, § 11, provides for the severability of the act if any part or application thereof is held invalid.

**Appropriations.** - Laws 1988, ch. 13, § 12, effective February 17, 1988, appropriates \$5,000,000, at the end of the seventy-sixth fiscal year, from the general fund to the public school state-support reserve fund.

Laws 1989, ch. 107, § 10 appropriates \$3,000,000 at the end of the seventy-seventh fiscal year, from the general fund to the public school state-support reserve fund.

Laws 1992, ch. 94, § 8, effective March 10, 1992, transfers \$3,700,000 from the operating reserve fund to the public school state support reserve fund in the eighty-first fiscal year.

**Executive branch reorganization.** - The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

## **22-8-32. Current school fund; receipts; disposition.**

A. As they are received, the state treasurer shall deposit into the current school fund revenue received from the following sources:

- (1) all fines and forfeitures collected under general laws;
- (2) the net proceeds of property that may come to the state by escheat; and
- (3) all other revenue which by law is to be credited to the current school fund.

B. At the end of each month, the state treasurer shall transfer the amount in the common school current fund, also known as the common school income fund, to the current school fund.

C. At the end of each month, after the transfer authorized in Subsection B of this section, the state treasurer shall transfer any unencumbered balance in the current school fund to the public school fund.

**History:** 1953 Comp., § 77-6-32, enacted by Laws 1967, ch. 16, § 86; 1972, ch. 90, § 2; 1976, ch. 7, § 1.



## ANNOTATIONS

**Cross-references.** - As to public school fund generally, see 22-8-14 NMSA 1978.

### **22-8-33. Distribution of certain revenue.**

There shall be distributed to the credit of each school district in a county, according to the proportion that the forty-day average daily membership of the school district bears to the forty-day average daily membership of the entire county, all revenue received by the county for public school purposes from the forest reserve funds distributed pursuant to Section 6-11-3 NMSA 1978.

**History:** 1953 Comp., § 77-6-35, enacted by Laws 1967, ch. 16, § 89; 1969, ch. 180, § 24; 1972, ch. 90, § 3; 1985 (1st S.S.), ch. 15, § 18.

### **22-8-34. Federal mineral leasing funds.**

Except for an annual appropriation to the free textbook fund [instructional material fund] and to the bureau of mines and mineral resources of the New Mexico institute of mining and technology, all other money received by the state pursuant to the provisions of the act of congress approved February 25, 1920 entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain" as amended and compiled in 30 United States Code, Sections 181 through 214, is appropriated for the use and benefit of the public schools of this state for instructional purposes. The state treasurer shall credit all money received under this federal act, less the appropriations to the free textbook fund [instructional material fund] and to the bureau of mines and mineral resources, to the public school fund.

**History:** 1953 Comp., § 77-6-36, enacted by Laws 1967, ch. 16, § 90; 1974, ch. 8, § 19.

## ANNOTATIONS

**Cross-references.** - As to public school fund generally, see 22-8-14 NMSA 1978.

As to instructional material fund generally, see 22-15-5 NMSA 1978 et seq.

As to New Mexico institute of mining and technology generally, see 21-11-1 NMSA 1978 et seq.

**Compiler's note.** - Laws 1975, ch. 270, § 5, amended 77-13-5, 1953 Comp., compiled as 22-15-5 NMSA 1978, by substituting references to the instructional material fund for references to the free textbook fund.

**Law reviews.** - For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

## **22-8-35. Tax anticipation certificates.**

A. For operating expenses, a local school board with the consent of the chief [director of public school finance] may anticipate the collection of taxes for which tax levies have been made by issuing and selling certificates of indebtedness. These certificates shall be issued on the faith and credit of the school district issuing the certificates. The certificates shall not bear interest in excess of six percent a year. The total unpaid certificates outstanding shall not exceed the budget allowance for operating expenses of the school district for a period of ninety days. The certificates shall be paid out of the money first credited thereafter to the operating fund of the school district.

B. For school building construction, repair or both, a local school board with consent of the chief [director] may anticipate the collection of taxes for which tax levies have been made for that purpose by issuing and selling certificates of indebtedness. These certificates shall be issued on the faith and credit of the school district issuing the certificates. The certificates shall not bear interest in excess of six percent a year. The certificates shall be paid out of the money first received under the tax levy.

**History:** 1953 Comp., § 77-6-39, enacted by Laws 1967, ch. 16, § 93.

### **ANNOTATIONS**

**Cross-references.** - As to general obligation bonds of school districts, see 22-18-1 NMSA 1978 et seq.

As to school revenue bonds, see 22-19-1 NMSA 1978 et seq.

As to public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

As to public school capital improvements, see 22-25-1 NMSA 1978 et seq.

**Executive branch reorganization.** - The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

## **22-8-36. Certification of allocations; fund accounts.**

The chief [director of public school finance] shall certify periodically to each county treasurer the allocations of funds to each school district in the county. The chief [director] shall certify to the county treasurer the names and purposes of the separate funds the county treasurer shall establish and maintain for each school district.

**History:** 1953 Comp., § 77-6-40, enacted by Laws 1967, ch. 16, § 94.

### **ANNOTATIONS**

**Executive branch reorganization.** - The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance.

### **22-8-37. Public school funds.**

Except for money received for a cafeteria or for an activity fund, all money for public school purposes distributed to a school district, or collected by a county, school district or public school authorities for a school district, shall be delivered to and kept by a county treasurer or a board of finance of a school district in funds approved by the division. Disbursements from these funds shall only be made for matured debts by voucher and warrants or checks of the local school board. In no event shall any money be expended or debts incurred except as authorized by the Public School Finance Act [22-8-1 to 22-8-42 NMSA 1978]. Money for a cafeteria or for an activity fund shall be deposited in a bank, or in a savings and loan association whose deposits are insured by an agency of the United States, or may be deposited in a credit union, as long as the credit union deposit is insured by an agency of the United States, approved by the local school board. The local school board may deposit any cafeteria funds, any activity funds or any other funds in one or more accounts with any such bank or insured savings and loan association in its county, but no local school board, in any official capacity, shall deposit any cafeteria funds, any activity funds or any other funds in any one such savings and loan association the aggregate of which would exceed the amount of federal savings and loan insurance corporation insurance for a single public account. As used in this section, "deposit" includes share, share certificate and share draft.

**History:** 1953 Comp., § 77-6-41, enacted by Laws 1967, ch. 16, § 95; 1968, ch. 18, § 11; 1975, ch. 157, § 9; 1978, ch. 128, § 7; 1987, ch. 79, § 22.

### **ANNOTATIONS**

**Disposition of school revenue.** - If local school board has not been designated a board of finance, the county treasurer is to keep all school revenue. 1967 Op. Att'y Gen. No. 67-144.

### **22-8-38. Boards of finance; designation.**

Upon written application to and approval of the state superintendent, any local school board may be designated a board of finance for public school funds of the school

district. Any local school board designated a board of finance may require all funds distributed to, allocated to or collected for the school district or the public schools under its jurisdiction to be deposited with it. The state superintendent shall designate a local school board as a board of finance if:

A. the local school board shows to the satisfaction of the state superintendent that it has personnel properly trained to keep accurate and complete fiscal records;

B. the local school board agrees to consult with the state superintendent on any matters not covered by the manual of accounting and budgeting before taking any action relating to funds held by it as a board of finance;

C. the persons handling these funds are adequately bonded to protect the funds entrusted to them from loss; and

D. the local school board making application has not been suspended and not reinstated as a board of finance within the past year.

**History:** 1953 Comp., § 77-6-42, enacted by Laws 1967, ch. 16, § 96; 1988, ch. 64, § 35.

#### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "chief" throughout the section; deleted "of the division" following "manual of accounting and budgeting" in Subsection B; and made a minor stylistic change in Subsection C.

#### **22-8-39. Boards of finance; suspension.**

The state superintendent may at any time suspend a local school board from acting as a board of finance if he reasonably believes there is mismanagement, improper recording or improper reporting of public school funds under its control. When a local school board is suspended from acting as a board of finance, the state superintendent shall:

A. immediately take control of all public school funds under the control of the local school board acting as a board of finance;

B. immediately have an audit made of all funds under the control of the local school board acting as a board of finance and charge the cost of the audit to the school district;

C. act as a fiscal agent for the school district and take any action necessary to conform the fiscal management of funds of the school district to the requirements of law and good accounting practices;

D. report any violations of the law to the proper law enforcement officers;

E. act as fiscal agent for the school district until he determines that the local school board is capable of acting as a board of finance, or until he determines that the county treasurer should act as fiscal agent for the school district; and

F. inform the local school board in writing of his determination as to who is to act as board of finance or fiscal agent for the school district, and also inform the county treasurer in writing if he determines that the county treasurer should act as fiscal agent for the school district.

**History:** 1953 Comp., § 77-6-43, enacted by Laws 1967, ch. 16, § 97; 1988, ch. 64, § 36.

### ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "chief" twice in the introductory paragraph and made a minor stylistic change.

#### **22-8-40. Deposit of public school funds; distribution; interest.**

A. All public money in the custody of local school boards which have been designated as boards of finance shall be deposited in qualified depositories in accordance with the terms of this section.

B. Deposits of funds of the local school district may be made in noninterest-bearing checking accounts in one or more banks, savings and loan associations or credit unions as long as the credit union deposits are insured by an agency of the United States, located within the geographical limits of the school district.

C. Deposits of funds of the local school district may be made in interest-bearing checking accounts, commonly known as "NOW" accounts, in one or more banks, savings and loan associations or credit unions as long as the credit union deposits are insured by an agency of the United States, located within the geographical limits of the school district.

D. Public money placed in interest-bearing deposits, in banks and savings and loan associations, other than interest-bearing checking accounts as defined in Subsection C of this section, shall be equitably distributed among all banks and savings and loan associations having their main or manned branch offices within the geographical boundaries of the local school district which have qualified as public depositories by reason of insurance of the account by an agency of the United States or by depositing collateral security or by giving bond as provided by law in the proportion that each such bank's or savings and loan association's net worth bears to the total net worth of all banks and savings and loan associations having their main office or a manned branch office within the geographical boundaries of the school district. The net worth of the main office of a savings and loan association and its manned branch offices within the geographical boundaries of a school district is the total net worth of the association

multiplied by the percentage that deposits of the main office and the manned branch offices located within the geographical boundaries of the school district are of the total deposits of the association. The net worth of each manned branch office or aggregate of manned branch offices of a savings and loan association located outside the geographical boundaries of the school district in which the main office is located is the total net worth of the association multiplied by the percentage that deposits of the branch or aggregate of branches located outside the geographical boundaries of the school district in which the main office is located are of the total deposits of the association. The director of the financial institutions division of the regulation and licensing department shall promulgate a formula for determining the net worth of banks' main offices and branches for the purposes of distribution of public money as provided for by this section. "Net worth" means assets less liabilities as reported by such banks and savings and loan associations on their most recent semiannual reports to the state or federal supervisory authority having jurisdiction.

E. Notwithstanding the provisions of Subsection D of this section, public money may be placed in interest-bearing deposits, other than interest-bearing checking accounts as defined in Subsection C of this section, at the discretion of the board of finance, in credit unions having their main or manned branch offices within the geographical boundaries of the local school district to the extent such deposits are insured by an agency of the United States.

F. The rate of interest for all public money deposited in interest-bearing accounts in banks, savings and loan associations and credit unions shall be set by the state board of finance, but in no case shall the rate of interest be less than one hundred percent of the asked price on United States treasury bills of the same maturity on the date of deposit. Any bank or savings and loan association that fails to pay the minimum rate of interest at the time of deposit provided for herein for any respective deposit forfeits its right to an equitable share of that deposit under this section.

If the deposit is part or all of the proceeds of a bond issue and the interest rate prescribed in this subsection materially exceeds the rate of interest of the bonds, the interest rate prescribed by this subsection shall be reduced on the deposit to an amount not materially exceeding the interest rate of the bonds if the bond issue would lose its tax exempt status under Section 103 of the United States Internal Revenue Code of 1954, as amended.

G. Public money in excess of that for which banks and savings and loan associations within the geographical boundaries of the local school district have qualified may be deposited in qualified depositories including credit unions in other areas within the state under the same requirements for payment of interest as if the money were deposited within the geographical boundaries of the local school district.

H. The board of finance of the school district may temporarily invest money held in demand deposits and not immediately needed for the operation of the school district. Such temporary investments shall be made only in securities which are issued by the

state or by the United States government, or by their departments or agencies, and which are either direct obligations of the state or the United States or are backed by the full faith and credit of those governments.

I. The department of finance and administration may monitor the deposits of public money by local school boards to assure full compliance with the provisions of this section.

**History:** 1953 Comp., § 77-6-44, enacted by Laws 1967, ch. 16, § 98; 1968, ch. 18, § 12; 1975, ch. 157, § 10; 1975, ch. 304, § 3; reenacted by 1977, ch. 136, § 2; 1978, ch. 128, § 8; 1980, ch. 151, § 49; 1981, ch. 332, § 18; 1983, ch. 191, § 2; 1987, ch. 79, § 23.

## ANNOTATIONS

**Cross-references.** - As to state board of finance generally, see 6-1-1 NMSA 1978 et seq.

**Internal Revenue Code.** - Section 103 of the Internal Revenue Code, referred to in the second paragraph of Subsection F, appears as 26 U.S.C. § 103.

### **22-8-40.1. Deposit of public school funds; providing exception on interest rate limitation for "NOW" accounts.**

Notwithstanding the provisions of Subsection E of Section 22-8-40 NMSA 1978, the requirement for a rate of interest of not less than one hundred percent of the asked price on United States treasury bills of the same maturity on the day of deposit shall not apply to interest-bearing checking accounts.

**History:** 1978 Comp., § 22-8-40.1, enacted by Laws 1981, ch. 341, § 1.

### **22-8-41. Restriction on operational funds; emergency accounts; cash balances.**

A. No school district shall expend money from its operational fund for the acquisition of a building site or for the construction of a new structure unless the school district has bonded itself to practical capacity or the state superintendent determines and certifies to the legislative finance committee that the expending of money from the operational fund for this purpose is necessary for an adequate public educational program and will not unduly hamper the district's current operations.

B. A school district may budget out of cash balances carried forward from the previous fiscal year an amount not to exceed five percent of its proposed operational fund expenditures for the ensuing fiscal year as an emergency account. Money in the emergency account shall be used only for unforeseen expenditures incurred after the

annual budget was approved and shall not be expended without the prior written approval of the state superintendent.

C. In addition to the emergency account, school districts may also budget operational fund cash balances carried forward from the previous fiscal year for operational expenditures exclusive of salaries and payroll upon specific prior approval of the state superintendent. The state superintendent shall notify the legislative finance committee in writing of his approval of such proposed expenditures.

**History:** 1953 Comp., § 77-6-45, enacted by Laws 1967, ch. 16, § 99; 1983, ch. 56, § 1; 1985 (1st S.S.), ch. 15, § 19; 1988, ch. 64, § 37.

### **ANNOTATIONS**

**Cross-references.** - As to public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

As to public school capital improvements, see 22-25-1 NMSA 1978 et seq.

As to the legislative finance committee, see 2-5-1 NMSA 1978.

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "director" throughout the section.

### **22-8-42. Violation of act; penalties.**

A. Any person violating any provision of the Public School Finance Act [22-8-1 to 22-8-42 NMSA 1978] is guilty of a petty misdemeanor.

B. Any person diverting or expending any public school money contrary to the approved budget is, in addition to being subject to any other civil or criminal action, liable along with his sureties to the state for the amount diverted or expended.

C. Any person diverting any public school funds from the purpose for which the funds were raised or acquired, or embezzling public school funds, shall be removed from office by the court imposing the criminal penalty.

D. Any person falsifying any record, account or report required to be kept or filed pursuant to the Public School Finance Act or knowingly using any money budgeted or appropriated for public school use or for any other purposes than that provided in the appropriation or budget is guilty of a petty misdemeanor and shall, in addition to all other civil or criminal penalties, forfeit his office or employment.

E. Legal proceedings for violation of the Public School Finance Act shall be instituted by the state superintendent.



F. A certified school instructor or certified school administrator guilty of any of the violations provided by this section shall, upon conviction, have his certificate revoked by the state board.

G. Nothing in this section shall be interpreted to prevent the enforcement of any provision of the Public School Finance Act by means of mandamus or injunction.

**History:** 1953 Comp., § 77-6-46, enacted by Laws 1967, ch. 16, § 100; 1977, ch. 247, § 204; 1988, ch. 64, § 38.

### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, substituted "state superintendent" for "secretary of finance and administration" in Subsection E, and, in Subsection F, inserted "certified school" and substituted "revoked" for "cancelled".

**One need not be found guilty of felony to forfeit and be disqualified from office** under the New Mexico constitution and Subsection D of this section. State ex rel. Martinez v. Padilla, 94 N.M. 431, 612 P.2d 223 (1980).

**Forfeiture of office required for approval of violative expenditures.** - Sale of gasoline to school district vehicles by school board member, purchase of airplane ticket for board member's wife and payment to board member and board member's wife for services not rendered are each a violation of this section and require the forfeiture of office of those members who approved the expenditures. State ex rel. Martinez v. Padilla, 94 N.M. 431, 612 P.2d 223 (1980).

## **ARTICLE 9 FEDERAL AID TO EDUCATION**

### **22-9-1. Gifts and grants for education.**

The state board, the state superintendent and the department of education are authorized to accept any gifts or grants from the federal government in aid of education, school construction or school lunch programs in the state.

**History:** 1953 Comp., § 77-7-1, enacted by Laws 1967, ch. 16, § 101.

### **ANNOTATIONS**

**Cross-references.** - As to school lunch programs generally, see 22-13-13 NMSA 1978.

### **22-9-2. Federal aid to education; state educational agency.**

The state board shall be the sole educational agency of the state for the administration or for the supervision of the administration of any state plan established or funds received by the state by virtue of any federal statute relating to aid for education, school construction or school lunch programs, except as is provided in Section 21-1-26 NMSA 1978 and as may otherwise be provided by law.

**History:** 1953 Comp., § 77-7-2, enacted by Laws 1967, ch. 16, § 102.

## ANNOTATIONS

**Cross-references.** - As to designation of state superintendent and state librarian as state educational authorities for administration of federal grants, see 22-9-8 NMSA 1978.

As to designation of board of educational finance to administer funds furnished under acts of congress to state educational institutions, see 21-1-26 NMSA 1978.

### **22-9-3. State educational agency; powers; duties.**

Whenever the state board is the sole educational agency of the state pursuant to the provisions of Section 22-9-2 NMSA 1978, it may:

- A. enter into an agreement with the proper federal agency to procure for the state the benefits of the federal statute;
- B. establish a state plan, if required by the federal statute, which meets the requirements of the federal statute to qualify the state for the benefits of the federal statute;
- C. provide for reports to be made to the federal agency as may be required;
- D. provide for reports to be made to the state board or its representative from agencies receiving federal funds;
- E. make surveys and studies in cooperation with other agencies to determine the needs of the state in the areas where the federal funds are to be applied;
- F. establish standards to which agencies must conform in receiving federal funds; and
- G. give technical advice and assistance to any local educational agency in connection with that agency obtaining federal funds.

**History:** 1953 Comp., § 77-7-3, enacted by Laws 1967, ch. 16, § 103.

## ANNOTATIONS

**Cross-references.** - As to designation of agency for submission of state plan for federal grants under Public Law 93-380, see 22-9-6 NMSA 1978.

#### **22-9-4. Limitation on accepting grants and gifts.**

Federal funds, gifts or grants relating to aid for education, school construction or school lunch programs may be accepted by the state only if supervision and control of courses of instruction and the personnel of public schools is reserved to the state or its local subdivisions.

**History:** 1953 Comp., § 77-7-4, enacted by Laws 1967, ch. 16, § 104.

#### **22-9-5. Custody of funds; budgets; disbursements.**

A. The state treasurer shall be the custodian of all funds received by the state by virtue of a federal statute, gift or grant relating to aid for education, school construction or school lunch programs. The state treasurer shall hold these funds in separate accounts according to the purpose of the grant or gift.

B. All federal funds, gifts or grants administered by the state board shall be budgeted, accounted for and disbursed as provided by law, and by the regulations of the department of finance and administration.

**History:** 1953 Comp., § 77-7-5, enacted by Laws 1967, ch. 16, § 105.

### **ANNOTATIONS**

**Cross-references.** - As to boards of finance for public school funds for school districts, see 22-8-38 to 22-8-40.1.

As to disbursements for rural library services, see 22-9-7 NMSA 1978.

#### **22-9-6. Authorization to receive federal grants and to submit a state plan.**

For purposes of receiving federal grants pursuant to Section 842 of Public Law 93-380, Assistance to States for State Equalization Plans, the state department of public education is designated the state agency and is authorized to submit a state plan to the United States secretary of education.

**History:** 1953 Comp., § 77-7-6, enacted by Laws 1976, ch. 21, § 1; 1977, ch. 246, § 64; 1980, ch. 151, § 50; 1988, ch. 64, § 39.

### **ANNOTATIONS**

**Cross-references.** - As to state equalization guarantee distributions generally, see 22-8-25 NMSA 1978.

**The 1988 amendment,** effective May 18, 1988, substituted "state department of public education" for "public school finance division of the department of finance and administration".

**Federal act.** - Section 842 of Public Law 93-380, referred to in this section, appears as 20 U.S.C. § 246.

### **22-9-7. Federal grant-in-aid funds; custody; deposit; disbursement.**

The state treasurer is the trustee for all funds apportioned to the state under any act of congress and he is directed to enter into agreements with, and to comply with the rules and regulations of, such agencies of the federal government as are necessary to procure for the state grants of federal aid to education. Any funds received under any act of congress shall be held by the state treasurer in special funds designated in accordance with the purposes of the grant made and shall be paid out by him only on warrant of the secretary of finance and administration. Warrants shall be issued only upon voucher of the superintendent of public instruction for disbursements other than for rural library service. Disbursements made for rural library service shall be made only upon voucher issued by the state librarian.

**History:** Laws 1939, ch. 162, § 2; 1941 Comp., § 55-519; 1953 Comp., § 73-6-32; Laws 1961, ch. 126, § 8; 1977, ch. 247, § 192.

#### **ANNOTATIONS**

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

### **22-9-8. State educational authorities for federal grant administration.**

The superintendent of public instruction shall be the state educational authority to represent the state in administration of any funds received under any act of congress to authorize grants to states in aid of education other than grants for aid to rural library service and, as to such grants and funds received thereunder, the state librarian shall be the authority to represent the state in the administration of the funds.

**History:** Laws 1939, ch. 162, § 3; 1941 Comp., § 55-520; 1953 Comp., § 73-6-33; Laws 1961, ch. 126, § 9.

#### **ANNOTATIONS**

**Cross-references.** - As to designation and powers of state board as educational agency of state for administration of state plans established for funds received pursuant to federal statutes, see 22-9-2 and 22-9-3 NMSA 1978.

As to designation of board of educational finance to administer funds furnished under acts of congress to state educational institutions, see 21-1-26 NMSA 1978.

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

**Grants under Title I, Public Law 815**, 81st Cong. (2d sess.), may properly be applied for and administered by the superintendent of public instruction. 1951-52 Op. Att'y Gen. No. 5344. See also 1951-52 Op. Att'y Gen. No. 5365.

### **22-9-9. Agencies for grants-in-aid; powers; duties.**

Whenever, under any act of the congress of the United States, federal aid to education is made available to the states:

A. the superintendent of public instruction shall:

(1) enter into any agreements with the proper federal agency or agencies necessary to procure for this state all benefits which may be available under any such act of congress;

(2) provide for and install an adequate system of auditing for the expenditure of funds to be received through the provisions of any such act of congress and to be apportioned to local school jurisdictions and teacher-training institutions, to educational agencies and institutions, conducting adult education, and to the state educational authority for any other purpose or purposes;

(3) provide an adequate system of reports to be made to such superintendent from local school jurisdictions and teacher-preparation institutions, from educational agencies and institutions conducting adult education, and from such other jurisdictions, institutions and agencies as may be required;

(4) develop and provide a plan of apportioning among local school jurisdictions any funds received for expenditure within such jurisdictions in such manner as to assist effectively in equalizing educational opportunities in public elementary and secondary schools within the state, such plan to conform as near as may be to any requirements of the act of congress and rules and regulations issued thereunder;

(5) develop and provide a plan of apportioning any funds received for expenditures in eligible institutions based on recommendations of the board of educational finance;

(6) develop and provide a plan for apportioning funds received for expenditure for adult education among public educational agencies and institutions in this state in such manner as will effectively contribute to the development of an economical, effective and comprehensive program of adult education; and

(7) make surveys and prepare and maintain state standards for the development of improved administrative units and attendance areas for the public elementary and secondary schools in anticipation of the availability of funds for the construction or alteration of buildings in connection with the public elementary and secondary schools, and for such purpose the superintendent may cooperate with any other public agency which he may designate; and

B. the state librarian of this state is hereby authorized and directed to:

(1) enter into any and all agreements with the proper federal agency or agencies necessary to procure for this state all benefits for rural or other library service which may be available under any such act of congress;

(2) make and administer all plans which may be necessary to carry out any provisions of any such act of congress which offers aid to library service;

(3) provide for and install an adequate system of auditing of the expenditure of funds to be received through the provisions of any such act of congress and to be apportioned to libraries and library services;

(4) provide for an adequate system of reports to be made to him from libraries and library services; and

(5) develop and provide a plan for apportioning any funds received for expenditure for library service which will provide for maintenance of a cooperative and integrated system of library service throughout the state, for suitable cooperative arrangements with school systems, cooperative agricultural extension services, and other appropriate agencies, and in such manner of apportioning as will effectively lessen inequalities of opportunity for library service.

**History:** Laws 1939, ch. 162, § 4; 1941 Comp., § 55-521; 1953 Comp., § 73-6-34; Laws 1961, ch. 126, § 10; 1961, ch. 217, § 1; 1977, ch. 246, § 48.

## ANNOTATIONS

**Cross-references.** - As to powers of state board of education when designated as sole educational agency of state for administration of state plans established for funds received pursuant to federal statutes, see 22-9-3 NMSA 1978.

As to disbursement by state librarian of federal funds for rural library services, see 22-9-7 NMSA 1978.

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

## **22-9-10. Reports to federal agencies.**

Whenever required by any act of congress authorizing federal aid to education or any rules or regulations issued pursuant thereto:

A. the superintendent of public instruction shall make reports with respect to expenditure of funds received and progress of education generally, progress of adult education generally or any other matters in the form and containing information required by the appropriate federal agencies; and

B. the state librarian shall make reports with respect to expenditure of funds received and progress of library service in the form and containing information required by the appropriate federal agencies.

**History:** Laws 1939, ch. 162, § 5; 1941 Comp., § 55-522; 1953 Comp., § 73-6-35; Laws 1961, ch. 126, § 11.

### **ANNOTATIONS**

**Cross-references.** - As to powers of state board of education when designated as sole educational agency of state for administration of state plans established for funds received pursuant to federal statutes, see 22-9-3 NMSA 1978.

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

## **22-9-11. [School facility construction grants-in-aid; enforcement of labor standards.]**

In the event that the state shall accept any provision of any such act of congress which authorizes and grants aid in the construction of school facilities, the superintendent of public instruction shall, by contract or otherwise, enforce labor standards not less beneficial to employees on such projects than those required under Sections 1 and 2 of the act of August 30, 1935 (49 Stat. 1011, ch. 825), as amended; provided, that the act of congress authorizing such aid shall so require.

**History:** Laws 1939, ch. 162, § 6; 1941 Comp., § 55-523; 1953 Comp., § 73-6-36.

### **ANNOTATIONS**

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

**Federal act.** - Sections 1 and 2 of the congressional act of August 30, 1935, as amended, referred to in this section, appear as 40 U.S.C. §§ 276a and 276a-1.

## **22-9-12. Official notice of acceptance of federal acts for education and library service.**

The superintendent of public instruction shall transmit to the proper federal agency designated in any act of congress authorizing federal aid to education, official notice of acceptance of any parts and titles of the act and transmit therewith certified copies of this act [22-9-7 to 22-9-12 NMSA 1978] and apportionment plans required in connection with the granting of any funds by any act of congress. In the case of aid to rural or other library service authorized in any act of congress, the official notice with the necessary certified copies as relate to library service shall be transmitted by the state librarian.

**History:** Laws 1939, ch. 162, § 9; 1941 Comp., § 55-524; 1953 Comp., § 73-6-37; Laws 1961, ch. 126, § 12.

### **ANNOTATIONS**

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

## **22-9-13. [Superintendent of public instruction declared sole agency for administration of federal aid to education.]**

The superintendent of public instruction is hereby designated as the sole agency of the state of New Mexico for the administration of any and all plans which may be established or funds which may be available to the state, or for which the state may be eligible by virtue of any legislation enacted by the federal government, to authorize federal assistance to states and communities to enable them to increase public elementary and secondary school construction.

**History:** 1953 Comp., § 73-6-37.1, enacted by Laws 1955, ch. 135, § 1.

### **ANNOTATIONS**

**Cross-references.** - As to designation of state board of education as sole educational agency for administration of state plans established for funds received pursuant to federal statutes, see 22-9-2 NMSA 1978.

As to enforcement of labor standards relating to school facility construction grants-in-aid, see 22-9-11 NMSA 1978.

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.



## **22-9-14. [Promulgation of standards and procedures; sale of obligations; purposes for which payments may be used.]**

Said superintendent shall, as required or necessary for such eligibility, set forth and promulgate standards and procedures, conforming to federal requirements, for determining eligibility of local educational agencies for payment under such federal legislation, and the amounts thereof, and the need for the facilities to be constructed, which standards and procedures shall provide reasonable assurance that:

A. such payments will be made only if, and to the extent, necessary to enable any local educational agency:

(1) to sell to the federal government or such agency as may be designated for such purpose obligation [obligations] in the amounts needed by such agency to construct the school facilities with respect to which the payments are made; or

(2) if such agency is legally unable to sell such obligations, to rent such facilities from a state school-building agency at rentals which the federal government or its designated agent determines to be comparable to those charged by state school-building agencies pursuant to agreements with the federal government or its designated agent; and,

B. such payments will be made only with respect to the construction of school facilities needed to relieve or prevent extreme overcrowding, double shifts or unhealthful or hazardous conditions.

**History:** 1953 Comp., § 73-6-37.2, enacted by Laws 1955, ch. 135, § 2.

### **ANNOTATIONS**

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

## **22-9-15. [Accounting, budgeting and other fiscal methods to be prescribed by superintendent.]**

Said superintendent shall provide and require such accounting, budgeting and other fiscal methods and procedures as are necessary for the proper and efficient administration of such federal plan or plans.

**History:** 1953 Comp., § 73-6-37.3, enacted by Laws 1955, ch. 135, § 3.

### **ANNOTATIONS**

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

## **22-9-16. [Reports.]**

Said superintendent shall provide for the making of such reports, in such form and containing such information as the federal government or its designated agent may from time to time reasonably require to carry out the provisions of applicable legislation, and for compliance with such provisions as may from time to time be necessary to assure the correctness and verification of such reports.

**History:** 1953 Comp., § 73-6-37.4, enacted by Laws 1955, ch. 135, § 4.

### **ANNOTATIONS**

**Compiler's note.** - This section was not enacted as part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

## **ARTICLE 10 CERTIFIED SCHOOL PERSONNEL**

### **22-10-1. Short title.**

Chapter 22, Article 10 NMSA 1978 may be cited as the "School Personnel Act".

**History:** 1953 Comp., § 77-8-1, enacted by Laws 1975, ch. 306, § 1; 1991, ch. 187, § 2.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1975, ch. 306, § 1, repeals 77-8-1, 1953 Comp., as enacted by Laws 1967, ch. 16, § 106, relating to requirements for certificates, and enacts the above section.

**The 1991 amendment,** effective June 14, 1991, rewrote this section which read "Sections 77-8-1 through 77-8-24 NMSA 1953 may be cited as the 'Certified School Personnel Act'."

**Purpose of provisions.** - The purpose of the Certified School Personnel Act is to protect the public against incompetent teachers and to insure proper educational qualifications, personal fitness and a high standard of teaching performance. *New Mexico State Bd. of Educ. v. Stoudt*, 91 N.M. 183, 571 P.2d 1186 (1977).

The purpose of the Certified School Personnel Act is to promote a sound public policy of retaining in the public school system teachers who have become increasingly valuable by reason of their experience. By statute, these public servants are assured an indefinite tenure of position during satisfactory performance of their duties. *Atencio v. Board of Educ.*, 99 N.M. 168, 655 P.2d 1012 (1982).

**Public school instructors and administrators are state employees** within the constraints of the prohibition against serving in the legislature while receiving compensation as an employee of the state. 1988 Op. Att'y Gen. No. 88-20.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Unlicensed teacher's right to recover for services, 30 A.L.R. 893, 42 A.L.R. 1226, 118 A.L.R. 646.

Matters proper for consideration in appointment of teachers, 94 A.L.R. 1484.

Tests of moral character or fitness as requisite to issuance of teacher's license or certificate, 96 A.L.R.2d 536.

Drugs and narcotics: use of illegal drugs as ground for dismissal of teacher, or denial or cancellation of teacher's certificate, 47 A.L.R.3d 754.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate, 78 A.L.R.3d 19.

Student's right to compel school officials to issue degree, diploma, or the like, 11 A.L.R.4th 1182.

Validity, construction, and effect of municipal residency requirements for teachers, principals, and other school employees, 75 A.L.R.4th 272.

78 C.J.S. Schools and School Districts § 161.

## **22-10-2. Definitions.**

As used in the School Personnel Act [Chapter 22, Article 10 NMSA 1978]:

A. "discharge" means the act of severing the employment relationship with an employee prior to the expiration of the current employment contract;

B. "state agency" means any state institution or state agency providing an educational program requiring the employment of certified school instructors;

C. "sabbatical leave" means leave of absence with pay as set by the local school board or governing authority of a state agency during all or part of a regular school term for purposes of study or travel related to the staff member's duties and of direct benefit to the instructional program;

D. "terminate" means the act of not reemploying an employee for the ensuing school year;

E. "working day" means every calendar day, excluding Saturday, Sunday or legal holiday; and

F. "just cause" means a reason that is rationally related to an employee's competence or turpitude or the proper performance of his duties and that is not in violation of the employee's civil or constitutional rights.

**History:** 1953 Comp., § 77-8-1.1, enacted by Laws 1975, ch. 306, § 2; 1990, ch. 90, § 1; 1991, ch. 187, § 3.

## ANNOTATIONS

**Cross-references.** - As to sabbatical leave programs generally, see 22-10-23 to 22-10-26 NMSA 1978.

**The 1990 amendment,** effective May 16, 1990, added present Subsections A, D and E, redesignated former Subsections A and B as present Subsections B and C, and made a minor stylistic change.

**The 1991 amendment,** effective June 14, 1991, deleted "Certified" preceding "School Personnel Act" in the introductory phrase; added Subsection F; and made a related stylistic change.

### **22-10-3. Certificate requirement; types of certificates; forfeiture of claim; exception; administrator apprenticeship.**

A. Any person teaching, supervising an instructional program, counseling or providing special instructional services in a public school or state agency and any person administering in a public school shall hold a valid certificate authorizing the person to perform that function.

B. All certificates issued by the state board shall be standard certificates except that the state board may issue substandard and substitute certificates under certain circumstances. If a local school board or the governing authority of a state agency certifies to the state board that an emergency exists in the hiring of a qualified person, the state board may issue a substandard certificate to a person not meeting the requirements for a standard certificate. The state board may also issue a substitute certificate to a person not meeting the requirements for a standard certificate to enable the person to perform the functions of a substitute teacher pursuant to the regulations of the state board. All substandard and substitute certificates issued shall be effective for only one school year. No person under the age of eighteen years shall hold a valid certificate, whether a standard, substandard or substitute.

C. Any person teaching, supervising an instructional program, counseling or providing special instructional services in a public school or state agency and any person administering in a public school without a valid certificate after the first three months of the school year shall thereafter forfeit all claim to compensation for services rendered.

D. This section shall not apply to a person performing the functions of a practice teacher as defined in the regulations of the state board.

E. Notwithstanding any existing requirements, any person seeking certification as an administrator shall be required to serve a one-year apprenticeship. The state board shall develop criteria and regulations to implement the provisions of this subsection.

**History:** 1953 Comp., § 77-8-1.2, enacted by Laws 1975, ch. 306, § 3; 1986, ch. 33, § 17.

### **ANNOTATIONS**

**No discharge where certificate lacking because of state delay.** - Failure by a teacher to timely present a certificate of recertification did not provide a basis for discharge, where the teacher's inability to obtain a valid teaching certificate was due to the delay of the state department of education in processing the certificate of recertification. Board of Educ. v. Singleton, 103 N.M. 722, 712 P.2d 1384 (Ct. App. 1985).

### **22-10-3.1. Certified school administrators; evaluation; improvement training.**

A. The state board shall adopt criteria and minimum statewide performance standards for the evaluation of all certified school administrators. Evaluation by the staff shall be one component of any evaluation tool developed.

B. Certified school administrators shall attend a training program approved by the department of education to improve their administrative skills and instructional leadership at least every two years.

**History:** 1978 Comp., § 22-10-3.1, enacted by Laws 1986, ch. 33, § 18; 1987, ch. 320, § 4; 1988, ch. 105, § 3.

### **ANNOTATIONS**

**The 1988 amendment,** effective May 18, 1988, substituted "Evaluation by the staff" for "The ability to evaluate staff" in the second sentence of Subsection A.

### **22-10-3.2. Certified school personnel and school nurses; required training program.**

A. All certified school personnel and school nurses shall be required to complete training in the detection and reporting of child abuse and neglect and substance abuse. This requirement shall be completed by July 1, 1991, or, after that date, within the person's first year of employment by a school district in the state.

B. Pursuant to the policy and regulations adopted by the state board, the department of education shall develop a training program, including training materials and necessary training staff, to meet the requirement of Subsection A of this section to make the training available in every school district in the state. The department of education shall coordinate the development of the program with appropriate staff at the human services department and the health and environment department.

C. The training program developed pursuant to this section shall be made available by the department of education to the deans of every college of education in New Mexico for use in providing such training to students seeking elementary and secondary education certification.

**History:** Laws 1988, ch. 48, § 1.

### **ANNOTATIONS**

**Appropriations.** - Laws 1988, ch. 48, § 2, effective May 18, 1988, appropriates \$150,000 from the general fund to the state department of public education for the seventy-seventh, seventy-eighth and seventy-ninth fiscal years for the purpose of establishing a three-year training program to train all certified school personnel and school nurses in the detection and reporting of child abuse and neglect and substance abuse and provides that any unexpended or unencumbered balance of the appropriation remaining at the end of the seventy-ninth fiscal year shall revert to the general fund.

**Health and environment department.** - Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment.

#### **22-10-4. Certificate fees.**

The state board may charge a reasonable fee for each application for or the renewal of a certificate. All fees collected pursuant to this section shall be deposited with the state treasurer for credit to the general fund.

**History:** 1953 Comp., § 77-8-2, enacted by Laws 1967, ch. 16, § 107.

#### **22-10-5. Certified school personnel; duties.**

Each certified school instructor in a public school or state agency and each certified school administrator in a public school shall:

A. present a valid certificate to the local school board or to the governing authority of the state agency within three months after the beginning of the school year;

B. enforce all laws and regulations applicable to his public school and school district or to the educational program of the state agency;

C. if instructing, teach the courses of instruction prescribed;

D. exercise supervision over students on property belonging to the public school or state agency and while the students are under the control of the public school or state agency; and

E. furnish reports as may be required.

**History:** 1953 Comp., § 77-8-3, enacted by Laws 1967, ch. 16, § 108; 1975, ch. 306, § 4.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 128 to 130, 132 to 136, 138 to 163, 166 to 172, 174, 180, 183, 185, 186, 188, 197, 200, 204, 208 to 212, 214.

Duty of teacher to perform services other than those which pertain to instruction, 38 A.L.R. 1414.

Instruction in physical education or coaching of athletic sports as within duties assumed by, or that may be assigned to, teacher, or among the subjects in respect of which teacher applicants must qualify, 119 A.L.R. 819.

Validity of governmental requirement of oath of allegiance or loyalty as applied to schoolteachers, 18 A.L.R.2d 319.

Dismissal or rejection of public schoolteacher because of disloyalty, 27 A.L.R.2d 487.

Criminal liability for excessive or improper punishment inflicted on child by parent, teacher or one in loco parentis, 89 A.L.R.2d 396.

Liability of university, college, or other school for failure to protect student from crime, 1 A.L.R.4th 1099.

Tort liability of public schools and institutions of higher learning for educational malpractice, 1 A.L.R.4th 1139.

Personal liability of public school teacher in negligence action for personal injury or death of student. 34 A.L.R.4th 228.

Personal liability of public school executive or administrative officer in negligence action for personal injury or death of student, 35 A.L.R.4th 272.

78 C.J.S. Schools and School Districts § 237.

### **22-10-6. School principals; additional duties.**

The position of school principal is hereby recognized. In addition to other duties prescribed by law, a public school principal shall be responsible for:

A. assuming administrative responsibility and instructional leadership, under the supervision of the local superintendent of schools, with regard to the discipline of students and the planning, operation, supervision and evaluation of the educational program of the school to which he is assigned;

B. submitting recommendations to the local superintendent concerning evaluation, promotion, transfer and dismissal of all personnel assigned to the school to which he is assigned; and

C. performing any other duties assigned him by the local superintendent pursuant to local school board policies.

Nothing in this section shall be construed as a limitation on the powers, duties and obligations of a local school board.

**History:** 1953 Comp., § 77-8-3.1, enacted by Laws 1973, ch. 135, § 1.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Tort liability of public schools and institutions of higher learning for educational malpractice, 1 A.L.R.4th 1139.

Personal liability of public school executive or administrative officer in negligence action for personal injury or death of student, 35 A.L.R.4th 272.

### **22-10-7. Certified school personnel; salary.**

All certified school personnel shall be paid at least once a month during a school year. The salary may be paid at least once a month during a twelve-month period although services are to be performed during a period less than the twelve months.

**History:** 1953 Comp., § 77-8-4, enacted by Laws 1967, ch. 16, § 109.

#### **ANNOTATIONS**



**Semimonthly wages.** - A school district is not required to pay wages semimonthly to its non-certified school personnel; but it may do so if it wishes. 1988 Op. Att'y Gen. No. 88-72.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 144 to 148.

Right of teacher to compensation while school is closed, 6 A.L.R. 742, 17 A.L.R. 1224, 21 A.L.R. 741.

Tenure teacher, compensation of, 154 A.L.R. 148.

Salary: services included in computing period of service for purpose of, 2 A.L.R.2d 1033.

78 C.J.S. Schools and School Districts §§ 218 to 228.

### **22-10-8. Compensation for educational meetings.**

Local school boards and governing authorities of state agencies may pay certified school personnel according to their employment contracts on evidence of attendance at any professional meeting connected with their profession as educators or associated with the courses of instruction in which they specialize.

**History:** 1953 Comp., § 77-8-5, enacted by Laws 1967, ch. 16, § 110; 1975, ch. 306, § 5.

### **22-10-9. Professional status.**

Teaching, supervising an instructional program, counseling or providing special instructional services in a public school or state agency or administering in a public school is recognized as a profession with all the rights, responsibilities and privileges accorded professions having their first responsibility to the public they serve. The primary responsibilities of this profession shall be to educate the children of this state and to improve the professional practices and ethical conduct of its members.

**History:** 1953 Comp., § 77-8-6, enacted by Laws 1967, ch. 16, § 111; 1975, ch. 306, § 6.

### **22-10-10. Communicable diseases; prohibited employment; penalty.**

A. No person afflicted with a communicable disease in a transmissible stage dangerous to the health of students shall be employed in a public or private school in the state.

B. The health and social services department [department of health], after consultation with the state board, shall adopt and issue regulations designating those communicable diseases in a transmissible stage that are dangerous to the health of students.

C. Each person employed in a public or private school, including bus drivers, shall present to the governing authority of the school where employed, upon initial employment a certificate from a licensed physician stating that the person is free from all communicable diseases in a transmissible state dangerous to the health of students.

D. The certificate from a licensed physician shall be according to a form prescribed by the health and social services department [department of health] and approved by the state board. The certificate must be obtained from a licensed physician not more than ninety days prior to the date of employment.

E. Any person violating the provisions of this section by not obtaining a certificate from a licensed physician as required is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 77-8-7, enacted by Laws 1967, ch. 16, § 112; 1977, ch. 45, § 1.

### **ANNOTATIONS**

**Bracketed material.** - The bracketed references in Subsections B and D to the department of health were inserted by the compiler. The health and social services department was abolished by Laws 1977, ch. 252, § 5 and ch. 253, § 5, and the public health functions were transferred to the health and environment department. Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, and enacts a new 9-7-4 NMSA 1978, relating to the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

### **22-10-11. Employment contracts; duration.**

A. All employment contracts between local school boards and certified school personnel and between governing authorities of state agencies and certified school instructors shall be in writing on forms approved by the state board. These forms shall contain and specify the term of service, the salary to be paid, the method of payment, the causes for termination of the contract and other provisions required by the regulations of the state board.

B. All employment contracts between local school boards and certified school personnel and between governing authorities of state agencies and certified school instructors shall be for a period of one school year except:

(1) contracts for less than one school year are permitted to fill personnel vacancies which occur during the school year;

(2) contracts for the remainder of a school year are permitted to staff programs when the availability of funds for the programs is not known until after the beginning of the school year;

(3) contracts for less than one school year are permitted to staff summer school programs and to staff federally funded programs in which the federally approved programs are specified to be conducted for less than one school year;

(4) contracts not to exceed two years are permitted for certified school administrators in public schools who are engaged in administrative functions for more than one-half of their employment time; and

(5) contracts not to exceed three years are permitted at the discretion of the local school board for certified school instructors in public schools who have been employed in the school district for three consecutive school years.

C. Persons employed under contracts for periods of less than one school year as provided in Paragraphs (1) and (2) of Subsection B of this section shall be accorded all the duties, rights and privileges of the Certified School Personnel Act [this article].

D. In determination of eligibility for unemployment compensation rights and benefits for certified school instructors where those rights and benefits are claimed to arise from the employment relationship between governing authorities of state agencies or local school boards and certified school instructors, that period of a year not covered by a school year shall not be considered an unemployment period.

E. Except as provided in Section 22-10-12 NMSA 1978, a person employed by contract pursuant to this section has no legitimate objective expectancy of reemployment, and no contract entered into pursuant to this section shall be construed as an implied promise of continued employment pursuant to a subsequent contract.

**History:** 1953 Comp., § 77-8-8, enacted by Laws 1967, ch. 16, § 113; 1975, ch. 306, § 7; 1986, ch. 33, § 19.

## ANNOTATIONS

**Contracts governed by ordinary rules of contract law.** - Contracts for employment made by a school district and its employees are governed by the ordinary rules of contract law, except where expressly restricted by statute. Board of Educ. v. Jennings, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982).

**Subsection A is directory only.** - Because Subsection A does not prescribe the result that will follow if a contract is not on a form approved by the state board, it is directory only. Board of Educ. v. Jennings, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982).

**Extension of two-year contract.** - A two-year contract between a local school board and a certified school administrator may not be extended for an additional year, in light of this section, which states that a school administrator's contract may not exceed two years. 1988 Op. Att'y Gen. No. 88-55.

**Words "for any other good and just cause" in employment contract** did not allow the state board of education to revoke a teacher's certificate for any reason that was not related to the purposes of the Certified School Personnel Act. *New Mexico State Bd. of Educ. v. Stoudt*, 91 N.M. 183, 571 P.2d 1186 (1977).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools § 141.

Power of school board to make contract extending beyond its own term, 70 A.L.R. 802, 149 A.L.R. 336.

Teachers' association or other organization, right to make membership or nonmembership in, a condition of employment as teacher, 72 A.L.R. 1225.

Power of school authorities to transfer teacher from one school or district to another, 103 A.L.R. 1382.

## **22-10-12. Notice of reemployment; termination.**

On or before the last day of the school year of the existing employment contract, the local school board or the governing authority of the state agency shall serve written notice of reemployment or termination on each certified school instructor employed by the school district or state agency. A notice of reemployment shall be an offer of employment for the ensuing school year. A notice of termination shall be a notice of intention not to reemploy for the ensuing school year. Failure of the local school board or the governing authority of the state agency to serve a written notice of reemployment or termination on a certified school instructor shall be construed to mean that notice of reemployment has been served upon the person for the ensuing school year according to the terms of the existing employment contract but subject to any additional compensation allowed other certified school instructors of like qualifications and experience employed by the school district or state agency. Nothing in this section shall be construed to mean that failure of a local school board or the governing authority of the state agency to serve a written notice of reemployment or termination shall automatically extend a certified school instructor's employment contract for a period in excess of one school year.

**History:** 1953 Comp., § 77-8-9, enacted by Laws 1967, ch. 16, § 114; 1975, ch. 306, § 8; 1986, ch. 33, § 20.

## **ANNOTATIONS**

**Cross-references.** - As to grounds and procedure for refusal of reemployment of certified school instructors with tenure rights, see 22-10-14 NMSA 1978.

As to applicability of provisions of section, see 22-10-16 NMSA 1978.

**Mandatory construction.** - Statutes requiring giving of notice of reemployment or dismissal are generally construed as mandatory, and in the absence of the giving of such notice reemployment is usually held to be effected. 1961-62 Op. Att'y Gen. No. 62-129.

**Failure to serve required notice upon nontenured teacher.** - Because appeal to the state board was available only to tenured teachers for a local board's failure to serve the required notice, the failure of the local board to give a nontenured teacher the written notice required by the regulation 14 days before the end of the school year did not require that the court order her re-employment for an additional year. *Provoda v. Maxwell*, 111 N.M. 578, 808 P.2d 28 (1991).

**Law reviews.** - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 161 to 163, 167, 170 to 172, 174, 185.

Temporary inability of teacher without fault of school authorities to perform duty as justifying termination of contract or removal, 72 A.L.R. 283.

Marriage of teacher as grounds for dismissal, 81 A.L.R. 1033, 118 A.L.R. 1092.

Reinstatement of teacher as restoration of original status as regards incidental rights or privileges, 89 A.L.R. 687.

Right to dismiss public schoolteacher on ground that services are no longer needed, 100 A.L.R.2d 1141.

What constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of public schoolteacher, 4 A.L.R.3d 1090.

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice, 52 A.L.R.4th 301.

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher, 60 A.L.R.4th 260.

78 C.J.S. Schools and School Districts §§ 187 to 197, 200 to 217.

**22-10-13. Reemployment; acceptance; rejection; binding contract.**

A. Each certified school instructor shall deliver to the local school board of the school district or to the governing authority of the state agency in which the person is employed a written acceptance or rejection of reemployment for the ensuing school year within fifteen days from the following:

(1) the date written notice of reemployment is served upon the person; or

(2) the last day of the school year when no written notice of reemployment or termination is served upon the person on or before the last day of the school year.

B. Delivery of the written acceptance of reemployment by a certified school instructor creates a binding employment contract between the certified school instructor and the local school board or the governing authority of the state agency until the parties enter into a formal written employment contract. Written employment contracts between local school boards or governing authorities of state agencies and certified school instructors shall be executed by the parties not later than ten days before the first day of a school year.

**History:** 1953 Comp., § 77-8-10, enacted by Laws 1967, ch. 16, § 115; 1975, ch. 306, § 9; 1986, ch. 33, § 21.

#### **ANNOTATIONS**

**Necessity for acceptance.** - Where if teacher did not receive notice of termination of employment, and such would constitute an offer of reemployment, but teacher did not deliver an acceptance to school board within statutory period, there was no binding contract of employment. *Hyde v. Taos Mun. School*, 84 N.M. 206, 501 P.2d 194 (1972).

**Time requirement for acceptance.** - This section does not authorize written acceptance within 15 days of the end of school, but from the end of school; moreover, the entirety of the section indicates that acceptance is contemplated only after school has ended without the teacher having received any notice. *Provoda v. Maxwell*, 111 N.M. 578, 808 P.2d 28 (1991).

#### **22-10-14. Termination decisions; local school board; governing authority of a state agency; procedures.**

A. A local school board or governing authority of a state agency may decline to reemploy a certified school instructor with less than three years of consecutive service in the same classification for any reason it deems sufficient. Upon request of the certified school instructor, the superintendent or administrator shall provide written reasons for the decision to terminate. The reasons shall be provided within ten working days of the request. The reasons shall not be publicly disclosed by the superintendent, administrator, local school board or governing authority. The reasons shall not provide a basis for contesting the decision under the School Personnel Act [Chapter 22, Article 10 NMSA 1978].

B. A certified school instructor who has been employed by a school district or state agency for three consecutive years and who receives a notice of termination pursuant to either Section 22-10-12 NMSA 1978 or Subsection B [A] of this section, may request an opportunity to make a statement to the local school board or governing authority on the decision to terminate him by submitting a written request to the local superintendent or administrator within five working days from the date written notice of termination is served upon him. The certified school instructor may also request in writing the reasons for the action to terminate him. The local superintendent or administrator shall provide written reasons for the notice of termination to the certified school instructor within five working days from the date the written request for a meeting and the written request for the reasons was received by the local superintendent or administrator. Neither the local superintendent or administrator nor the local school board or governing authority shall publicly disclose its reasons for termination.

C. A local school board or governing authority may not refuse to reemploy a certified school instructor who has been employed by a school district or state agency for three consecutive years without just cause.

D. The certified school instructor's request pursuant to Subsection C [B] of this section shall be granted if he responds to the local superintendent's or administrator's written reasons as provided in Subsection C [B] of this section by submitting in writing to the local superintendent or administrator a contention that the decision to terminate him was made without just cause. The written contention shall specify the grounds on which it is contended that the decision was without just cause and shall include a statement of the facts that the certified school instructor believes support his contention. This written statement shall be submitted within ten working days from the date the certified school instructor receives the written reasons from the local superintendent or administrator. The submission of this statement constitutes a representation on the part of the certified school instructor that he can support his contentions and an acknowledgment that the local school board or governing authority may offer the causes for its decision and any relevant data in its possession in rebuttal of his contentions.

E. A local school board or governing authority shall meet to hear the certified school instructor's statement in no less than five or more than fifteen working days after the local school board or governing authority receives the statement. The hearing shall be conducted informally in accordance with the provisions of the Open Meetings Act [10-15-1 to 10-15-4 NMSA 1978]. The certified school instructor and the local superintendent or administrator may each be accompanied by a person of his choice. First, the superintendent shall present the factual basis for his determination that just cause exists for the termination of the employee, limited to those reasons provided to the certified school instructor pursuant to Subsection C [B] of this section. Then, the certified school instructor shall present his contentions, limited to those grounds specified in Subsection E [D] of this section. The local school board or governing authority may offer such rebuttal testimony as it deems relevant. All witnesses may be questioned by the local school board or governing authority, the certified school instructor or his representative and the local superintendent or administrator or his

representative. The local school board or governing authority may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable. No record shall be made of the proceeding. The local school board or governing authority shall notify the certified school instructor and the local superintendent or administrator of its decision in writing within five working days from the conclusion of the meeting.

**History:** 1953 Comp., § 77-8-11, enacted by Laws 1967, ch. 16, § 116; 1975, ch. 306, § 10; 1979, ch. 86, § 1; 1983, ch. 103, § 1; reenacted by Laws 1986, ch. 33, § 22; 1987, ch. 320, § 5; 1990, ch. 90, § 2; 1991, ch. 187, § 4.

## ANNOTATIONS

- I. General Consideration.
- II. Tenure Rights.
  - A. Generally.
  - B. Procedure for Refusal to Reemploy.
  - C. Hearings.

### I. GENERAL CONSIDERATION.

**Bracketed material.** - The bracketed subsection references in Subsections B, D, and E were inserted by the compiler to correct apparently erroneous references. The bracketed material was not enacted by the legislature and is not part of the law.

**The 1990 amendment,** effective May 16, 1990, inserted "governing authority of a state agency" in the catchline and in the first sentence of Subsection A and "or governing authority" following "local school board", "or state agency" following "school district", and "local" before "superintendent" throughout the section; added the final four sentences in Subsection A; in Subsection B, substituted "five working days" for "five calendar days" in two places and deleted "local school board's" preceding "action to terminate him" at the end of the second sentence; in Subsection C, inserted "state agency" in Subparagraph (c) of Paragraph (2); substituted "ten working days" for "five calendar days" in the third sentence of Subsection D; and, in Subsection E, substituted "in no less than five or more than fifteen working days" for "within ten calendar days" in the first sentence and "five working days" for "five calendar days" in the final sentence.

**The 1991 amendment,** effective June 14, 1991, rewrote this section to the extent that a detailed comparison would be impracticable.

**Constitutionality.** - The procedures in this section, 22-10-14.1, 22-10-17, and 22-10-17.1 NMSA 1978 satisfy the requirements of the due process clause of the fourteenth amendment to the Constitution of the United States. 1988 Op. Att'y Gen. No. 88-05.

**Law reviews.** - For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).



**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Request for hearing, sufficiency under statute requiring hearing on request before discharge, 89 A.L.R.2d 1018.

Who is "teacher" for purposes of tenure statute, 94 A.L.R.3d 141.

Termination of teacher's tenure status by resignation, 9 A.L.R.4th 729.

Validity and construction of statutes, ordinances, or regulations requiring competency tests of schoolteachers, 64 A.L.R.4th 642.

## II. TENURE RIGHTS.

### A. GENERALLY.

**Compiler's notes.** - Most of the cases cited in the notes below were decided under this section as it existed prior to the 1986 reenactment. Prior to the reenactment, the section provided for tenure rights for certified school instructors employed for three consecutive school years and having entered into an employment contract for a fourth consecutive school year. See now 22-10-11E NMSA 1978, which provides that, except as provided in 22-10-12 NMSA 1978, no person employed by contract pursuant to 22-10-11 NMSA 1978 shall have a legitimate objective expectancy of reemployment, and Subsection F of this section.

**Policy behind tenure statute.** - The legislature recognized the sound public policy of retaining in the public school system teachers who had become increasingly valuable by reason of their experience and had by statute assured these public servants an indefinite tenure of position during satisfactory performance of their duties. 1963-64 Op. Att'y Gen. No. 63-152 (rendered under former law).

**Drawing on facts predating statute not retroactive application.** - The supreme court has held that teacher tenure laws are prospective in application. However, a statute is not applied retroactively merely because it draws upon antecedent facts for its operation. *Lucero v. Board of Regents*, 91 N.M. 770, 581 P.2d 458 (1978).

**Persons to whom applicable.** - Only certified school instructors with three or more years of service are entitled to procedural due process prior to nonrenewal; the statutory scheme does not give similar protection to administrators at the expiration and nonrenewal of their contracts. *Cole v. Ruidoso Mun. Sch.*, 947 F.2d 903 (10th Cir. 1991).

**Teacher at state school held entitled to tenure.** - Where a certified teacher seeking recognition as a tenured teacher had been employed for three consecutive years prior to the effective date of the 1975 amendment making this section applicable to state agencies, and had entered into a contract for the fourth consecutive year after the amendment became effective, his years of service prior to that date could be counted towards the required number of years of employment, since a contract had been

entered into after the effective date of the amendment. *Lucero v. Board of Regents*, 91 N.M. 770, 581 P.2d 458 (1978).

**Section required only that a certified school instructor be employed by a school district;** it did not limit that employment to teaching positions or to employment in a single school within that district. *Penasco Indep. School Dist. No. 4 v. Lucero*, 86 N.M. 683, 526 P.2d 825 (Ct. App. 1974)(decided prior to 1983 amendment).

**"Employed"** required that a contract be entered into for four consecutive years and services be rendered. 1968 Op. Att'y Gen. No. 68-70.

**Teacher did not acquire tenure** where the three years of service were not consecutive, being interrupted by a leave of absence for one year. 1968 Op. Att'y Gen. No. 68-70.

**Instructor lost tenure rights upon employment as administrator.** - A certified school instructor who had previously acquired tenure rights as a certified school instructor with a public school district lost those tenure rights as a result of being reemployed for the next consecutive school year as a certified school administrator. *Atencio v. Board of Educ.*, 99 N.M. 168, 655 P.2d 1012 (1982)(decided prior to 1983 amendment adding last sentence of Subsection B).

An individual who voluntarily changed his teacher status to become a certified school administrator did not retain a property interest as a tenured certified school instructor entitled to protection by due process. *Atencio v. Board of Educ.*, 99 N.M. 168, 655 P.2d 1012 (1982)(decided prior to 1983 amendment).

**Reduction in force or staff realignment.** - A tenured teacher subject to termination under a reduction-in-force plan is entitled to bump a non-tenured teacher holding a position for which both are certified, or take priority over a non-tenured teacher in obtaining the necessary certification for a vacant position for which neither is presently certified. However, a tenured teacher can be terminated and a non-tenured teacher retained as an alternative to a staff realignment which would seriously affect the educational program. *New Mexico State Bd. of Educ. v. Abeyta*, 107 N.M. 1, 751 P.2d 685 (1988).

## B. PROCEDURE FOR REFUSAL TO REEMPLOY.

**Compiler's notes.** - The cases cited in the notes below were decided under former 22-10-15 NMSA 1978, repealed in 1986.

**Sufficiency of notice of termination.** - Where teacher with tenure rights was only given two days notice - excluding the date of service - before the end of the school year, and under the regulations prescribed by the state board she was entitled to no less than 14 days notice before the end of the school year, the conduct of the local board in failing to follow the regulation amounted to unfairness, and although teacher may have known

her principal was going to recommend to the local board that she not be reemployed, this placed no burden upon her to employ an attorney, or to otherwise begin the preparation of her defense, in anticipation of the ruling of the local board. She was entitled, insofar as the section and the rule permitted, to a timely notice, pursuant to the requirements of the rule. *Brininstool v. New Mexico State Bd. of Educ.*, 81 N.M. 319, 466 P.2d 885 (Ct. App. 1970).

Evaluation reports by a school principal and a supervisor addressed "To Whom It May Concern," copies of which were sent to counsel for teacher, did not constitute the written statement of the cause or causes for his dismissal even though the letter by which these evaluation reports were transmitted referred to them as formal charges on file with the local board, and also advised of complaints and observations made against teacher by school patrons and parents. *Belen Mun. Bd. of Educ. v. Sanchez*, 75 N.M. 386, 405 P.2d 229 (1965).

**Grounds for termination.** - Absent grounds personal to a teacher, to terminate his services it is necessary to show affirmatively that there is no position available which he is qualified to teach, and where a local board asserts no grounds personal to the teacher, it is up to them to prove that no position is available for which he is qualified. *Penasco Indep. School Dist. No. 4 v. Lucero*, 86 N.M. 683, 526 P.2d 825 (Ct. App. 1974).

Absent grounds personal to the teacher, to terminate her services it was necessary to show affirmatively that there was no position available which tenured teacher was qualified to teach. *Fort Sumner Mun. School Bd. v. Parsons*, 82 N.M. 610, 485 P.2d 366 (Ct. App.), cert. denied, 82 N.M. 601, 485 P.2d 357 (1971).

### C. HEARINGS.

**Compiler's notes.** - The cases cited in the notes below were decided under former 22-10-19 NMSA 1978, repealed in 1986.

**Hearing prerequisite to appeal.** - It is well settled that a teacher must first seek a hearing before the local board and, if dissatisfied there, appeal from an adverse decision of the local board to the state board of education. *Shepard v. Board of Educ.*, 81 N.M. 585, 470 P.2d 306 (1970).

The right to appeal to the state board, affirmatively authorized, is from a decision of the local board "after a hearing." The negative implication is that where no hearing has been held, an appeal to the state board is not authorized. Absent a hearing before the local board, neither the state board nor the court of appeals has jurisdiction over any matter presented. *Quintana v. State Bd. of Educ.*, 81 N.M. 671, 472 P.2d 385 (Ct. App.), cert. denied, 81 N.M. 668, 472 P.2d 382 (1970).

A teacher whose contract was not renewed and who so desired had an obligation to call for a hearing before the local school board, to be followed by an appeal to state board of

education in event decision of the local board was unsatisfactory, before resorting to the courts for relief. *Jones v. Board of School Dirs.*, 55 N.M. 195, 230 P.2d 231 (1951).

**Local board's decision must rest on its conclusion of law** and the conclusion must in turn be supported by one or more findings of fact. *Morgan v. New Mexico State Bd. of Educ.*, 83 N.M. 106, 488 P.2d 1210 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971).

**Admission of hearsay evidence.** - Where discharged school principal, appealing from his discharge for insubordination, complained of the admission of four written exhibits at the local board hearing on the basis that the documents were hearsay and prejudicial to his interest, and where none of the four exhibits contained evidence of insubordination during the term of the current contract, but each tended to establish that principal's insubordination during the current contract was willful, admission of the written hearsay was not error, since it could not have said that principal's right to a fair hearing, or his interests, was substantially prejudiced thereby. *McAlister v. New Mexico State Bd. of Educ.*, 82 N.M. 731, 487 P.2d 159 (Ct. App. 1971).

### **22-10-14.1. Appeals; independent arbitrator; qualifications; procedure; binding decision.**

A. A certified school instructor who is still aggrieved by a decision of a local school board or governing authority rendered pursuant to Section 22-10-14 NMSA 1978 may appeal the decision to an arbitrator. A written appeal shall be submitted to the local superintendent or administrator within five working days from the receipt of the local school board's or governing authority's written decision or the refusal of the board or authority to grant a hearing. The appeal shall be accompanied by a statement of particulars specifying the grounds on which it is contended that the decision was impermissible pursuant to Subsection D of Section 22-10-14 NMSA 1978 and including a statement of facts supporting the contentions. Failure of the certified school instructor to submit a timely appeal or a statement of particulars with the appeal shall disqualify him for any appeal and render the local school board's or governing authority's decision final.

B. The local school board or governing authority and the certified school instructor shall meet within ten working days from the receipt of the request for an appeal and select an independent arbitrator to conduct the appeal. If the parties fail to agree on an independent arbitrator, they shall request the presiding judge in the judicial district in which the certified school instructor's public school is located to select one. The presiding judge shall select the independent arbitrator within five working days from the date of the parties' request.

C. A qualified independent arbitrator shall be appointed who is versed in employment practices and school procedures and who preferably has experience in the practice of law. No person shall be appointed to serve as the independent arbitrator who has any direct or indirect financial interest in the outcome of the proceeding, has any relationship

to any party in the proceeding, is employed by the local school board or governing authority or is a member of or employed by any teachers' organization of which the certified school instructor is a member.

D. Appeals from the decision of the local school board or governing authority shall be decided after a de novo hearing before the independent arbitrator. The issue to be decided by the independent arbitrator is whether there was just cause for the decision of the local school board or governing authority to terminate the certified school instructor.

E. The de novo hearing shall be held within thirty working days from the selection of the independent arbitrator. The arbitrator shall give written notice of the date, time and place of the hearing, and such notice shall be sent to the certified school instructor and the local school board or governing authority.

F. Each party has the right to be represented by counsel at the hearing before the independent arbitrator.

G. Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the independent arbitrator.

H. The independent arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

I. The rules of civil procedure shall not apply to the de novo hearing, but it shall be conducted so that both contentions and responses are amply and fairly presented. To this end, the independent arbitrator shall permit either party to call and examine witnesses, cross-examine witnesses and introduce exhibits. The technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator shall require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

J. The local school board or governing authority has the burden of proof and shall prove by a preponderance of the evidence that, at the time the notice of termination was served on the certified school instructor, the local school board or governing authority had just cause to terminate the certified school instructor. If the local school board or governing authority proves by a preponderance of the evidence that there was just cause for its action, then the burden shifts to the certified school instructor to rebut the evidence presented by the local school board or governing authority.

K. The independent arbitrator shall uphold the local school board's or governing authority's decision only if it proves by a preponderance of the evidence that, at the time the notice of termination was served on the certified school instructor, the local school board or governing authority had just cause to terminate the certified school instructor. If

the local school board or governing authority fails to meet its burden of proof or if the certified school instructor rebuts the proof offered by the local school board or governing authority, the arbitrator shall reverse the decision of the local school board or governing authority.

L. No official record shall be made of the hearing. Either party desiring a record of the arbitration proceedings may, at his own expense, record or otherwise provide for a transcript of the proceedings; provided, however, that the record so provided shall not be deemed an official transcript of the proceedings nor shall it imply any right of automatic appeal or review.

M. The independent arbitrator shall render a written decision affirming or reversing the action of the local school board or governing authority. The decision shall contain findings of fact and conclusions of law. The parties shall receive actual written notice of the decision of the independent arbitrator within ten working days from the conclusion of the de novo hearing.

N. The sole remedies available under this section shall be reinstatement or payment of compensation reinstated in full but subject to any additional compensation allowed other certified school instructors of like qualifications and experience employed by the school district or state agency and including reimbursement for compensation during the entire period for which compensation was terminated, or both, less an offset for any compensation received by the certified school instructor during the period the compensation was terminated.

O. Unless a party can demonstrate prejudice arising from a departure from the procedures established in this section and in Section 22-10-14 NMSA 1978, such departure shall be presumed to be harmless error.

P. The decision of the independent arbitrator shall be binding on both parties and shall be final and nonappealable except where the decision was procured by corruption, fraud, deception or collusion, in which case it shall be appealed to the district court in the judicial district in which the public school or state agency is located.

Q. Each party shall bear its own costs and expenses. The independent arbitrator's fees and other expenses, incurred in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.

R. Local school districts shall file a record with the department of education of all terminations and all actions arising from terminations annually.

**History:** 1978 Comp., § 22-10-14.1, enacted by Laws 1986, ch. 33, § 23; 1990, ch. 90, § 3; 1991, ch. 187, § 5.

## ANNOTATIONS

**The 1990 amendment**, effective May 16, 1990, inserted "or governing authority" following "local school board" throughout the section; in Subsection A, deleted "who has been employed by a school district for three consecutive years and" following "school instructor" and substituted "may appeal the decision to an arbitrator" for "may request an appeal to an independent arbitrator" in the first sentence, rewrote the second sentence which read "A written request for an appeal shall be submitted to the local superintendent within five calendar days from the receipt of the local school board's written decision or the refusal of the board to grant a hearing", substituted "appeal" and "the appeal" for "request" and "his request" in the third and fourth sentences, and deleted "request for" before "appeal" the first time the word appears in the fourth sentence; in Subsection B, substituted "ten working days" for "ten calendar days" in the first sentence and "five working days" for "five calendar days" in the third sentence; substituted "thirty working days" for "thirty calendar days" in Subsection E; inserted "local school" preceding "board's" in the second sentence of Subsection J and in Subsection K; substituted "ten working days" for "ten calendar days" in the third sentence of Subsection M; inserted "or state agency" following "school district" in two places in Subsection N and following "public school" near the end of Subsection P; and, in Subsection Q, substituted "assigned at the discretion of the arbitrator" for "borne by the school district; provided that if the certified school instructor does not prevail in the proceeding, he shall be responsible for reimbursing the school district for the costs incurred in the conduct of the arbitration proceedings and the arbitrator's fees" at the end thereof.

**The 1991 amendment**, effective June 14, 1991, rewrote this section to the extent that a detailed comparison would be impracticable.

**Constitutionality.** - The procedures in 22-10-14, this section, 22-10-17, and 22-10-17.1 NMSA 1978 satisfy the requirements of the due process clause of the fourteenth amendment to the Constitution of the United States. 1988 Op. Att'y Gen. No. 88-05.

**Adequate review necessary for reversal.** - Before the state board opts to reject the decision of its hearing officer, particularly when the credibility of the witnesses is at issue, at the very least it must review so much of the transcript of the proceedings before the hearing officer as is necessary to support its decision (decided under former 22-10-20 NMSA 1978). Board of Educ. v. New Mexico State Bd. of Educ., 106 N.M. 129, 740 P.2d 123 (Ct. App. 1987).

**Board's reversal of hearing officer held erroneous.** - The state board improvidently found that the local board did not establish sufficient cause for its discharge of a teacher by a preponderance of the evidence, in light of the number of witnesses testifying before the local board as to the teacher's sexual advances and the nature of their testimony (decided under former 22-10-20 NMSA 1978). Board of Educ. v. New Mexico State Bd. of Educ., 106 N.M. 129, 740 P.2d 123 (Ct. App. 1987).

**Appeals to state board under former 22-10-20 NMSA 1978.** - See Board of Educ. v. State Bd. of Educ., 79 N.M. 332, 443 P.2d 502 (Ct. App. 1968); Morgan v. State Bd. of

Educ., 80 N.M. 754, 461 P.2d 236 (Ct. App. 1969), cert. denied, 81 N.M. 41, 462 P.2d 626 (1970); Wickersham v. New Mexico State Bd. of Educ., 81 N.M. 188, 464 P.2d 918 (Ct. App. 1970); Shepard v. Board of Educ., 81 N.M. 585, 470 P.2d 306 (1970); Quintana v. State Bd. of Educ., 81 N.M. 671, 472 P.2d 385 (Ct. App.), cert. denied, 81 N.M. 668, 472 P.2d 382 (1970); Fort Sumner Mun. School Bd. v. Parsons, 82 N.M. 610, 485 P.2d 366 (Ct. App.), cert. denied, 82 N.M. 601, 485 P.2d 357 (1971); McAlister v. New Mexico State Bd. of Educ., 82 N.M. 731, 487 P.2d 159 (Ct. App. 1971); Brown v. New Mexico State Bd. of Educ., 83 N.M. 99, 488 P.2d 734 (1971); Morgan v. New Mexico State Bd. of Educ., 83 N.M. 106, 488 P.2d 1210 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971); Board of Educ. v. New Mexico State Bd. of Educ., 88 N.M. 10, 536 P.2d 274 (Ct. App. 1975); Bertrand v. New Mexico State Bd. of Educ., 88 N.M. 611, 544 P.2d 1176 (Ct. App. 1975), cert. denied, 89 N.M. 5, 546 P.2d 70 (1976); New Mexico State Bd. of Educ. v. Stoudt, 91 N.M. 183, 571 P.2d 1186 (1977); Board of Educ. v. Jennings, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982) (specially concurring opinion); Redman v. Board of Regents, 102 N.M. 234, 693 P.2d 1266 (Ct. App. 1984).

## **22-10-15. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1986, ch. 33, § 33 repeals former 22-10-15 NMSA 1978, as amended by Laws 1975, ch. 306, § 11, relating to the procedure to be followed by a local school board or the governing body of a state agency in refusing to reemploy a certified school instructor with tenure rights. For provisions of former section, see 1984 Replacement Pamphlet. For present comparable provisions, see 22-10-14 and 22-10-14.1 NMSA 1978.

Laws 1986, ch. 33 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 21, 1986.

## **22-10-16. Excepted from provisions.**

Sections 22-10-12 through 22-10-15 NMSA 1978 do not apply to the following:

- A. a person not holding a standard certificate;
- B. a certified school instructor employed to fill the position of a certified school instructor entering military service;
- C. a person attaining seventy years of age prior to the last day of the school year; and
- D. a person not qualified to teach.

**History:** 1953 Comp., § 77-8-13, enacted by Laws 1967, ch. 16, § 118; 1975, ch. 191, § 1; 1983, ch. 103, § 2; 1991, ch. 187, § 6.



## ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, substituted "seventy years" for "sixty-five years" in Subsection C.

**Compiler's note.** - Section 22-10-15 NMSA 1978, referred to in the introductory language, was repealed in 1986.

**Former subsection excepting administrators construed.** - See *Penasco Indep. School Dist. No. 4 v. Lucero*, 86 N.M. 683, 526 P.2d 825 (Ct. App. 1974); *Atencio v. Board of Educ.*, 99 N.M. 168, 655 P.2d 1012 (1982).

### **22-10-17. Discharge hearing; procedures.**

A. A local school board or the governing authority of a state agency may discharge a certified school employee only for just cause according to the following procedure:

(1) the superintendent shall serve a written notice of his intent to recommend discharge on the certified school employee in accordance with the law for service of process in civil actions; and

(2) the superintendent shall state in the notice of his intent to recommend discharge the cause for his recommendation and shall advise the certified school employee of his right to a discharge hearing before the local school board or governing authority as provided in this section.

B. A certified school employee who receives a notice of intent to recommend discharge pursuant to Subsection A of this section may exercise his right to a hearing before the local school board or governing authority by giving the local superintendent or administrator written notice of that election within five working days of his receipt of the notice to recommend discharge.

C. The local school board or governing authority shall hold a discharge hearing no less than twenty and no more than forty working days after the local superintendent or administrator receives the written election from the certified school employee and shall give the certified school employee at least ten days written notice of the date, time and place of the discharge hearing.

D. Each party, the local superintendent or administrator and the certified school employee, may be accompanied by a person of his choice.

E. The parties shall complete and respond to discovery by deposition and production of documents prior to the discharge hearing.

F. The local school board or governing authority shall have the authority to issue subpoenas for the attendance of witnesses and to produce books, records, documents

and other evidence at the request of either party and shall have the power to administer oaths.

G. The local superintendent or administrator shall have the burden of proving by a preponderance of the evidence that, at the time of the notice of intent to recommend discharge, he had just cause to discharge the certified school employee.

H. The local superintendent or administrator shall present his evidence first, with the certified school employee presenting his evidence thereafter. The local school board or governing authority shall permit either party to call, examine and cross-examine witnesses and to introduce documentary evidence.

I. An official record shall be made of the hearing. Either party may have one copy of the record at the expense of the local school board or governing authority.

J. The local school board shall render its written decision within twenty days of the conclusion of the discharge hearing.

**History:** 1953 Comp., § 77-8-14, enacted by Laws 1967, ch. 16, § 119; 1975, ch. 306, § 12; reenacted by Laws 1986, ch. 33, § 24; 1989, ch. 281, § 1; 1990, ch. 90, § 4; 1991, ch. 187, § 7.

## ANNOTATIONS

- I. General Consideration.
- II. Discharge Procedure.

### I. GENERAL CONSIDERATION.

**The 1989 amendment**, effective June 16, 1989, inserted references to "certified school instructor" and "certified school administrator" throughout the section and added the last sentence in Subsection C.

**The 1990 amendment**, effective May 16, 1990, inserted "or governing authority" following "local school board" and "or administrator" following "superintendent" throughout the section; substituted "ten working days" for "five calendar days" near the end of Subsection B; substituted "in no less than five and no more than fifteen working days" for "within ten calendar days" in the fourth sentence and "five working days" for "five calendar days" in the final sentence of Subsection C; and, near the middle of Subsection D substituted "five working days" for "five calendar days."

**The 1991 amendment**, effective June 14, 1991, rewrote this section to the extent that a detailed comparison would be impracticable.

**Constitutionality.** - The procedures in 22-10-14, 22-10-14.1, this section, and 22-10-17.1 NMSA 1978 satisfy the requirements of the due process clause of the fourteenth amendment to the Constitution of the United States. 1988 Op. Att'y Gen. No. 88-05.

**"Discharge" includes temporary or permanent removal.** - "Discharge," as used in this section, prohibiting the discharge of certified instructors without an opportunity for notice and hearing, includes removing the teacher either temporarily or permanently from employment. Board of Educ. v. Singleton, 103 N.M. 722, 712 P.2d 1384 (Ct. App. 1985).

**Law reviews.** - For annual survey of New Mexico employment law, see 16 N.M.L. Rev. 39 (1986).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 147 to 193.

Validity of governmental requirement of oath of allegiance or loyalty as applied to schoolteachers, 18 A.L.R.2d 319.

Dismissal or rejection of public schoolteacher because of disloyalty, 27 A.L.R.2d 487.

Assertion of immunity as grounds for discharge of teacher, 33 A.L.R.2d 799.

Right to dismiss public schoolteacher on the grounds that services are no longer needed, 100 A.L.R.2d 1141.

Incompetency: what constitutes "incompetency" or "inefficiency" as a ground for dismissal or demotion of a public schoolteacher, 4 A.L.R.3d 1090.

Elements and measure of damages in action by schoolteacher for wrongful discharge, 22 A.L.R.3d 1047.

Drugs and narcotics: use of illegal drugs as grounds for dismissal of teacher, or denial or cancellation of teacher's certificate, 47 A.L.R.3d 487.

Appearance: dismissal of, or disciplinary action against, public schoolteachers for violation of regulation as to dress or personal appearance of teachers, 58 A.L.R.3d 1227.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate, 78 A.L.R.3d 19.

Insubordination: what constitutes "insubordination" as ground for dismissal of public schoolteacher, 78 A.L.R.3d 83.

Tardiness: dismissal of public schoolteacher because of unauthorized absence or tardiness, 78 A.L.R.3d 117.

Sufficiency of notice of intention to discharge or not to rehire teacher, under statutes requiring such notice, 52 A.L.R.4th 301.

Liability of school authorities for hiring or retaining incompetent or otherwise unsuitable teacher, 60 A.L.R.4th 260.

Maternity leave: mandatory maternity leave rules or policies for public schoolteachers as constituting violation of equal protection clause of fourteenth amendment to federal constitution, 17 A.L.R. Fed. 768.

78 C.J.S. Schools and School Districts §§ 200, 201, 204.

## II. DISCHARGE PROCEDURE.

**Compiler's notes.** - The cases cited in the notes below were decided under this section as it existed prior to the 1986 reenactment.

**Construction of this section and 22-10-21 NMSA 1978.** See *Morgan v. New Mexico State Bd. of Educ.*, 83 N.M. 106, 488 P.2d 1210 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971).

**Section inapplicable to suspensions with pay for duration of contract.** - School board's action in suspending school superintendent with pay for the duration of his contract period did not amount to a discharge and was not protected by the statutory requirements for a hearing. *Black v. Board of Educ.*, 87 N.M. 45, 529 P.2d 271 (1974).

**Determination as to good cause for discharge.** - In the absence of a statutory definition of the term, it is the function of the state board of education in the exercise of its sound discretion to determine the question of "good cause," and its determination is conclusive unless the evidence discloses that it acted unlawfully, arbitrarily or capriciously. *Lopez v. State Bd. of Educ.*, 70 N.M. 166, 372 P.2d 121 (1962).

**Assault while intoxicated.** - State board of education did not act unlawfully, arbitrarily or capriciously in finding good cause for the termination of a teacher's contract where teacher assaulted a woman in a bar while intoxicated. *Lopez v. State Bd. of Educ.*, 70 N.M. 166, 372 P.2d 121 (1962).

**Insubordination.** See *McAlister v. New Mexico State Bd. of Educ.*, 82 N.M. 731, 487 P.2d 159 (Ct. App. 1971).

**Timing of hearing mandatory.** - The time specified for conducting a dismissal hearing pursuant to this section is mandatory, unless waived by the parties or unless a

continuance is sought and obtained for good cause. Board of Educ. v. Singleton, 103 N.M. 722, 712 P.2d 1384 (Ct. App. 1985).

**Appeal limited to issues urged at hearing.** - A school board's delay in according a dismissed teacher a timely hearing under this section and the provisions of her contract could not be urged as a basis for dismissal of the board's appeal, where this ground was not initially argued in the administrative hearing below. Board of Educ. v. Singleton, 103 N.M. 722, 712 P.2d 1384 (Ct. App. 1985).

### **22-10-17.1. Appeals; independent arbitrator; qualifications; procedure; binding decision.**

A. A certified school employee aggrieved by a decision of a local school board or governing authority to discharge him after a discharge hearing held pursuant to Section 22-10-17 NMSA 1978 may appeal the decision to an independent arbitrator. A written notice of appeal shall be submitted to the local superintendent or administrator within five working days from the receipt of the copy of the written decision of the local school board or governing authority.

B. The local school board or governing authority and the certified school employee shall meet within ten calendar days from the receipt of the notice of appeal and select an independent arbitrator to conduct the appeal, or, in the event the parties fail to agree on an independent arbitrator, they shall request the presiding judge in the judicial district in which the public school is located to select the independent arbitrator. The presiding judge shall select the independent arbitrator within five working days from the date of the parties' request.

C. A qualified independent arbitrator shall be appointed who is versed in employment practices and school procedures. No person shall be appointed to serve as the independent arbitrator who has any direct or indirect financial interest in the outcome of the proceeding, has any relationship to any party in the proceeding, is employed by the local school board or governing authority or is a member of or employed by any professional organization of which the certified school employee is a member.

D. Appeals from the decision of the local school board or governing authority shall be decided after a de novo hearing before the independent arbitrator. The local school board or governing authority shall have the burden of proving by a preponderance of the evidence that, at the time of the notice of intent to recommend discharge, the local superintendent or administrator had just cause to discharge the certified school employee. The local school board or governing authority shall present its evidence first, with the certified school employee presenting his evidence thereafter.

E. The hearing shall be held within thirty working days from the selection of the independent arbitrator. The independent arbitrator shall give written notice of the date, time and place of the hearing, and such notice shall be sent to the certified school employee and the local school board or governing authority.

F. Each party has the right to be represented by counsel at the hearing before the independent arbitrator.

G. Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the independent arbitrator.

H. The independent arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action or in the manner provided by the American arbitration association's voluntary labor arbitration rules if that entity is used by the parties.

I. The rules of civil procedure shall not apply to the hearing, but it shall be conducted so that both contentions and responses are amply and fairly presented. To this end, the independent arbitrator shall permit either party to call and examine witnesses, cross-examine witnesses and introduce exhibits. The technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

J. An official record shall be made of the hearing. Either party may order a transcript of the record at his own expense.

K. The independent arbitrator shall render a written decision affirming or reversing the action of the local school board or governing authority. The decision shall contain findings of fact and conclusions of law. The parties shall receive the written decision of the independent arbitrator within thirty working days from the conclusion of the hearing.

L. Unless a party can demonstrate prejudice arising from a departure from the procedures established in this section and in Section 22-10-17 NMSA 1978, such departure shall be presumed to be harmless error.

M. The decision of the independent arbitrator shall be final and binding on both parties and shall be nonappealable except where the decision was procured by corruption, fraud, deception or collusion, in which case it may be appealed to the court of appeals by filing a notice of appeal as provided by the New Mexico rules of appellate procedure.

N. Each party shall bear its own costs and expenses. The independent arbitrator's fees and other expenses incurred in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.

**History:** 1978 Comp., § 22-10-17.1, enacted by Laws 1986, ch. 33, § 25; 1990, ch. 90, § 5; 1991, ch. 187, § 8.

## **ANNOTATIONS**

**The 1990 amendment**, effective May 16, 1990, inserted "or governing authority" following "local school board" throughout the section; in Subsection A, in the first sentence, inserted "local school" preceding "board" the second time the reference appears and substituted "may appeal the decision" for "may request an appeal", in the second sentence, inserted "or administrator" and substituted "five working days" for "five calendar days" and, in the third sentence, substituted "The appeal shall be" for "The request for an appeal to an independent arbitrator shall be"; substituted "five working days" for "five calendar days" in the final sentence of Subsection B; in Subsection E, substituted "thirty working days" for "thirty calendar days" in the first sentence and inserted "or certified school administrator" in the second sentence; substituted "labor arbitration rules" for "rules for arbitration" near the end of Subsection H; substituted "thirty working days" for "thirty calendar days" in the third sentence of Subsection K; in Subsection N, substituted "Each party" for "Either party" at the beginning of the first sentence and rewrote the second sentence which read "The arbitrator's fees and other expenses incurred in the conduct of the arbitration shall be borne by the school districts; provided that if the certified school instructor or administrator does not prevail in the proceeding, he shall be responsible for reimbursing the school district for the costs incurred in the conduct of the arbitration proceeding and the arbitrator's fees"; and deleted former Subsection O relating to compliance with the American arbitration association's rules.

**The 1991 amendment**, effective June 14, 1991, substituted "employee" for "instructor or certified school administrator" throughout the section; substituted "notice of appeal" for "request for an appeal" in the second sentence in Subsection A and in the first sentence in Subsection B; in Subsection A, substituted "a discharge hearing held" for "his statement to the local school board presented" in the first sentence and deleted the former third sentence which read "The appeal shall be accompanied by a statement of particulars specifying the grounds on which it is contended that the decision was not based on good and just cause"; in Subsection C substituted "professional organization" for "teachers' or administrators' organization"; in Subsection D, inserted "de novo" in the first sentence and substituted the second and third sentences for the former second sentence which read "The issue to be decided by the independent arbitrator is whether the board's decision to discharge the certified school instructor or certified school administrator was based on good and just cause"; and made minor stylistic changes throughout the section.

**Constitutionality.** - The procedures in 22-10-14, 22-10-14.1, 22-10-17, and this section NMSA 1978 satisfy the requirements of the due process clause of the fourteenth amendment to the Constitution of the United States. 1988 Op. Att'y Gen. No. 88-05.

## **22-10-18. Compensation payments to discharged personnel.**

A. Payment of compensation to any certified school instructor employed by a local school board or by the governing authority of a state agency and payment of compensation to any certified school administrator employed by a local school board shall terminate as of the date, after a hearing, that a written copy of the decision of the

local school board or the governing authority of the state agency to discharge the person is served on the person. If the compensation of the person discharged during the term of a written employment contract is to be paid monthly during a twelve-month period for services to be performed during a period less than twelve months, the person shall be entitled to a pro rata share of the compensation payments due for the period during the twelve months in which no services were to be performed.

B. In the event the action of the local school board in discharging a certified school instructor or administrator or the action of the governing authority of a state agency in discharging a certified school instructor is reversed on appeal, payment of compensation to the person shall be reinstated in full but subject to any additional compensation allowed other certified school instructor or administrator of like qualifications and experience employed by the school district or state agency and including reimbursement for compensation during the entire period the compensation was terminated less an offset for any compensation received by the person from a school district or state agency during the period the compensation was terminated.

**History:** 1953 Comp., § 77-8-15, enacted by Laws 1967, ch. 16, § 120; 1975, ch. 306, § 13.

#### **ANNOTATIONS**

**Offset provision in Subsection B is not exclusive;** rather, a school district or state agency may offset an award by any compensation that a terminated employee received from any source during his period of termination. Board of Educ. v. Jennings, 102 N.M. 762, 701 P.2d 361 (1985).

**22-10-19, 22-10-20. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1986, ch. 33, § 33 repeals former 22-10-19 and 22-10-20 NMSA 1978, as amended by Laws 1975, ch. 306, § 14 and Laws 1983, ch. 166, § 1, respectively, giving the state board authority to promulgate regulations for the conduct of hearings before local school boards and governing authorities of state agencies and relating to appeals to the state board, effective May 21, 1986. For provisions of former sections, see 1984 Replacement Pamphlet. For present comparable provisions, see 22-10-14 and 22-10-14.1 NMSA 1978.

**22-10-21. Supervision and correction procedures.**

The state board shall prescribe by regulations procedures to be followed by a local school board or the governing authority of a state agency in supervising and correcting unsatisfactory work performance of certified school personnel before notice of intent to discharge is served upon them and by the governing authority of a state agency in supervising and correcting unsatisfactory work performance of certified school



instructors before notice of intent to discharge is served upon them. These regulations shall provide that written records shall be kept on all action taken by a local school board or the governing authority of a state agency to improve any person's unsatisfactory work performance and all improvements made in the person's work performance. These written records shall be introduced as evidence at any hearing for the person conducted by the local school board or the governing authority of the state agency.

**History:** 1953 Comp., § 77-8-18, enacted by Laws 1967, ch. 16, § 123; 1975, ch. 306, § 16; 1986, ch. 33, § 26.

## ANNOTATIONS

**Section is consistent with 22-10-17 NMSA 1978.** - Under this section the notice of discharge provided for in 22-10-17 NMSA 1978 is not to be served until the procedures of the state board regulations have been followed. *Morgan v. New Mexico State Bd. of Educ.*, 83 N.M. 106, 488 P.2d 1210 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971) (decided prior to 1986 changes to this section and 22-10-17 NMSA 1978).

**Purpose of work conferences** is to allow certified school personnel to work harmoniously with a supervisor to perform appointed tasks adequately. *Board of Educ. v. Jennings*, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982)(specially concurring opinion).

**Meaning of "unsatisfactory work performance".** See *Morgan v. New Mexico State Bd. of Educ.*, 83 N.M. 106, 488 P.2d 1210 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971).

**Sexual harassment** constitutes "unsatisfactory work performance," therefore requiring work conferences. *Board of Educ. v. Jennings*, 98 N.M. 602, 651 P.2d 1037 (Ct. App. 1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity and construction of statutes, ordinances, or regulations requiring competency tests of schoolteachers, 64 A.L.R.4th 642.

### **22-10-22. Suspension and revocation of certificates; appeal.**

A. The state board may suspend or revoke a certificate held by a certified school instructor or administrator for incompetency, immorality or for any other good and just cause.

B. A certificate may be suspended or revoked only according to the following procedure:

(1) the state board serving written notice of the suspension or revocation on the person holding the certificate in accordance with the law for service of process in civil actions. The notice of the suspension or revocation shall state the grounds for the suspension or

revocation of the certificate. The notice of the suspension or revocation shall also designate a place, time and date, not less than thirty days from the date of the service of the notice of the suspension or revocation, for a hearing before the state board;

(2) the state board or its designated hearing officer conducting a hearing which provides the person holding the certificate, or his attorney, an opportunity to present evidence or arguments on all pertinent issues. A transcript shall be made of the entire hearing conducted by the state board or its designated hearing officer; and

(3) the state board rendering a written decision in accordance with the law and based upon evidence presented and admitted at the hearing. The written decision shall include findings of fact, conclusions of law, and be based upon the findings of fact and the conclusions of law. A written copy of the decision of the state board shall be served upon the person holding the certificate within sixty days from the date of the hearing. Service of the written copy of the decision shall be in accordance with the law for service of process in civil actions or by certified mail to the person's address of record.

C. Any person aggrieved by a decision of the state board after a hearing pursuant to this section may appeal the decision to the court of appeals by filing a notice of appeal with the clerk of the court within thirty days after service of a written copy of the decision of the state board on the person. The cost of transcripts on appeal, including one copy for the use of the state board, shall be borne by the appellant. Upon appeal, the court of appeals shall affirm the decision of the state board unless the decision is found to be:

(1) arbitrary, capricious or unreasonable;

(2) not supported by substantial evidence; or

(3) otherwise not in accordance with law.

**History:** 1953 Comp., § 77-8-19, enacted by Laws 1967, ch. 16, § 124; 1973, ch. 124, § 3.

## ANNOTATIONS

**Cross-references.** - As to service of process in civil actions generally, see Rule 1-004 SCRA 1986.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools § 141.

Revocation of teacher's certificate for moral unfitness, 97 A.L.R.2d 827.

Drugs and narcotics: use of illegal drugs as ground for dismissal of teacher, or denial or cancellation of teacher's certificate, 47 A.L.R.3d 754.

Sexual conduct as ground for dismissal of teacher or denial or revocation of teaching certificate, 78 A.L.R.3d 19.

### **22-10-23. Local sabbatical leave program authorized.**

A local school board may provide as part of its compensation plan a program of sabbatical leave for its certified employees. The governing authority of a state agency may provide a program of sabbatical leave for its certified school instructors.

**History:** 1953 Comp., § 77-8-20, enacted by Laws 1969, ch. 116, § 1; 1975, ch. 306, § 17.

## **ANNOTATIONS**

**Cross-references.** - For definition of "sabbatical leave," see 22-10-2 NMSA 1978.

### **22-10-24. Approved program required for sabbatical leave.**

Sabbatical leave may be granted only upon the presentation and approval by the state department of education of a full program of study or travel related to the certified employee's duties and showing direct benefit to the instructional program.

**History:** 1953 Comp., § 77-8-22, enacted by Laws 1969, ch. 116, § 3; 1975, ch. 306, § 18.

### **22-10-25. Minimum conditions for sabbatical leave.**

Any sabbatical leave program adopted by a local school district or a state agency shall provide the following as minimum conditions:

A. only those certified employees who have completed at least six years of continuous service in a certified capacity with the school district or those certified school instructors who have completed at least six years of continuous service in a certified capacity with the state agency are eligible. For purposes of this section, a leave of absence without pay shall not be considered as an interruption of continuous service but the leave of absence without pay shall not be counted in determining the six-year requirement;

B. further sabbatical leave may be granted in the seventh year of service following a period of sabbatical leave under the same conditions as other sabbatical leaves are granted;

C. sabbatical leave shall be granted only upon agreement by the employee to return to the school system or state agency for at least two years following the leave or repayment to the school district or state agency of the salary received during the period of leave. Such agreement shall be placed in a supplementary contract executed prior to authorization for the sabbatical leave;

D. the maximum term of any one period of sabbatical leave shall be one year;

E. the employee shall be guaranteed an equivalent or better position upon return to the school system or state agency;

F. if regular salary increments for length of service are contained in the salary schedule, the period of leave shall be counted as period of service in the computation of future length of service increments; and

G. the employee may continue his participation in the educational retirement plan by making appropriate contributions as agreed by the local school board or the governing authority of the state agency and the educational retirement board.

**History:** 1953 Comp., § 77-8-23, enacted by Laws 1969, ch. 116, § 4; 1975, ch. 306, § 19.

### **22-10-26. Pay for sabbatical leave.**

Sabbatical leave pay may be allowed in any amount up to one-half of the employee's regular salary for the year immediately preceding the leave and payment shall be made by one of the two following methods:

A. one-half to be paid at the end of the first year after return and one-half at the end of the second year after return; or

B. during the term of the leave upon the furnishing of security satisfactory to the local school board or the governing authority of the state agency assuring the employee's remaining in the system for two years after the leave or repayment to the school district or state agency of the salary received during the period of leave.

**History:** 1953 Comp., § 77-8-24, enacted by Laws 1969, ch. 119, § 5; 1975, ch. 306, § 20.

## **ARTICLE 11 EDUCATIONAL RETIREMENT**

### **22-11-1. Short title.**

Chapter 22, Article 11 NMSA 1978 may be cited as the "Educational Retirement Act".

**History:** 1953 Comp., § 77-9-1, enacted by Laws 1967, ch. 16, § 125; 1991, ch. 118, § 2.

### **ANNOTATIONS**

**The 1991 amendment**, effective July 1, 1991, substituted "Chapter 22, Article 11 NMSA 1978" for "Sections 77-9-1 through 77-9-45 New Mexico Statutes Annotated, 1953 Compilation".

**No state income tax on contributions.** - The state taxation and revenue department cannot lawfully levy and collect state income tax on contributions to the educational retirement fund. Vaughn v. State, Taxation & Revenue Dep't, 98 N.M. 362, 648 P.2d 820 (Ct. App. 1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity of statute or ordinance providing for pensions for teachers, 37 A.L.R. 1162.

78 C.J.S. Schools and School Districts §§ 231 to 236.

## **22-11-2. Definitions.**

As used in the Educational Retirement Act [this article]:

A. "member" means any employee except for a participant coming within the provisions of the Educational Retirement Act;

B. "regular member" means:

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

(a) a participant; or

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

(2) a person regularly employed as a teaching, nursing or administrative employee of a junior college created pursuant to the Junior College Act;

(3) a person regularly employed as a teaching, nursing or administrative employee of a technical and vocational institute created pursuant to the Technical and Vocational Institute Act [21-16-1 to 21-16-7, 21-16-11 to 21-16-15 NMSA 1978];

(4) a person regularly employed as a teaching, nursing or administrative employee of the New Mexico boys' school, the girls' welfare home, the Los Lunas mental hospital or a school district or as a certified school instructor of a state institution or agency providing an educational program and holding a standard or substandard certificate issued by the state board;

(5) a person regularly employed by the department of education, the board or the public school finance division holding a standard or substandard certificate issued by the state board at the time of commencement of such employment;

(6) a member classified as a regular member in accordance with the regulations of the board; or

(7) a person regularly employed by the New Mexico activities association holding a standard certificate issued by the state board at the time of commencement of such employment;

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

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

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

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

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

H. "provisional service-employment" means employment qualifies a person to be a provisional member;

I. "prior employment" means employment performed prior to the effective date of the Educational Retirement Act which would be service-employment or provisional service-employment if performed thereafter;

J. "service-credit" means that period of time with which a member is accredited for the purpose of determining his eligibility for and computation of retirement or disability benefits;

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

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

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

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

O. "board" means the educational retirement board;

P. "fund" means the educational retirement fund;

Q. "director" means the educational retirement director;

R. "medical authority" means a medical doctor within the state or as provided in Subsection D of Section 22-11-36 NMSA 1978 either designated or employed by the board to examine and report on the physical condition of applicants for or recipients of disability benefits;

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

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

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

V. "qualifying state educational institution" means the university of New Mexico, New Mexico state university, the New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university and western New Mexico university;

W. "participant" means:

(1) a person regularly employed as a faculty or professional employee of a qualifying state educational institution who first becomes employed with such an educational institution on or after July 1, 1991 and who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan; and

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

X. "alternative retirement plan" means the retirement plan provided for in Sections 22-11-46 through 22-11-51 NMSA 1978.

**History:** 1953 Comp., § 77-9-2, enacted by Laws 1967, ch. 16, § 126; 1975, ch. 306, § 21; 1978, ch. 167, § 1; 1982, ch. 37, § 1; 1991, ch. 118, § 3.

### **ANNOTATIONS**

**The 1991 amendment**, effective July 1, 1991, in Subsection A, inserted "except for a participant"; in Subsection B, divided former Paragraph (1) into Paragraphs (1) through (3) and designated its subsequent paragraphs accordingly, in Paragraph (1), added Subparagraph (a) and the designation for Subparagraph (b) and inserted "a person regularly employed as a teaching, nursing and administrative employee" in Paragraphs (2) and (3); in Subsection C, inserted "but who is"; in Subsections D to F, inserted references to participants; added Subsections V to X; and made minor stylistic changes throughout the section.

**Junior College Act.** - See 21-13-1 NMSA 1978 and notes thereto.

**Public school finance division.** - The public school finance division of the department of finance and administration, referred to in Subsection B(3), was abolished by Laws 1983, ch. 301, § 14. Laws 1983, ch. 301, § 69, creates the office of education. See 9-6-3 and 22-8-3 NMSA 1978.

**Retired legislator entitled to benefits from educational and public employees' retirement systems.** - When a legislator is retired and no longer an employee, he is not, pursuant to this section, a "regular member" under the Educational Retirement Act and is not excluded from membership and participation in another state retirement program by 22-11-16 NMSA 1978; therefore he may receive benefits from both the educational retirement system and the public employees' retirement system. 1979 Op. Att'y Gen. No. 79-5.

**Public Employees Retirement Act (PERA) retiree** who returns to employment with a governmental entity whose employees are covered exclusively under the provisions of the Educational Retirement Act (ERA) for retirement purposes may not continue to receive PERA benefits. Such retiree's benefits must be suspended. That retiree is employed by an affiliated public employer and his "membership," within the meaning of that term, is not provided for in the ERA. 1987 Op. Att'y Gen. No. 87-79.

**22-11-3. Educational retirement board; members; terms; vacancies.**



A. The "educational retirement board" is created.

B. The board shall be composed of seven members, consisting of the following:

(1) the superintendent of public instruction;

(2) the state treasurer;

(3) one member to be elected for a term of four years by members of the New Mexico association of educational retirees;

(4) one member to be elected for a term of four years by the members of the New Mexico education association;

(5) one member to be elected for a term of four years by the New Mexico members of the American association of university professors; and

(6) two members to be appointed by the governor for terms of four years each.

C. In the initial composition of the board, the member elected by the members of the American association of university professors shall serve for a term of three years; one member appointed by the governor shall serve for a term of two years, and the other member appointed by the governor shall serve for a term of one year.

D. Vacancies occurring in the term of office of those members appointed by the governor or elected by an association shall be filled either by the governor appointing or the association electing a new member to fill the unexpired term.

**History:** 1953 Comp., § 77-9-3, enacted by Laws 1967, ch. 16, § 127; 1977, ch. 246, § 65; 1988, ch. 64, § 40.

## ANNOTATIONS

**The 1988 amendment**, effective May 18, 1988, deleted Subsection B(2) which read "the director of public school finance" and redesignated former Subsection B(3) as present Subsection B(2); added present Subsection B(3); and made a minor stylistic change in Subsection D.

**Member of board has right to resign** his office, and where no particular method of resigning is provided by law, no formal method is necessary or required. 1963-64 Op. Att'y Gen. No. 63-35 (rendered under former law).

### **22-11-4. Board; regular and special meetings.**

A. The board shall hold regular meetings four times each year and may, by its bylaws, provide for additional regular meetings. Prior to each regular meeting, written notice

shall be given to each member of the board specifying the time and place of the regular meeting.

B. Special meetings of the board may be called by the chairman or any three members of the board. Written notice of the special meeting shall be sent to each member of the board at least three days in advance of the special meeting.

**History:** 1953 Comp., § 77-9-4, enacted by Laws 1967, ch. 16, § 128.

### **22-11-5. Board; record; quorum; compensation.**

A. The board shall elect from its membership a chairman and a vice chairman.

B. A record shall be taken and preserved of all meetings of the board.

C. A quorum of the board shall be required for the transaction of any business. A majority of the members of the board constitute a quorum. Each member of the board shall have one vote and a proposal shall pass by the affirmative vote of a majority of the members present at the meeting.

D. While performing their duties, each member of the board shall be entitled to receive per diem and mileage as provided by the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], and shall receive no other compensation, perquisite or allowance.

**History:** 1953 Comp., § 77-9-5, enacted by Laws 1967, ch. 16, § 129.

### **22-11-6. Board; powers; duties.**

The board shall:

A. properly and uniformly enforce the Educational Retirement Act [this article];

B. hire employees and delegate administrative authority to these employees;

C. make an actuarial report on the financial operation of the Educational Retirement Act to the legislature at each regular session every odd-numbered year;

D. accept donations, gifts or bequests; and

E. adopt regulations pursuant to the Educational Retirement Act.

**History:** 1953 Comp., § 77-9-6, enacted by Laws 1967, ch. 16, § 130.

### **22-11-7. Educational retirement director; bond.**

A. The board shall employ an educational retirement director. The director shall be the administrative officer for the board in carrying out the provisions of the Educational Retirement Act [this article] and shall have those additional duties provided in the regulations of the board.

B. Before assuming the duties of office, the director shall obtain an official bond payable to the fund and conditioned upon the faithful performance of his duties during his term of office. The bond shall be executed by a corporate surety company authorized to do business in this state. The amount of the bond shall be not less than twenty-five thousand dollars (\$25,000). The board may elect to obtain a schedule or blanket corporate surety bond covering the director and employees of the division for any period not exceeding four years. The cost of a bond obtained pursuant to this section shall be paid from the fund. Any bond obtained shall be approved by the board and filed with the secretary of state.

**History:** 1953 Comp., § 77-9-7, enacted by Laws 1967, ch. 16, § 131.

### **22-11-8. Medical authority; fees.**

A. The board shall employ the services of a medical authority. The medical authority shall examine, make reports and certify the physical condition of applicants for and recipients of disability benefits pursuant to the Educational Retirement Act [this article].

B. The board shall pay the medical authority a reasonable fee for his professional services.

**History:** 1953 Comp., § 77-9-8, enacted by Laws 1967, ch. 16, § 132.

### **22-11-9. Actuary; fees.**

A. The board shall employ the services of an actuary. The actuary shall prepare a table of actuarial equivalents for use of the board and the director in computing the value of advanced, deferred or optional payment of benefits pursuant to the Educational Retirement Act [this article]. The actuary shall also study the financial operations of the Educational Retirement Act and shall make written reports thereon to the board.

B. The board shall pay the actuary a reasonable fee for his professional services.

**History:** 1953 Comp., § 77-9-9, enacted by Laws 1967, ch. 16, § 133.

### **22-11-10. Salaries; fees; expenditures.**

A. The amount of salaries and fees to be paid by the board shall be fixed by the regulations of the board.

B. Salaries and fees paid, and all other necessary expenditures of the board, shall be paid out of the fund unless otherwise provided by law.

**History:** 1953 Comp., § 77-9-10, enacted by Laws 1967, ch. 16, § 134.

### **22-11-11. Educational retirement fund.**

A. The educational retirement fund is created.

B. The state treasurer shall be the custodian of the fund and the board shall be the trustee of the fund.

C. All membership fees, contributions from members and local administrative units, securities evidencing the investment of money from the fund, interest, gifts, grants or bequests shall be deposited in the fund.

**History:** 1953 Comp., § 77-9-11, enacted by Laws 1967, ch. 16, § 135.

### **ANNOTATIONS**

**Fund transfer.** - Laws 1987, ch. 136, § 1C transfers to the general fund \$5,000,000 on July 1, 1987, from the appropriations made in Laws 1981, Chapter 128 to the educational retirement fund for the purpose of providing a cost-of-living increase and \$3,073,886.27 on July 1 of each fiscal year subsequent to the seventy-sixth fiscal year through July 1 of the eightieth fiscal year.

Laws 1987, ch. 136, § 3 provides for the severability of the act if any part or application thereof is held invalid.

Laws 1987, ch. 136, § 4 makes the act effective immediately. Approved April 7, 1987.

### **22-11-12. Fund; disbursements.**

The state treasurer shall make disbursements from the fund only on warrants issued by the department of finance and administration. Warrants for disbursements from the fund shall be issued by the department of finance and administration only upon voucher of the director.

**History:** 1953 Comp., § 77-9-12, enacted by Laws 1967, ch. 16, § 136.

### **22-11-13. Investment of the fund; indemnification of board.**

A. The board is authorized to invest or reinvest the fund and may invest the fund only in the following:

(1) bills, bonds or notes of the United States, United States government-sponsored enterprises or federal agency securities;

(2) bonds, notes or obligations of a municipality or political subdivision of the state which were issued pursuant to law; provided the issuer has not, within ten years prior to making the investment, been in default for more than three months in the payment of any part of the principal or interest on any debt evidenced by its bonds, notes or obligations; and provided the bonds are city or county utility, or utility-district revenue bonds with the revenue of such utility, other than for payment of operation and maintenance expenses, pledged wholly to payment of the interest on and the principal of such indebtedness, and the utility project has been completely self-supporting for a period of five years preceding the date of the investment;

(3) bonds, notes or commercial paper of any corporation organized and operating within the United States or preferred common stock or American depository receipts of any corporation whose securities are listed on at least one national stock exchange or on the N.A.S.D. national market; provided that the corporation shall have a minimum net worth of twenty-five million dollars (\$25,000,000); provided that the fund shall not at any one time own more than ten percent of the voting stock of a company; and provided that in the investment of the fund, not more than seventy-five percent of the total amount of the fund shall at any time be invested in corporate securities; or

(4) industrial revenue bonds issued pursuant to the Industrial Revenue Bond Act [3-32-1 to 3-32-16 NMSA 1978], where both the principal and interest of the bonds are fully and unconditionally guaranteed by a lease agreement executed by a corporation organized and operating within the United States and which has net assets of at least ten million dollars (\$10,000,000) and has issued securities traded on one or more national stock exchanges and where the senior securities of the guaranteeing corporation would have the equivalent of a BAA rating.

B. The board or its designated agent may enter into contracts for the temporary exchange of securities for the use by broker-dealers, banks or other recognized institutional investors, for periods not to exceed one year, for a specified fee or consideration. No such contract shall be entered into unless the contract is fully secured by a collateralized, irrevocable letter of credit running to the board, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. This collateral shall be delivered to the state fiscal agent or its designee contemporaneously with the transfer of funds or delivery of the securities. Such contract may authorize the board to invest cash collateral in instruments or securities which are authorized fund investments and may authorize payment of a fee from the fund or from income generated by the investment of cash collateral to the borrower of securities providing cash as collateral. The board may apportion income derived from the investment of cash collateral to pay its agent in securities lending transactions.

C. Commissions paid for the purchase or sale of any securities pursuant to the provisions of the Educational Retirement Act [this article] shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice.

D. Investment of the fund shall be made with the exercise of that degree of judgment and care, under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived.

E. Securities purchased from the fund shall be held in the custody of the state treasurer. At the direction of the board, the state treasurer shall deposit with a bank or trust company the securities for safekeeping or servicing.

F. The board may consult with the state investment council or the state investment officer; may request from the state investment council or the state investment officer any information, advice or recommendations with respect to investment of the fund; may utilize the services of the state investment council or the state investment officer; and may act upon any advice or recommendations of the state investment council or the state investment officer. The state investment council or the state investment officer shall render investment advisory services to the board upon request and without expense to the board. The board may also employ investment advisory services and pay a reasonable compensation from the fund for the services. Any services obtained by the board shall be advisory only, and the board shall in all cases retain and exercise its power to make all decisions relating to the investment of the fund.

G. Members of the board, jointly and individually, shall be indemnified from the fund by the state from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorneys' fees, and against all liability, losses and damages of any nature whatsoever that members shall or may at any time sustain by reason of any decision made in the performance of their duties pursuant to this section.

**History:** 1953, Comp., § 77-9-13, enacted by Laws 1967, ch. 16, § 137; 1969, ch. 203, § 1; 1970, ch. 81, § 3; 1975, ch. 211, § 5; 1987, ch. 71, § 1; 1989, ch. 22, § 1.

## ANNOTATIONS

**Cross-references.** - As to applicability of insurance or banking laws to administration of article, see 22-11-43 NMSA 1978.

**The 1989 amendment**, effective March 10, 1989, in Subsection B, added "or consideration" at the end of the first sentence and added the fourth and fifth sentences.

**22-11-14. Fund; restrictions.**

A. No member of the board or employee of the board shall have any interest, directly or indirectly, in the gains or profits of any investments made by the board, except for regular salaries and per diem and mileage allowances authorized pursuant to the Educational Retirement Act [this article].

B. No member of the board or employee of the board shall, directly or indirectly for himself or as an agent or partner for others, borrow from the fund or deposits of the board, or in any manner use the fund or deposits except to make current and necessary disbursements authorized by the board.

C. No member of the board or employee of the board shall become an endorser or surety or become in any manner an obligor for moneys loaned or borrowed by the board.

**History:** 1953 Comp., § 77-9-14, enacted by Laws 1967, ch. 16, § 138.

### **ANNOTATIONS**

**Cross-references.** - As to compensation of members of board, see 22-11-5 NMSA 1978.

As to payment of salaries and fees by board, see 22-11-10 NMSA 1978.

### **22-11-15. Fund; refunds; payments.**

A. After filing written demand with the director, a member is entitled to a refund of the total amount of the member's contributions plus interest at a rate equal to seventy-five percent of the average rate earned by the fund during the five fiscal years preceding the fiscal year of refund, reduced by the sum of any disability benefits previously received by the member, if:

(1) the member terminates employment for reasons other than by retirement, disability or death;

(2) the member has exempted himself from the Educational Retirement Act [this article];  
or

(3) the member was not reemployed following a period of disability during which he received disability benefits.

B. If the amount of a deceased member's contribution or residual contribution does not exceed the sum of one thousand dollars (\$1,000) and no written claim is made to the board for it within one year from the date of the member's death, by his surviving beneficiary or the member's estate, payment thereof may be made to the named beneficiary or, if none is named, to the person the board determines to be entitled to the

contribution under the laws of New Mexico. Any payment made by the board pursuant to this subsection shall be a bar to a claim by any other person.

C. The interest provided for in Subsection A of this section shall apply only to contributions paid to the fund after July 1, 1971 and on deposit in the fund for a period of at least one fiscal year; provided that no such interest shall be allowed on refunds of contributions which were paid into the fund prior to July 1, 1971.

**History:** 1953 Comp., § 77-9-15, enacted by Laws 1967, ch. 16, § 139; 1971, ch. 12, § 1; 1984, ch. 19, § 1.

### ANNOTATIONS

**Cross-references.** - As to payment of benefits upon death during reemployment, see 22-11-26 NMSA 1978.

As to retirement benefit options, see 22-11-29 NMSA 1978.

As to disability benefits, see 22-11-35 to 22-11-40 NMSA 1978.

As to withdrawal of accumulated deductions under Retirement Reciprocity Act, see 10-13-3 NMSA 1978.

**No state income tax on contributions.** - The state taxation and revenue department cannot lawfully levy and collect state income tax on contributions to the educational retirement fund. Vaughn v. State, Taxation & Revenue Dep't, 98 N.M. 362, 648 P.2d 820 (Ct. App. 1982).

### 22-11-16. Regular membership.

Except as otherwise provided in the Educational Retirement Act [this article], being a regular member shall be a condition of employment and shall exclude membership and participation in any other state retirement program.

**History:** 1953 Comp., § 77-9-16, enacted by Laws 1967, ch. 16, § 140.

### ANNOTATIONS

**Cross-references.** - As to optional coverage of persons qualified to be regular members and covered by retirement program for federal civil service employees, see 22-11-19 NMSA 1978.

**Retired legislator entitled to benefits from educational and public employees' retirement systems.** - Since when a legislator is retired and no longer an employee he is not, pursuant to 22-11-2 NMSA 1978, a "regular member" under the Education Retirement Act and is not excluded from membership and participation in another state



retirement program by this section, therefore he may receive benefits from both the educational retirement system and the public employees' retirement system. 1979 Op. Att'y Gen. No. 79-5.

**Public employees retirement association.** - Full-time city public school teacher who was a member of the educational retirement system, and who was simultaneously employed on a part-time basis by the city, was not required to be a member of the Public Employees Retirement Association. 1988 Op. Att'y Gen. No. 88-70.

## **22-11-17. Provisional membership.**

A. A provisional member shall be covered by the provisions of the Educational Retirement Act [this article] but shall have the option to exempt himself from its coverage. A provisional member exempting himself from the provisions of the Educational Retirement Act shall not be entitled to the benefits or coverage under any other state retirement program except as otherwise provided in this section. This section shall not affect any rights a provisional member may have under the provisions of the federal Social Security Act. This option to exempt must be exercised within one year of employment according to the regulations adopted by the board. Any provisional member exempting himself pursuant to this section shall be entitled to a refund of any contributions made pursuant to the Educational Retirement Act prior to the exercise of the exemption.

B. A provisional member not exempt from the coverage of the Educational Retirement Act shall have the right to earned service-credit for periods of employment subsequent to July 1, 1957 and prior to July 1, 1961, provided that all contributions at the rates in effect during that period of employment are paid. If a provisional member chooses to make the contributions for that period, the local administrative unit employing a member during that period shall pay the employer's contribution at the rate in effect during that period of employment. Contributions prior to July 1, 1961 by both the provisional member and the local administrative unit shall bear interest at the rate of three percent a year from July 1, 1961 until paid.

C. A provisional member exempt from the coverage of the provisions of the Educational Retirement Act shall have the right to revoke the exemption at any time; however, within the first two weeks following the beginning of each school year, such provisional member shall be informed in writing of his right to revoke the exemption and shall sign a statement to the effect that he does or does not wish to revoke the exemption. A copy of such statement shall be kept in the personnel file of the provisional member. Any provisional member who revokes his exemption from coverage shall have the right to acquire earned service-credit for periods of employment during which the exemption or exemptions were in force, under the following conditions:

(1) both the member and the administrative unit contributions, at the rates in effect during the periods of employment and applied to the earnings of the member during

such periods, shall be paid to the fund, together with interest, at a rate equal to the board's actuarial earnings assumption rate at the time of purchase;

(2) member and administrative unit contributions, together with interest, may both be paid by the member; or

(3) if the member tenders payment of his contributions, together with interest, the local administrative unit by whom he was employed may, but shall not be obligated to, pay the administrative unit contributions, together with interest; and

(4) the right of a member to acquire earned service-credit in accordance with this subsection shall expire on June 30, 1992.

D. A provisional member employed by the board, the department of education, the New Mexico school for the deaf, the northern New Mexico state school, the New Mexico school for the visually handicapped, the girls' welfare home, the New Mexico boys' school or the Los Lunas mental hospital shall have the option of qualifying for coverage under either the Educational Retirement Act or the public employees' retirement association of New Mexico. This option shall be exercised by filing a written election with both the educational retirement director and the director of the public employees' retirement association of New Mexico. This election shall be made within six months after employment and shall be irrevocable regardless of subsequent employment or reemployment in any administrative unit enumerated in this subsection. Until this election is made, the provisional member shall be covered and shall be required to make contributions under the Educational Retirement Act.

**History:** 1953 Comp., § 77-9-17, enacted by Laws 1967, ch. 16, § 141; 1971, ch. 268, § 1; 1973, ch. 382, § 1; 1983, ch. 101, § 1; 1987, ch. 208, § 1; 1989, ch. 30, § 1.

## ANNOTATIONS

**The 1989 amendment,** effective July 1, 1989, in Subsection C, substituted all of the present language of Paragraph (1) beginning with "board's" for "average rate earned by the fund during the five fiscal years preceding the fiscal year in which payment is made", and substituted "1992" for "1986" in Paragraph (4).

**Social Security Act.** - The Social Security Act, referred to in Subsection A, is compiled as 42 U.S.C. § 301 et seq.

**Suspension of benefits upon resumption of employment.** - An employee of the department of finance and administration, retired pursuant to the provisions of the Public Employee's Retirement Act, may not resume employment with the department of education without suspension of retirement benefits. 1987 Op. Att'y Gen. No. 87-37 (decided under former § 10-11-22).

An employee of a public school system, retired pursuant to the provisions of the Educational Retirement Act, may not resume employment with the department of education without suspension of her educational retirement benefits. 1987 Op. Att'y Gen. No. 87-38 (decided under former § 10-11-8).

**Public Employee Retirement Act annuitants whom the department of education subsequently employs** and who elect to participate in the educational retirement system by making contributions to that system do not "qualify for (retirement) coverage" under Paragraph D, since they are not considered as having acquired any service credit for purposes of educational retirement benefits. 1987 Op. Att'y Gen. No. 87-37 (decided under former § 10-11-22).

**"Double dipping" disallowed.** - This section does not contemplate a useless act or a manipulative election of coverage under the Public Employees Retirement Act for the sole purpose of enabling the state employee to engage in "double dipping". 1987 Op. Att'y Gen. No. 87-38.

### **22-11-18. Provisional members employed after July 1, 1971.**

A provisional member that is employed after July 1, 1971, must be covered under the Educational Retirement Act [this article] and does not have the option granted under Section 22-11-17 NMSA 1978 to exempt himself from coverage except that if he is a provisional member employed by an administrative unit enumerated in Section 22-11-17D NMSA 1978, he shall have the option provided by that subsection.

**History:** 1953 Comp., § 77-9-17.1, enacted by Laws 1971, ch. 73, § 1.

### **22-11-19. Regular or provisional membership; optional coverage.**

Any person qualified to be a regular or provisional member covered by a retirement program established for federal civil service employees shall have six months after the commencement of employment to file a written notice with the director of his election not to be covered by the Educational Retirement Act [this article]. If the person so elects, he may withdraw any contributions made pursuant to the Educational Retirement Act.

**History:** 1953 Comp., § 77-9-18, enacted by Laws 1967, ch. 16, § 142.

#### **22-11-19.1. [Exemption of certain participants covered under Comprehensive Employment and Training Act.]**

All participants covered under the Comprehensive Employment and Training Act (Public Law 95-524) are exempt from coverage under the Educational Retirement Act [this article], effective July 1, 1979, except for those employees who have vested in the plan by that date.

**History:** Laws 1979, ch. 316, § 1.

## ANNOTATIONS

**Comprehensive Employment and Training Act.** - The federal Comprehensive Employment and Training Act referred to in this section, was found at 29 U.S.C. §§ 801 to 999 before it was repealed in 1982 by P.L. 97-300, Title I, § 184(a)(1).

### **22-11-20. Membership fee.**

Upon the commencement of employment of a member by a local administrative unit, a membership fee of five dollars (\$5.00) shall be deducted from the member's first month's salary by the local administrative unit.

**History:** 1953 Comp., § 77-9-19, enacted by Laws 1967, ch. 16, § 143.

### **22-11-21. Contributions; members; local administrative units.**

A. Each member shall make contributions to the fund in the amount of seven and six-tenths percent of his annual salary.

B. Until June 30, 1993, each local administrative unit shall make a yearly contribution to the fund of a sum equal to seven and six-tenths percent of the annual salary of each member employed by the local administrative unit.

C. Beginning July 1, 1993 and thereafter, each local administrative unit shall make a yearly contribution to the fund of a sum equal to eight and sixty-five hundredths percent of the annual salary of each member employed by the local administrative unit.

**History:** 1953 Comp., § 77-9-20, enacted by Laws 1967, ch. 16, § 144; 1974, ch. 5, § 1; 1981, ch. 293, § 1; 1984, ch. 19, § 2; 1991, ch. 140, § 1; 1992, ch. 117, § 1.

## ANNOTATIONS

**The 1991 amendment,** effective June 14, 1991, added "Until July 1, 1992" at the beginning of Subsection B and added Subsection C.

**The 1992 amendment,** effective March 10, 1992, substituted "1993" for "1992" near the beginning of Subsections B and C; and substituted "sixty-five hundredths" for "six-tenths" in Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity and effect of retroactive change in rate of employee's contribution to public pension fund, 78 A.L.R.2d 1197.

### **22-11-21.1. Member contributions; tax treatment.**

Commencing on July 1, 1983, each local administrative unit shall, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code, pick up, for the purposes specified in that section, member contributions required by Subsection A of Section 22-11-21 NMSA 1978 for all annual salary earned by the member. Member contributions picked up under the provisions of this subsection shall be treated as local administrative unit contributions for purposes of determining income tax obligations under the Internal Revenue Code; however, such picked-up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Members' contributions picked up under this section shall continue to be designated member contributions for all purposes of the Educational Retirement Act [this article] and shall be considered as part of the member's annual salary for purposes of determining the amount of the member's contribution. The provisions of this section are mandatory, and the member shall have no option concerning the pickup or to receive the contributed amounts directly instead of having them paid by the local administrative unit to the educational retirement system.

**History:** 1978 Comp., § 22-11-21.1, enacted by Laws 1983, ch. 91, § 1.

### **ANNOTATIONS**

**Internal Revenue Code.** - For the Internal Revenue Code, referred to in the second sentence, see 26 U.S.C. § 1 et seq. Section 414(h) of the code, referred to in the first sentence, appears as 26 U.S.C. § 414(h).

#### **22-11-22. Payment; records.**

A. Membership fees and contributions shall be deducted from the salaries of members by the local administrative units as the salaries are paid. These fees and contributions shall be forwarded monthly to the director for deposit in the fund.

B. Contributions of local administrative units shall be derived from revenue available to the local administrative unit and shall be forwarded monthly to the director for deposit in the fund.

C. Each local administrative unit shall record and certify quarterly to the director an itemized account of the contributions and fees paid by each member and the local administrative unit. The director shall keep a record of these itemized accounts.

**History:** 1953 Comp., § 77-9-21, enacted by Laws 1967, ch. 16, § 145; 1984, ch. 19, § 3.

#### **22-11-23. Retirement eligibility.**

A. On and after July 1, 1984:

(1) a member shall be eligible for retirement benefits pursuant to the Educational Retirement Act [this article] when either of the following conditions occurs:

(a) the sum of the member's age and years of earned service-credit equals seventy-five; or

(b) upon completion of five years of earned service-credit and upon becoming sixty-five years of age;

(2) a member under sixty years of age eligible to retire under Paragraph (1) of Subsection A of this section may retire and receive retirement benefits pursuant to the Educational Retirement Act that he would be eligible to receive if he were to retire at the age of sixty years reduced by six-tenths of one percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member's sixtieth birthdate but after the fifty-fifth birthdate, and one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to age fifty-five; or

(3) a member under sixty years of age acquiring twenty-five or more years of earned and allowed service-credit may retire and receive retirement benefits pursuant to the Educational Retirement Act computed on the same basis as if the member were sixty years of age.

B. A member shall be subject to the provisions of Paragraphs (2) and (3) of Subsection A of this section as they existed at the beginning of his last cumulated years of earned service credit, regardless of later amendment.

**History:** 1953 Comp., § 77-9-22, enacted by Laws 1967, ch. 16, § 146; 1971, ch. 12, § 2; 1974, ch. 5, § 2; reenacted by 1981, ch. 293, § 2; 1984, ch. 19, § 4.

## ANNOTATIONS

**Cross-references.** - As to deferred retirement, see 22-11-27 NMSA 1978.

As to earned service-credit generally, see 22-11-33 NMSA 1978.

As to allowed service-credit generally, see 22-11-34 NMSA 1978.

As to entitlement to service-credit of certain persons covered under public employees retirement association, see 22-11-45 NMSA 1978.

As to reciprocal service credit under Retirement Reciprocity Act, see 10-13-4 NMSA 1978.

**Nature of retirement rights.** - Benefits under the Educational Retirement Act of this state are retirement allowances and not mere gratuities inasmuch as the employees themselves maintain in part the fund. When an employee meets all of the requirements

for retirement - that is to say, when the contingency occurs on which payments are to be made - he or she acquires a vested right in his retirement benefits under the act and any subsequent discharge or other happenings cannot defeat this right. 1959-60 Op. Att'y Gen. No. 60-217.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Services included in computing period of services for purpose of teachers' retirement benefits, 2 A.L.R.2d 1033.

Disciplinary suspension of public employee as affecting computation of length of service for retirement or pension purposes, 6 A.L.R.2d 506.

Validity of repeal or modification of pension statute provisions, 52 A.L.R.2d 437.

Misconduct as affecting teacher's right to pension or retention in retirement system, 76 A.L.R.2d 584.

## **22-11-24. Retirement benefits; minimum contributory employment.**

A. A member must have acquired not less than five years of contributory employment to be eligible for retirement benefits pursuant to the Educational Retirement Act [this article].

B. A member desiring to retire before having completed five years of contributory employment shall be limited to the maximum benefit he would have been entitled to receive under any statute repealed by the Educational Retirement Act. A member may acquire five years or less of contributory employment by contributing to the fund, for each year of contributory employment desired, a sum equal to the prevailing combined contributions of the member and the local administrative unit in effect at the time the contributory employment is acquired. This contribution shall be computed on the member's average annual salary for the last five years of employment plus an additional sum as interest from the effective date of the Educational Retirement Act as fixed by the board, but not to exceed three percent a year.

C. Years of contributory employment purchased pursuant to this section shall not be considered as an addition to service actually performed in computing the sum of the member's retirement benefit.

D. The retirement benefits of members retired pursuant to the Educational Retirement Act prior to July 1, 1959 and who have acquired contributory employment years by purchase, shall be computed upon the basis of the amount paid therefor.

**History:** 1953 Comp., § 77-9-23, enacted by Laws 1967, ch. 16, § 147.

## **22-11-25. Retirement; reemployment.**

A. A member retired pursuant to the provisions of the Educational Retirement Act [this article] may remove himself from retirement status by returning to employment. A reemployed member shall make regular contributions pursuant to the Educational Retirement Act. Upon termination of reemployment, the member shall be eligible for retirement benefits again based upon all service-credit acquired. In no case shall the retirement benefits be less than the member was receiving prior to his reemployment. Except as provided in Subsection B of this section, the member shall not receive greater retirement benefits than he was receiving prior to his reemployment unless he has not less than five years of employment subsequent to July 1, 1957 with all contributions required by the Educational Retirement Act having been paid on the earnings derived through his employment.

B. A member retired pursuant to the provisions of the Educational Retirement Act returning to employment for not less than one year after July 1, 1957 and prior to July 1, 1963 shall be eligible for retirement benefits pursuant to this section if the following conditions occur:

(1) the member's contributions on the salary earned during that period of reemployment must be paid at the rate which was in effect at that time. If this contribution is made, the local administrative unit employing the member during that period shall pay the local administrative units [unit's] contribution at the rate in effect at that time; and

(2) the member shall have fulfilled the five-year contributory employment requirement specified in Section 22-11-24 NMSA 1978.

C. At the time of retirement following a period of reemployment, the member's retirement benefits shall be paid in accordance with the terms of the option selected at the time of the first retirement. A member qualified to retire pursuant to this section after having reentered employment after retiring prior to July 1, 1957 shall be eligible to retire under the options specified in Section 22-11-29 NMSA 1978.

**History:** 1953 Comp., § 77-9-24, enacted by Laws 1967, ch. 16, § 148.

## ANNOTATIONS

**Suspension of benefits upon resumption of employment.** - An employee of a public school system, retired pursuant to the provisions of the Educational Retirement Act, may not resume employment with the department of education without suspension of her educational retirement benefits. 1987 Op. Att'y Gen. No. 87-38 (decided under former § 10-11-8).

**The suspension provisions of the disbursing system** apply to the benefits granted pursuant to the reciprocity act to a member retired under the public employee retirement association and the educational retirement system who resumes employment. 1988 Op. Att'y Gen. No. 88-22.



**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity of legislation providing for additional retirement or disability allowance for public schoolteachers previously retired or disabled, 27 A.L.R.2d 1447.

## **22-11-26. Death during reemployment.**

If a member dies during a period of reemployment following retiring pursuant to the Educational Retirement Act [this article], the benefits to be paid shall be determined according to the following:

A. if the member did not elect to exercise Option B or C pursuant to Section 22-11-29 NMSA 1978 at the time of first retirement, the member's beneficiary or estate shall receive the difference, if any, between the member's total contribution and total benefits received prior to death; or

B. if a retirement benefit has been paid to the member pursuant to either Option B or Option C of Section 22-11-29 NMSA 1978 prior to reemployment, the reemployed member shall be considered as retiring on the day preceding the date of death, and the benefits due the surviving beneficiary, computed as of that date, shall be commenced effective on the date of death in accordance with the terms of the option elected.

**History:** 1953 Comp., § 77-9-25, enacted by Laws 1967, ch. 16, § 149; 1981, ch. 294, § 1.

## **22-11-27. Deferred retirement; restriction.**

A. A member eligible for retirement may continue in employment and shall continue to pay contributions as provided by the Educational Retirement Act [this article].

B. A member may terminate his employment and retire at any time after his age and his earned service-credit equal the sum of seventy-five, if the contributions he has made are left in the fund.

C. A member having five years or more of earned service-credit may terminate his employment and retire at any time after reaching the age of sixty-five years if the contributions he has made are left in the fund.

D. No member shall be on a retirement status while engaged in employment.

**History:** 1953 Comp., § 77-9-26, enacted by Laws 1967, ch. 16, § 150; 1971, ch. 12, § 3; 1974, ch. 5, § 3.

## **ANNOTATIONS**

**Cross-references.** - As to retirement eligibility generally, see 22-11-23 NMSA 1978.

## **22-11-28. Applications for retirement; effective date.**

A. Application for retirement shall be made by a member on forms provided by the board.

B. Retirement pursuant to the Educational Retirement Act [this article] shall become effective on July 1 following approval of the application for retirement by the board. With approval of the board and the local administrative unit employing the member, retirement pursuant to the Educational Retirement Act may become effective on the first day of any month during the year.

**History:** 1953 Comp., § 77-9-27, enacted by Laws 1967, ch. 16, § 151; 1975, ch. 191, § 2.

## **22-11-29. Retirement benefit options.**

A. Upon retirement pursuant to the Educational Retirement Act [this article], a member may elect, and such election shall be irrevocable, to receive the actuarial equivalent of his retirement benefit, as provided in Section 22-11-30 NMSA 1978, to be effective on his retirement in any one of the following optional forms:

(1) OPTION B. A reduced annuity payable during the member's life with provision that upon the member's death the same annuity shall be continued during the life of and paid to the beneficiary designated by the member in writing at the time of electing this option; or

(2) OPTION C. A reduced annuity payable during the member's life with the provision that upon the member's death one-half of this same annuity shall be continued during the life of and paid to the beneficiary designated by the member in writing at the time of electing this option.

B. In the case of Options B and C of Subsection A of this section, the actuarial equivalent of the member's retirement benefit shall be computed on the basis of the lives of both the member and the beneficiary.

C. In the event that the named beneficiary of a retired member who elected Option B or C at the time of retirement predeceases the retired member, the annuity of the retired member shall be adjusted by adding an amount equal to the amount by which the annuity of the retired member was reduced at retirement as a result of the election of Option B or C. The adjustment authorized in this subsection shall be made as follows:

(1) beginning on the first month following the month in which the named beneficiary of a retiree dies applicable to an annuity received by a retiree who retires after June 30, 1987; or

(2) beginning on July 1, 1987 applicable to an annuity received by a retiree who retired prior to July 1, 1987 and otherwise qualifies for the adjustment; provided, however, no adjustment shall be made retroactively.

D. In the event of the death of the member who has not retired and who has completed at least five years' earned service credit, the member shall be considered as retiring on the first day of the month following the date of death, and the benefits due the surviving beneficiary, computed as of that date, shall, except as provided in Subsection G of this section, be commenced effective on the first day of such month in accordance with the terms of Option B. In lieu of the provisions of Option B, the surviving beneficiary may elect to receive payment of all the contributions made by the member, plus interest at the rate earned by the fund during the preceding fiscal year reduced by the sum of any disability benefits previously received by the member, or the surviving beneficiary may choose to defer receipt of the survivor's benefit to whatever age the beneficiary chooses up to the time the member would have attained age sixty. If the benefit is thus deferred, it shall be calculated as though the member had retired on the first day of the month in which the beneficiary elects to receive the benefit. In the event of the death of the beneficiary after the death of the member and prior to the date on which the beneficiary has elected to receive the beneficiary's benefit, the estate of the beneficiary shall be entitled to a refund of the member's contributions plus interest at the rate earned by the fund during the preceding fiscal year, reduced by the sum of any disability benefits previously received by the member.

E. In the case of death of a retired member who did not elect either Option B or C and before the benefits paid to him have equaled the amount of his accumulated contributions to the fund, the balance shall be paid to the beneficiary designated in writing to the director by the member or, if no beneficiary was designated, to the estate of the member.

F. No benefit shall be paid pursuant to this section if the member's contributions have been refunded pursuant to Section 22-11-15 NMSA 1978.

G. In the case of death of a member with less than five years' earned service credit or death of a member who has filed with the director a notice rejecting the provisions of Subsection C of this section, which notice shall be revocable by the member at any time prior to retirement, the member's contributions to the fund plus interest at the rate earned by the fund during the preceding fiscal year shall be paid to the beneficiary designated in writing to the director by the member or, if no beneficiary was designated, to the estate of the member.

H. Any elections of either Option B or C of Subsection A of this section on file with the director by members who have not retired prior to June 30, 1984 are void.

**History:** 1953 Comp., § 77-9-28, enacted by Laws 1967, ch. 16, § 152; 1977, ch. 314, § 1; 1981, ch. 294, § 2; 1984, ch. 19, § 5; 1987, ch. 86, § 1.

## ANNOTATIONS

**Cross-references.** - As to payment of benefits upon death during reemployment, see 22-11-26 NMSA 1978.

As to disability benefits, see 22-11-35 to 22-11-40 NMSA 1978.

### **22-11-30. Retirement benefits.**

A. Retirement benefits for a member retired pursuant to the Educational Retirement Act [this article] on or before June 30, 1967 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first four thousand dollars (\$4,000) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service-credit.

B. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1967 but on or before June 30, 1971 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first six thousand six hundred dollars (\$6,600) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service-credit.

C. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1971 but on or before June 30, 1974 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the member's average annual salary multiplied by the number of years of the member's total service-credit.

D. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of one or more years shall be computed pursuant to Subsection E of this section. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of less than one year shall be computed pursuant to Subsection A of this section if his date of last retirement was on or before June 30, 1967 or pursuant to Subsection B of this section if his date of last retirement was on or after July 1, 1967 but not later than June 30, 1971 or pursuant to Subsection C of this section if his date of last retirement was on or after July 1, 1971 but not later than June 30, 1974.

E. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1974 but not later than June 30, 1987, shall be paid monthly and shall be one-twelfth of a sum equal to:

(1) one and one-half percent of the member's average annual salary multiplied by the number of years of service-credit for:

(a) prior employment; and

(b) allowed service-credit for service performed prior to July 1, 1957, except United States military service credit purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978; plus

(2) two percent of the member's average annual salary multiplied by the number of years of service-credit for:

(a) contributory employment;

(b) allowed service-credit for service performed after July 1, 1957; and

(c) United States military service credit for service performed prior to July 1, 1957 and purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978.

F. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1987 but not later than June 30, 1991 shall be paid monthly and shall be one-twelfth of a sum equal to two and fifteen hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four quarters ending on June 30, 1987 without having accumulated not less than 1.0 years earned service after June 30, 1987.

G. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1991 shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four consecutive quarters ending on June 30, 1991 without having accumulated at least one year earned service beginning on or after July 1, 1991.

H. A member's average annual salary, pursuant to this section, shall be computed on the basis of the last five years for which contribution was made or upon the basis of any consecutive five years for which contribution was made by the member, whichever is higher.

**History:** 1953 Comp., § 77-9-29, enacted by Laws 1967, ch. 16, § 153; 1971, ch. 12, § 4; 1974, ch. 5, § 4; 1985, ch. 170, § 1; 1987, ch. 86, § 2; 1991, ch. 140, § 2.

## ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, inserted "but not later than June 30, 1991" near the beginning of Subsection F; added Subsection G; redesignated former Subsection G as Subsection H; and made a minor stylistic change in Subsection D.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - What constitutes "salary," "wages," "pay," or the like, within pension law basing benefits thereon, 14 A.L.R.2d 634.

## **22-11-31. Cost of living adjustment; additional contributions.**

A. For the purposes of this section:

(1) "adjustment factor" means a multiplicative factor computed to provide an annuity adjustment pursuant to the provisions of Subsection B of this section;

(2) "annuity" means any benefit payable under the Educational Retirement Act [this article] or the Retirement Reciprocity Act [10-13-1 to 10-13-5 NMSA 1978] as a retirement benefit, disability benefit or survivor benefit;

(3) "calendar year" means the full twelve months beginning January 1 and ending December 31;

(4) "consumer price index" means the average of the monthly consumer price indexes for a calendar year for the entire United States for all items as published by the United States department of labor;

(5) "next preceding calendar year" means the full calendar year immediately prior to the preceding calendar year; and

(6) "preceding calendar year" means the full calendar year preceding the July 1 on which a benefit is to be adjusted.

B. On or after July 1, 1984, each annuity shall be adjusted annually and cumulatively commencing on July 1 of the year in which a member attains the age of sixty-five or on July 1 following the year a member retires, whichever is later. The annuity shall be adjusted by applying an adjustment factor that results in either an adjustment equal to one-half of the percentage increase or decrease of the consumer price index between the next preceding calendar year and the preceding calendar year, except that the adjustment shall not exceed four percent, in absolute value, nor be less than two percent, in absolute value. In the event that the percentage increase or decrease of the consumer price index is less than two percent, in absolute value, the adjustment factor shall be the same as the percentage increase or decrease of the consumer price index. No negative adjustment in the retirement benefit shall reduce the member's benefit below that which he received upon the date of his retirement.

C. A retired member whose benefit is subject to adjustment under the provisions of the Educational Retirement Act in effect prior to July 1, 1984 shall have his annuity readjusted annually and cumulatively under the provisions of that act in effect prior to July 1, 1984 until July 1 of the year in which he attains the age of sixty-five, when he shall have his annuity readjusted annually and cumulatively under the provisions of this section. A member who retires after attaining the age of sixty-five shall have his annuity

adjusted annually and cumulatively commencing on July 1 of the year following his retirement.

D. A retired member who returns to work shall be subject to the provisions of this section as they exist at the time of his final retirement.

E. Benefits of a member who is on a disability status in accordance with Section 22-11-35 NMSA 1978 or a member whom the board certifies was disabled at regular retirement shall be adjusted in accordance with Subsections B and C of this section, except that the benefits shall be adjusted annually and cumulatively commencing on July 1 of the third full year following the year in which the member was approved by the board for disability or retirement.

F. The board shall adjust the benefits of each person receiving an annuity as of June 30, 1991. The adjustment shall be made on July 1, 1991 on the basis of an increase of two dollars (\$2.00) per month for each year since the member's last retirement plus an increase of one dollar (\$1.00) per month for each year of credited service at the time of retirement.

**History:** 1953 Comp., § 77-9-30, enacted by Laws 1967, ch. 16, § 154; 1971, ch. 12, § 5; 1974, ch. 5, § 5; reenacted by 1979, ch. 333, § 2; 1981, ch. 293, § 3; 1984, ch. 19, § 6; 1987, ch. 86, § 3; 1991, ch. 140, § 3.

## ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, designated formerly undesignated provisions as Subsections C and D; deleted former Subsection C, relating to adjustment of benefits of persons receiving an annuity as of June 30, 1987; added Subsections E and F; and made a minor stylistic change in Subsection B.

### **22-11-32. Adjustment of benefits.**

A. If retirement or disability benefits cause a decrease in the amount of monetary payments due to a member or beneficiary from any public agency, the retirement or disability benefits shall be reduced to result in the maximum total benefits to the member or beneficiary.

B. If there is a change in the effect of retirement or disability benefits on any monetary payments due to a member or beneficiary from any public agency, the retirement or disability benefits shall be adjusted to result in the maximum total benefits to the member or beneficiary. In no event shall the retirement or disability benefits be increased in an amount greater than that authorized by the Educational Retirement Act [this article].

C. The provisions of this section are mandatory and are not subject to option or election by any member or beneficiary. Each member or beneficiary shall inform the director of all facts necessary for the director to carry out the provisions of this section.

D. If the director, in good faith, seeks to ascertain all facts necessary to comply with provisions of this section, but payment of retirement or disability benefits is made without making an adjustment as provided by this section, neither the board, the director or any public officer or employee shall be liable because of the payment.

E. As used in this section:

(1) "retirement or disability benefits" means retirement or disability benefits payable to a member or beneficiary pursuant to the Educational Retirement Act;

(2) "public agency" includes the federal government, any department or agency of the federal government, any state and any department, agency and political subdivision of a state; and

(3) "total benefits" means retirement or disability benefits plus any other monetary payments due to the member or beneficiary from any public agency.

**History:** 1953 Comp., § 77-9-31, enacted by Laws 1967, ch. 16, § 155.

## ANNOTATIONS

**Cross-references.** - As to effect of article upon benefits being paid under laws repealed by article or under laws establishing public employees retirement association, see 22-11-44 NMSA 1978.

### **22-11-33. Earned service-credit.**

A. Upon a member filing an application for retirement or disability benefits, earned service-credit for the time of contributory employment shall be certified by the director and subject to the review of the board.

B. A member shall be certified to have earned service-credit for that period of time when he was engaged in prior employment. Earned service-credit shall not be certified for that period of employment for which the contributions have been withdrawn from the fund by the member.

C. Earned service-credit shall be certified for periods of employment interrupted for some cause other than retirement or disability. This shall be done if a member withdrawing contributions from the fund for this period returns to the fund for each year of earned service-credit desired, a sum equal to the member's contribution to the fund during this period, and an additional sum as interest compounded annually, from the date the contributions were withdrawn to the date of payment of the amount of returned



contributions at the rate of interest earned by the fund during the five-year period immediately preceding the application for the earned service-credit. These payments may be made in installments and if the payments made to the fund are insufficient for the restoration of any full year of earned service-credit, the member shall be certified to have acquired earned service-credit for that period of time which is proportionate to the payments made.

**History:** 1953 Comp., § 77-9-33, enacted by Laws 1967, ch. 16, § 156.

## **ANNOTATIONS**

**Cross-references.** - As to reciprocal service-credits under Retirement Reciprocity Act, see 10-13-4 NMSA 1978.

As to entitlement to service-credit of certain persons covered under public employees' retirement association, see 22-11-45 NMSA 1978.

### **22-11-34. Allowed service-credit.**

A. A member shall be certified to have acquired allowed service-credit for those periods of time when he was:

(1) employed prior to the effective date of the Educational Retirement Act [this article] in any federal educational program within New Mexico, including United States Indian schools and civilian conservation corps camps. This service-credit shall be allowed without contribution;

(2) engaged in military service which interrupted his employment in New Mexico, if he returned to his employment within eighteen months following honorable discharge. This service-credit shall be allowed without contribution;

(3) engaged in United States military service or the commissioned corps of the public health service from which he was honorably discharged if he contributes to the fund a sum equal to ten and one-half percent of his average annual salary for that period of time for which he has acquired earned service-credit under the Educational Retirement Act for each year of service-credit he desires to purchase. Average annual salary shall be determined in accordance with rules promulgated by the board but shall always be based upon actual salaries earned by the member where the actual salaries can be ascertained by the board. The employer's contributions for service-credit shall not be paid by the employer. The purchase of service-credit provided in this section shall be carried out by the member prior to July 1, 1992 or within three years after the date of the member's employment following service, whichever is later; or

(4) employed:

(a) in any public school or public institution of higher learning in another state, territory or possession of the United States;

(b) in any United States military dependents' school operated by a branch of the armed forces of the United States;

(c) as provided in Paragraph (1) of this subsection after the effective date of the Educational Retirement Act; or

(d) in any private school in New Mexico accredited by the state board of education.

B. The member under Paragraph (4) of Subsection A of this section shall contribute to the fund for each year of allowed service-credit desired an amount equal to twelve percent of the member's annual salary at the time payment is made if the member is employed or twelve percent times the member's annual salary during the member's last year of employment if the member is not employed at the time of payment. Contributions paid by the member who is not employed shall bear interest at the average rate earned by the fund during the five-fiscal-year period immediately preceding the date of payment. Such interest shall run from the date the member last terminated employment to the date of payment. Payment pursuant to Paragraph (4) of Subsection A of this section may be made in installments, at the discretion of the board, over a period of not to exceed one year, and, if the sum paid does not equal the amount required for any full year of allowed service-credit, the member shall acquire allowed service-credit for that period of time which is proportionate to the payment made. Half credit may be allowed without contribution for not more than ten years of the educational service described by Subparagraph (a) of Paragraph (4) of Subsection A of this section if that service was prior to June 13, 1953 and if the member was employed in New Mexico prior to June 13, 1953 in any position covered by the Educational Retirement Act or any law repealed thereby.

C. No member shall be certified to have acquired allowed service-credit:

(1) under any single paragraph or the combination of only Paragraphs (1) and (4) or only Paragraphs (2) and (3) of Subsection A of this section in excess of five years; or

(2) in excess of ten years for any other combination of those paragraphs.

D. The provisions of this section are made applicable to the services described prior to as well as after the effective date of the Educational Retirement Act.

**History:** 1953 Comp., § 77-9-34, enacted by Laws 1967, ch. 16, § 157; 1975, ch. 321, § 1; 1977, ch. 331, § 2; 1981, ch. 291, § 1; 1986, ch. 48, § 1; 1989, ch. 30, § 2.

## ANNOTATIONS

**Cross-references.** - As to entitlement to service-credit of certain persons covered under public employees retirement association, see 22-11-45 NMSA 1978.

As to reciprocal service-credits under Retirement Reciprocity Act, see 10-13-4 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, in Subsection A(1) substituted "employed" for "serving as a teacher or administrator" in the first sentence; in Subsection A(3) inserted "or the commissioned corps of the public health service" in the first sentence, substituted "1992" for "1987" in the last sentence, and deleted "military" preceding "service" throughout the subsection; in Subsection A(4) deleted "a teacher or administrator" at the beginning of Subparagraphs (a) through (c) and deleted "a certified teacher or certified administrator" at the beginning of Subparagraph (d); and in Subsection B substituted all of the present language of the first sentence following "equal to" for "the prevailing combined percentage of contributions of members and local administrative units in effect at the time of application for allowed service-credit times the member's annual salary if the member is employed, or time the member's annual salary during the member's last year of employment if the member is not employed at the time of the application" and inserted "at the discretion of the board" in the fourth sentence.

**Effective date of Educational Retirement Act.** - The Educational Retirement Act, enacted as part of the Public School Code (Laws 1967, ch. 16), contains no effective date. However, Laws 1967, ch. 16, § 303, makes the Public School Code effective on July 1, 1967.

**Public Health Service officers.** - Active duty as a uniformed commissioned officer in the United States Public Health Service qualifies as "military service" pursuant to Subsection (A)(3) in the following situations: (1) When the service was performed while the commissioned corps was declared to be a military service pursuant to 42 U.S.C. § 217, or (2) when the officer was detailed to a branch of the armed services, as 10 U.S.C. § 101(4) defines that term. 1987 Op. Att'y Gen. No. 87-73.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Services included in computing period of service for purpose of teachers' seniority, 2 A.L.R.2d 1033.

## **22-11-35. Disability benefit; eligibility; medical examination.**

A. A member shall be eligible for disability benefits if he has acquired ten years or more of earned service-credit and the board certifies the member to be totally disabled to continue his employment and unable to obtain and retain other gainful employment commensurate with his background, education and experience.

B. Prior to any certification of disability by the board, the board shall require each applicant for disability benefits to submit himself to a medical examination by the medical authority.

**History:** 1953 Comp., § 77-9-35, enacted by Laws 1967, ch. 16, § 158.

## **ANNOTATIONS**

**Scope of board's authority.** - The legislature, through this section has granted the board the authority to award disability benefits if certain requirements are met. If the board certifies the eligible member to be totally disabled, the board must award benefits. Once the determination of total disability is made, it is the duty of the board to certify the member as disabled. There is nothing in this grant of authority which authorizes the board to refuse to accept an application for disability if the applicant continues to hold a property interest in a bus contract. *Gonzales v. New Mexico Educ. Retirement Bd.*, 109 N.M. 592, 788 P.2d 348, cert. denied, U.S. , 111 S. Ct. 61, 112 L. Ed. 2d 36 (1990).

### **22-11-36. Disability benefit; continued eligibility; reexaminations.**

A. To continue to receive disability benefits, a member shall, on the anniversary date in each year of his being placed on a disability status, present himself to the medical authority for a medical reexamination. The medical authority shall certify to the director after each medical examination whether there is or is not a substantial betterment of the member's disability. In the event a substantial betterment of the disability is reported, the board shall determine whether the member is totally disabled for employment and unable to obtain and retain other gainful employment commensurate with his background, education and experience. If the board determines that the member is no longer disabled, the payment of the disability benefits shall cease.

B. Payment to a member of disability benefits shall be suspended if a certificate of medical reexamination by the medical authority is not filed with the director within thirty days after the date upon which the member should have been reexamined where the failure to file the certificate was due to the unexcused failure or the refusal of the member to report for the medical reexamination. Payment of disability benefits shall be resumed only after the member has complied with the requirements of the Educational Retirement Act [this article]. A member shall have no right or claim for benefits withheld during a period of suspension.

C. The board may, in its discretion, require further or more frequent medical examinations of members having a disability status.

D. A member receiving disability benefits unable to report for a medical reexamination because of his physical condition or because he resides outside the state shall notify the director of this fact not later than fifteen days in advance of the date for the medical reexamination. The board shall designate a medical doctor or doctors in the vicinity of the residence of the member to make the medical reexamination and to report the findings to the board.

**History:** 1953 Comp., § 77-9-36, enacted by Laws 1967, ch. 16, § 159.

## ANNOTATIONS

**Cross-references.** - As to reports of improved health by members receiving disability benefits, see 22-11-39 NMSA 1978.

As to suspension of payments for failure to make reports, see 22-11-40 NMSA 1978.

### **22-11-37. Disability benefit.**

A. The annual disability benefit shall be equal to two percent of the member's average annual salary multiplied by the number of years of the member's total service-credit if the result is greater than one-third of the member's average annual salary. If the result of that formula is less than one-third of the member's average annual salary, the annual disability benefit shall be equal to the lesser of the following amounts:

(1) two percent of the member's average annual salary multiplied by the sum of the member's total service-credit plus the number of years, calculated to the nearest completed quarter, from the effective date of the member's disability to the member's sixtieth birthday; or

(2) one-third of the member's average annual salary.

B. A member's average annual salary for the purpose of computing disability benefits shall be the average salary for the last five years of employment or for any other consecutive five-year period for which contribution was made by the member, whichever is higher.

C. The annual disability benefit shall be paid in equal monthly installments.

**History:** 1953 Comp., § 77-9-37, enacted by Laws 1967, ch. 16, § 160; 1973, ch. 350, § 1; 1991, ch. 140, § 4.

## ANNOTATIONS

**The 1991 amendment**, effective June 14, 1991, in Subsection A, substituted "two percent" for "one and one-half percent" in the first sentence and in Paragraph (1); inserted "annual" preceding "salary" in Subsection B; and made minor stylistic changes in Subsections A and B.

### **22-11-38. Disability retirement.**

A member receiving disability benefits upon attaining the age of sixty years shall be considered as retiring pursuant to the Educational Retirement Act [this article] at the rate of benefits received for the disability.

**History:** 1953 Comp., § 77-9-38, enacted by Laws 1967, ch. 16, § 161.

## **22-11-39. Report of improved health; penalty.**

A. A member receiving disability benefits shall report to the director in writing any substantial improvement in his disability within thirty days after he has or reasonably should have knowledge of the improvement.

B. A member failing to report to the director as required by this section is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 77-9-39, enacted by Laws 1967, ch. 16, § 162.

### **ANNOTATIONS**

**Cross-references.** - As to requirement of reports and examinations of members receiving disability benefits generally, see 22-11-36 NMSA 1978.

## **22-11-40. Reports; restoration to fund.**

A. The payment of disability benefits shall be suspended by the director upon notification by the board that the member has failed or refused to make any report required by the board to be made by him. Payment of disability benefits shall be resumed only after the required report is made. The member shall have no right or claim for benefits withheld during a period of suspension.

B. If a member is obligated to restore any sum of money to the fund and fails or refuses to do so for a period of three months after written demand is made by the director, he shall forfeit his membership and receive no further benefits pursuant to the Educational Retirement Act [this article]. The director shall determine whether the former member's contributions to the fund exceed the total amount of disability or retirement benefits he has received and shall withdraw from any such balance of contributions the amount of money the member is obligated to restore to the fund. Any balance of the contribution remaining in the fund shall be paid to the former member or his beneficiary. In the event the money the former member is obligated to restore to the fund is not restored to the fund, the former member shall be subject to civil action by the board for its recovery.

**History:** 1953 Comp., § 77-9-40, enacted by Laws 1967, ch. 16, § 163.

### **ANNOTATIONS**

**Cross-references.** - As to suspension of benefits upon failure to file certificate of reexamination, see 22-11-36 NMSA 1978.

## **22-11-41. No prohibition on insurance; continued eligibility after retirement; limitation.**

A. Nothing in the Educational Retirement Act [this article] shall prohibit any local administrative unit from carrying group life, health or accident insurance on its employees.

B. A member employed by a state agency and insured under the provisions of the state group medical insurance plan in effect at the time of retirement or disability, under the terms of any separate subsequent state medical group insurance plan, may continue to be insured under the state group medical insurance plan after the effective date of his retirement or disability if he pays the entire periodic premium charge for the insurance and consents to have the periodic premium charges deducted from his retirement or disability benefit.

C. Local administrative units are authorized to extend to their employees the group medical insurance authorized for public employees under Section 10-7-4 NMSA 1978.

D. The provisions of Subsection B of this section shall be applicable to all members commencing retirement or disability benefits on or after July 1, 1978.

**History:** 1953 Comp., § 77-9-41, enacted by Laws 1967, ch. 16, § 164; 1979, ch. 312, § 1; 1981, ch. 299, § 1.

## **22-11-42. Nonassignability; division of funds as community property; child support obligations.**

A. Except as specifically provided in the Educational Retirement Act [this article] and the provisions of Subsections B and C of this section, contributions or benefits mentioned in the Educational Retirement Act shall not be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, guarantee fund or similar assessment or any other legal process.

B. A court of competent jurisdiction, solely for the purposes of effecting a division of community property, may provide by appropriate order for a determination and division of a community interest in the pensions or other benefits provided for in the Educational Retirement Act. In so doing, the court shall fix the manner in which the warrants shall be issued, may order direct payments by the board to a person with a community interest in the pensions or benefits and may restrain the refund of member or participant contributions. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the board or a carrier or contractor for the alternative retirement plan, nor shall the court cause any increase in the actuarial present value of the pensions or other benefits to be paid by the board or a carrier or contractor for the alternative retirement plan.

C. A court of competent jurisdiction, solely for the purposes of enforcing current or delinquent child support obligations, may provide by appropriate order for withholding amounts due in satisfaction of current or delinquent child support obligations from the pensions or other benefits provided for in the Educational Retirement Act and for

payment of such amounts to third parties. The court shall not alter the manner in which the amount of pensions or other benefits is calculated by the board or a carrier or contractor for the alternative retirement plan. The court shall not cause any increase in the actuarial present value of the pensions or other benefits to be paid by the board or a carrier or contractor for the alternative retirement plan. Payments made pursuant to such orders shall only be made when the member or participant terminates employment and requests a refund of contributions or when the member or participant retires; in no case shall more money be paid out, either in a lump sum or in monthly benefits, of the fund or alternative retirement plan in enforcement of current or delinquent child support obligations than would otherwise be payable.

**History:** 1953 Comp., § 77-9-42, enacted by Laws 1967, ch. 16, § 165; 1987, ch. 242, § 1; 1989, ch. 125, § 3; 1990, ch. 49, § 17; 1991, ch. 118, § 4.

## ANNOTATIONS

**Cross-references.** - As to exemption from legal process for Public Employees Retirement Act benefits, see 10-11-135 NMSA 1978.

As to exemption from legal process for Judicial Retirement Act benefits, see 10-12B-7 NMSA 1978.

As to exemption from legal process for Magistrate Retirement Act benefits, see 10-12C-7 NMSA 1978.

As to exemption from legal process for interest from state police pension fund, see 29-4-10 NMSA 1978.

As to exemption from legal process for married persons or heads of households, see 42-10-1 NMSA 1978.

As to rules governing garnishment and writs of execution in the district, magistrate, and metropolitan courts, see Rules 1-065.1, 2-801, and 3-801, respectively.

As to form for claim of exemptions on executions, see Form 4-803.

As to form for order on claim of exemption and order to pay in execution proceedings, see Form 4-804.

As to form for application for writ of garnishment and affidavit, see Form 4-805.

As to form for notice of right to claim exemptions from execution, see Form 4-808A.

As to form for claim of exemption from garnishment, see Form 4-809.



**The 1989 amendment**, effective June 16, 1989, added "child support obligations" to the catchline; substituted "Subsections B and C" for "Subsection B" in Subsection A; substituted "Educational" for "Education" in the first sentence of Subsection B; and added Subsection C.

**The 1990 amendment**, effective May 16, 1990, deleted "Tax exemption" in the catchline, deleted "and shall also be exempt from any state income tax" at the end of Subsection A and substituted "board" for "association" at the end of the second sentence of Subsection C.

**The 1991 amendment**, effective July 1, 1991, in Subsection A, inserted "guarantee fund or similar assessment"; in Subsection B, in the second sentence, inserted "or participant" and in two locations in the third sentence inserted "or a carrier or contractor for the alternative retirement plan"; in Subsection C, in the second and third sentences, inserted "or a carrier or contractor for the alternative retirement plan" and, in the fourth sentence, inserted "or participant" twice and "or alternative retirement plan".

**Applicability.** - Laws 1990, ch. 49, § 24, makes the provisions of the act applicable to taxable years beginning on or after January 1, 1990.

**Exemption from income tax permitted.** - The legislature may grant a special income tax exemption to one kind of public employee, teachers, yet deny the same exemption to other public employees. *Vaughn v. State, Taxation & Revenue Dep't*, 98 N.M. 362, 648 P.2d 820 (Ct. App. 1982).

**"Trading" tax exemptions for health care.** - Repeal of the state income tax exemptions for teacher pensions and public employee pensions does not remedy constitutional defects of the proposed retiree health care act under a theory that those exemptions would be "traded" for retiree health care. Those exemptions are not property rights, irrevocable contractual entitlements, or pension benefits. Hence, elimination of the favorable tax treatment for current retirees is not consideration for a multi-million dollar health care plan that the state proposes to provide them. 1990 Op. Att'y Gen. No. 90-03.

## **22-11-43. Insurance or banking laws inapplicable.**

In the absence of specific provisions to the contrary, no law of this state regulating insurance policies, insurance companies or banking institutions shall apply to the administration of the Educational Retirement Act [this article].

**History:** 1953 Comp., § 77-9-43, enacted by Laws 1967, ch. 16, § 166.

## **22-11-44. Saving clause; retirement benefits; disability benefits.**

A. Any person retired pursuant to the provisions of any laws repealed by the Educational Retirement Act [this article] shall be considered to have retired pursuant to

the Educational Retirement Act and shall continue to receive retirement benefits in the same amount as received prior to the enactment of the Educational Retirement Act.

B. Any person receiving disability benefits pursuant to any laws repealed by the Educational Retirement Act shall continue to receive disability benefits in the same amount as received prior to the enactment of the Educational Retirement Act, and shall be considered to have been granted disability benefits pursuant to and be subject to the provisions of the Educational Retirement Act.

C. Nothing in the Educational Retirement Act shall be construed to adversely affect any benefits being paid pursuant to any laws repealed by the Educational Retirement Act or any laws establishing the public employees retirement association of New Mexico.

D. No person who was heretofore covered under the provisions of any statute repealed by the Educational Retirement Act shall be retired at a monthly benefit which is less than he would have received had his employment continued to be performed under such repealed provisions.

**History:** 1953 Comp., § 77-9-44, enacted by Laws 1967, ch. 16, § 167.

### **22-11-44.1. New Mexico activities association; retirement fund; transfer and assumption of assets and liabilities; rules and regulations.**

A. On July 1, 1982, all assets and liabilities past or present of the retirement fund of the New Mexico activities association are transferred to, and shall be assumed by, the board for purposes of the Educational Retirement Act [this article]. Subject to rules and regulations of the board, all rights, privileges and benefits of membership under the Educational Retirement Act are extended to employees and former employees of the New Mexico activities association.

B. The board shall adopt appropriate rules and regulations deemed necessary to carry out the provisions of this act [22-11-2, 22-11-44.1 NMSA 1978].

**History:** 1978 Comp., § 22-11-44.1, enacted by Laws 1982, ch. 37, § 2.

### **22-11-45. Elections of the public employees retirement association; payment of contributions.**

Any person covered under the public employees retirement association of New Mexico on or subsequent to July 1, 1961 employed by a local administrative unit any time between July 1, 1957 and July 1, 1961 shall not be entitled to service-credit for this time either under the Educational Retirement Act [this article] or under the public employees retirement association of New Mexico unless he elects in writing with the public employees retirement association of New Mexico to be credited with the service-credit.

If a person so elects, he shall pay the employee's contribution to the public employees retirement association of New Mexico in an amount which would have been deducted if he had been a member of the public employees retirement association of New Mexico during this period in which he was employed, together with interest at the rate of four percent a year. The local administrative unit shall then make the employers' contribution for the period involved to the public employees retirement association of New Mexico in a sum equal to the amount which would have been contributed by an employer if the person had been a member of the public employees retirement association of New Mexico during this period in which he was employed, together with interest at the rate of four percent a year. The election provided for by this section shall be made within one year from the person's subsequent date of employment in a position in which he is covered by the public employees retirement association of New Mexico. If the election is not made within this period, no further right to elect shall exist.

**History:** 1953 Comp., § 77-9-45, enacted by Laws 1967, ch. 16, § 168.

### **ANNOTATIONS**

**Cross-references.** - As to Public Employees Retirement Act, see 10-11-1 NMSA 1978 et seq.

As to reciprocal service-credits under Retirement Reciprocity Act, see 10-13-4 NMSA 1978.

**22-11-46. Reserved.**

**22-11-47. Alternative retirement plan; election of coverage.**

A. Beginning October 1, 1991 any employee who is eligible to become a participant may make within ninety days of that date an irrevocable election to participate in the alternative retirement plan. Thereafter, any employee who is eligible to become a participant may make within the first ninety days of employment with a qualifying state educational institution an irrevocable election to participate in the alternative retirement plan. Any employee who makes the irrevocable election shall become a participant the first day of the first pay period following the election. Any employee who fails to make the irrevocable election within ninety days of October 1, 1991 or within the first ninety days of employment with a qualifying state educational institution shall become or remain a regular member if that employee is eligible to be a regular member.

B. Until the time an employee who is eligible to become a participant elects to participate in the alternative retirement plan, that employee shall be a regular member.

C. When an employee elects to become a participant any employer and employee contributions made as a regular member shall be withdrawn from the fund and applied instead toward the alternative retirement plan as if the participant had been participating

in the alternative retirement plan from the commencement of employment with the qualifying state educational institution.

**History:** 1978 Comp., § 22-11-47, enacted by Laws 1991, ch. 118, § 5.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1991, ch. 118, § 11 makes the act effective on July 1, 1991.

#### **22-11-48. Alternative retirement plan; contributory employment.**

A. Contributions made by a qualifying state educational institution on behalf of a participant together with any interest accrued on those contributions shall be credited to the benefit of the participant and shall be distributed or treated as agreed upon between the contractor or carrier providing the alternative retirement plan benefits and the board.

B. Contributions of a participant who terminates employment together with any applicable interest accrued on those contributions shall remain the property of the participant and the contributions, interest and any benefits based on them shall be treated as agreed upon between the contractor or carrier providing the alternative retirement plan benefits and the board.

**History:** 1978 Comp., § 22-11-48, enacted by Laws 1991, ch. 118, § 6.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1991, ch. 118, § 11 makes the act effective on July 1, 1991.

#### **22-11-49. Alternative retirement plan; contributions.**

A. Each participant shall contribute an amount equal to the percent of the participant's salary that the participant would have been required to contribute as a regular member. The contribution shall be made in the manner provided for by the board.

B. Each qualifying state educational institution shall contribute on behalf of each participant an amount of the participant's salary equal to the contribution that would have been required of the employer if the participant was, instead, a regular member. Of the contribution made by a qualifying state educational institution on behalf of a participant beginning October 1, 1991, a sum equal to three percent of the annual salary of each participant shall be contributed to the fund, and the remainder of the contribution shall be paid to the alternative retirement plan as provided by the board; provided, however, that on July 1 following any report by the actuary to the board that concludes that less than three percent of the contributions made by a qualifying state educational institution on behalf of its participants is required to satisfy the unfunded actuarial liability attributable to the participation of the participants in the alternative

retirement plan, the three percent shall be reduced to the percentage determined by the actuary.

C. Contributions required by the provisions of this section may be made by a reduction in salary or by a public employer pick-up pursuant to any applicable provision of the Internal Revenue Code of 1986, as amended.

**History:** 1978 Comp., § 22-11-49, enacted by Laws 1991, ch. 118, § 7.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1991, ch. 118, § 11 makes the act effective on July 1, 1991.

#### **22-11-50. Alternative retirement plan; tax treatment.**

The board shall have the authority to determine whether the alternative retirement plan shall be qualified under Section 401(a) or 403(a) of the Internal Revenue Code of 1986, as amended, and shall make that determination based upon which choice is most advantageous to the participants as a whole.

**History:** 1978 Comp., § 22-11-50, enacted by Laws 1991, ch. 118, § 8.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1991, ch. 118, § 11 makes the act effective on July 1, 1991.

**Internal Revenue Code.** - Sections 401(a) and 403(a) of the Internal Revenue Code, referred to in this section, appear as 26 U.S.C. §§ 401(a) and 403(a), respectively.

#### **22-11-51. Benefits.**

No retirement, death or other benefit shall be paid by the board from the fund for services credited under the alternative retirement plan. Such benefits are payable to participants or their beneficiaries only by the appropriate alternative retirement plan contractor or carrier in accordance with the terms of the applicable contracts or certificates; provided, however, that retirement benefits shall be paid in the form of a lifetime income and, except for death benefits, single sum cash payments shall not be permitted.

**History:** 1978 Comp., § 22-11-51, enacted by Laws 1991, ch. 118, § 9.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1991, ch. 118, § 11 makes the act effective on July 1, 1991.

## **22-11-52. Alternative retirement plan; selection of contractor or carrier; administration.**

A. The board shall solicit and review proposals for providing retirement, death and any other benefits deemed desirable by the board for participants in the alternative retirement plan. The board shall solicit proposals for providing the benefits through annuity contracts or certificates that are fixed or variable in nature or some combination thereof.

B. The board, after consultation with the qualifying state educational institutions, shall select no less than two nor more than three contractors or carriers to provide the contracts or certificates. In making its selection, the board shall consider, among other things, the following criteria:

- (1) the portability of the benefits offered based upon the number of states and institutions of higher education in which the offeror provides similar benefits;
- (2) the nature and extent of the rights and benefits that would be provided to the participants;
- (3) the relation of the rights and benefits to the contributions that would be made by the participants and the qualifying state educational institutions;
- (4) the ability of the offeror to provide the rights and benefits;
- (5) the suitability of the rights and benefits for recruitment and retention of employees by the qualifying state educational institutions; and
- (6) compliance with the requirements of the Educational Retirement Act.

C. The board shall provide for the administration and maintenance of the alternative retirement plan and may adopt rules and regulations for that purpose.

**History:** 1978 Comp., § 22-11-52, enacted by Laws 1991, ch. 118, § 10.

### **ANNOTATIONS**

**Effective dates.** - Laws 1991, ch. 118, § 11 makes the act effective on July 1, 1991.

## **ARTICLE 12 COMPULSORY SCHOOL ATTENDANCE**

**22-12-1. Short title.**

Sections 22-12-1 through 22-12-7 NMSA 1978 may be cited as the "Compulsory School Attendance Law".

**History:** 1953 Comp., § 77-10-1, enacted by Laws 1967, ch. 16, § 169.

## **ANNOTATIONS**

**Cross-references.** - For constitutional provision pertaining to compulsory school attendance, see N.M. Const., art. XII, § 5.

As to compulsory education of visually handicapped, see 21-5-5 NMSA 1978.

**Law reviews.** - For comment, "Compulsory School Attendance - Who Directs the Education of a Child? State v. Edgington," see 14 N.M.L. Rev. 453 (1984).

### **22-12-2. Compulsory school attendance; responsibility.**

A. Any qualified student and any person who because of his age is eligible to become a qualified student as defined by the Public School Finance Act [22-8-1 to 22-8-42 NMSA 1978] until attaining the age of majority shall attend a public school, a private school, a home school or a state institution. A person shall be excused from this requirement if:

- (1) the person is specifically exempted by law from the provisions of this section;
- (2) the person has graduated from a high school;
- (3) the person is at least sixteen years of age and has been excused by the local school board or its authorized representative upon a finding that the person will be employed in a gainful trade or occupation or engaged in an alternative form of education sufficient for the person's educational needs and the parent, guardian or other person having custody and control consents;
- (4) with consent of the parent, guardian or person having custody and control of the person to be excused, the person is excused from the provisions of this section by the superintendent of schools of the school district in which the person is a resident and the person is under eight years of age; or
- (5) the person is judged, based on standards and procedures adopted by the state board, to be unable to benefit from instruction because of learning disabilities or mental, physical or emotional conditions.

B. A person subject to the provisions of the Compulsory School Attendance Law [22-12-1 to 22-12-7 NMSA 1978] shall attend school for at least the length of time of the school year that is established in the school district in which the person is a resident.

C. Any parent, guardian or person having custody and control of a person subject to the provisions of the Compulsory School Attendance Law is responsible for the school attendance of that person.

**History:** 1953 Comp., § 77-10-2, enacted by Laws 1967, ch. 16, § 170; 1967, ch. 133, § 1; 1972, ch. 17, § 2; 1974, ch. 7, § 2; 1975, ch. 332, § 3; 1975, ch. 338, § 2; 1981, ch. 7, § 1; 1985, ch. 21, § 4.

## ANNOTATIONS

**Cross-references.** - As to excusal of certain students from full-time school attendance, see 22-12-6 NMSA 1978.

As to age of majority, see 28-6-1 NMSA 1978.

**Law reviews.** - For comment, "Compulsory School Attendance - Who Directs the Education of a Child? State v. Edgington," see 14 N.M.L. Rev. 453 (1984).

**Duty to protect children.** - Compulsory attendance laws in no way restrain a child's liberty so as to render the child and his parents unable to care for the child's basic needs. Thus, the state does not incur under the Due Process Clause an affirmative duty to protect school children who attend state-run schools from deprivations by private actors merely on the basis of compulsory attendance laws. *Maldonado v. Josey*, 975 F.2d 727 (10th Cir. 1992).

**Legislature did not intend for the law to require a student to attend the public schools** of his district, nor that such a student be required to do so by any rule of any other body. 1973 Op. Att'y Gen. No. 73-59.

**Validity of regulations prohibiting school attendance by certain students.** - A rule which requires the withdrawal of a student when it is known that she is pregnant and when the school officials do not believe that such attendance is proper, clearly violates the compulsory attendance law, therefore, if the girl is physically capable of attending school, the local school board may not prohibit her attendance by rule or regulation merely because she is pregnant. 1967 Op. Att'y Gen. No. 67-117.

Children under 17 (now 18) years of age may not be excluded or exempted from school because they are married. 1967 Op. Att'y Gen. No. 67-117.

**Constitutionality of prohibiting home instruction.** - The exclusion of home instruction by a parent, guardian or custodian of a child from satisfying the requirements of the compulsory school attendance law does not violate equal protection as guaranteed in the United States and New Mexico constitutions. *State v. Edgington*, 99 N.M. 715, 663 P.2d 374 (Ct. App.), cert. denied, 464 U.S. 940, 104 S. Ct. 354, 78 L. Ed. 2d 318 (1983) (decided prior to 1985 amendment, which inserted "a home school" in introductory language of Subsection A).



**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 227 to 231, 233.

Regulations forbidding pupils to leave school grounds during school hours, 32 A.L.R. 1342, 48 A.L.R. 659.

Extent of legislative power with respect to attendance and curriculum, 39 A.L.R. 477, 53 A.L.R. 832.

Personal liability of school authorities for dismissal or suspension of pupil, 42 A.L.R. 763.

Inmates of charitable institutions as residents entitled to school privileges, 48 A.L.R. 1098.

Expulsion or suspension from private school or college, 50 A.L.R. 1497.

Marriage or other domestic relations as ground for exclusion of pupil from public school, 63 A.L.R. 1164.

Failure of student to attain or maintain prescribed scholastic rating as grounds for dropping him, 86 A.L.R. 484.

Health measures, power of municipal school authorities to prescribe, as a condition of school attendance, 93 A.L.R. 1413.

Releasing public school pupils from attendance for purposes of attending religious-education classes, 2 A.L.R.2d 1371.

Religious beliefs of parents as defense to prosecution for failure to comply with compulsory education law, 3 A.L.R.2d 1401.

Marriage or pregnancy of public school student as ground for expulsion, exclusion or restriction of activities, 11 A.L.R.3d 996.

Participation of student in demonstration on or near campus as warranting expulsion or suspension from school or college, 32 A.L.R.3d 864.

What constitutes "private school" within statute making attendance at such a school compliance with compulsory school-attendance law, 65 A.L.R.3d 1222.

Conditions at school as excusing or justifying nonattendance, 9 A.L.R.4th 122.

Validity of regulation of athletic eligibility of students voluntarily transferring from one school to another, 15 A.L.R.4th 885.

79 C.J.S. Schools and School Districts §§ 463 to 474.

### **22-12-2.1. Extracurricular activities; student participation.**

A. Effective with the 1986-87 school year, a student shall have a 2.0 grade point average on a 4.0 scale, or its equivalent, either cumulatively or for the grading period immediately preceding participation, in order to be eligible to participate in any extracurricular activity. For purposes of this section, "grading period" is a period of time not less than six weeks. The provisions of this subsection shall not apply to special education students placed in class C and class D programs.

B. Effective with the 1987-88 school year, no student shall be absent from school for school-sponsored extracurricular activities in excess of ten days per semester, and no class may be missed in excess of ten times per semester.

C. The provisions of Subsections A and B of this section apply to all extracurricular activities.

D. The state superintendent may issue a waiver relating to the number of absences for participation in any state or national competition. The state superintendent shall develop a procedure for petitioning cumulative provision eligibility cases, similar to other eligibility situations.

E. Student standards for participation in extracurricular activities shall be applied beginning with a student's second semester of grade eight.

**History:** 1978 Comp., § 22-12-2.1, enacted by Laws 1986, ch. 33, § 27; 1987, ch. 305, § 1; 1988, ch. 20, § 1.

### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, deleted former Subsections C and D, regarding absences in the 1989-90 and 1990-91 school years, and redesignated former Subsections E to G as present Subsections C to E, substituting "Subsections A and B" for "Subsections A through D" in present Subsection C.

### **22-12-3. [Excusing students for religious instruction.]**

Any student may, subject to the approval of the local school board, be excused from school to participate in religious instruction for not more than one hour each school day with the written consent of his parents at a time period not in conflict with the academic program of the school. The local school board and its employees shall not assume responsibility for the religious instructions or permit them to be conducted on school property.

**History:** 1953 Comp., § 77-10-2.1, enacted by Laws 1971, ch. 238, § 1.

## ANNOTATIONS

**Cross-references.** - For constitutional right to freedom of religion, see N.M. Const., art. II, § 11.

For prohibition against requiring attendance at or participation in religious services by teachers or students, see N.M. Const., art. XII, § 9.

### **22-12-4. Right to education.**

All school age persons in the state shall have a right to a free public education as follows:

A. except for school age persons who are detained or enrolled in state institutions other than those school age persons provided for in Subsection C of this section, any school age person shall have a right to attend public school within the school district in which he resides or is present;

B. except as provided in Subsection C of this section, the state institution in which a school age person is detained or enrolled shall be responsible for providing educational services for the school age person; and

C. any school age person who is a client as defined in Section 43-1-3 NMSA 1978 in a state institution under the authority of the secretary of the health and environment department shall have a right to attend public school in the school district in which the institution, in which he is a client, is located if:

(1) the school age person has been recommended for placement in a public school by the educational appraisal and review committee of the district in which the institution is located; or

(2) the school age person has been recommended for placement in a public school as a result of the appeal process as provided in the special education regulations of the state board of education.

**History:** 1953 Comp., § 77-10-3, enacted by Laws 1967, ch. 16, § 171; reenacted by 1978, ch. 211, § 10.

## ANNOTATIONS

**Secretary of health and environment.** - Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5

NMSA 1978 the administrative head of the department of environment is the secretary of environment.

**No contractual right to free public education.** - The right and privilege to a free public education does not give rise to a contractual relationship for which an individual may sue for breach of contract. *Rubio ex rel. Rubio v. Carlsbad Mun. School Dist.*, 106 N.M. 446, 744 P.2d 919 (Ct. App. 1987).

**School board may allocate attendance within district.** - So long as the statutory and constitutional minimum educational standards are satisfied, the local school board may allocate attendance within the district. 1979 Op. Att'y Gen. No. 79-36.

**Students may not be forced to attend particular public school,** although enrollment in another school within or without the local district is subject to availability of accommodations and must be determined by the local board. 1979 Op. Att'y Gen. No. 79-36.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.

## **22-12-5. School attendance.**

A. Local school boards may admit school-age persons who do not live within the school district to the public schools within the school district when there are sufficient school accommodations to provide for them.

B. Local school boards may permit school-age persons to transfer to a school outside the child's attendance zone but within the school district when there are sufficient school accommodations to provide for them.

C. Local school boards may charge a tuition fee for the right to attend public school within the school district only to those school-age persons who do not live within the state. The tuition fee shall not exceed the amount generated by the public school fund for a school-age person similarly situated within the school district for the current school year.

D. When the parent or guardian of a student not living in the state pays an ad valorem property tax for school purposes within the district, the amount of the tuition payable for the school year shall be reduced by the district average ad valorem tax per pupil as determined by the ad valorem tax credit utilized in calculating state equalization guarantee distribution.

**History:** 1953 Comp., § 77-10-4, enacted by Laws 1967, ch. 16, § 172; 1979, ch. 55, § 1; 1990 (1st S.S.), ch. 9, § 11.

## **ANNOTATIONS**

**The 1990 (1st S.S.) amendment**, effective June 18, 1990, substituted "the school district" for "their school district" in Subsection A, added present Subsection B, redesignated former Subsections B and C as present Subsections C and D, adding "distribution" at the end of Subsection D.

**Child who lives in state is state resident.** - For the purpose of public school education, a child is considered a resident of the state if he lives in the state. 1978 Op. Att'y Gen. No. 78-14 (rendered under former law).

**Students may not be forced to attend particular public school**, although enrollment in another school within or without the local district is subject to availability of accommodations and must be determined by the local board. 1979 Op. Att'y Gen. No. 79-36.

**Tuition assessment is mandatory** although Subsection B uses the word "may." 1978 Op. Att'y Gen. No. 78-14 (rendered under former law).

**Law reviews.** - For comment, "Compulsory School Attendance - Who Directs the Education of a Child? State v. Edgington," see 14 N.M.L. Rev. 453 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Constitutionality, construction and effect of statutes in relation to admission of nonresident pupils to school privileges, 72 A.L.R. 499, 113 A.L.R. 177.

Validity and application of provisions governing determination of residence for purpose of fixing fee differential for out-of-state students in public college, 83 A.L.R.2d 497, 56 A.L.R.3d 641.

79 C.J.S. Schools and School Districts §§ 455 to 462.

## **22-12-6. Certificates of employment.**

A. Any student subject to the provisions of the Compulsory School Attendance Law [22-12-1 to 22-12-7 NMSA 1978] attaining the age of fourteen may be excused from full-time school attendance by issuance of a certificate of employment by the superintendent of schools of the school district in which the student is a resident or is employed. The certificate of employment shall only be issued upon satisfactory assurance to the superintendent of schools that the student will be definitely employed in a gainful trade or occupation.

B. The certificate of employment shall contain the following information:

(1) the name, age and residence of the person excused from full-time school attendance;

(2) by whom the person is to be employed or is employed;

(3) the last class grade attended by the person; and

(4) a statement that the person is excused from full-time school attendance until the certificate is revoked.

**History:** 1953 Comp., § 77-10-6, enacted by Laws 1967, ch. 16, § 174.

## **ANNOTATIONS**

**Cross-references.** - As to excusal of persons from school attendance requirement generally, see 22-12-2 NMSA 1978.

**Law reviews.** - For comment, "Compulsory School Attendance - Who Directs the Education of a Child? State v. Edgington," see 14 N.M.L. Rev. 453 (1984).

### **22-12-7. Enforcement of attendance law; penalty.**

A. Each local school board and each governing authority of a private school shall initiate the enforcement of the provisions of the Compulsory School Attendance Law [22-12-1 to 22-12-7 NMSA 1978] for students enrolled in their respective schools.

B. To initiate enforcement of the provisions of the Compulsory School Attendance Law, a local school board or governing authority of a private school or its authorized representatives shall give written notice by certified mail to or by personal service on the parent, guardian or custodian of a student subject to and in noncompliance with the provisions of the Compulsory School Attendance Law.

C. If violations of the provisions of the Compulsory School Attendance Law continue after written notice as provided in Subsection B of this section has occurred, the student shall be reported to the probation services office of the judicial district where the student resides for an investigation as to whether the student shall be considered to be a neglected child or a child in need of supervision and thus subject to the provisions of the Children's Code.

D. If after review by the juvenile probation office of the children's court division or by the district judge of the children's court division where the student resides, a determination and finding is made that the nonattendance by the student may have been caused by the parent, guardian or one having custody of the student then the matter will be referred by the juvenile probation office or by the children's court division of the district court to the district attorney's office, or any law enforcement agency having jurisdiction for appropriate investigation and filing of charges allowed under the Compulsory School Attendance Law.

E. A parent, guardian or one having custody of the student who, after receiving written notice as provided in Subsection B of this section and after the matter has been reviewed in accordance with Subsection D of this section, knowingly allows the student

to continue to violate the Compulsory School Attendance Law shall be guilty of a petty misdemeanor. Upon the first conviction, a fine of not less than twenty-five dollars (\$25.00) or more than one hundred dollars (\$100) may be imposed, or the parent, guardian or one having custody of the student may be ordered to perform community service. If violations of the Compulsory School Attendance Law continue, upon the second and subsequent convictions, the parent, guardian or one having custody of the student who knowingly allows the student to continue to violate the Compulsory School Attendance Law shall be guilty of a petty misdemeanor and shall be subject to a fine of not more than five hundred dollars (\$500) or incarceration for a period not to exceed six months or both.

F. The provisions of this section shall apply beginning July 1, 1987.

**History:** 1953 Comp., § 77-10-7, enacted by Laws 1967, ch. 16, § 175; 1975, ch. 332, § 4; 1981, ch. 7, § 2; 1986, ch. 33, § 28; 1987, ch. 222, § 1.

## ANNOTATIONS

**Children's Code.** - See 32-1-1 NMSA 1978 and notes thereto.

**Constitutionality of prohibiting home instruction.** - The exclusion of home instruction by a parent, guardian or custodian of a child from satisfying the requirements of the compulsory school attendance law does not violate equal protection as guaranteed in the United States and New Mexico constitutions. *State v. Edgington*, 99 N.M. 715, 663 P.2d 374 (Ct. App.), cert. denied, 464 U.S. 940, 104 S. Ct. 354, 78 L. Ed. 2d 318 (1983) (decided prior to 1985 amendment to 22-12-2 NMSA 1978, which inserted "a home school" in the introductory language of Subsection A).

**Law reviews.** - For comment, "Compulsory School Attendance - Who Directs the Education of a Child? *State v. Edgington*," see 14 N.M.L. Rev. 453 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Conditions at school as excusing or justifying nonattendance, 9 A.L.R.4th 122.

### **22-12-8. Notice of absence.**

Notwithstanding the provisions of Section 22-12-7 NMSA 1978, if a student is absent for three or more successive school days, the local school district shall contact by telephone or written notice the student's parents, legal guardian or custodian no later than the close of school on the school day next succeeding the three-day period. The provisions of this section do not apply to any absence if the parent, legal guardian or custodian, prior to the end of the three-day period, has contacted the school to explain the absence prior to the end of the three-day period.

**History:** 1978 Comp., § 22-12-8, enacted by Laws 1985, ch. 104, § 1.

# ARTICLE 13

## COURSES OF INSTRUCTION AND SCHOOL LUNCH PROGRAM

### 22-13-1. Public schools; required courses of instruction.

The state board shall, by regulation, prescribe courses of instruction to be taught in all public schools in the state, including courses in the history of New Mexico.

**History:** 1953 Comp., § 77-11-1, enacted by Laws 1967, ch. 16, § 180; 1969, ch. 200, § 1.

#### ANNOTATIONS

**Cross-references.** - As to education and testing pertaining to sickle cell trait and sickle cell anemia, see 24-3-1 NMSA 1978.

### 22-13-2. Repealed.

#### ANNOTATIONS

**Repeals.** - Laws 1979, ch. 54, § 1, repeals 22-13-2 NMSA 1978, relating to required course of instruction in drug abuse education in the public schools. For provisions of former section, see 1978 original pamphlet.

### 22-13-3. Early childhood education programs required.

A. In accordance with state board regulations, every local school board shall establish and conduct early childhood education programs and may provide transportation for students attending those programs.

B. The state board shall adopt and promulgate regulations providing for:

(1) minimum standards for the conduct of early childhood education programs; and

(2) qualifications of any person teaching in those programs.

C. The cost of operating early childhood education programs shall be included in the budget prepared for the school district.

D. As used in this section, "early childhood education programs" means kindergarten programs for every child who has attained his fifth birthday prior to September 1 of the school year, except for those children who are eligible for and participating in federal headstart programs in any class B county with a population in excess of ninety-five



thousand, established by a local school board for the development or enrichment of persons within the school district.

E. The provisions of this section shall be effective with the 1988-89 school year, and waivers may be granted upon the request of the parent or legal guardian pursuant to Section 22-12-2 NMSA 1978.

**History:** 1953 Comp., § 77-11-2, enacted by Laws 1967, ch. 16, § 181; reenacted by 1973, ch. 357, § 1; 1974, ch. 8, § 20; 1977, ch. 2, § 2; 1986, ch. 33, § 29; 1987, ch. 320, § 6; 1988, ch. 35, § 1.

### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, inserted "except for those children who are eligible for and participating in federal headstart programs in any class B county with a population in excess of ninety-five thousand" in Subsection D.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Power and duty of school authorities to maintain kindergarten, 70 A.L.R. 1313.

79 C.J.S. Schools and School Districts § 484.

### **22-13-4. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1979, ch. 54, § 1, repeals 22-13-4 NMSA 1978, relating to evaluation of early childhood education programs. For provisions of former section, see 1978 original pamphlet.

### **22-13-5. Special education for exceptional children.**

School districts shall provide special education appropriate to meet the needs of all exceptional children unless otherwise provided by law. Regulations and standards shall be developed and established by the state board for the conduct of special education in the schools and classes of the public school system in the state and in all institutions wholly or partly supported by the state. The state board shall monitor and enforce the regulations and standards. School districts shall also provide services for three-year-old and four-year-old developmentally disabled children unless the parent or guardian chooses not to enroll his child. These services may include evaluating and diagnosing particular needs, providing learning experiences that develop cognitive and social skills, arranging for or providing speech, physical or occupational therapy and providing parent education. The services may be provided by school personnel or contracted for with other community agencies and may be either home-based or center-based.

**History:** 1953 Comp., § 77-11-3, enacted by Laws 1967, ch. 16, § 182; 1969, ch. 256, § 1; reenacted by 1972, ch. 95, § 1; 1978, ch. 211, § 11; 1985, ch. 7, § 1; 1985, ch. 93, § 2; 1989, ch. 135, § 1.

## ANNOTATIONS

**The 1989 amendment**, effective June 16, 1989, substituted "appropriate" for "sufficient" in the first sentence; rewrote the third sentence, which formerly read: "Beginning on July, 1986, school districts shall also provide services for four-year old developmentally disabled children whose parents or guardians request such services"; and rewrote the fourth sentence, which formerly read: "Beginning on July 1, 1987, school districts shall also provide services for three-year-old developmentally disabled children whose parents or guardians request such services".

**State forbidden from discriminating against handicapped in providing education.**

- The state is obligated by both federal and state law to provide all its pre-college age children with appropriate educations. Under federal law relating to state programs receiving federal financial assistance, the state is forbidden from discriminating against the handicapped in meeting this obligation. *New Mexico Ass'n for Retarded Citizens v. New Mexico*, 678 F.2d 847 (10th Cir. 1982).

**Discretionary nature of Public Law 94-142**, appearing as 20 U.S.C. § 1400 et seq., frees the state to participate or not in the acquisition of federal funds under the federal Elementary and Secondary Education Act as it chooses. Its choice not to participate is, without more, a governmental decision that is within the state's power and not subject to judicial inquiry. *New Mexico Ass'n for Retarded Citizens v. New Mexico*, 495 F. Supp. 391 (D.N.M. 1980), rev'd on other grounds, 678 F.2d 847 (10th Cir. 1982).

**State has no obligation to seek federal funds.** - The theory that the state has a continuing obligation to seek federal funds to implement educational goals for handicapped children must fail in light of the congressional amendment rendering the federal Elementary and Secondary Education Act discretionary. *New Mexico Ass'n for Retarded Citizens v. New Mexico*, 495 F. Supp. 391 (D.N.M. 1980), rev'd on other grounds, 678 F.2d 847 (10th Cir. 1982).

**State's status as monitor over spending of federal funds.** - The state may not technically be required to monitor compliance with § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. Its failure to insure compliance by the local school districts, however, implicates it under § 504 insofar as the state's status as the recipient of federal financial assistance obligates it not to permit, directly or indirectly, programs benefiting from federal financial assistance received by the state, to discriminate against handicapped persons within the context of the regulations promulgated under § 504. *New Mexico Ass'n for Retarded Citizens v. New Mexico*, 495 F. Supp. 391 (D.N.M. 1980), rev'd on other grounds, 678 F.2d 847 (10th Cir. 1982).

**Students in psychiatric care and substance abuse treatment centers.** - Public schools have no constitutional or statutory obligation to provide educational services to students within private, for-profit adolescent psychiatric care and substance abuse treatment centers, but if the student is handicapped, federal law may require such education. 1988 Op. Att'y Gen. No. 88-10.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Tort liability of public school or government agency for misclassification or wrongful placement of student in special education program, 33 A.L.R.4th 1166.

AIDS infection as affecting right to attend public school, 60 A.L.R.4th 15.

What services must federally assisted school provide for handicapped children under Education of the Handicapped Act (20 USCS §§ 1401 et seq.), 63 A.L.R. Fed. 856.

Construction of "stay-put" provision of Education of the Handicapped Act (20 U.S.C. § 1415(e)(3)), that handicapped child shall remain in current educational placement pending proceedings conducted under section, 103 A.L.R. Fed. 120.

## **22-13-6. Special education; definitions.**

As used in the Public School Code:

A. "special education" means the provision of services additional to, supplementary to or different from those provided in the regular school program by a systematic modification and adaptation of instructional techniques, materials and equipment to meet the needs of exceptional children;

B. "exceptional children" means school-age persons whose abilities render regular services of the public school to be inconsistent with their educational needs;

C. "developmentally disabled children" means those children who are classified as developmentally disabled according to the Developmental Disabilities Community Services Act; and

D. "gifted child" means a school-age person whose measured intelligence quotient, either verbal or nonverbal, measures at least 2 standard deviations above the mean on an intelligence test approved by the state board and who meets at least one of the following additional criteria:

(1) a score of at least the ninety-fifth percentile and above the total battery score on a standardized achievement test approved by the state board;

(2) outstanding creativity or divergent thinking as established in the educational standards for New Mexico schools; and

(3) outstanding critical thinking or problem-solving ability on a test as established in the educational standards for New Mexico schools.

E. Nothing in this section shall preclude a district from offering additional gifted programs for students who fail to meet the eligibility criteria; however, the state shall only provide state funds for state department of education approved gifted programs for those students who meet the established criteria.

**History:** 1953 Comp., § 77-11-3.1, enacted by Laws 1972, ch. 95, § 2; 1978, ch. 211, § 12; 1985, ch. 93, § 3; 1986, ch. 33, § 30.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1972, ch. 95, § 2, repealed 77-11-3.1, 1953 Comp., as enacted by Laws 1967, ch. 290, § 1, relating to nonprofit training centers for educating or training handicapped students, and enacted a new 22-13-6 NMSA 1978.

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

### **22-13-7. Special education; responsibility.**

A. The state board shall make, adopt and keep current a state plan for special education policy, programs and standards.

B. The department of education with the approval of the state board shall set standards for diagnosis and screening of and educational offerings for exceptional children in public schools, in private, nonsectarian, nonprofit training centers and in state institutions under the authority of the secretary of health and environment.

C. The state board shall establish and maintain a program of evaluation of the implementation and impact of all programs for exceptional children in the public schools. This program shall be operated with the cooperation of local school districts, portions of the program may be subcontracted and periodic reports regarding the efficacy of programs for exceptional children shall be made to the legislative education study committee.

**History:** 1953 Comp., § 77-11-3.2, enacted by Laws 1972, ch. 95, § 3; 1978, ch. 211, § 13; 1990, ch. 94, § 4.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1972, ch. 95, § 3, repealed 77-11-3.2, 1953 Comp., as enacted by Laws 1971, ch. 109, § 1, relating to provision of special education services and facilities by localities, and enacted a new 22-13-7 NMSA 1978.

**The 1990 amendment**, effective May 16, 1990, substituted "state board" for "state board of education" in Subsections A and B, deleted "department" after "health and environment" at the end of Subsection B, added Subsection C, and made minor stylistic changes in Subsection B.

**Secretary of health and environment.** - Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Requisite conditions and appropriate factors affecting educational placement of handicapped children, 23 A.L.R.4th 740.

## **22-13-8. Special education; private.**

A. The responsibility of school districts, institutions and the state to provide a free public education for exceptional children is not diminished by the availability of private schools and services. Whenever such schools or services are utilized, it continues to be a state responsibility to assure that all exceptional children receive the education to which the laws of the state entitle them.

B. A local school board may make an agreement with private, nonsectarian, nonprofit educational training centers for educating exceptional children and for providing for payment for such education. All financial agreements between local boards and private, nonsectarian, nonprofit educational training centers must be negotiated in accordance with regulations promulgated by the director. Payment for education and services under such agreements shall be made by the local board of education from funds available.

C. All agreements between local school boards and private, nonsectarian, nonprofit educational training centers must be approved by the state superintendent. All agreements must provide for diagnosis and an educational program for each child which meets state standards for such programs. The agreements must also acknowledge the authority and responsibility of the local board and the department of education to conduct on-site evaluations of programs and pupil progress to insure meeting state standards.

D. Exceptional children attending a private, nonsectarian, nonprofit training center shall be counted in the special education membership of the school district as enrolled in the Class D special education program.

**History:** 1953 Comp., § 77-11-3.3, enacted by Laws 1972, ch. 95, § 4; 1974, ch. 8, § 21; 1977, ch. 81, § 1; 1978, ch. 211, § 14.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity of, and sufficiency of compliance with, state standards for approval of private school to receive public placements of students or reimbursement for their educational costs, 48 A.L.R.4th 1231.

### **22-13-9. Part-time schools.**

A. When fifteen or more certificates of employment have been issued within a school district, the local school board of that school district shall establish a part-time school for students issued certificates of employment pursuant to the provisions of Section 22-12-6 NMSA 1978 unless excused from establishing the school for sufficient reasons by the state superintendent.

B. If a part-time school is established in a school district, all students issued certificates of employment shall attend the part-time school unless excused for sufficient reason by the superintendent of schools of the school district.

C. The state board shall adopt regulations concerning the establishment and operation of part-time schools; however, all part-time schools shall give instruction for not less than one hundred fifty hours a year.

**History:** 1953 Comp., § 77-11-4, enacted by Laws 1967, ch. 16, § 183.

### **22-13-10. Part-time schools; restriction on employment of students; penalty.**

A. Any person, business or corporation employing a person subject to the provisions of the Compulsory School Attendance Law [22-12-1 to 22-12-7 NMSA 1978] who has attained the age of fourteen years shall permit the person to attend a part-time school established in the school district where the person resides or is employed.

B. When the maximum number of hours of employment for a person having attained the age of fourteen years is established by state or federal law, the hours of attendance at a part-time school shall be computed as hours of employment under these laws. Nothing in this section shall affect the right of an employer to reduce accordingly the compensation to be paid a person because of the time spent in a part-time school.

C. Any person, business or corporation violating the provisions of this section is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 77-11-5, enacted by Laws 1967, ch. 16, § 184.

### **22-13-11. Adult education classes.**

A. Pursuant to the standards and regulations of the state board, a local school board may establish an adult education class within the school district provided that the minimum enrollment for any adult education class shall be ten persons. The local school board has authority to employ a certified school instructor to teach in any adult education class established.

B. The state board shall establish standards and promulgate regulations for the establishment and operation of an adult education class.

**History:** 1953 Comp., § 77-11-6, enacted by Laws 1967, ch. 16, § 185.

### **22-13-12. Approved driver-education courses.**

A. The state board or its designated representative shall adopt and promulgate minimum standards for approved driver-education and motorcycle driver-education courses taught in any school in the state.

B. A driver-education or motorcycle driver-education course shall provide to students legally entitled to operate the type of motor vehicle involved, classroom instruction and behind-the-wheel or on-the-motorcycle training in the safe operation of the motor vehicle.

C. An approved driver-education or motorcycle driver-education course is a course of instruction certified by the state superintendent as meeting the minimum standards for such a driver-education course adopted by the state board or its designated representative.

**History:** 1953 Comp., § 77-11-7, enacted by Laws 1967, ch. 16, § 186; 1973, ch. 381, § 4.

### **22-13-13. School lunch program.**

A. The state board shall prescribe standards and regulations for the establishment and operation of school lunch programs in the state. The department of education shall provide technical advice and assistance to any school district in connection with the establishment or operation of a school lunch program.

B. A local school board may accept gifts or grants for use in connection with a school lunch program in the school district.

C. A "school lunch program" means a program under which lunches are served by a public school in the state on a nonprofit basis to students attending the school.

**History:** 1953 Comp., § 77-11-8, enacted by Laws 1967, ch. 16, § 187.

## **ANNOTATIONS**

**Cross-references.** - As to designation of state board as sole educational agency of state for administration or supervision of state plan established for funds received pursuant to federal statute relating to school lunch programs, see 22-9-2 NMSA 1978.

## **22-13-14. Fire drills; requirement.**

A. A fire drill shall be conducted in each public and private school of the state at least once each week during the first four weeks of the school year and at least once each month thereafter until the end of the school year. It shall be the responsibility of the person in charge of a school to carry out the provisions of this section.

B. In locations where a paid fire department is maintained, a member of the fire department shall be requested to be in attendance during the fire drills for the purpose of giving instruction and constructive criticism.

C. The state board shall determine penalties for any person failing to meet the provisions of this section.

**History:** 1953 Comp., § 77-11-9, enacted by Laws 1967, ch. 16, § 188; 1979, ch. 81, § 1.

### **ANNOTATIONS**

**Cross-references.** - For fire protection training programs, see 59A-52-6 NMSA 1978.

## **22-13-15. Public school instruction; prohibition; penalty.**

A. No person shall teach sectarian doctrine in a public school.

B. Any person violating the provisions of this section by teaching sectarian doctrine in a public school shall be immediately discharged from further employment with a school district. The provisions of Sections 22-10-17 through 22-10-20 NMSA 1978 relating to the discharge of certified school personnel apply to this section.

**History:** 1953 Comp., § 77-11-10, enacted by Laws 1967, ch. 16, § 189.

### **ANNOTATIONS**

**Cross-references.** - For constitutional right to freedom of religion, see N.M. Const., art. II, § 11.

For prohibition against requiring religious tests and requiring attendance at or participation in religious services by teachers or students, see N.M. Const., art. XII, § 9.

**Compiler's note.** - Sections 22-10-19 and 22-10-20 NMSA 1978, referred to in the second sentence in Subsection B, were repealed in 1986.



## **22-13-16. Private school programs; solicitations; permit; penalty.**

A. It is unlawful for any private school, or its agent, to canvass a prospective student in New Mexico for the purpose of selling to the student a scholarship or collecting tuition from the student in advance of the date for registration for the school without first obtaining a permit from the state board. This shall not be construed to prevent canvassing by schools for prospective students where no scholarship is sold or where no fee for tuition is collected in advance of registration. This shall also not be construed to prevent a school from advertising.

B. To obtain a permit as required by this section, an application shall be filed with the state board, signed by an authorized representative of the school, accompanied by any reasonable fee required by the state board and containing the following:

- (1) the name and location of the school seeking the permit;
- (2) the number of instructors employed by the school;
- (3) the courses of instruction offered by the school; and
- (4) any additional information required by the state board.

C. The state board may revoke, at any time, any permit issued by it for satisfactory cause.

D. Any person violating any provisions of this section is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 77-11-11, enacted by Laws 1967, ch. 16, § 190.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Instruction by correspondence schools as commerce, 26 A.L.R. 360, 47 A.L.R. 782.

78 C.J.S. Schools and School Districts § 6.

## **22-13-17 to 22-13-24. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1979, ch. 54, § 1, repeals 22-13-17 to 22-13-24 NMSA 1978, enacted by Laws 1969, ch. 180, §§ 27 to 33 and Laws 1972, ch. 2, § 1, relating to education enrichment program and diesel mechanics program. For provisions of former sections, see 1978 original pamphlet.

# ARTICLE 13A

## INCENTIVES FOR SCHOOL IMPROVEMENT

### 22-13A-1. Short title.

This act [22-13A-1 to 22-13A-6 NMSA 1978] may be cited as the "Incentives for School Improvement Act".

**History:** Laws 1989, ch. 137, § 1.

### ANNOTATIONS

**Effective dates.** - Laws 1989, ch. 137 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

**Compiler's note.** - The Incentives for School Improvement Act is not a part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

### 22-13A-2. Purpose.

The purpose of the Incentives for School Improvement Act [22-13A-1 to 22-13A-6 NMSA 1978] is to provide financial incentives to school districts in order to improve the academic performance and school behavior of students.

**History:** Laws 1989, ch. 137, § 2.

### ANNOTATIONS

**Effective dates.** - Laws 1989, ch. 137 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

### 22-13A-3. Definitions.

As used in the Incentives for School Improvement Act [22-13A-1 to 22-13A-6 NMSA 1978]:

- A. "department" means the state department of public education;
- B. "fund" means the incentives for school improvement fund;
- C. "program" means the incentives for school improvement program; and
- D. "state board" means the state board of education.

**History:** Laws 1989, ch. 137, § 3.

### **ANNOTATIONS**

**Effective dates.** - Laws 1989, ch. 137 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

#### **22-13A-4. Program created; administration; program approval.**

The incentives for school improvement program is created. The program shall be administered by the department. The department shall develop a standardized method to measure the progress of students enrolled in schools electing to participate in the program. The standardized method developed shall be reviewed and approved by the state board.

**History:** Laws 1989, ch. 137, § 4.

### **ANNOTATIONS**

**Effective dates.** - Laws 1989, ch. 137 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

#### **22-13A-5. Program implementation; measurement criteria.**

A. The department shall develop a formula by which to measure school achievement in the areas of academic performance and student behavior. This formula shall include a factor which takes into account the number of students at risk of school failure in attendance at a school. The product of this formula shall take the form of a composite rating assigned to each school participating in the program.

B. Academic performance shall be measured by:

- (1) nationally standardized test scores;
- (2) graduation competency scores; and
- (3) other factors deemed relevant by the department.

C. Student behavior shall be measured by:

- (1) dropout rates;
- (2) graduation rates;
- (3) attendance rates; and

(4) other factors deemed relevant by the department.

D. The students at risk of school failure factor shall be measured by:

(1) the number of bilingual program units received by the school;

(2) the number of low-income students as measured by federal poverty guidelines; and

(3) other factors deemed relevant by the department.

E. Annually, the department shall assign a new composite rating to all schools electing to participate in the program. The department shall compare the new rating to the previous annual rating. Schools increasing their composite rating shall be ranked in order. The schools evidencing the greatest increase in rating shall receive monetary disbursements from the fund.

**History:** Laws 1989, ch. 137, § 5.

### **ANNOTATIONS**

**Effective dates.** - Laws 1989, ch. 137 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

### **22-13A-6. Fund created.**

A. There is created in the state treasury the "incentives for school improvement fund". The fund shall consist of any state money appropriated to the fund, any federal money allocated to the state for the purposes of this act [22-13A-1 to 22-13A-6 NMSA 1978], undistributed annual balances and earnings of the fund and any gifts or bequests made to the fund. The state treasurer shall invest the fund as other state funds are invested. The balance remaining in the fund at the end of the fiscal year shall not revert to the general fund.

B. The fund shall be expended by the superintendent of public instruction for the purpose of administering the Incentives for School Improvement Act [22-13A-1 to 22-13A-6 NMSA 1978]. No more than one-half of one percent of the fund shall be retained by the state superintendent for administrative purposes.

C. Money in the fund other than that used for administrative purposes shall be distributed directly to the New Mexico elementary, middle and secondary schools evidencing the greatest improvement based upon their composite rating as determined by the department. Money received by a school from the fund shall not be utilized for salaries or salary increases. Money shall be utilized for school improvement purposes as determined by the school principal and teachers in cooperation with other school employees and the community.

**History:** Laws 1989, ch. 137, § 6.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1989, ch. 137 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1989.

## **ARTICLE 13B TWENTY-FIRST CENTURY EDUCATION**

### **22-13B-1. Short title. (Effective until July 1, 1993.)**

Sections 1 through 9 [22-13B-1 to 22-13B-9 NMSA 1978] of this act may be cited as the "Twenty-First Century Education Act".

**History:** Laws 1990 (1st S.S.), ch. 9, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - Laws 1990 (1st S.S.), ch. 9, § 13 repeals 22-13B-1 to 22-13B-9 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 9, §§ 1 to 9, effective July 1, 1993.

**Effective dates.** - Laws 1990 (1st S.S.), ch. 9 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1990.

### **22-13B-2. Purpose of act. (Effective until July 1, 1993.)**

The purpose of the Twenty-First Century Education Act [22-13B-1 to 22-13B-9 NMSA 1978] is to prepare New Mexico for the future by allowing for the implementation of innovative public school programs aimed at fostering an educational framework to guide New Mexico's education system into the twenty-first century.

**History:** Laws 1990 (1st S.S.), ch. 9, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - See 22-13B-1 NMSA 1978 and notes thereto.

**Effective dates.** - Laws 1990 (1st S.S.), ch. 9 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1990.

### **22-13B-3. Definitions. (Effective until July 1, 1993.)**

As used in the Twenty-First Century Education Act [22-13B-1 to 22-13B-9 NMSA 1978]:

- A. "board" means the state board of education;
- B. "commission" means the twenty-first century education commission;
- C. "department" means the state department of public education;
- D. "fund" means the twenty-first century education fund; and
- E. "school" means a public elementary, middle or secondary school.

**History:** Laws 1990 (1st S.S.), ch. 9, § 3.

### **ANNOTATIONS**

**Delayed repeals.** - See 22-13B-1 NMSA 1978 and notes thereto.

**Effective dates.** - Laws 1990 (1st S.S.), ch. 9 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1990.

### **22-13B-4. Commission created; membership. (Effective until July 1, 1993.)**

A. The "twenty-first century education commission" is created. The commission shall be composed of not less than seven or more than twelve members. Commission members shall be appointed by the board to serve two-year terms. The members shall be selected to reflect the interests of parents, teachers and other educators and the private sector. A majority of the members of the commission shall represent interests and occupations other than education.

B. Members of the commission shall elect from among themselves a chairman. The commission shall meet at the call of the chairman.

C. Commission members shall not be paid but shall receive per diem and mileage expenses as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** Laws 1990 (1st S.S.), ch. 9, § 4.

### **ANNOTATIONS**

**Delayed repeals.** - See 22-13B-1 NMSA 1978 and notes thereto.

**Effective dates.** - Laws 1990 (1st S.S.), ch. 9 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1990.

**22-13B-5. Commission purpose; duties; staff. (Effective until July 1, 1993.)**

A. The purpose of the commission is to develop a framework to consider proposals to implement innovative, alternative public school plans and, based upon that consideration, to recommend funding to implement approved plans. Additionally, the purpose of the commission is to oversee the evaluation of specially funded programs and projects.

B. The commission shall:

(1) propose criteria to the board for application of individual schools for participation in innovative, alternative public school programs;

(2) publish criteria for approval of schools proposing to implement such programs;

(3) recommend to the board a financial award to schools implementing such programs;

(4) work with the department and in consultation with the legislative education study committee to examine incorporation of funding of successful pilot programs into the state equalization guarantee distribution;

(5) propose and, upon approval by the board, implement an accountability system to monitor and evaluate schools implementing approved programs and report their findings to the board; and

(6) report on the status of implemented programs to the legislature, governor and board on an annual basis.

C. The department shall serve as staff to the commission.

**History:** Laws 1990 (1st S.S.), ch. 9, § 5.

**ANNOTATIONS**

**Delayed repeals.** - See 22-13B-1 NMSA 1978 and notes thereto.

**Effective dates.** - Laws 1990 (1st S.S.), ch. 9 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1990.

**22-13B-6. Administration. (Effective until July 1, 1993.)**

A. Individual schools wishing to implement alternative structural and curricular plans or collaborative school improvement programs may apply through their local school board to the board for approval and funding of pilot programs.

B. An individual school shall apply through their local school board to the board for a waiver of the provisions of the Public School Code affected by implementation of the proposed plan.

C. The board may grant a waiver of pertinent provisions of the Public School Code necessary to implement the proposed plan.

D. Upon authorization of the board, the department shall distribute from the fund to the local school district the amount of money awarded to the school by the board for the purpose of implementing the proposed plan.

**History:** Laws 1990 (1st S.S.), ch. 9, § 6.

### **ANNOTATIONS**

**Delayed repeals.** - See 22-13B-1 NMSA 1978 and notes thereto.

**Effective dates.** - Laws 1990 (1st S.S.), ch. 9 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1990.

**Public School Code.** - See 22-1-1 NMSA 1978 and notes thereto.

### **22-13B-7. Fund created. (Effective until July 1, 1993.)**

The "twenty-first century education fund" is created in the state treasury. Money in the fund is appropriated to the department. Expenditure of the fund shall be only upon recommendation of the commission and authorization of the board. Upon authorization of the board, the superintendent of public instruction shall distribute money from the fund to the appropriate local school district for expenditure at the approved school. No more than one percent of the balance of the fund may be retained by the department to meet administrative expenses incurred in providing assistance in application preparation and in the implementation of the Twenty-First Century Education Act [22-13B-1 to 22-13B-9 NMSA 1978]. The department may utilize money in the fund to evaluate and monitor any alternative curricular or structural plan or any educational program receiving state funding from the department. Money in the fund shall not revert to the general fund.

**History:** Laws 1990 (1st S.S.), ch. 9, § 7.

### **ANNOTATIONS**

**Delayed repeals.** - See 22-13B-1 NMSA 1978 and notes thereto.

**Effective dates.** - Laws 1990 (1st S.S.), ch. 9 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1990.



## **22-13B-8. Board regulations. (Effective until July 1, 1993.)**

The board may promulgate all rules, regulations and policies necessary to implement the provisions of the Twenty-First Century Education Act [22-13B-1 to 22-13B-9 NMSA 1978].

**History:** Laws 1990 (1st S.S.), ch. 9, § 8.

### **ANNOTATIONS**

**Delayed repeals.** - See 22-13B-1 NMSA 1978 and notes thereto.

**Effective dates.** - Laws 1990 (1st S.S.), ch. 9 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1990.

## **22-13B-9. Program applications; evaluations; monitoring. (Effective until July 1, 1993.)**

A. Individual schools wishing to secure funding to implement alternative structural or curricular plans shall submit an application to the commission pursuant to the regulations adopted by the board. Alternative structural and curricular plans may include:

- (1) extension of the school year beyond existing calendars;
- (2) the establishment of after-school enrichment programs; and
- (3) lengthened teacher contracts allowing additional in-service training and parent-teacher contact.

B. As deemed appropriate by the board or commission, all individual schools securing funding to implement alternative structural or curricular plans, all schools in which a student receives transportation-cost assistance associated with enrollment at a school of choice and all schools implementing special projects receiving state funding from the department shall cooperate with the board or commission to permit monitoring and evaluation of the special plan, program or assistance.

**History:** Laws 1990 (1st S.S.), ch. 9, § 9.

### **ANNOTATIONS**

**Delayed repeals.** - See 22-13B-1 NMSA 1978 and notes thereto.

**Effective dates.** - Laws 1990 (1st S.S.), ch. 9 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1990.

# ARTICLE 14

## VOCATIONAL EDUCATION OR REHABILITATION

### 22-14-1. Definitions.

As used in Sections 22-14-2 through 22-14-16 NMSA 1978:

A. "vocational education" means vocational or technical training or retraining conducted as part of a program designed to enable an individual to engage in a remunerative occupation. Vocational education may provide, but is not limited to, guidance and counseling, vocational instruction, training for vocational education instructors, transportation, and training material and equipment;

B. "handicapped individual" means any individual under a physical or mental disability which constitutes a substantial handicap to employment but which is of such a nature that vocational rehabilitation may be reasonably expected to enable the individual to engage in a remunerative occupation;

C. "vocational rehabilitation" means services or training necessary to enable a handicapped individual to engage in a remunerative occupation. Vocational rehabilitation may provide, but is not limited to, medical or vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational licenses, customary occupational tools or equipment, maintenance, and training material and equipment; and

D. "federal aid funds" means funds, gifts or grants received by the state under any federal aid for vocational education or vocational rehabilitation.

**History:** 1953 Comp., § 77-12-1, enacted by Laws 1967, ch. 16, § 191.

### ANNOTATIONS

**Cross-references.** - As to area vocational schools, see 21-17-1 NMSA 1978 et seq.

As to technical and vocational institute districts, see 21-16-1 NMSA 1978 et seq.

As to development training, see 21-19-7 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Physical or mental illness as basis of dismissal of student from school, college, or university, 17 A.L.R.4th 519.

When does change in "educational placement" occur for purposes of § 615(b)(1)(C) of the Education for All Handicapped Children Act of 1975 (20 USCS § 1415(b)(1)(C)), requiring notice to parents prior to such change, 54 A.L.R. Fed. 570.

## **22-14-2. Vocational education or vocational rehabilitation; state governing authority.**

A. The state board is the governing authority and shall establish policies for the conduct of all programs of the state and state plans established relating to vocational education or vocational rehabilitation, unless otherwise provided by law.

B. The state board shall be the sole agency of the state for the administration or for the supervision of the administration of any state plan relating to vocational education or vocational rehabilitation, or for any federal aid funds, except as may otherwise be provided by law.

**History:** 1953 Comp., § 77-12-2, enacted by Laws 1967, ch. 16, § 192.

### **ANNOTATIONS**

**Cross-references.** - For designation of state board as sole educational agency for state for administration or supervision of administration of state plan established for funds received pursuant to federal statutes generally, see 22-9-2 NMSA 1978.

## **22-14-3. State agency for vocational education and vocational rehabilitation; authority.**

Whenever the state board is the sole agency of the state for the administration or for the supervision of the administration of any federal aid funds, the state board may:

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

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

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

D. provide for reports to be made to the state board or to its representative from agencies receiving federal aid funds;

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

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

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

**History:** 1953 Comp., § 77-12-3, enacted by Laws 1967, ch. 16, § 193.

## **ANNOTATIONS**

**Cross-references.** - For powers and duties of state board when designated as sole agency of state for administration or supervision of administration of federal aid funds generally, see 22-9-3 NMSA 1978.

### **22-14-4. Vocational education division; director.**

A. The vocational education division is created within the department of education.

B. With approval of the state board, the state superintendent shall appoint a director of the vocational education division to be known as the director of vocational education.

C. The state board may delegate to the vocational education division its administrative functions relating to vocational education.

**History:** 1953 Comp., § 77-12-4, enacted by Laws 1967, ch. 16, § 194.

### **22-14-5. Vocational education division; powers; duties.**

Subject to the policies of the state board, the vocational education division shall:

A. provide vocational education to qualified individuals;

B. act as the representative of the state board in administering any state plan or federal aid funds relating to vocational education;

C. cooperate and make agreements with public or private agencies to establish or to maintain a vocational education program;

D. enter into reciprocal agreements with other states to provide vocational education;

E. accept gifts or grants to be used for vocational education;

F. adopt regulations for the administration of laws relating to vocational education; and

G. conduct research and compile statistics relating to vocational education.

**History:** 1953 Comp., § 77-12-5, enacted by Laws 1967, ch. 16, § 195.

## **22-14-6. [Vocational rehabilitation division;] division of services for blind; transfer.**

The division of the services for the blind of the health and social services department [human services department] together with its powers, duties, records, equipment and personnel is transferred to the vocational rehabilitation division of the department of education. Upon completion of the transfer, the services for the blind shall constitute an identifiable administrative unit within the division of vocational rehabilitation and be under the director.

**History:** 1953 Comp., § 77-12-5.1, enacted by Laws 1971, ch. 324, § 1.

### **ANNOTATIONS**

**Cross-references.** - As to New Mexico school for visually handicapped, see 21-5-1 NMSA 1978 et seq.

**Health and social services department.** - The health and social services department was abolished by Laws 1977, ch. 252, § 5. Laws 1977, ch. 252, § 3, created the human services department.

## **22-14-7. Vocational rehabilitation division; director.**

A. The vocational rehabilitation division is created within the department of education.

B. With approval of the state board, the state superintendent shall appoint a director of the vocational rehabilitation division to be known as the director of vocational rehabilitation.

C. The state board may delegate to the vocational rehabilitation division its administrative functions relating to vocational rehabilitation.

**History:** 1953 Comp., § 77-12-6, enacted by Laws 1967, ch. 16, § 196.

## **22-14-8. Vocational rehabilitation division; powers; duties.**

Subject to the policies of the state board, the vocational rehabilitation division shall:

A. provide vocational rehabilitation to qualified individuals;

B. act as the representative of the state board in administering any state plan or federal aid funds relating to vocational rehabilitation;

C. cooperate and make agreements with public or private agencies to establish or to maintain a vocational rehabilitation program;

- D. enter into reciprocal agreements with other states to provide vocational rehabilitation;
- E. accept gifts or grants to be used for vocational rehabilitation;
- F. adopt regulations for the administration of laws relating to vocational rehabilitation;
- G. conduct research and compile statistics relating to vocational rehabilitation; and
- H. coordinate programming related to the transition of persons with disabilities from secondary and post-secondary education programs to employment or vocational placement.

**History:** 1953 Comp., § 77-12-7, enacted by Laws 1967, ch. 16, § 197; 1989, ch. 88, § 1.

### **ANNOTATIONS**

**The 1989 amendment**, effective June 16, 1989, added Subsection H.

### **22-14-9. Custody of funds; budgets; disbursements.**

- A. The state treasurer shall be the custodian of all federal aid funds. The state treasurer shall hold these funds in separate accounts according to the purposes of the funds.
- B. All state funds, federal aid funds or grants to the state relating to vocational education shall be budgeted and accounted for as provided by law and by the regulations of the department of finance and administration. Such funds or grants shall be disbursed by warrants of the department of finance and administration on vouchers issued by the director of vocational education.
- C. All state funds, federal aid funds or grants to the state relating to vocational rehabilitation shall be budgeted and accounted for as provided by law and by the regulations of the department of finance and administration. Such funds or grants shall be disbursed by warrants of the department of finance and administration on vouchers issued by the director of vocational rehabilitation.
- D. All federal aid funds received by the state to be used for vocational education or vocational rehabilitation programs may be expended in any succeeding year from the year received.

**History:** 1953 Comp., § 77-12-8, enacted by Laws 1967, ch. 16, § 198.

### **ANNOTATIONS**

**Cross-references.** - For provisions relating to custody, budgeting and disbursement of federal aid funds generally, see 22-9-5 NMSA 1978.

## **22-14-10. Vocational rehabilitation division; designated agency for federal funds.**

The vocational rehabilitation division of the department of education is designated the sole state agency to administer and receive any federal funds relating to vocational rehabilitation of the blind.

**History:** 1953 Comp., § 77-12-8.1, enacted by Laws 1971, ch. 324, § 4.

### **ANNOTATIONS**

**Cross-references.** - As to designation of state agencies for administration or receipt of federal funds generally, see 22-9-2 NMSA 1978 et seq.

## **22-14-11. Vocational education or rehabilitation; eligibility.**

Vocational education or vocational rehabilitation shall be provided to any individual who:

A. is a resident of the state at the time of filing his application for vocational education or vocational rehabilitation; and

B. qualifies for eligibility under a vocational education or vocational rehabilitation program established by the state; or

C. qualifies for eligibility under the terms of an agreement which the state has with the federal government or with another state.

**History:** 1953 Comp., § 77-12-9, enacted by Laws 1967, ch. 16, § 199.

### **22-14-11.1. Third party liability.**

A. The vocational rehabilitation division shall make reasonable efforts to ascertain any legal liability of third parties who are or may be liable to pay all or part of the cost of rehabilitation services of an applicant or client of vocational rehabilitation.

B. When the division provides vocational rehabilitation services to qualified individuals, the division is subrogated to any right of the individual against a third party for recovery of costs incurred.

**History:** Laws 1983, ch. 60, § 1.

## **22-14-12. Hearings.**

A. A fair hearing shall be provided for any individual applying for or receiving vocational rehabilitation aggrieved by any action or inaction of the vocational rehabilitation division or of the director of vocational rehabilitation.

B. The state board shall adopt regulations for the conduct of hearings pursuant to this section.

**History:** 1953 Comp., § 77-12-10, enacted by Laws 1967, ch. 16, § 200; 1983, ch. 60, § 2.

### **22-14-13. Nontransferable or nonassignable rights.**

The rights of any individual under the provisions of any state law relating to vocational rehabilitation are not transferable or assignable in law or in equity.

**History:** 1953 Comp., § 77-12-11, enacted by Laws 1967, ch. 16, § 201.

### **22-14-14. Limitations on political activities.**

No person engaged in administering any vocational education or vocational rehabilitation program pursuant to Sections 22-14-1 through 22-14-16 NMSA 1978 shall use his official authority or influence to permit the use of the vocational education or vocational rehabilitation program to interfere with any public election or partisan political campaign. Nor shall such person take any active part in the management of a political campaign, or participate in any political activity beyond the person's constitutional rights of voting and of free speech. Nor shall he be required to contribute or render service, assistance, subscription, assessment or contribution for any political purpose. Any person violating the provisions of this section shall be subject to discharge or suspension.

**History:** 1953 Comp., § 77-12-12, enacted by Laws 1967, ch. 16, § 202.

### **22-14-15. Repealed.**

## **ANNOTATIONS**

**Repeals.** - Laws 1983, ch. 60, § 4, repeals 22-14-15 NMSA 1978, as enacted by Laws 1967, ch. 16, § 203, relating to the cooperation of health officials in the examination of applicants for vocational rehabilitation. For provisions of former section, see 1978 original pamphlet.

Laws 1983, ch. 60, contains no effective date provision, but was enacted at the session which adjourned on March 19, 1983. See N.M. Const., art. IV, § 23.



## **22-14-16. Admission to state educational institutions; exemption from certain fees.**

Upon written request of the state board, all state educational institutions shall accept for admission, without any charge for any fees except tuition charges, all handicapped individuals meeting the standards of the institution.

**History:** 1953 Comp., § 77-12-14, enacted by Laws 1967, ch. 16, § 204.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Physical or mental illness as basis of dismissal of student from school, college, or university, 17 A.L.R.4th 519.

## **22-14-17 to 22-14-19. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1983, ch. 156, § 3, repeals 22-14-17 to 22-14-19 NMSA 1978, as enacted by Laws 1976 (S.S.), ch. 30, §§ 1 to 3, relating to the northern New Mexico rehabilitation center, effective July 1, 1983. For provisions of former sections, see 1978 original pamphlet.

## **22-14-20. New Mexico school for the visually handicapped; certain functions transferred.**

There is transferred to the services for the blind administrative unit of the vocational rehabilitation division of the department of education those powers, fiscal responsibilities, duties, records, equipment, lands, buildings and personnel of the New Mexico school for the visually handicapped pertaining to the training, rehabilitating and employing of blind persons over the age of eighteen years in cooperation with any other federal or state agency.

**History:** 1953 Comp., § 73-23-1.2, enacted by Laws 1971, ch. 324, § 5; 1973, ch. 209, § 2; 1978 Comp., § 21-5-3, recompiled as 1978 Comp., § 22-14-20 by Laws 1983, ch. 60, § 3.

## **22-14-21. Products of clients of services for the blind, division of vocational rehabilitation; purchasing agent to determine value.**

It shall be the duty of the state purchasing agent to determine the fair market value of all products manufactured by clients of services for the blind and offered for sale to the state or any other governmental agency, or political subdivision thereof having its own purchasing agency, by services for the blind; and approved for such use by the state purchasing agent; to revise such prices from time to time, in accordance with changing

market conditions and to make such rules and regulations regarding specifications, time of delivery and other relevant matters as shall be necessary to carry out the purpose of Sections 21-5-9 through 21-5-11 [22-14-21 to 22-14-23] NMSA 1978.

**History:** 1941 Comp., § 6-410, enacted by Laws 1953, ch. 163, § 1; 1953 Comp., § 73-23-7; Laws 1977, ch. 159, § 1; 1978 Comp., § 21-5-9, recompiled as 1978 Comp., § 22-14-21 by Laws 1983, ch. 60, § 3.

## ANNOTATIONS

**Compiler's note.** - Sections 21-5-9 to 21-5-11 NMSA 1978, referred to in this section, were recompiled as 22-14-21 to 22-14-23 NMSA 1978 in 1983.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Works and Contracts § 10.

72 C.J.S. Supp. Public Contracts § 4.

### **22-14-22. Purchases by state agencies and subdivisions.**

Except as hereinafter provided, all products thereafter procured by or for the state or any governmental agency, or political subdivision thereof having its own purchasing agency, shall be procured in accordance with applicable specifications, of the state purchasing agent, from services for the blind or duly establish agencies or branches thereof whenever such products are available at the price determined as provided in Section 21-5-9 [22-14-21] NMSA 1978 to be a fair market price for the product or products so manufactured, and no advertisement or notice for bids from other suppliers shall be necessary.

**History:** 1941 Comp., § 6-411, enacted by Laws 1953, ch. 163, § 2; 1953 Comp., § 73-23-8; 1977, ch. 159, § 2; 1978 Comp., § 21-5-10, recompiled as 1978 Comp., § 22-14-22 by Laws 1983, ch. 60, § 3.

## ANNOTATIONS

**Compiler's note.** - Section 21-5-9 NMSA 1978, referred to in this section, was recompiled as 22-14-21 NMSA 1978 in 1983.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Works and Contracts § 10.

72 C.J.S. Supp. Public Contracts § 4.

### **22-14-23. Application of funds.**

All money received by services for the blind or any duly established agency or branch thereof from the sale of such products to the state, any subdivision thereof or any other purchaser shall be placed in a special fund which shall be used only for ordinary and necessary business expenses and to purchase raw materials, supplies and capital improvements for the manufacturing of products and to pay such compensation to the clients manufacturing such products as may be determined to be reasonable by services for the blind.

**History:** 1941 Comp., § 6-412, enacted by Laws 1953, ch. 163, § 3; 1953 Comp., § 73-23-9; Laws 1977, ch. 159, § 3; 1981, ch. 71, § 1; 1978 Comp., § 21-5-11, recompiled as 1978 Comp., § 22-14-23 by Laws 1983, ch. 60, § 3.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Funds § 5; 68 Am. Jur. 2d Schools § 47.

#### **22-14-24. Purpose.**

The purpose of Sections 22-14-24 through 22-14-29 NMSA 1978 is to provide blind persons with remunerative employment, to enlarge the economic opportunities for the blind and to stimulate them to greater efforts in striving to make themselves self-supporting, by authorizing blind persons licensed in accordance with the provisions of those sections to operate vending stands on any state property where vending stands may be properly and satisfactorily operated by blind persons, by granting blind persons a preference in the operation of vending stands on state property, by authorizing cooperation with the United States government in the administration of the vending stand program for the blind on federal property and by authorizing the commission to establish, maintain and operate a vending stand program for the blind.

**History:** 1953 Comp., § 59-12-1, enacted by Laws 1957, ch. 180, § 1; 1971, ch. 324, § 2; 1978 Comp., § 28-9-1, recompiled as 1978 Comp., § 22-14-24 by Laws 1983, ch. 60, § 3; 1986, ch. 108, § 10.

### **ANNOTATIONS**

**Cross-references.** - For employment of the handicapped, see 28-10-1 NMSA 1978 et seq.

#### **22-14-25. Definitions.**

For the purposes of Sections 22-14-24 through 22-14-29 NMSA 1978:

A. "blind person" means a person having not more than ten percent visual acuity in the better eye with correction. This means a person who has:

(1) not more than 20/200 central visual acuity in the better eye after correction; or

(2) an equally disabling loss of the visual field, i.e., a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees. Such blindness shall be certified by a duly licensed ophthalmologist, subject to approval of the New Mexico board of medical examiners;

B. "commission" means the commission for the blind;

C. "license" means a written instrument issued by the commission to a blind person pursuant to Sections 22-14-24 through 22-14-29 NMSA 1978, authorizing the blind person to operate a vending stand on state, federal or other property;

D. "state property" means any building or land owned, leased or occupied by any department or agency of the state or any instrumentality wholly owned by the state or by any county or municipality or by any other local governmental entity; and

E. "vending stand" means:

(1) such shelters, counters, shelving, display and wall cases, refrigerating apparatus and other appropriate auxiliary equipment as are necessary for the vending of such articles as may be approved by the commission, agency or person having control of the property on which the stand is to be located; and

(2) manual or coin-operated vending machines or similar devices for vending the articles mentioned in Paragraph (1) of this subsection.

**History:** 1953 Comp., § 59-12-2, enacted by Laws 1957, ch. 180, § 2; 1978 Comp., § 28-9-2, recompiled as 1978 Comp., § 22-14-25 by Laws 1983, ch. 60, § 3; 1986, ch. 108, § 11.

## **22-14-26. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1986, ch. 108, § 16 repeals former 22-14-26 NMSA 1978, as enacted by Laws 1971, ch. 324, § 3 and recompiled by Laws 1983, ch. 60, § 3, defining "division," effective July 1, 1986. For provisions of former section, see 1984 Replacement Pamphlet.

**Temporary provisions.** - Laws 1986, ch. 108, § 17 provides that all appropriations, property, equipment, supplies, personnel and money which, prior to July 1, 1986, belonged to, were allocated to or were used to support the services for the blind section of the vocational rehabilitation division of the state department of public education are transferred to the commission for the blind. All existing contracts and agreements in effect as to the services for the blind section of the vocational rehabilitation division of

the state department of public education shall be binding and effective in the commission for the blind. All references in law to the services for the blind section of the vocational rehabilitation division of the state department of public education shall be construed to be references to the commission for the blind.

### **22-14-27. Assuring preferences to blind persons.**

The head or governing body of each department or agency and of each county or municipality or other local governmental entity having control of state property shall:

A. adopt policies and take action as may be necessary to assure that blind persons licensed by the commission will be given a preference in the establishment and operation of vending stands on property under its control, when vending stands may be properly and satisfactorily operated by blind persons;

B. cooperate with the commission in surveys of property under its control to find suitable locations for the operation of vending stands by blind persons and, after it has been determined that there is need for a vending stand and after the commission has determined that the stand may be properly and satisfactorily operated by a blind person, issue to the commission a permit for the operation of a vending stand by a licensed blind person and cooperate with the commission in the installation of the vending stand; and

C. provide appropriate vending space and utility services for the operation of vending stands at no cost to the commission or to the blind licensee.

**History:** 1953 Comp., § 59-12-3, enacted by Laws 1957, ch. 180, § 3; 1978 Comp., § 28-9-4, recompiled as 1978 Comp., § 22-14-27 by Laws 1983, ch. 60, § 3; 1985, ch. 233, § 1; 1986, ch. 108, § 12.

### **ANNOTATIONS**

**Determinations where cooperative effort.** - While under this section there was to be a cooperative effort between the division (now the commission) and the agency, it was the division that made the determination as to the need for a vending stand and the further determination that such stand might be properly and satisfactorily operated by a blind person. 1964 Op. Att'y Gen. No. 64-77.

### **22-14-28. Powers and duties of the commission relating to the vending stand program.**

In carrying out the provisions of Sections 22-14-24 through 22-14-29 NMSA 1978, the commission:

A. shall prescribe regulations governing:

- (1) personnel standards;
- (2) the protection of records and confidential information;
- (3) eligibility for licensing of blind persons as vending stand operators;
- (4) termination of licenses;
- (5) the title to vending stand equipment and the interest in stocks of merchandise;
- (6) procedures for fair hearings; and
- (7) such other regulations as may be necessary to carry out the purposes of Sections 22-14-24 through 22-14-29 NMSA 1978;

B. shall appoint such personnel as may be necessary for the administration of the vending stand program;

C. shall make surveys to find locations where vending stands may be properly and satisfactorily operated by blind persons and shall establish vending stands as it deems appropriate;

D. shall furnish each vending stand established with adequate suitable equipment, shall be responsible for the maintenance and repair of the equipment and shall furnish each vending stand with an adequate initial stock of merchandise;

E. shall provide such management and supervisory services as are deemed necessary by the commission to assure that each vending stand will be operated in the most effective and productive manner possible;

F. shall cooperate with the United States department of education in the administration of the vending stand program on federal property and adopt such methods of operation and take such action as may be required to secure the full benefits of that program;

G. shall prepare and submit to the governor annual reports of activities and expenditures and, prior to each regular session of the legislature, estimates of sums required for carrying out the purpose of Sections 22-14-24 through 22-14-29 NMSA 1978 and estimates of the amounts to be made available for this purpose from all sources;

H. shall take such other action as may be necessary or appropriate to carry out the purposes of Sections 22-14-24 through 22-14-29 NMSA 1978;

I. may enter into agreements with private nonprofit organizations for furnishing services to the vending stand program; provided that all such services and activities of the

nonprofit organizations relating to the vending stand program shall be subject to the commission's supervision and control;

J. may, in its discretion, set aside funds from the operation of vending stands for such purposes as maintenance and replacement of equipment, the purchase of new equipment, the provision of management services, guaranteeing a fair minimum return to all vending stand operators and such other purposes as it may determine appropriate and which are not inconsistent with federal laws and regulations relating to the "setting aside of funds"; provided that in no case shall the amount set aside from any vending stand exceed a reasonable sum in relation to the net profit to the operator of the stand in the opinion of the executive officer of the agency; and

K. may accept gifts and donations made unconditionally, or subject to such conditions as it may determine appropriate, for the purposes of carrying out the provisions of Sections 22-14-24 through 22-14-29 NMSA 1978 and may use, hold, invest or reinvest such gifts for those purposes.

**History:** 1953 Comp., § 59-12-4, enacted by Laws 1957, ch. 180, § 4; 1978 Comp., § 28-9-5, recompiled as 1978 Comp., § 22-14-28 by Laws 1983, ch. 60, § 3; 1986, ch. 108, § 13.

## ANNOTATIONS

**Broad powers granted.** - In order that the division (now the commission) be able to achieve the statutory ends, the legislature granted it broad powers. 1964 Op. Att'y Gen. No. 64-77.

### 22-14-29. Hearings.

The commission shall provide an opportunity for a fair hearing to any licensed vending stand operator dissatisfied with any action arising from the operation or administration of the vending stand program.

**History:** 1953 Comp., § 59-12-5, enacted by Laws 1957, ch. 180, § 5; 1978 Comp., § 28-9-6, recompiled as 1978 Comp., § 22-14-29 by Laws 1983, ch. 60, § 3; 1986, ch. 108, § 14.

## ARTICLE 15 INSTRUCTIONAL MATERIAL

### 22-15-1. Short title.

Sections 22-15-1 through 22-15-14 NMSA 1978 may be cited as the "Instructional Material Law".

**History:** 1953 Comp., § 77-13-1, enacted by Laws 1967, ch. 16, § 205; 1975, ch. 270, § 1.

## ANNOTATIONS

**Cross-references.** - As to courses of instruction generally, see 22-13-1 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 285 to 289, 303.

Free textbooks and other school supplies for individual use of pupils, 17 A.L.R. 299, 67 A.L.R. 1196.

Furnishing free textbooks to sectarian school or student therein, 93 A.L.R.2d 986.

### **22-15-2. Definitions.**

As used in the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978]:

A. "division" means the state instructional material division;

B. "director" means the state instructional material director;

C. "instructional material" means school textbooks and supplementary instructional material adopted by the state board pursuant to the Instructional Material Law;

D. "multiple list" means a written list of instructional material consisting of several items of instructional material selected for each course of instruction approved by the state board in each school grade;

E. "average daily membership" means the same as "average daily membership" in Section 22-8-2 B NMSA 1978 except based only upon students entitled to the free use of instructional material pursuant to the Instructional Material Law; and

F. "additional pupil" means a pupil in a school district's, state institution's or private school's current year's certified forty-day average daily membership above the number certified in the school district's, state institution's or private school's prior year's forty-day average daily membership. Kindergarten membership shall be calculated on a full-time equivalent basis.

**History:** 1953 Comp., § 77-13-2, enacted by Laws 1967, ch. 16, § 206; 1975, ch. 270, § 2.

## ANNOTATIONS



**Compiler's note.** - The reference in Subsection E to "average daily membership" as defined in 22-8-2B NMSA 1978 should now be to "membership" in order to comport with the amendment to that section by Laws 1988, ch. 64, § 13 which substituted "membership" for "average daily membership".

### **22-15-3. Division; director; surety bond.**

A. The state instructional material division is created within the department of education.

B. With approval of the state board, the state superintendent shall appoint a director of the division to be known as the state instructional material director.

C. Before assuming the duties of office, the director shall obtain an official bond payable to the state and conditioned upon the faithful performance of duties during the director's term of office. The bond shall be executed by a corporate surety company authorized to do business in this state. The amount of the bond shall be fixed by the state board. The state board may elect to obtain a schedule or blanket corporate surety bond covering the director and employees of the division for any period not exceeding four years. The cost of a bond obtained pursuant to this section shall be paid from the administrative fund of the department of education. Any bond obtained shall be approved by the state board and filed with the secretary of state.

**History:** 1953 Comp., § 77-13-3, enacted by Laws 1967, ch. 16, § 207; 1975, ch. 270, § 3.

### **22-15-4. Division; duties.**

Subject to the policies of the state board, the division shall:

A. administer the provisions of the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978];

B. adopt and enforce regulations for the handling, safekeeping and distribution of instructional material and for inventory and accounting procedures to be followed by school districts, state institutions, private schools and adult basic education centers pursuant to the Instructional Material Law; and

C. withdraw or withhold the privilege of participating in the free use of instructional material in case of any violation of or noncompliance with the provisions of the Instructional Material Law or any regulations adopted pursuant thereto.

**History:** 1953 Comp., § 77-13-4, enacted by Laws 1967, ch. 16, § 208; 1975, ch. 270, § 4.

### **22-15-5. Instructional material fund.**

A. The state treasurer shall establish a fund to be known as the "instructional material fund".

B. The instructional material fund shall be used for the purpose of paying for the cost of purchasing instructional material pursuant to the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978]. Transportation charges for the delivery of instructional material to a school district, a state institution, a private school or an adult basic education center as agent and emergency expenses incurred in providing instructional material to students may be included as a cost of purchasing instructional material. Charges for rebinding of used instructional materials that appear on the multiple list pursuant to Section 22-15-8 NMSA 1978 may also be included as a cost of purchasing instructional material.

**History:** 1953 Comp., § 77-13-5, enacted by Laws 1967, ch. 16, § 209; 1975, ch. 270, § 5; 1992, ch. 76, § 1.

### ANNOTATIONS

**Cross-references.** - As to payment of fines for violations of minimum hour laws into fund, see 50-4-18 NMSA 1978.

**The 1992 amendment,** effective May 20, 1992, inserted "a" preceding "state institution" in the second sentence of Subsection B and added the third sentence of that subsection.

### **22-15-6. Disbursements from the instructional material fund.**

Disbursements from the instructional material fund shall be by warrant of the department of finance and administration upon vouchers issued by the director.

**History:** 1953 Comp., § 77-13-6, enacted by Laws 1967, ch. 16, § 210; 1975, ch. 270, § 6.

### **22-15-7. Students eligible; distribution.**

A. Any qualified student or person eligible to become a qualified student attending a public school, a state institution or a private school approved by the state board in any grade from first through the twelfth grade of instruction is entitled to the free use of instructional material. Any student enrolled in an early childhood education program as defined by Section 22-13-3 NMSA 1978 or person eligible to become an early childhood education student as defined by Section 22-13-3 NMSA 1978 attending a private early childhood education program approved by the state board is entitled to the free use of instructional material. Any student in an adult basic education program approved by the state board is entitled to the free use of instructional material.

B. Instructional material shall be distributed to school districts, state institutions, private schools and adult basic education centers as agents for the benefit of students entitled to the free use of the instructional material.

C. Any school district, state institution, private school or adult basic education center as agent receiving instructional material pursuant to the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978] is responsible for distribution of the instructional material for use of eligible students and for the safekeeping of the instructional material.

**History:** 1953 Comp., § 77-13-7, enacted by Laws 1967, ch. 16, § 211; 1975, ch. 270, § 7; 1977, ch. 99, § 1.

### ANNOTATIONS

**Cross-references.** - As to transfer of unused materials, see 22-15-10 NMSA 1978.

**Right to inspect instructional material.** - Local school boards have no authority to prohibit citizens of the state from inspecting instructional material used in a public school within the district. 1988 Op. Att'y Gen. No. 88-37.

### 22-15-8. Multiple list; selection.

A. The state board shall adopt a multiple list to be made available to students pursuant to the Instructional Material Law. The state board shall ensure that parents are involved in the adoption process at the state level.

B. Pursuant to the provisions of the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978], each school district, state institution, private school or adult basic education center as agent may select instructional material for the use of its students from the multiple list adopted by the state board. Local school boards shall give written notice to parents and shall invite parental involvement in the adoption process at the district level. Local school boards shall also give public notice, which notice may include publication in a newspaper of general circulation in the school district.

**History:** 1953 Comp., § 77-13-8, enacted by Laws 1967, ch. 16, § 212; 1975, ch. 270, § 8; 1986, ch. 33, § 31.

### ANNOTATIONS

**Cross-references.** - As to contracts with publishers for purchase and delivery of materials on list, see 22-15-13 NMSA 1978.

**Severability clauses.** - Laws 1986, ch. 33, § 35 provides for the severability of the act if any part or application thereof is held invalid.

**Right to inspect instructional material.** - Local school boards have no authority to prohibit citizens of the state from inspecting instructional material used in a public school within the district. 1988 Op. Att'y Gen. No. 88-37.

## **22-15-9. Instructional material accounts; credit allocations.**

A. The division shall establish a separate instructional material account for each school district, state institution, private school or adult basic education center in the state having students in attendance entitled to the free use of instructional material pursuant to the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978].

B. On or before July 1 of each year, the division shall allocate credit to the instructional material account of each school district, state institution or private school equal to ninety percent of its estimated entitlement as determined from the estimated forty-day membership for the next school year. A school district's, state institution's or private school's entitlement is that portion of the total amount of the annual appropriation less a deduction for a reasonable reserve for transportation charges and emergency expenses that its forty-day membership bears to the forty-day membership of the entire state. Kindergarten MEM shall be calculated on a .5 full-time-equivalent basis. The allocation for adult basic education shall be based on a full-time-equivalency obtained by multiplying the total previous year's enrollment by .25. For the purpose of this allocation, additional pupils shall be counted as four pupils.

On or before January 15 of each year, the division shall recompute each entitlement using the forty-day membership for that year, except for adult basic education, and shall allocate the balance of the annual appropriation compensating for any over- or under-estimation of credit made in the first allocation.

In the event the funds remaining for this allocation are insufficient to compensate for an over- or under-estimation of credit made in the first allocation, the final recomputed over- or under-allocation of credit shall be carried forward by the division to be credited or debited to the allocation for the ensuing school year.

C. Pursuant to the regulations of the division, each school district, state institution, private school or adult basic education center may requisition from the division instructional material authorized and necessary, including the rebinding of used instructional material. The cost of the instructional material, including the rebinding of used instructional material, shall be debited against the instructional material account of the school district, state institution, private school or adult basic education center making the requisition. A debit of up to twenty percent of total credit allocations shall be allowed by the division for each public school district, state institution, or adult basic education center for instructional materials not included on the multiple list provided for in Section 22-15-8 NMSA 1978.

D. Any balance remaining in an instructional material account of a school district, state institution, private school or adult basic education center at the end of the fiscal year shall remain available for requisitioning against in subsequent years.

**History:** 1953 Comp., § 77-13-9, enacted by Laws 1967, ch. 16, § 213; 1969, ch. 180, § 26; 1975, ch. 270, § 9; 1977, ch. 99, § 2; 1979, ch. 125, § 1; 1992, ch. 76, § 2.

## ANNOTATIONS

**Cross-references.** - As to annual reports as to materials on hand, money collected and other matters, see 22-15-12 NMSA 1978.

**The 1992 amendment,** effective May 20, 1992, substituted "forty-day membership" for "forty-day average daily membership" several times throughout the section; in Subsection B made minor stylistic changes in the first and second sentences and substituted "MEM" for "ADM" in the third sentence; and, in Subsection C, inserted "including the rebinding of used instructional material" in the first and second sentences.

### **22-15-10. Sale or loss or return of instructional material.**

A. With the approval of the director, instructional material distributed to a school district, state institution, private school or adult basic education center pursuant to the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978] may be sold at a price determined by officials of the school district, state institution, private school or adult basic education center. The selling price shall not exceed the cost of the instructional material to the state.

B. A school district, state institution, private school or adult basic education center as agent may hold the parent, guardian or student responsible for the loss, damage or destruction of instructional material while the instructional material was in the possession of the student. A school district may withhold the grades, diploma and transcripts of the student responsible for damage or loss of instructional material until the parent, guardian or student has paid for the damage or loss. When a parent, guardian or student is unable to pay for damage or loss, the school district shall work with the parent, guardian or student to develop an alternative program in lieu of payment. Where a parent or guardian is determined to be indigent according to guidelines established by the state board of education, the local school district shall bear the cost.

C. All money collected by a school district, state institution, private school or adult basic education center as agent for the sale, loss, damage or destruction of instructional material received pursuant to the Instructional Material Law shall be transmitted to the division. The division shall credit the instructional material account of the school district, state institution, private school or adult basic education center and deposit the money received with the state treasurer for credit to the instructional material fund.

D. Upon order of the director, a school district, state institution, private school or adult basic education center shall transfer as ordered to the division or its designee instructional material purchased from the instructional material fund which is in usable condition and for which there is no use expected by the respective schools.

**History:** 1953 Comp., § 77-13-10, enacted by Laws 1967, ch. 16, § 214; 1975, ch. 270, § 10; 1989, ch. 280, § 1.

## ANNOTATIONS

**The 1989 amendment**, effective June 16, 1989, added the last three sentences in Subsection B and made minor stylistic changes.

### **22-15-11. Record of instructional material.**

A. The division shall keep accurate records of the cost of all instructional material distributed pursuant to the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978].

B. Each school district, state institution, private school or adult basic education center shall keep accurate records of all instructional material distributed to it pursuant to the Instructional Material Law on forms and by procedures prescribed by the division.

**History:** 1953 Comp., § 77-13-11, enacted by Laws 1967, ch. 16, § 215; 1975, ch. 270, § 11.

### **22-15-12. Annual report.**

Annually, at a time specified by the division, each local school board of a school district and each governing authority of a state institution, private school or adult basic education center receiving instructional material pursuant to the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978] shall file a report with the division. The report shall be on a form prescribed by the division and shall contain:

A. the amount of instructional material in the possession of the school district, state institution, private school or adult basic education center at the end of the school year;

B. the amount of money collected for instructional material pursuant to the Instructional Material Law and the disposition thereof; and

C. any other information relating to the Instructional Material Law requested by the division.

**History:** 1953 Comp., § 77-13-12, enacted by Laws 1967, ch. 16, § 216; 1975, ch. 270, § 12.

### **22-15-13. Contracts with publishers.**

A. The state board may enter into a contract with a publisher or a publisher's representative for the purchase and delivery of instructional material selected from the multiple list adopted by the state board.

B. Payment for instructional material purchased by the state board shall be made only upon performance of the contract and the delivery and receipt of the instructional material.

C. Each publisher or publisher's representative contracting with the state for the sale of instructional material shall agree:

(1) to file a copy of each item of instructional material to be furnished under the contract with the state board with a certificate attached identifying it as an exact copy of the item of instructional material to be furnished under the contract;

(2) that the instructional material furnished pursuant to the contract shall be of the same quality in regard to paper, binding, printing, illustrations, subject matter and authorship as the copy filed with the state board; and

(3) that if instructional material under the contract is sold elsewhere in the United States for a price less than that agreed upon in the contract with the state, the price to the state shall be reduced to the same amount.

**History:** 1953 Comp., § 77-13-13, enacted by Laws 1967, ch. 16, § 217; 1975, ch. 270, § 13.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 79 C.J.S. Schools and School Districts §§ 491, 492.

### **22-15-14. Reports; budgets.**

A. Annually, the division shall submit a budget for the ensuing fiscal year to the department of finance and administration showing the expenditures for instructional material to be paid out of the instructional material fund, including reasonable transportation charges and emergency expenses.

B. Upon request, the division shall make reports to the state board concerning the administration and execution of the Instructional Material Law [22-15-1 to 22-15-14 NMSA 1978].

**History:** 1953 Comp., § 77-13-14, enacted by Laws 1967, ch. 16, § 218; 1975, ch. 270, § 14.

## ANNOTATIONS

**Cross-references.** - As to instructional material fund generally, see 22-15-5 NMSA 1978.

### **22-15-15. Short title.**

This act [22-15-15 to 22-15-20 NMSA 1978] may be cited as the "Historical Codes Act".

**History:** Laws 1981, ch. 29, § 1.

### **22-15-16. Purpose.**

It is the purpose of the Historical Codes Act [22-15-15 to 22-15-20 NMSA 1978] to promote an appreciation, necessary to a complete education, for the heritage and history of our civilization through the posting of historical codes pursuant to the provisions of the Historical Codes Act.

**History:** Laws 1981, ch. 29, § 2.

### **22-15-17. Funding.**

Each local school board is authorized to accept contributions from private sources in order to carry out the provisions of the Historical Codes Act [22-15-15 to 22-15-20 NMSA 1978].

**History:** Laws 1981, ch. 29, § 3.

### **22-15-18. Posting of copy.**

Each local school board may, to the extent funds are available pursuant to Section 3 [22-15-17 NMSA 1978] of the Historical Codes Act, post, in a nondiscriminatory manner not favoring one religious or ethno-cultural background over another, durable, permanent copies of the historical codes in each regular instructional classroom in the school district.

**History:** Laws 1981, ch. 29, § 4.

### **22-15-19. Other funds prohibited.**

No funds from any other source other than those accepted pursuant to Section 3 [22-15-17 NMSA 1978] of the Historical Codes Act shall be used to carry out the provisions of Section 4 [22-15-18 NMSA 1978] of that act.

**History:** Laws 1981, ch. 29, § 5.

### **22-15-20. Definition.**



As used in the Historical Codes Act [22-15-15 to 22-15-20 NMSA 1978], "historical codes" means:

- A. the ten commandments;
- B. the code of Hammurabi;
- C. any injunctive compendium from the Koran;
- D. any compendium of Confucian teachings;
- E. any excerpts from the Bhagavad-Gita;
- F. the teachings of Gautama Buddha or his followers; or
- G. any other teachings representing disparate ethno-cultural or religious backgrounds.

**History:** Laws 1981, ch. 29, § 6.

## **ARTICLE 16**

### **TRANSPORTATION OF STUDENTS**

#### **22-16-1. State transportation division; director.**

- A. The state transportation division is created within the department of education.
- B. With approval of the state board, the state superintendent shall appoint a director of the state transportation division to be known as the state transportation director.
- C. The state board may delegate to the state transportation division its administrative functions relating to public school transportation.

**History:** 1953 Comp., § 77-14-1, enacted by Laws 1967, ch. 16, § 219.

#### **ANNOTATIONS**

**Cross-references.** - As to emergency transportation, see 22-17-1 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 68 Am. Jur. 2d Schools §§ 234 to 239, 244, 300.

One transporting children to or from school as independent contractor, 66 A.L.R. 724.

Constitutionality of statute providing school-bus service for pupils of parochial or private schools, 168 A.L.R. 1434.

Buses: constitutionality, under state constitutional provision forbidding financial aid to religious sects, of public provision of school bus service for private school pupils, 41 A.L.R.3d 344.

78 C.J.S. Schools and School Districts § 15.

## **22-16-2. State transportation division; duties.**

Subject to the policies of the state board, the state transportation division shall:

- A. establish standards for school bus transportation;
- B. establish standards pursuant to Section 66-7-365 NMSA 1978;
- C. establish and approve school bus routes for the transportation of students:
  - (1) to and from public schools;
  - (2) to and from public school attendance centers and schools or centers providing approved cooperative education programs;
  - (3) to and from private, nonsectarian, nonprofit training centers for exceptional children operated under contract with a local school board;
  - (4) to and from early childhood education programs; and
  - (5) to and from state institutions under the authority of the secretary of health and environment and the public school in which clients of such institutions are enrolled;
- D. cooperate with the director in matters relating to the financing of public school bus transportation;
- E. issue and enforce those regulations adopted by the state board relating to school bus transportation;
- F. audit records of school bus contractors or school district owned bus operations in accordance with regulations promulgated by the school transportation director; and
- G. establish standards, inspect and certify for safety vehicles defined as school buses by Section 66-1-4 [66-1-4.11] NMSA 1978.

**History:** 1953 Comp., § 77-14-2, enacted by Laws 1967, ch. 16, § 220; 1975, ch. 342, § 3; 1976 (S.S.), ch. 20, § 3; 1978, ch. 200, § 2; 1978, ch. 211, § 15; 1979, ch. 53, § 1; 1979, ch. 305, § 5.

## **ANNOTATIONS**

**Cross-references.** - For provisions relating to financing of public school bus transportation generally, see 22-8-29 to 22-8-32 NMSA 1978.

As to transportation of blind children to New Mexico school for visually handicapped, see 21-5-6 NMSA 1978.

As to design and operation regulations for school buses, see 66-7-365 NMSA 1978.

**Bracketed material.** - The bracketed reference to 66-1-4.16 NMSA 1978 in Subsection G, was inserted by the compiler to indicate the new location of the definition of "school bus" following the 1990 legislation. The bracketed material was not enacted by the legislature and is not part of the law.

**Secretary of health and environment.** - Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment.

### **22-16-3. School bus service contracts.**

A. All contracts entered into by a school district to provide school bus service to students attending public school within the school district shall be approved by the state transportation director. The contracts shall be in writing on forms provided by the state transportation division.

B. A school district may enter into a school bus service contract for a term not to exceed four years. A school bus service contract may provide, at the expiration of the term of the contract, for annual renewal of the school bus service contract on the same terms and conditions at the option of the local school board if approval is granted by the state transportation director.

C. In the event a contract with a school bus operator is terminated, the buses owned by the operator that are used pursuant to his school bus service contract shall be appraised by three qualified appraisers appointed by the local school board and approved by the state transportation director. The operator succeeding to the contract shall purchase, with the approval of the operator whose contract was terminated, all of these buses owned by the former operator at their appraised value.

**History:** 1953 Comp., § 77-14-3, enacted by Laws 1967, ch. 16, § 221.

### **22-16-4. School bus routes; limitations; exceptions; minimum requirements.**

A. Bus routes shall be approved annually.

B. Except as provided in Subsection C and D of this section, no school bus route shall be approved or maintained for distances less than:

(1) one mile one way for students in grades kindergarten through six;

(2) one and one-half miles one way for students in grades seven through nine; and

(3) two miles one way for students in grades ten through twelve.

C. In school districts having extremely hazardous walking conditions as determined by the local school board and confirmed by the state transportation director, students of any grade may be transported a lesser distance than that provided in Subsection B of this section. Standards for determining hazardous walking conditions shall be established by the state transportation division with the approval of the state board.

D. Exceptional children whose handicaps require transportation and three- and four-year-old children who meet the state board approved criteria and definition of developmentally disabled may be transported a lesser distance than that provided in Subsection B of this section.

E. Except as provided in Subsections F and G of this section, no bus route serving less than ten students shall be approved or maintained. No approved bus routes shall be disapproved during a school year as long as there are students to be served unless a more economical arrangement is agreed to by the local school board, the bus operators concerned and the parents or guardians of the students served and confirmed by the state transportation division.

F. A bus route serving less than ten students may be approved and maintained if the students served include one or more exceptional children whose handicaps require transportation.

G. A bus route serving less than ten students may be approved and maintained under unusual circumstances as determined by the local school board and approved by the state transportation director.

**History:** 1953 Comp., § 77-14-4, enacted by Laws 1967, ch. 16, § 222; 1975, ch. 342, § 4; 1987, ch. 149, § 3.

### **22-16-4.1. School bus routes to and from public schools and vocational education centers.**

A. The local school board may request the state transportation director to establish vocational education school bus routes for the purpose of transporting students to and

from attendance centers and the place where vocational education programs are being offered.

B. The cost of such routes shall be paid from the vocational education transportation distribution, as provided in Section 22-8-26 NMSA 1978.

**History:** Laws 1979, ch. 289, § 2; 1979, ch. 305, § 6.

#### **ANNOTATIONS**

**Compiler's note.** - Laws 1979, ch. 289, § 2, and Laws 1979, ch. 305, § 6, enact identical sections, designated by the compiler as 22-16-4.1 NMSA 1978.

#### **22-16-5. School bus routes; objections.**

A. A local school board may file a written protest with the state board objecting to a school bus route established by the state transportation division. The written protest shall contain the objections of the local school board to the school bus route.

B. The state board shall, within thirty days from the date of receipt of the written protest provided in Subsection A of this section, give notice of a date, place and time for a hearing on the written protest to persons affected by the written protest.

C. The state board shall hold a hearing on the written protest and may modify or change any school bus route if it is determined that the modification or change will be beneficial to the school district affected.

D. No school bus route shall be modified or changed in any manner inconsistent with the provisions of an existing school bus service contract unless the proposed modification or change is approved by the state transportation director.

**History:** 1953 Comp., § 77-14-5, enacted by Laws 1967, ch. 16, § 223; 1975, ch. 342, § 5.

#### **ANNOTATIONS**

**Section pertains not only to the establishment, but also the maintenance of school bus routes** by the state transportation division of the department of education, with provision for protest by local school boards through Subsection A. *Martinez v. Board of Educ.*, 82 N.M. 375, 482 P.2d 239 (1971).

**Section provides for modification or change of established school bus routes** through the state transportation director. *Martinez v. Board of Educ.*, 82 N.M. 375, 482 P.2d 239 (1971).

#### **22-16-6. Reimbursement of parents or guardians.**

A. A local school board may, subject to regulations adopted by the state board and with the approval of the state transportation director, provide per capita or per mile reimbursement to a parent or guardian in cases where regular school bus transportation is impractical because of distance, road conditions, sparseness of population or in cases where the local school board has authorized a parent to receive reimbursement for travel costs incurred by having a child attend a school outside the child's attendance zone. A schedule providing for the reimbursement of parents and guardians in an amount that is reasonable and comparable to that which would be paid to a school bus contractor for the transportation of pupils, when computation for payment excludes the factors of size and age of school bus equipment and the driver's salary, shall be established by the state transportation division of the department of education with the approval of the state board.

B. A parent may receive reimbursement for transportation costs incurred as a result of his child's attendance at a school outside the child's attendance zone pursuant to Subsection A of this section only upon application to and approval of the local school board for the receiving school district and upon a showing that the family income is at or below the federally established poverty level.

C. For purposes of this section, "attendance zone" means the school to which a school-age person is assigned to attend by the local school board.

**History:** 1953 Comp., § 77-14-6, enacted by Laws 1967, ch. 16, § 224; 1973, ch. 337, § 1; 1990 (1st S.S.), ch. 9, § 12.

### ANNOTATIONS

**The 1990 (1st S.S.) amendment**, effective June 18, 1990, added the Subsection A designation, inserting therein "subject to regulations adopted by the state board and", "or in cases where the local school board has authorized a parent to receive reimbursement for travel costs incurred by having a child attend a school outside the child's attendance zone", and "of the department of education", made minor stylistic changes, and added Subsections B and C.

**Purpose of reimbursement schedule.** - The reimbursement schedule provision to be established by the state transportation director with the consent and approval of the state board of education is apparently designed to insure a maximum amount of uniformity in payments for this type of transportation in school districts where similar conditions prevail. 1966 Op. Att'y Gen. No. 66-134 (decided under prior law).

### **22-16-7. County school bus transportation expenditures.**

A. A board of county commissioners may contract with a school bus service operator for the transportation of students attending schools, other than public schools, within the county in compliance with the Compulsory School Attendance Law [22-12-1 to 22-12-7 NMSA 1978]. The contract shall provide for the school bus service operator to use the

same school bus routes as established for students attending public schools in the county.

B. A board of county commissioners may provide for payment under any contract made pursuant to the provisions of this section only out of general funds of the county and not out of any funds, taxes raised or taxes levied for educational purposes, or out of any money appropriated for public schools.

**History:** 1953 Comp., § 77-14-7, enacted by Laws 1967, ch. 16, § 225.

## **ANNOTATIONS**

**Cross-references.** - For provisions relating to financing of public school bus transportation generally, see 22-8-29 to 22-8-32 NMSA 1978.

**Transportation of students of private, religious schools.** - A county may contract with a school district for the transportation of students of private, religious schools under this section only if the county is reimbursed by the private schools or their students for the costs of such transportation pursuant to an enforceable contract. 1989 Op. Att'y Gen. No. 89-02.

### **22-16-8. Cattleguards on school bus routes.**

The board of county commissioners of each county shall construct cattleguards where privately owned fences intersect school bus routes in the county when consent is obtained from each owner of real property upon which the cattleguards are to be constructed. The cost of constructing the cattleguards shall be paid out of the county road fund as other county road expenses are paid.

**History:** 1953 Comp., § 77-14-8, enacted by Laws 1967, ch. 16, § 226.

### **22-16-9. School buses; termination of use; resale.**

A. When a school bus is being operated for purposes other than to actually transport students to and from school or on school activity trips, all markings indicating "school bus" shall be covered or removed.

B. When a school bus is sold to be used exclusively for purposes other than the transportation of students, all school bus identification shall be removed. In addition, unless the motor vehicle is painted a different color than that prescribed by the state board for school buses, a series of diagonal black stripes shall be painted on the rear of the motor vehicle. The stripes shall be at least three feet long, four inches wide, and shall be spaced not more than ten inches apart.

C. The provisions of this section shall apply to any school bus that is operated on any public street or highway, except for the purpose of taking it to a place to be painted or moving it to a place of storage.

**History:** 1953 Comp., § 77-14-9, enacted by Laws 1967, ch. 16, § 227.

### **22-16-10. Use of state or county equipment for snow removal.**

The state or any county may, in order to provide for the public health, safety and welfare, use its road equipment for snow removal on any school bus route.

**History:** 1953 Comp., § 77-14-10, enacted by Laws 1975, ch. 79, § 1.

## **ARTICLE 17 EMERGENCY TRANSPORTATION**

### **22-17-1. Short title.**

Sections 1 through 4 [22-17-1 to 22-17-4 NMSA 1978] of this act may be cited as the "Emergency Transportation Act".

**History:** 1953 Comp., § 77-14A-1, enacted by Laws 1974, ch. 38, § 1.

### **22-17-2. Corporation commission permits.**

A. Subject to the Emergency Transportation Act [22-17-1 to 22-17-4 NMSA 1978], the state corporation commission may approve a permit application of a school district operating its own school buses or of an independent school bus operator who operates school buses under contract with a school district, for the operation of such buses for general public transportation if the commission determines that:

(1) the school district operating its own school buses or the independent school bus operator has complied with laws, regulations and other requirements governing transportation of the general public;

(2) existing public or private transportation systems will not be adversely affected by the use of school buses for general public transportation; and

(3) a public transportation emergency exists within the proposed area of operation necessitating the use of school buses for general public transportation.

B. Notice of approval or denial of the permit application shall be submitted to the state transportation director of the state transportation division of the department of education and to the applicant within ten days of final determination by the commission.



**History:** 1953 Comp., § 77-14A-2, enacted by Laws 1974, ch. 38, § 2.

## **ANNOTATIONS**

**Cross-references.** - As to exemption of motor vehicles used pursuant to article from motor carrier regulations, see 65-2-126 NMSA 1978.

### **22-17-3. State transportation director; approval.**

A. Upon the receipt of approval of the permit application from the state corporation commission, the state transportation director may grant a permit to operate school buses for general public transportation to a school district that operates its own school buses or to the independent school bus operator who operates school buses under contract with a school district, if he determines:

(1) that school bus service to students will not be adversely affected by issuing the permit;

(2) that the operation of such buses for general public transportation service by the district or the independent operator will not provide unnecessary duplication of a general public transportation service by school buses of another school district or independent school bus operator contracting with another district; and

(3) that there has been compliance with the rules and regulations of the state transportation director issued pursuant to the Emergency Transportation Act [22-17-1 to 22-17-4 NMSA 1978].

B. The state transportation director, subject to the approval of the state superintendent of public instruction, shall by regulation provide for application fees, forms and permit procedures pursuant to the Emergency Transportation Act.

C. A permit issued under this section shall be valid for one year and shall be annually renewed upon payment of a reasonable application fee to the state transportation division and certification by the state corporation commission of the permittee's compliance with all applicable laws. Notice of renewal of the permit shall be delivered by the state transportation division to the state corporation commission and the local school board concerned.

**History:** 1953 Comp., § 77-14A-3, enacted by Laws 1974, ch. 38, § 3.

### **22-17-4. Termination of permit.**

A permit issued pursuant to the Emergency Transportation Act [22-17-1 to 22-17-4 NMSA 1978] shall be terminated by the state transportation director upon thirty days' written notice to the holder of the permit, if the state transportation director receives written notice from:

A. the state corporation commission that it has determined that a public transportation emergency in the area in which the permittee provides general public transportation no longer exists, or that public or private transportation systems are being adversely affected in such area; or

B. the local school board that such board has determined that school bus service to students is being adversely affected by providing general public transportation under the permit.

**History:** 1953 Comp., § 77-14A-4, enacted by Laws 1974, ch. 38, § 4.

## **ARTICLE 18 GENERAL OBLIGATION BONDS OF SCHOOL DISTRICTS**

### **22-18-1. General obligation bonds; authority to issue.**

Subject to the provisions of Article 9, Section 11 of the constitution of New Mexico and Sections 6-15-1 and 6-15-2 NMSA 1978, a school district may issue general obligation bonds for the purpose of erecting, remodeling, making additions to and furnishing school buildings, or purchasing or improving school grounds or any combination of these purposes. Such bonds shall be fully negotiable and constitute negotiable instruments within the meaning and for all purposes of the Uniform Commercial Code [Chapter 55 NMSA 1978].

**History:** 1953 Comp., § 77-15-1, enacted by Laws 1967, ch. 16, § 228.

### **ANNOTATIONS**

**Cross-references.** - As to public school finances generally, see 22-8-1 NMSA 1978 et seq.

As to school revenue bonds, see 22-19-1 NMSA 1978 et seq.

As to school construction, see 22-20-1 NMSA 1978 et seq.

As to public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

As to public school capital improvements, see 22-25-1 NMSA 1978 et seq.

For constitutional provision relating to school district indebtedness, see N.M. Const., art. IX, § 11.

As to issuance and sale of bonds by school districts generally, see 6-15-3 to 6-15-10 NMSA 1978.

As to issuance of refunding bonds by school districts generally, see 6-15-11 to 6-15-22 NMSA 1978.

As to bond elections generally, see 6-15-23 to 6-15-28 NMSA 1978.

**"School building"**. - The term "school building" has been defined by the courts in the context of the expenditure of revenues from a bond issue to mean a structure which is used for teaching. 1981 Op. Att'y Gen. No. 81-1.

**Buildings for teacher housing not school buildings.** - Buildings used for teacher housing, which are not used for instructional purposes, do not fall within the meaning of the term "school building" as it is commonly used in bonding provisions. 1981 Op. Att'y Gen. No. 81-1.

Revenues generated by school district general obligation bonds or pursuant to the Public School Capital Improvements Act may not be spent to construct teacher housing. 1981 Op. Att'y Gen. No. 81-1.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Securities and Obligations §§ 120, 122.

## **22-18-2. Bond elections; qualification of voters; calling for bond elections.**

A. Before any general obligation bonds are issued, a local school board of a school district shall submit to a vote of the qualified electors of the school district owning real estate in the school district the question of creating a debt by issuing the bonds and a majority of those persons voting on the question shall vote for issuing the general obligation bonds.

B. The election on the question of creating a debt by issuing general obligation bonds shall be held at the same time as a regular school district election or at any special school district election which is not within ninety days after a regular school district election. The question shall be submitted to a vote at a general or special school district election upon the initiative of a local school board or upon a petition being filed with a local school board signed by qualified electors of the school district having paid a property tax on property in the school district for the preceding year, according to the latest completed tax rolls. The number of signatures required on the petition shall be at least ten percent of the number of votes cast for governor in the school district in the last preceding general election. For the purpose of determining the number of votes cast for governor in the school district at the last preceding general election, any portion of a voting division within the school district shall be construed to be wholly within the school district. A local school board shall call for a bond election at a regular or special school district election within ninety days from the date a properly signed petition is filed with them.

**History:** 1953 Comp., § 77-15-2, enacted by Laws 1967, ch. 16, § 229.

## ANNOTATIONS

**Cross-references.** - For requirement that persons be registered voters to vote in bond elections, see 22-18-4 NMSA 1978.

**Constitutionality of section.** - New Mexico Const., art. IX, § 11 violates the equal protection clause of the U.S. Const. by restricting the right to vote in school district bond elections to real estate owners, and likewise, this section, which implements N.M. Const., art. IX, § 11, conflicts with the equal protection clause of the U.S. Const. insofar as it restricts the franchise in school district bond elections to real estate owners or to those who have paid a property tax on property in the school district for the preceding year. *Prince v. Board of Educ.*, 88 N.M. 548, 543 P.2d 1176 (1975).

**Provision means that a voter in a school bond election must be a resident of the district,** an owner of real estate within the same, but it is not necessary to have paid taxes on said real estate in order to vote in the school bond election. 1957-58 Op. Att'y Gen. No. 58-128. See *Prince v. Board of Educ.*, 88 N.M. 548, 543 P.2d 1176 (1975).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Power of school district or school authorities to rescind or modify vote or resolution for bond issue, 68 A.L.R.2d 1041.

79 C.J.S. Schools and School Districts § 366.

### **22-18-3. Bond elections; notice; publication.**

A. Whenever a bond election for a school district is called, notice of the bond election shall be published once each week for two consecutive weeks. A local school board shall give public notice of the bond election by publishing a resolution adopted by the local school board. The first publication of the notice shall be made between fifteen and thirty days before the date of the bond election.

B. The notice published by the local school board shall state the date when the bond election will be held, the questions to be submitted to the voters, a brief description of the boundaries of each voting division, the location of each polling place and the hours each polling place will be open.

C. All publications, ballots, ballot labels and instructions for a bond election shall be printed in English and may also be printed in Spanish.

**History:** 1953 Comp., § 77-15-3, enacted by Laws 1967, ch. 16, § 230.

## ANNOTATIONS

**Cross-references.** - As to publication of notice generally, see 14-11-1 NMSA 1978 et seq.

#### **22-18-4. Bond elections; conduct.**

A. A person is required to be a registered voter to vote in a bond election in a school district.

B. Except as otherwise provided in Sections 22-18-1 through 22-18-12 NMSA 1978, bond elections in a school district shall be conducted pursuant to Sections 22-6-1 through 22-6-20 NMSA 1978 and the Bond Election Act [6-15-23 to 6-15-28 NMSA 1978].

**History:** 1953 Comp., § 77-15-4, enacted by Laws 1967, ch. 16, § 231; 1970, ch. 6, § 7.

#### **ANNOTATIONS**

**Compiler's note.** - Sections 22-6-1 to 22-6-4, and 22-6-6 to 22-6-20, referred to in Subsection B, were repealed in 1985.

#### **22-18-5. Bond elections; ballots.**

A. The question on the ballot of creating a debt by issuing general obligation bonds shall state the purpose or purposes for which the bonds are to be issued and the amount of the bond issue. Two or more separate questions may be submitted to the voters at a bond election, in which case, the vote on each question shall be separately counted, canvassed and certified.

B. Bond election ballots shall contain a place for a vote "For the school district bonds" and "Against the school district bonds" for each bond issue.

C. If paper ballots are used at a bond election, all questions to be voted on at the bond election shall be listed on one ballot.

**History:** 1953 Comp., § 77-15-5, enacted by Laws 1967, ch. 16, § 232.

#### **ANNOTATIONS**

**Use of the language "for school purposes," with no other qualification, on a school bond issue** was too broad, because such language did not sufficiently apprise the voter of the exact purpose for which the election was held. Board of Educ. v. Hartley, 74 N.M. 469, 394 P.2d 985 (1964)(decided under prior law).

#### **22-18-6. Canvass of returns; certificate of results.**

Within three days after the date of a bond election in a school district, the local school board of the school district shall:

- A. canvass the returns in the same manner as county election returns are canvassed;
- B. issue a certificate of results of the school district election;
- C. determine the total number of persons voting at the bond election; and
- D. enter the results of the bond election and the total number of persons voting at the bond election in the official minutes book of the school district.

**History:** 1953 Comp., § 77-15-6, enacted by Laws 1967, ch. 16, § 233.

### **ANNOTATIONS**

**Cross-references.** - As to election contests, see 22-18-10 NMSA 1978.

#### **22-18-7. Authority to issue bonds.**

If a majority of those persons voting on a question submitted to the voters in a bond election vote for creating a debt by issuing general obligation bonds, the local school board may, subject to the approval of the attorney general, proceed to issue the bonds.

**History:** 1953 Comp., § 77-15-7, enacted by Laws 1967, ch. 16, § 234.

#### **22-18-8. Restriction on bond elections.**

In the event a majority of those persons voting on a question submitted to the voters in a bond election vote against creating a debt by issuing general obligation bonds, no bond election shall be held on the same question for a period of two years from the date of the bond election, except upon the presentation of a petition pursuant to Section 22-18-2 NMSA 1978 and after the expiration of at least six months from the date of the previous bond election on the question. If a majority of those persons voting on a question submitted to the voters in a bond election for a second time within two years vote against creating a debt by issuing general obligation bonds, no bond election shall then be held on the same question for a period of two years from the date of first bond election on the question.

**History:** 1953 Comp., § 77-15-8, enacted by Laws 1967, ch. 16, § 235.

### **ANNOTATIONS**

**Bond elections on the "same question".** - Alamogordo school district's proposed February, 1989 bond question, which differed materially in amount of bonded

indebtedness and in purpose, was not the "same question" that the voters defeated in May, 1987, and therefore did not violate this section. 1988 Op. Att'y Gen. No. 88-53.

### **22-18-9. Approval of bond issue by attorney general.**

No issue of bonds shall be valid or binding on any school district unless prior to the issuance of the bonds the attorney general approves the bond issue as to form and legality. The written approval of the attorney general shall be made a part of the transcript of the proceedings in connection with each bond issue. The local school board of each school district proposing to issue bonds shall provide the attorney general with all information necessary for this consideration of the form and legality of the bond issue.

**History:** 1953 Comp., § 77-15-9, enacted by Laws 1967, ch. 16, § 236.

### **ANNOTATIONS**

**Cross-references.** - As to preparation and disposition of transcripts of proceedings relating to bond issues, see 6-15-2 NMSA 1978.

### **22-18-10. Bond election contests.**

No action concerning any question placed on the ballot at a bond election shall be maintained in the district court unless the action is filed within ten days after the publication of the certificate of results of the bond election by the superintendent of schools.

**History:** 1953 Comp., § 77-15-10, enacted by Laws 1967, ch. 16, § 237.

### **22-18-11. General obligation bonds; issuance; sale.**

A. General obligation bonds of a school district shall be issued and sold pursuant to the provisions of Sections 6-15-3 through 6-15-10 NMSA 1978.

B. Except as is otherwise provided by law, general obligation bonds issued by a school district shall be of the denomination or denominations, shall be payable at the place or places within or without the state or both, shall be in such form and shall bear such terms and conditions as the local school board of the school district determines.

C. General obligation bonds issued by a school district shall be signed by the president and attested by the secretary of the local school board, unless the bonds are issued in book entry or similar form without the delivery of physical securities. Any coupons appertaining to the bonds shall be signed by the president of the local school board either manually or by facsimile signature.

D. The general obligation bonds issued by a school district may be executed in the manner provided by the provisions of the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978].

**History:** 1953 Comp., § 77-15-11, enacted by Laws 1967, ch. 16, § 238; 1983, ch. 265, § 47.

## **22-18-12. Budgetary provisions; payment of principal and interest.**

A. A local school board shall establish adequate budgetary provisions, approved by the public school finance division [office of education], to promptly pay, as it becomes due, all principal and interest on general obligation bonds issued by the school district.

B. The full faith and credit of a school district shall be pledged to the payment of the principal and interest on general obligation bonds issued by the school district.

C. The board of county commissioners shall levy and collect upon all taxable property within a school district in the county such tax as is necessary to pay the interest and principal on general obligation bonds issued by the school district as the interest and principal become due, without limitation as to rate or amount.

**History:** 1953 Comp., § 77-15-12, enacted by Laws 1967, ch. 16, § 239.

### **ANNOTATIONS**

**Public school finance division.** - The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1980, ch. 151, § 58, abolishes the educational finance and cultural affairs department, § 4 of that act creates the department of finance and administration and § 47 of that act creates the public school finance division of the department of finance and administration. Laws 1983, ch. 301, § 83, abolishes the public school finance division of the department of finance and administration and § 69 of that act creates the office of education of the department of finance and administration. Laws 1983, ch. 301, § 83, also provides that all references to the public school finance division shall be construed to mean the office of education of the department of finance and administration.

## **ARTICLE 18A SCHOOL DISTRICT LOANS**

### **22-18A-1. Short title.**

Sections 1 through 4 [22-18A-1 to 22-18A-4 NMSA 1978] of this act may be cited as the "School District Loan Act".



**History:** Laws 1989, ch. 134, § 1.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1989, ch. 134, § 6 makes the School District Loan Act effective immediately. Approved March 30, 1989.

**Compiler's note.** - The School District Loan Act is not a part of the Public School Code but has been compiled with the Public School Code as a convenience to the user.

### **22-18A-2. Purpose.**

The purpose of the School District Loan Act [22-18A-1 to 22-18A-4 NMSA 1978] is to provide school districts with financial assistance to make payment of principal and interest due on outstanding school district general obligation indebtedness.

**History:** Laws 1989, ch. 134, § 2.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1989, ch. 134, § 6 makes the School District Loan Act effective immediately. Approved March 30, 1989.

### **22-18A-3. Fund created; administration.**

A. There is created in the state treasury a revolving loan fund to be known as the "public school district general obligation bonds loan fund". The fund is established as an additional source for payments of principal and interest due on public school district general obligation indebtedness already incurred or incurred in the future or for payments of any other obligations arising in connection with that indebtedness. The fund shall be drawn upon only in the event ad valorem taxes or other revenues of the public school district available for the described payments are either insufficient or are not received by the public school district at the time due or anticipated. The state department of public education shall administer the fund and may make loans from the fund in accordance with the School District Loan Act [22-18A-1 to 22-18A-4 NMSA 1978]. Money remaining in the fund at the end of any fiscal year shall not revert to the general fund.

B. The state department of public education shall deposit in the fund all receipts from the repayment of loans made pursuant to the School District Loan Act.

C. Each July 1, balances in the public school district general obligation bonds loan fund in excess of one million dollars (\$1,000,000) shall be transferred to the state-support reserve fund.

**History:** Laws 1989, ch. 134, § 3.

## ANNOTATIONS

**Emergency clauses.** - Laws 1989, ch. 134, § 6 makes the School District Loan Act effective immediately. Approved March 30, 1989.

### **22-18A-4. Loan program; duties of the state department of public education.**

A. The state department of public education shall adopt regulations to govern the application procedure and requirements for making loans under the School District Loan Act [22-18A-1 to 22-18A-4 NMSA 1978].

B. The state department of public education may make a loan to a school district if the local school district board certifies to the state department of public education that there are insufficient ad valorem taxes or other school district revenues to meet a payment of principal or interest, or both, due on the school district's general obligation indebtedness or to meet any other obligation arising in connection with that indebtedness lawfully payable from ad valorem taxes, or that the receipt of ad valorem taxes to make any such payment will be delayed and not be available to make the payment when due.

C. A loan shall be made for a period of time not to exceed five years with an annual interest rate to be the lesser of five percent or the rate of interest determined by the state department of public education, so that the interest rate shall comply with federal arbitrage requirements. A loan shall be repaid in annual installments as determined by the state board of public education. Loans shall be made by the state department of public education pursuant to this section only, with the prior approval of the state board of finance.

**History:** Laws 1989, ch. 134, § 4.

## ANNOTATIONS

**Emergency clauses.** - Laws 1989, ch. 134, § 6 makes the School District Loan Act effective immediately. Approved March 30, 1989.

### **22-18A-5. Temporary transfer of funds.**

If it is determined by the state department of public education and the department of finance and administration that there are insufficient ad valorem taxes or other public school district revenues to meet a payment of principal or interest due on public school district general obligation indebtedness or to meet any other obligation arising in connection with that indebtedness lawfully payable from ad valorem taxes, or that the receipt of ad valorem taxes or other revenues to be used to make any such payment will be delayed and not be available to make the payment when due, the state department of public education and the department of finance and administration may request the state board of finance to direct a temporary transfer of a sufficient amount of money

from the state-support reserve fund or the general fund operating reserve to the public school district general obligation bonds loan fund so that the payment becoming due may be made and a default avoided. In determining the order of transfer, money in the state-support reserve fund shall be transferred first, and if that amount is insufficient then the general fund operating reserve shall be used. If such a transfer is directed by the state board of finance, the state department of public education shall use the amount transferred to the state public school district general obligation bonds loan fund to make the payment.

**History:** Laws 1989, ch. 134, § 5.

### **ANNOTATIONS**

**Emergency clauses.** - Laws 1989, ch. 134, § 6 makes the School District Loan Act effective immediately. Approved March 30, 1989.

## **ARTICLE 19 SCHOOL REVENUE BONDS**

### **22-19-1. Short title.**

Sections 22-19-1 through 22-19-16 NMSA 1978 may be cited as the "School Revenue Bond Act".

**History:** 1953 Comp., § 77-16-1, enacted by Laws 1967, ch. 16, § 240.

### **ANNOTATIONS**

**Cross-references.** - As to public school finances generally, see 22-8-1 NMSA 1978 et seq.

As to general obligation bonds of school districts, see 22-18-1 NMSA 1978 et seq.

As to public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

As to public school capital improvements, see 22-25-1 NMSA 1978 et seq.

For constitutional provision relating to school district indebtedness, see N.M. Const., art. IX, § 11.

As to issuance and sale of bonds by school districts generally, see 6-15-3 to 6-15-10 NMSA 1978.

As to issuance of refunding bonds by school districts generally, see 6-15-11 to 6-15-22 NMSA 1978.

As to bond elections generally, see 6-15-23 to 6-15-28 NMSA 1978.

## **22-19-2. Definitions.**

As used in the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978]:

A. "income project" means purchasing, erecting, improving, repairing or furnishing a building, improvement or facility, including the land upon which it is situated, which will produce an income to the school district;

B. "net income from the income project" means all income derived from an income project, including the income pledged pursuant to the School Revenue Bond Act, less the operating costs of the income project; and

C. "operating costs" means expenses of operating, maintaining and keeping in repair an income project, including the cost of heating, electricity, insurance, service employees and equipment replacement.

**History:** 1953 Comp., § 77-16-2, enacted by Laws 1967, ch. 16, § 241.

## **22-19-3. Income projects.**

A local school board may borrow money to finance income projects of the school district pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978].

**History:** 1953 Comp., § 77-16-3, enacted by Laws 1967, ch. 16, § 242.

## **22-19-4. Bonds; mortgages.**

A. A local school board may issue bonds or other special obligations to finance the repayment of all money borrowed for an income project pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978].

B. A local school board may execute a mortgage, deed of trust or a security agreement upon the income project to secure payment of any bonds or other special obligations issued pursuant to the School Revenue Bond Act.

**History:** 1953 Comp., § 77-16-4, enacted by Laws 1967, ch. 16, § 243.

## **22-19-5. Determination by local school board.**

Prior to borrowing money and issuing evidences of indebtedness to finance an income project, a local school board shall make a determination that the income project is necessary and that sufficient income will be produced by the income project to repay all

money borrowed and to discharge any bonds or other special obligations issued for the repayment of the money borrowed.

**History:** 1953 Comp., § 77-16-5, enacted by Laws 1967, ch. 16, § 244.

### **22-19-6. Report to state board.**

Prior to borrowing any money to finance an income project, a local school board shall furnish to the state board the following information:

- A. a detailed description of the income project;
- B. an explanation of the necessity for the income project;
- C. an estimate of the total cost of the income project;
- D. an estimate of the amount of income anticipated from the income project;
- E. an estimate of the amount of income from existing buildings, improvements or facilities that will be pledged to pay for the income project;
- F. an estimate of the yearly operating cost of the income project; and
- G. an estimate of the anticipated yearly net income from the income project.

**History:** 1953 Comp., § 77-16-6, enacted by Laws 1967, ch. 16, § 245.

### **22-19-7. State board approval; determination by state board.**

A. A local school board shall obtain written approval of the state board before it borrows money, issues bonds or other special obligations, or executes mortgages, deeds of trust or security agreements for financing an income project pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978].

B. Prior to giving written approval to an income project, the state board shall determine that the income project is necessary and that sufficient income will be produced by the income project to repay all money borrowed and to discharge any bonds or other special obligations issued for the repayment of the money borrowed.

**History:** 1953 Comp., § 77-16-7, enacted by Laws 1967, ch. 16, § 246.

### **22-19-8. Records; restriction on use of income.**

A. A local school board shall retain complete and accurate records of:

- (1) the net income from the income project; and

(2) the operating costs of the income project.

B. All income from the income project shall be used solely for the following purposes:

(1) to pay the principal, interest and service charges on any bonds or other special obligations issued pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978]; and

(2) to pay the operating costs of the income project.

**History:** 1953 Comp., § 77-16-8, enacted by Laws 1967, ch. 16, § 247.

### **22-19-9. Bonds; pledge of income; satisfaction of indebtedness.**

A. Bonds or other special obligations issued pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978] shall irrevocably pledge, for the prompt payment of the principal, interest and service charges thereof, the net income from the income project for which the bonds or other special obligations were issued. The bonds or other special obligations shall be equally and ratably secured, without priority, by this pledge of the net income from the income project.

B. A local school board shall operate the income project so as to insure a sufficient income to promptly pay the principal, interest and service charges, as they become due, on the bonds or other special obligations issued, after the payment of operating costs of the income project. A local school board shall establish a reserve fund not exceeding ten thousand dollars (\$10,000) to be used for the repayment of any money borrowed.

C. Satisfaction of any indebtedness created by any bonds or other special obligations issued pursuant to the School Revenue Bond Act shall be limited solely to foreclosure of the income project upon which a mortgage, deed of trust or security agreement was executed, without the right to a deficiency judgment.

**History:** 1953 Comp., § 77-16-9, enacted by Laws 1967, ch. 16, § 248.

## **ANNOTATIONS**

**Cross-references.** - As to pledge of additional revenue, see 22-19-12 NMSA 1978.

### **22-19-10. Proceeds of bond sales; retirement fund.**

A. Proceeds from the sale of bonds or other special obligations issued by a local school board pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978] shall be deposited into a separate account to be used solely for the specific purposes for which the money was borrowed. All costs incident to issuing and selling bonds or other special obligations may be paid out of the proceeds of this account.

B. A local school board, at the time of issuing any bonds or other special obligations, shall establish a fund to be known as the "retirement fund." All net income from the income project and all proceeds remaining after completion of the income project shall be deposited into the retirement fund. All proceeds in the retirement fund shall be used solely for the purpose of repaying the principal, interest and service charges on any bonds or other special obligations issued for the income project.

**History:** 1953 Comp., § 77-16-10, enacted by Laws 1967, ch. 16, § 249.

### **22-19-11. Bonds; form; requirements.**

All bonds or other special obligations issued pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978] shall:

A. be fully negotiable within the provisions of the Uniform Commercial Code [Chapter 55 NMSA 1978];

B. have a duration of time not to exceed forty years from their date of issuance;

C. bear interest at a rate not to exceed a net of six percent a year, interest payable semiannually;

D. be sold at a price which does not result in an actual net interest cost to maturity, computed on the basis of standard tables of bond values, in excess of six percent a year;

E. have the principal thereof paid in yearly amounts beginning not later than two years from their date of issuance; and

F. be sold at public or private sale, with or without a discount as provided by Subsection D of this section.

**History:** 1953 Comp., § 77-16-11, enacted by Laws 1967, ch. 16, § 250.

### **22-19-12. Pledge of additional revenue.**

A local school board may pledge, as security for the payment of the principal and interest on any bonds or other special obligations issued pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978], a part or the whole amount of income derived from an existing building, improvement or other facility subject to the control of the local school board. A local school board may pledge this income whether or not the existing building, improvement or facility is to be improved, repaired or furnished by the proceeds of the bonds or other special obligations.

**History:** 1953 Comp., § 77-16-12, enacted by Laws 1967, ch. 16, § 251.

## **22-19-13. Refunding bonds.**

A. A local school board may issue refunding bonds for the purpose of refunding, for not less than the principal amount thereof, bonds issued pursuant to the provisions of the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978] or any act repealed thereby, or for the purpose of providing additional funds for any income project for which bonds have been authorized by a local school board, or for both purposes.

B. Except as otherwise provided in the School Revenue Bond Act, refunding bonds shall conform to the provisions of the School Revenue Bond Act which provide for the issuance of other revenue bonds by a local school board.

C. A refunding bond issued by a local school board may have the same security or source of payment as was pledged for the payment of the bond being refunded but no source of payment shall be pledged which is not authorized by the School Revenue Bond Act.

D. A refunding bond may be delivered in exchange for a bond authorized to be refunded, sold at a public or private sale for not less than the par value of the bond or sold in part and exchanged in part. If the refunding bond is sold, the proceeds shall be immediately applied to the retirement of the bond to be refunded, or the proceeds or the obligations in which the proceeds are permitted by law to be invested shall be placed in trust to be held and applied to payment of the bond to be refunded.

**History:** 1953 Comp., § 77-16-13, enacted by Laws 1967, ch. 16, § 252.

### **ANNOTATIONS**

**Cross-references.** - As to exchange of bonds, see 22-19-15 NMSA 1978.

## **22-19-14. Refunding bonds; issuance; sale; proceeds.**

A. No bond shall be refunded pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978] unless it matures or is callable for prior redemption under its terms within fifteen years from the date of issuance of the refunding bond, or unless the holder of the bond voluntarily surrenders it for exchange or payment.

B. Outstanding bonds of more than one issue may be refunded by refunding bonds of one or more issue. Refunding bonds and any other bonds authorized pursuant to the School Revenue Bond Act may be issued separately or in combinations of one or more series.

C. If any officer whose signature or facsimile signature appears on any bond or coupon authorized by the School Revenue Bond Act ceases to hold office before delivery of the bond, the signature or facsimile signature shall be valid for all purposes as if he had remained in office until delivery.



D. When a refunding bond is sold, the net proceeds may, in the discretion of the local school board, be invested in obligations of the federal government or any agency of the federal government or in obligations fully guaranteed by the federal government, but the obligations purchased must have a maturity and bear a rate of interest payable at times to ensure the existence of sufficient money to pay the bond to be refunded when it becomes due or redeemable pursuant to a call for redemption, together with interest and redemption premiums, if any.

E. All obligations purchased with the net proceeds from refunding bonds shall be deposited in trust with a bank doing business in the state and which is a member of the federal deposit insurance corporation. The obligations shall be held, liquidated and the proceeds of the liquidation paid out for payment of the principal, interest and redemption premium of the bonds to be refunded as the bonds to be refunded become due, or where the bonds are subject to redemption under a call for redemption previously made, or where there is a voluntary surrender with the approval of the local school board.

F. The determination of the local school board issuing refunding bonds that the issuance has been in compliance with the School Revenue Bond Act is conclusively presumed correct in the absence of fraud or arbitrary and gross abuse of discretion.

G. As used in this section, "net proceeds" means the gross proceeds of the refunding bonds after deducting all accrued interest and expenses incurred in connection with the authorization and issuance of the refunding bonds and the refunding of outstanding bonds, including fiscal agent fees, commissions and all discounts incurred in the resale of the refunding bonds to the original purchaser.

**History:** 1953 Comp., § 77-16-14, enacted by Laws 1967, ch. 16, § 253.

## **22-19-15. Exchange of bonds.**

In authorizing any bonds pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978], a local school board, in its authorization resolution, may provide for exchange of any bonds issued for refunding bonds of larger or smaller denominations. Refunding bonds in the changed denominations shall be exchanged for the original bonds in the same aggregate principal amounts so that there is no overlapping of interest paid. Refunding bonds in changed denominations shall bear interest at the same rates, mature on the same dates, be in the same form and be identical with the original bonds surrendered for exchange in all respects except as to denominations, serial numbers and a recital as to the exchange. Where any exchange of bonds is made pursuant to the School Revenue Bond Act, the bonds surrendered by the holders at the time of exchange shall be canceled. The exchange shall be made only at the request of the holder of the bond to be surrendered, and the local school board may require the holder of the bond to pay all expenses incurred in connection with the exchange, including those of authorization and issuance of the refunding bonds.

**History:** 1953 Comp., § 77-16-15, enacted by Laws 1967, ch. 16, § 254.

## **22-19-16. Tax exemption; no charge against state.**

A. Bonds or other special obligations issued pursuant to the School Revenue Bond Act [22-19-1 to 22-19-16 NMSA 1978] are exempt from taxation by the state or any of its political subdivisions.

B. No obligation created pursuant to the School Revenue Bond Act shall be a charge against or a debt of the state or any of its political subdivisions.

**History:** 1953 Comp., § 77-16-16, enacted by Laws 1967, ch. 16, § 255.

## **ARTICLE 20 SCHOOL CONSTRUCTION**

### **22-20-1. School construction; approval of the state superintendent.**

A. Each local school board shall secure the approval of the state superintendent or his designee prior to the construction or letting of contracts for construction of any school building or related school structure or before reopening an existing structure which was formerly used as a school building but which has not been used for that purpose during the previous year. It shall not be required to obtain approval from the state superintendent for enlarging an existing attendance center which is now in use unless the enlargement is for the purpose of changing the character of the attendance center from an elementary school to a secondary school or adding an elementary school to a secondary school or a secondary school to an elementary school. A written application shall be submitted to the state superintendent requesting approval of the construction. The state superintendent shall prescribe the form of the application which shall include the following:

- (1) a statement of need;
- (2) the anticipated number of students affected by the construction;
- (3) the estimated cost;
- (4) a description of the proposed construction or structure to be built; and
- (5) a map of the area showing existing school attendance centers within a five-mile radius and any obstructions to attending the attendance centers, such as but not limited to railroad tracks, rivers and limited-access highways.

B. The state superintendent or his designee shall give his approval to an application if he reasonably determines that:

- (1) the construction will not cause an unnecessary proliferation of school construction;

- (2) the construction is needed in the school district;
- (3) the construction is feasible;
- (4) the cost of the construction is reasonable; and
- (5) the school district is financially able to pay for the construction.

C. Within thirty days after the receipt of an application filed pursuant to this section, the state superintendent or his designee shall in writing notify the local school board making the application of his approval or disapproval of the application.

**History:** 1953 Comp., § 77-18-1, enacted by Laws 1967, ch. 16, § 270; 1988, ch. 64, § 41.

### **ANNOTATIONS**

**Cross-references.** - As to public works generally, see 13-4-1 NMSA 1978 et seq.

**The 1988 amendment,** effective May 18, 1988, substituted "the state superintendent" for "chief" in the catchline and in the second and last sentences in Subsection A; substituted "state superintendent or his designee" for "chief" in the first sentence in Subsection A and in Subsections B and C; added the designations (1) to (5) in Subsection B; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Title to buildings when school lands revert for nonuse for school purposes, 28 A.L.R.2d 564.

Constitutionality, construction and application of statutes declaring that school buildings are civic centers or otherwise providing for use of such buildings for other than school purposes, 79 A.L.R.2d 1148, 94 A.L.R.2d 1274.

### **22-20-2. School building construction; distance from highways.**

A. No local school board shall construct, or cause the construction of, any public school building within four hundred feet of any main artery of travel without the prior written approval of the state board.

B. The district court may enforce the provisions of this section by any appropriate civil remedy in an action brought by an interested party.

C. As used in this section, "main artery of travel" means any designated state or federal-aid highway used primarily to accommodate transient motor traffic through a municipality and any type of public highway used primarily to accommodate transient motor traffic through a rural community or area.

**History:** 1953 Comp., § 77-18-2, enacted by Laws 1967, ch. 16, § 271.

### **22-20-3. School construction; approval of state board.**

A. Each local school board shall secure approval of the state board for plans and specifications for the expending of twenty-five thousand dollars (\$25,000) or more on erecting, remodeling or making additions to any public school building or structure when state capital outlay funds have been awarded to the local school board to underwrite any of the project costs. When the project costs have been derived from locally authorized and issued general obligation bonds, the authority of the state board shall be that of review and recommendation concerning the plans and specifications. The state board shall only approve or review and recommend factors relating to educational aspects of the construction.

B. Any contract to expend money pursuant to plans and specifications not approved as provided by this section is void and constitutes no charge in law or equity against the local school board or the school district.

**History:** 1953 Comp., § 77-18-3, enacted by Laws 1967, ch. 16, § 272; 1974, ch. 16, § 2; 1975, ch. 166, § 1.

## **ARTICLE 21**

### **PROHIBITED SALES BY PERSONNEL**

#### **22-21-1. Prohibiting sales to the department of education, to school districts and to school personnel; exception; penalty.**

A. A member of the state board, a member of a local school board, the state superintendent, an employee of the department of education, a certified school instructor or a certified school administrator shall not, directly or indirectly, sell or be a party to any transaction to sell any instructional material, furniture, equipment, insurance, school supplies or work under contract to the department of education, school district or public school with which he is associated or employed. No such person shall receive any commission or profit from the sale or any transaction to sell any instructional material, furniture, equipment, insurance, school supplies or work under contract to the department of education, school district or public school with which he is associated or employed.

B. The provisions of this section shall not apply to a person making a sale in the regular course of his business who complies with the provisions of Sections 13-1-1 through 13-1-26 NMSA 1978. The provisions of this section shall not apply in cases in which certified school instructors or certified school administrators contract to perform special services with the department of education, school district or public school with which they are associated or employed during time periods wherein service is not required under a contract for instruction or administration.

C. No member of the state board, member of a local school board, state superintendent, employee of the department of education, certified school instructor or certified school administrator shall solicit or sell or be a party to a transaction to solicit or sell insurance or investment securities to any employee of the department of education or any employee of the school district whom he supervises. Nothing in this subsection shall prohibit a financial institution from requiring the purchase of insurance in connection with a loan or offering and selling such insurance in accordance with the provisions of the Insurance Code [Chapter 59A NMSA 1978].

D. No state employee who supervises or exercises control over local school districts, which supervision or control includes but is not limited to school programs, capital outlay and operating budgets, shall enter into any business relationship with an employee of a local school district over which he exercises supervision or control.

E. Any person violating any provision of this section is guilty of a fourth degree felony under the Criminal Code. The state board of education may suspend or revoke the certification of a certified school administrator or a certified school instructor for violation of this section.

**History:** 1953 Comp., § 77-19-1, enacted by Laws 1967, ch. 16, § 282; 1971, ch. 74, § 1; 1985, ch. 141, § 1.

## ANNOTATIONS

**Cross-references.** - As to Conflict of Interest Act, see 10-16-1 NMSA 1978 et seq.

As to sales to and contracts with schools or educational institutions by boards, officers and employees, see 21-1-35 NMSA 1978.

As to sentencing for felonies, see 31-18-15 NMSA 1978.

**Compiler's note.** - Sections 13-1-1 through 13-1-26 NMSA 1978, referred to in Subsection B, were repealed by Laws 1984, ch. 65, § 175. For present comparable provisions, see 13-1-28 through 13-1-199 NMSA 1978, the Procurement Code.

**Criminal Code.** - See 30-1-1 NMSA 1978 and notes thereto.

**Purpose of this section and 21-1-35 NMSA 1978,** is to prevent a conflict of interest between school board members and the districts they are connected with. State ex rel. Martinez v. Padilla, 94 N.M. 431, 612 P.2d 223 (1980).

**Applicability of Conflict of Interest Act to school district employees.** - The Conflict of Interest Act does not apply to employees of school districts. 1969 Op. Att'y Gen. No. 69-19.

**Transfer by board of contract to wife of board member.** - No violation of this section would result where a school board transfers a school bus transportation contract to the wife of a member of the local board making such transfer, as the board member is neither directly nor indirectly working under contract to his school district and the contract is truly between the school board and the wife only, with the husband having no personal interest, pecuniary or otherwise, in the contract. 1971 Op. Att'y Gen. No. 71-36.

**Seeking of assistance from bidders in preparation of specifications.** - The conflict of interest provision of the public school code does not prohibit school districts from seeking the assistance of bidders in the preparation of specifications. 1969 Op. Att'y Gen. No. 69-19.

**Practice restricting district bus drivers in location of gas purchase prohibited.** - The practice of requiring certain district bus drivers to buy their gas at a school board member's gas station is exactly the type of improper conflict this section was designed to prohibit, and such activity does not fall within the "regular course of business" exception of Subsection B. State ex rel. Martinez v. Padilla, 94 N.M. 431, 612 P.2d 223 (1980).

## **ARTICLE 22**

### **VARIABLE SCHOOL CALENDARS**

#### **22-22-1. Short title.**

This act [22-22-1 to 22-22-6 NMSA 1978] may be cited as the "Variable School Calendar Act".

**History:** 1953 Comp., § 77-22-1, enacted by Laws 1972, ch. 16, § 1.

#### **22-22-2. Definition.**

As used in the Variable School Calendar Act [22-22-1 to 22-22-6 NMSA 1978], "variable school calendar" means a calendar for school or school district operations extending over a ten, eleven or twelve-month period or portions thereof in excess of nine months, which permits pupil attendance on a staggered schedule.

**History:** 1953 Comp., § 77-22-2, enacted by Laws 1972, ch. 16, § 2.

#### **22-22-3. Purpose of act.**

The purpose of the Variable School Calendar Act [22-22-1 to 22-22-6 NMSA 1978] is to create an opportunity for public schools or school districts to operate beyond a nine-month period in any one calendar year in order to achieve optimum and maximum use of school facilities and personnel.

**History:** 1953 Comp., § 77-22-3, enacted by Laws 1972, ch. 16, § 3.

#### **22-22-4. Variable school calendar; request.**

The local school board of any school district may adopt by resolution a request to the state department of education for approval to operate under a variable school calendar. The state department of education will develop criteria for the establishment of a variable school calendar in a school district.

**History:** 1953 Comp., § 77-22-4, enacted by Laws 1972, ch. 16, § 4.

#### **22-22-5. Variable school calendar; action by department and board.**

A. The department shall make rules and regulations pursuant to the Variable School Calendar Act [22-22-1 to 22-22-6 NMSA 1978] necessary to establish procedures for making application, requiring reports and maintaining supervision of operations of a district under a variable school calendar. In addition, the state department of education may make such rules and regulations necessary to implement the provisions of the Variable School Calendar Act.

B. The state board of education may suspend or modify existing rules and regulations pertaining to school district operations upon recommendation of the state superintendent, when such rules and regulations prevent or impede the implementation of the Variable School Calendar Act.

**History:** 1953 Comp., § 77-22-5, enacted by Laws 1972, ch. 16, § 5.

#### **22-22-6. Variable school calendar; effect of approval of request.**

Upon approval of the state department of education of the request of a local school board for operation under a variable school calendar, such calendar for that school or school district shall be in lieu of any other school calendar provided by law and all requirements for reporting or operating under existing school calendars shall be suspended for such school or school district upon the initiation of operations under a variable school calendar and the rules and regulations made pursuant thereto. Such school or school district shall continue to operate under the approved variable school calendar until such time the local school board requests the state department of education by resolution for approval of the discontinuance of the variable school calendar and such request is approved by the department.

**History:** 1953 Comp., § 77-22-6, enacted by Laws 1972, ch. 16, § 6.

## **ARTICLE 23**

## **BILINGUAL MULTICULTURAL EDUCATION**

## **22-23-1. Short title.**

This act [22-23-1 to 22-23-6 NMSA 1978] may be cited as the "Bilingual Multicultural Education Act".

**History:** 1953 Comp., § 77-23-1, enacted by Laws 1973, ch. 285, § 1.

### **ANNOTATIONS**

**Cross-references.** - As to courses of instruction generally, see 22-13-1 NMSA 1978 et seq.

For constitutional provision requiring legislature to provide for training of teachers in English and Spanish languages and to provide means and methods to facilitate teaching of English language to Spanish-speaking students, see N.M. Const., art. XII, § 8.

For constitutional provision relating to educational rights of children of Spanish descent, see N.M. Const., art. XII, § 10.

**Law reviews.** - For comment, "Education and the Spanish-Speaking - An Attorney General's Opinion on Article XII, Section 8 of the New Mexico Constitution," see 3 N.M.L. Rev. 364 (1973).

For note, "Bilingual Education: Serna v. Portales Municipal Schools," see 5 N.M.L. Rev. 321 (1975).

## **22-23-2. Definitions.**

As used in the Bilingual Multicultural Education Act [22-23-1 to 22-23-6 NMSA 1978]:

A. "program" means a program of education by which students learn through two languages to understand and participate in the cultures of their environment;

B. "chief" means chief of public school finance [director of the office of education];

C. "culturally and linguistically different" are those persons who are of a different cultural background than the majority culture of the state and whose native tongue is of a language other than the language of the majority culture within the state;

D. "department" means the state department of education;

E. "district" means a local school district; and

F. "school board" means a local school board.



**History:** 1953 Comp., § 77-23-2, enacted by Laws 1973, ch. 285, § 2.

## **ANNOTATIONS**

**Chief of public school finance.** - The public school finance division of the department of finance and administration was abolished by Laws 1977, ch. 246, § 69. Laws 1977, ch. 246, § 3, established the public school finance division of the educational finance and cultural affairs department. Laws 1977, ch. 246, § 63, compiled as 22-8-3 NMSA 1978, designated the administrative and executive head of the public school finance division of the educational finance and cultural affairs department as the director of public school finance. Laws 1980, ch. 151, § 58, abolishes the educational finance and cultural affairs department, § 4 of that act creates the department of finance and administration and § 47 of that act creates the public school finance division of the department of finance and administration. Laws 1983, ch. 301, § 83, abolishes the public school finance division of the department of finance and administration and § 69 of that act creates the office of education of the department of finance and administration and designates the administrative and executive head of the office of education as the director of the office of education. Laws 1983, ch. 301, § 83 also provides that all references to the director or chief of public school finance shall be construed to be references to the director of the office of education.

### **22-23-3. Purpose.**

A. The purpose of the Bilingual Multicultural Education Act [22-23-1 to 22-23-6 NMSA 1978] is to insure equal education opportunities for students in New Mexico.

B. Cognitive and affective development of the students in New Mexico is encouraged by:

(1) utilizing the cultural and linguistic backgrounds of the students in the curriculum;

(2) providing students with opportunities to expand their conceptual and linguistic abilities and potentials in a successful and positive manner; and

(3) teaching students to appreciate the value and beauty of different languages and cultures.

**History:** 1953 Comp., § 77-23-3, enacted by Laws 1973, ch. 285, § 3.

### **22-23-4. State board and department; powers; duties.**

A. The state board shall issue guidelines for the development and implementation of programs.

B. The department shall administer and enforce the provisions of the Bilingual Multicultural Education Act [22-23-1 to 22-23-6 NMSA 1978].

C. The department shall assist school boards in developing and evaluating programs.

D. In the development, implementation and administration of this program, the state board and the department shall give preference to New Mexico residents when hiring personnel.

**History:** 1953 Comp., § 77-23-4, enacted by Laws 1973, ch. 285, § 4.

### **22-23-5. Program plan and evaluation.**

A. The school board may prepare and submit to the department a program plan in accordance with guidelines issued by the state board.

B. At regular intervals, the school board, the department and a parent advisory committee from the district shall review the goals and priorities of the plan and make appropriate recommendations to the state board.

C. Programs shall be located in the regular public schools of the district. Involvement of students in any programs shall not have the effect of segregating students by ethnic group, color or national origin.

**History:** 1953 Comp., § 77-23-5, enacted by Laws 1973, ch. 285, § 5; 1988, ch. 64, § 42.

### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, deleted "the state superintendent of public instruction or his representative and the chief" following "to the department" in Subsection A.

### **22-23-6. Bilingual instruction programs; eligibility for state financial support.**

A. To be eligible for state financial support, each program shall:

(1) provide for the educational needs of linguistically and culturally different students, including native American children and other students who may wish to participate, in grades kindergarten through twelve, with priority to be given to programs in grades kindergarten through three, in any public school or any combination of public schools in a district;

(2) fund programs for culturally and linguistically different students in the state in grades kindergarten through three for which there is an identifiable need to improve the language capabilities of these students before funding programs at higher grade levels;

(3) use two languages as mediums of instruction for any part or all of the curriculum of the grade levels within the program;

(4) use teachers who have specialized in elementary or secondary education and who have received special training in bilingual education conducted through the use of two languages; and

(5) emphasize the history and cultures associated with the students' mother tongue.

B. Each program must meet each requirement of Subsection A of this section and be approved by the department, the state superintendent or his representative to be eligible for state financial support.

C. The provisions in Paragraph (1) of Subsection A of this section relating to grades seven through twelve shall be phased in as follows:

(1) grades seven and eight in the 1988-89 school year;

(2) grades nine and ten in the 1989-90 school year; and

(3) grades eleven and twelve in the 1990-91 school year.

**History:** 1953 Comp., § 77-23-6, enacted by Laws 1973, ch. 285, § 6; 1987, ch. 211, § 1.

## ANNOTATIONS

**School district would not be justified in failing to take affirmative steps to rectify language deficiencies because the state did not provide additional funding** for bilingual multicultural programs at each grade level. Neither *Lau v. Nichols*, 414 U.S. 563, 94 S. Ct. 786, 39 L. Ed. 2d 1 (1974); nor *Serna v. Portales Mun. Schools*, 499 F.2d 1147 (10th Cir. 1974) even suggests that the state is responsible for providing any such additional funds. 1976 Op. Att'y Gen. No. 76-3.

**Law reviews.** - For note, "Bilingual Education: *Serna v. Portales Municipal Schools*," see 5 N.M.L. Rev. 321 (1975).

## ARTICLE 24 PUBLIC SCHOOL CAPITAL OUTLAY

### 22-24-1. Short title.

Sections 22-24-1 through 22-24-6 NMSA 1978 may be cited as the "Public School Capital Outlay Act".

**History:** 1953 Comp., § 77-24-9, enacted by Laws 1975, ch. 235, § 1; 1978, ch. 152, § 1.

## **ANNOTATIONS**

**Cross-references.** - As to public school finances generally, see 22-8-1 NMSA 1978 et seq.

As to public school capital improvements, see 22-25-1 NMSA 1978 et seq.

### **22-24-2. Purpose of act.**

The purpose of the Public School Capital Outlay Act [22-24-1 to 22-24-6 NMSA 1978] is to meet critical school district capital outlay needs which cannot be met by the school district after it has exhausted all available sources.

**History:** 1953 Comp., § 77-24-10, enacted by Laws 1975, ch. 235, § 2; 1978, ch. 152, § 2.

### **22-24-3. Definitions.**

As used in the Public School Capital Outlay Act [22-24-1 to 22-24-6 NMSA 1978]:

- A. "council" means the public school capital outlay council; and
- B. "fund" means the public school capital outlay fund.

**History:** 1953 Comp., § 77-24-11, enacted by Laws 1975, ch. 235, § 3; 1978, ch. 152, § 3.

### **22-24-4. Fund created; use.**

A. There is created the "public school capital outlay fund." Balances remaining in the fund at the end of each fiscal year shall not revert.

B. Money in the fund may be used only for capital expenditures deemed by the council necessary for an adequate educational program, and the capital expenditures are limited to the purchase, or construction of temporary or permanent classrooms.

C. The council may authorize the purchase by the property control division of the general services department of property to be loaned to school districts to meet a temporary requirement. Payment for these purchases shall be made from the fund. Title and custody to the property shall rest in the property control division. The council shall authorize the lending of the property to school districts upon request and upon finding that sufficient need exists. Annual application for use or return of state-owned portable classroom buildings shall be submitted by public school districts to the council.

Expenses of maintenance of the property while in the custody of the property control division shall be paid from the fund; expenses of maintenance and insurance of the property while in the custody of a school district shall be the responsibility of the school district. The council may authorize the permanent disposition of the property by the property control division with prior approval of the state board of finance.

D. Applications for assistance from the fund shall be made by local school districts to the council in accordance with requirements of the council.

E. The council shall review all requests for assistance from the fund and shall allocate funds only for those capital outlay projects that cannot be financed by the school district from other sources and that meet the criteria of the Public School Capital Outlay Act [22-24-1 to 22-24-6 NMSA 1978].

**History:** 1953 Comp., § 77-24-12, enacted by Laws 1975, ch. 235, § 4; 1978, ch. 152, § 4; 1983, ch. 301, § 70.

## ANNOTATIONS

**Disposal of portable classrooms not limited to sale.** - The discretion of the council to authorize the disposal of portable classrooms purchased by the fund is not limited to sale for consideration or exchange. 1980 Op. Att'y Gen. No. 80-5.

**When gratis transfer of classrooms proper.** - A gratis transfer by the public school capital outlay council of portable classrooms to local school boards does not violate N.M. Const., art. IX, § 14, since the prohibition there does not apply as between the state and one of its subordinate agencies. 1980 Op. Att'y Gen. No. 80-5.

**Veto power over gratis transfer.** - Section 13-6-2(C) NMSA 1978 gives the secretary of finance and administration or the state board of finance veto power over any gratis transfer of school property. 1980 Op. Att'y Gen. No. 80-5.

### **22-24-5. Fund; distribution.**

A. The council shall approve an application for grant assistance from the fund when the council determines that:

(1) a critical need exists requiring action;

(2) the residents of the school district have provided all available resources to the district to meet its capital outlay requirement;

(3) the school district has used its resources in a prudent manner;

(4) the district is in a county or counties which have participated in a reappraisal program and the reappraised values are on the tax rolls or will be used for the tax year

1979 as certified by the property tax division of the taxation and revenue department;  
and

(5) the school district has provided insurance for buildings of the school district in accordance with the provisions of Section 13-5-3 NMSA 1978.

B. The council shall consider all applications for assistance from the fund and, after a public hearing, shall either approve or deny the application. Applications for grant assistance shall only be accepted by the council after a district has complied with the provisions of this section. The council shall list all applications in order of priority, and all allocations shall be made on a priority basis; provided however, except in the case of an emergency, that the order of priority shall first reflect those projects which have been previously funded but are not as yet completed excluding expansion of those projects and contingent upon maintenance of the required local support.

C. Money in the fund shall be disbursed by warrant of the department of finance and administration on vouchers signed by the secretary of finance and administration following certification by the council that the application has been approved.

**History:** 1953 Comp., § 77-24-13, enacted by Laws 1975, ch. 235, § 5; 1977, ch. 247, § 205; 1978, ch. 152, § 5; 1987, ch. 326, § 1.

## **22-24-6. Council created; organization; duties.**

A. There is created the "public school capital outlay council", consisting of the:

- (1) secretary of finance and administration;
- (2) state superintendent of public instruction;
- (3) the governor or his designee;
- (4) president of the New Mexico school boards association or his designee;
- (5) the director of the construction industries division of the regulation and licensing department;
- (6) the president of the state board of education or his designee; and
- (7) the director of the legislative education study committee or his designee.

B. The council shall investigate all applications for assistance from the fund and shall certify the approved applications to the secretary of finance and administration for distribution of funds.

C. The council shall elect a chairman from among the members. The council shall meet at the call of the chairman.

D. The department of education shall account for all distributions and shall make annual reports to the legislative education study committee and to the legislative finance committee.

**History:** 1953 Comp., § 77-24-14, enacted by Laws 1975, ch. 235, § 6; 1977, ch. 247, § 206; 1978, ch. 152, § 6; 1980, ch. 151, § 51; 1988, ch. 64, § 43.

### **ANNOTATIONS**

**The 1988 amendment**, effective May 18, 1988, substituted "the governor or his designee" for "director of the public school finance division" in Subsection A(3); made a minor stylistic change in Subsection A(4); substituted "regulation and licensing department" for "commerce and industry department" in Subsection A(5); added Subsections A(6) and (7); inserted "shall" in Subsection B; and substituted "department of education" for "council shall employ a staff director who" in Subsection D.

## **ARTICLE 25 PUBLIC SCHOOL CAPITAL IMPROVEMENTS**

### **22-25-1. Short title.**

This act [22-25-1 to 22-25-10 NMSA 1978] may be cited as the "Public School Capital Improvements Act".

**History:** 1953 Comp., § 77-25-1, enacted by Laws 1975 (S.S.), ch. 5, § 1.

### **ANNOTATIONS**

**Cross-references.** - As to public school finances generally, see 22-8-1 NMSA 1978 et seq.

As to public school emergency capital outlays, see 22-24-1 NMSA 1978 et seq.

**Revenues not to be used for teacher housing.** - Revenues generated by school district general obligation bonds or pursuant to the Public School Capital Improvements Act may not be spent to construct teacher housing. 1981 Op. Att'y Gen. No. 81-1.

### **22-25-2. Definitions.**

As used in the Public School Capital Improvements Act [22-25-1 to 22-25-10 NMSA 1978]:

A. "program unit" means the product of the program element multiplied by the applicable cost differential factor, as defined in Section 22-8-2 NMSA 1978; and

B. "capital improvements" means expenditures, exclusive of any debt service expenses, for:

(1) erecting, remodeling, making additions to, providing equipment for or furnishing public school buildings;

(2) purchasing or improving public school grounds;

(3) maintenance of public school buildings or public school grounds, exclusive of salary expenses of school district employees; and

(4) purchasing activity vehicles for transporting students to extracurricular school activities.

**History:** 1953 Comp., § 77-25-2, enacted by Laws 1975 (S.S.), ch. 5, § 2; 1981, ch. 314, § 1; 1989, ch. 159, § 1.

#### **ANNOTATIONS**

**The 1989 amendment**, effective June 16, 1989, added Subsection B(4).

#### **22-25-3. Authorization for local school board to submit question of capital improvements tax imposition.**

Any local school board may adopt a resolution to submit to the qualified electors of the school district the question of whether a property tax should be imposed upon the net taxable value of property allocated to the school district under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] at a rate not to exceed that specified in the resolution for the purpose of capital improvements in the school district. The resolution shall:

A. identify the capital improvements for which the revenue proposed to be produced will be used;

B. specify the rate of the proposed tax, which shall not exceed two dollars (\$2.00) on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code;

C. specify the date an election will be held to submit the question of imposition of the tax to the qualified electors of the district; and

D. limit the imposition of the proposed tax to no more than three property tax years.



**History:** 1953 Comp., § 77-25-3, enacted by Laws 1975 (S.S.), ch. 5, § 3; 1986, ch. 32, § 21.

#### **22-25-4. Authorizing resolution; time limitation.**

The resolution authorized under Section 3 of the Public School Capital Improvements Act [22-25-3 NMSA 1978] shall be adopted no later than May 15 in the year in which the tax is proposed to be imposed.

**History:** 1953 Comp., § 77-25-4, enacted by Laws 1975 (S.S.), ch. 5, § 4.

#### **22-25-5. Conduct of election; notice; ballot.**

A. An election on the question of imposing a tax under the Public School Capital Improvements Act [22-25-1 to 22-25-10 NMSA 1978] may be held in conjunction with a regular school district election or may be conducted as or held in conjunction with a special school district election, but the election shall be held prior to July 1 of the property tax year in which the tax is proposed to be imposed. Conduct of the election shall be as prescribed in the School Election Law for regular and special school district elections.

B. The resolution required to be published as notice of the election under Section 1-22-4 or 1-22-5 NMSA 1978 shall include as the question to be submitted to the voters whether a property tax at a rate not to exceed the rate specified in the authorizing resolution should be imposed for the specified number of property tax years not exceeding three years upon the net taxable value of all property allocated to the school district for the capital improvements specified in the authorizing resolution.

C. The ballot shall include the information specified in Subsection B of this section and shall present the voter the choice of voting "for the public school capital improvements tax" or "against the public school capital improvements tax".

**History:** 1953 Comp., § 77-25-5, enacted by Laws 1975 (S.S.), ch. 5, § 5; 1986, ch. 32, § 22.

#### **22-25-6. Election results; certification.**

The certification of the results of an election held on the question of imposition of a public school capital improvements tax shall be made in accordance with Section 22-6-16 NMSA 1978 and a copy of the certificate of results shall be mailed immediately to the director.

**History:** 1953 Comp., § 77-25-6, enacted by Laws 1975 (S.S.), ch. 5, § 6; 1977, ch. 246, § 66.

### **ANNOTATIONS**

**Compiler's note.** - Section 22-6-16 NMSA 1978, referred to in this section, was repealed by Laws 1985, ch. 168, § 22.

### **22-25-7. Imposition of tax; limitation on expenditures.**

If as a result of an election held in accordance with the Public School Capital Improvements Act [22-25-1 to 22-25-10 NMSA 1978] a majority of the qualified electors voting on the question vote in favor of the imposition of the tax, the tax rate shall be certified, unless the local school board requests by resolution that a rate be discontinued, by the department of finance and administration at the rate specified in the resolution authorized under Section 22-25-3 NMSA 1978 or at any lower rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the rate specified in the resolution and be imposed at the rate certified in accordance with the provisions of the Property Tax Code. The revenue produced by the tax and any state distribution resulting to the district under the Public School Capital Improvements Act shall be expended only for the capital improvements specified in the authorizing resolution.

**History:** 1953 Comp., § 77-25-7, enacted by Laws 1975 (S.S.), ch. 5, § 7; 1986, ch. 32, § 23.

### **ANNOTATIONS**

**The "tax rate imposed in the district" under the Public School Capital Improvements Act** is that rate certified in accordance with this section which incorporates § 7-37-7.1 NMSA 1978. This certified rate must be that which the voters approve unless the operation of the rate limitation provisions of § 7-37-7.1 NMSA 1978 requires a lower rate, in which case the lower rate must be certified. 1987 Op. Att'y Gen. No. 87-52.

### **22-25-8. Tax to be imposed for a maximum of three years.**

A tax imposed in a school district as a result of an election under the Public School Capital Improvements Act [22-25-1 to 22-25-10 NMSA 1978] shall be imposed for one, two or three years commencing with the property tax year in which the election was held. The local school board may discontinue, by resolution, the Public School Capital Improvements Act tax levy at the end of the first or second year of the levy. The local school board shall direct that the Public School Capital Improvements Act tax levy be decreased by the amount required for any year in which the decrease is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

**History:** 1953 Comp., § 77-25-8, enacted by Laws 1975 (S.S.), ch. 5, § 8; 1976 (S.S.), ch. 31, § 1; 1986, ch. 32, § 24.

## **22-25-9. State distribution to district imposing tax under certain circumstances.**

The director shall distribute to any school district that has imposed a tax under the Public School Capital Improvements Act [22-25-1 to 22-25-10 NMSA 1978] an amount from the public school capital improvements fund that is equal to the amount by which the revenue estimated to be received from the imposed tax, at the rate certified by the department of finance and administration in accordance with Section 22-25-7 NMSA 1978, assuming a one hundred percent collection rate, is less than an amount calculated by multiplying the district's first forty-days' total program units times thirty-five dollars (\$35.00) and further multiplying the product obtained by the tax rate approved by the qualified electors in the most recent election on the question of imposing a tax under the Public School Capital Improvements Act. The distribution shall be made each year that the tax is imposed in accordance with Section 22-25-7 NMSA 1978; provided that no state distribution from the public school capital improvements fund may be used for capital improvements to any administration building of a school district. In the event that sufficient funds are not available in the public school capital improvements fund to make the state distribution provided for in this section, the dollar per program unit figure shall be reduced as necessary.

**History:** 1953 Comp., § 77-25-9, enacted by Laws 1975 (S.S.), ch. 5, § 9; 1976 (S.S.), ch. 31, § 2; 1977, ch. 246, § 67; 1981, ch. 314, § 2; 1986, ch. 32, § 25; 1988, ch. 64, § 44; 1988, ch. 66, § 2.

### **ANNOTATIONS**

**The 1988 amendments.** - Laws 1988, ch. 64, § 44, effective May 18, 1988, substituting "state superintendent" for "director" in the first sentence and deleting "by December 1 of" preceding "each year" in the next-to-last sentence, was approved on March 8, 1988. However, Laws 1988, ch. 66, § 2, effective March 8, 1988, giving effect to the second change but not the first, and amending this section further by substituting "approved by the qualified electors in the most recent election on the question of imposing a tax" for "imposed in the district" near the end of the first sentence, deleting "by December 1" preceding "of each year" in the second sentence and inserting the proviso at the end of the second sentence was approved later on March 8, 1988. The section is set out as amended by Laws 1988, ch. 66, § 2. See 12-1-8 NMSA 1978.

**The "tax rate imposed in the district" under the Public School Capital Improvements Act** is that rate certified in accordance with § 22-25-7 which incorporates § 7-37-7.1 NMSA 1978. This certified rate must be that which the voters approve unless the operation of the rate limitation provisions of § 7-37-7.1 NMSA 1978 requires a lower rate, in which case the lower rate must be certified. 1987 Op. Att'y Gen. No. 87-52.

**Administrative charge not to be used to reduce revenue estimate.** - The school district, not the state's public school capital improvements fund, must absorb the two

percent administrative charge authorized by § 7-38-38.1 NMSA 1978, and such fee may not be used to reduce the revenue estimate that his section requires. 1987 Op. Att'y Gen. No. 87-52 (rendered prior to 1988 amendment).

### **22-25-10. Public school capital improvements fund created.**

There is created a "public school capital improvements fund." Balances in the fund remaining at the end of a fiscal year shall not revert.

**History:** 1953 Comp., § 77-25-10, enacted by Laws 1975 (S.S.), ch. 5, § 10; 1976 (S.S.), ch. 31, § 3.

## **ARTICLE 26 PUBLIC SCHOOL BUILDINGS**

### **22-26-1. Short title.**

This act [22-26-1 to 22-26-8 NMSA 1978] may be cited as the "Public School Buildings Act".

**History:** Laws 1983, ch. 163, § 1.

### **22-26-2. Definitions.**

As used in the Public School Buildings Act [22-26-1 to 22-26-8 NMSA 1978], "capital improvements" means expenditures, exclusive of any debt service expenses, for:

- A. erecting, remodeling, making additions to, providing equipment for or furnishing public school buildings; and
- B. purchasing or improving public school grounds.

**History:** Laws 1983, ch. 163, § 2.

### **22-26-3. Authorization for local school board to submit question of capital improvements tax imposition.**

Any local school board may adopt a resolution to submit to the qualified electors of the school district the question of whether a property tax at a rate not to exceed the rate specified in the resolution should be imposed upon the net taxable value of property allocated to the school district under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] for the purpose of capital improvements in the school district. The resolution shall:

A. specify the rate of the proposed tax, which shall not exceed ten dollars (\$10.00) on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code;

B. specify the date an election will be held to submit the question of imposition of the tax to the qualified electors of the district; and

C. limit the imposition of the proposed tax to no more than five property tax years.

**History:** Laws 1983, ch. 163, § 3; 1986, ch. 32, § 26.

#### **22-26-4. Authorizing resolution; time limitation.**

The resolution authorized under Section 3 [22-26-3 NMSA 1978] of the Public School Buildings Act shall be adopted no later than May 15 in the year in which the tax is proposed to be imposed.

**History:** Laws 1983, ch. 163, § 4.

#### **22-26-5. Conduct of election; notice; ballot.**

A. An election on the question of imposing a tax under the Public School Buildings Act [22-26-1 to 22-26-8 NMSA 1978] may be held in conjunction with a regular school district election or may be conducted as or held in conjunction with a special school district election, but the election shall be held prior to July 1 of the property tax year in which the tax is proposed to be imposed. Conduct of the election shall be as prescribed in the School Election Law [1-22-1 to 1-22-19 NMSA 1978] for regular and special school district elections.

B. The resolution required to be published as notice of the election under Section 1-22-4 or 1-22-5 NMSA 1978 shall include as the question to be submitted to the voters whether a property tax at a rate not to exceed the rate specified in the authorizing resolution should be imposed for the specified number of property tax years not exceeding five years upon the net taxable value of all property allocated to the school district for capital improvements.

C. The ballot shall include the information specified in Subsection B of this section and shall present the voter the choice of voting "for the public school buildings tax" or "against the public school buildings tax".

**History:** Laws 1983, ch. 163, § 5; 1986, ch. 32, § 27.

#### **22-26-6. Election results; certification.**

The certification of the results of an election held on the question of imposition of a public school buildings tax shall be made in accordance with Section 22-6-16 NMSA

1978, and a copy of the certificate of results shall be mailed immediately to the director of public school finance [director of the office of education].

**History:** Laws 1983, ch. 163, § 6.

## ANNOTATIONS

**Compiler's note.** - Section 22-6-16 NMSA 1978, referred to in this section, was repealed by Laws 1985, ch. 168, § 22.

**Director of public school finance.** - The name of the director of public school finance, referred to in this section, was changed to the director of the office of education by Laws 1983, ch. 301, § 69. See 22-8-3 NMSA 1978.

### **22-26-7. Imposition of tax; limitations.**

If as a result of an election held in accordance with the Public School Buildings Act [22-26-1 to 22-26-8 NMSA 1978] a majority of the qualified electors voting on the question vote in favor of the imposition of the tax, the tax rate shall be certified, unless the local school board directs that the tax levy not be made for the year, by the department of finance and administration at the rate specified in the authorizing resolution or at any lower rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the rate specified in the authorizing resolution or at any rate lower than the rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 if directed by the local school board pursuant to Section 22-26-8 NMSA 1978, and the tax shall be imposed at the rate certified in accordance with the provisions of the Property Tax Code [Articles 35 to 38, Chapter 7 NMSA 1978]. If in any tax year the authorized tax rate under the Public School Buildings Act, when added to the tax rates for servicing debt of the school district and for capital improvements pursuant to the Public School Capital Improvements Act [22-25-1 to 22-25-10 NMSA 1978], exceeds ten dollars (\$10.00), or a lower amount that would be required by applying the rate limitation provisions of Section 7-37-7.1 NMSA 1978 to the amount of ten dollars (\$10.00), on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code, the tax rate under the Public School Buildings Act shall be reduced to an amount which, when added to such additional rates, will equal ten dollars (\$10.00), or the lower amount that would be required by applying the rate limitation provisions of Section 7-37-7.1 NMSA 1978 to the amount of ten dollars (\$10.00), on each one thousand dollars (\$1,000) of net taxable value of property so allocated to the school district. The revenue produced by the tax and any state distribution resulting to the district under the Public School Buildings Act shall be expended only for capital improvements.

**History:** Laws 1983, ch. 163, § 7; 1986, ch. 32, § 28.

### **22-26-8. Tax to be imposed for a maximum of five years.**

A tax imposed in a school district as a result of an election under the Public School Buildings Act [22-26-1 to 22-26-8 NMSA 1978] shall be imposed for one, two, three, four or five years commencing with the property tax year in which the election was held. The local school board may direct that such levy be decreased or not made for any year if, in its judgment, the total levy is not necessary for such year and shall direct that the levy be decreased by the amount required if a decrease is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

**History:** Laws 1983, ch. 163, § 8; 1986, ch. 32, § 29.