



The Legislature
of the
State of New Mexico

49th Legislature, 2nd Session

LAWS 2010

CHAPTER 116

HOUSE BILL 232, as amended

Introduced by

REPRESENTATIVE RICK MIERA AND REPRESENTATIVE MIMI STEWART



Chapter 116

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; ESTABLISHING STANDARDIZED REPORTING DATES.

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

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

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

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

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

C. "commission" means the public education commission;

D. "department" means the public education department;

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

Chapter 110

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1 science;

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

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

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

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

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

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

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

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1 high school or any combination of those and includes a charter
2 school;

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

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

9 O. "school-age person" means a person who is at
10 least five years of age prior to 12:01 a.m. on September 1 of
11 the school year and who has not received a high school diploma
12 or its equivalent. A maximum age of twenty-one shall be used
13 for a person who is classified as special education membership
14 as defined in Section 22-8-21 NMSA 1978 or as a resident of a
15 state institution;

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

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

25 R. "school district" means an area of land

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1 established as a political subdivision of the state for the
2 administration of public schools and segregated geographically
3 for taxation and bonding purposes;

4 S. "school employee" includes licensed and
5 nonlicensed employees of a school district;

6 T. "school principal" means the chief
7 instructional leader and administrative head of a public
8 school;

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

12 V. "secretary" means the secretary of public
13 education;

14 W. "state agency" or "state institution" means the
15 New Mexico military institute, New Mexico school for the blind
16 and visually impaired, New Mexico school for the deaf, New
17 Mexico boys' school, girls' welfare home, New Mexico youth
18 diagnostic and development center, Sequoyah adolescent
19 treatment center, Carrie Tingley crippled children's hospital,
20 New Mexico behavioral health institute at Las Vegas and any
21 other state agency responsible for educating resident
22 children;

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

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

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

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

11 BB. "certified school employee" or "certified
12 school personnel" means a licensed school employee."

13 Section 2. Section 22-8-6.1 NMSA 1978 (being Laws 1993,
14 Chapter 227, Section 8, as amended) is amended to read:

15 "22-8-6.1. CHARTER SCHOOL BUDGETS.--

16 A. Each state-chartered charter school shall
17 submit to the charter schools division of the department a
18 school-based budget. For the first year of operation, the
19 budget of every state-chartered charter school shall be based
20 on the projected number of program units generated by that
21 charter school and its students, using the at-risk index and
22 the instructional staff training and experience index of the
23 school district in which it is geographically located. For
24 second and subsequent fiscal years of operation, the budgets
25 of state-chartered charter schools shall be based on the

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1 number of program units generated using the average of the MEM
2 on the second and third reporting dates of the prior year and
3 its own instructional staff training and experience index and
4 the at-risk index of the school district in which the state-
5 chartered charter school is geographically located. The
6 budget shall be submitted to the division for approval or
7 amendment pursuant to the Public School Finance Act and the
8 Charter Schools Act.

9 B. Each locally chartered charter school shall
10 submit to the local school board a school-based budget. For
11 the first year of operation, the budget of every locally
12 chartered charter school shall be based on the projected
13 number of program units generated by the charter school and
14 its students, using the at-risk index and the instructional
15 staff training and experience index of the school district in
16 which it is geographically located. For second and subsequent
17 fiscal years of operation, the budgets of locally chartered
18 charter schools shall be based on the number of program units
19 generated using the average of the MEM on the second and third
20 reporting dates of the prior year and its own instructional
21 staff training and experience index and the at-risk index of
22 the school district in which the locally chartered charter
23 school is geographically located. The budget shall be
24 submitted to the local school board for approval or amendment.
25 The approval or amendment authority of the local school board

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1 relative to the charter school budget is limited to ensuring
2 that sound fiscal practices are followed in the development of
3 the budget and that the charter school budget is within the
4 allotted resources. The local school board shall have no veto
5 authority over individual line items within the charter
6 school's proposed budget, but shall approve or disapprove the
7 budget in its entirety. Upon final approval of the local
8 budget by the local school board, the individual charter
9 school budget shall be included separately in the budget
10 submission to the department required pursuant to the Public
11 School Finance Act and the Charter Schools Act.

12 C. For the first year of operation after a locally
13 chartered charter school converts to a state-chartered charter
14 school or a state-chartered charter school converts to a
15 locally chartered charter school, the charter school's budget
16 shall be based on the number of program units generated using
17 the average of the MEM on the second and third reporting dates
18 of the prior year and the instructional staff training and
19 experience index and the at-risk index of the school district
20 in which it is geographically located. For second and
21 subsequent fiscal years of operation, the charter school shall
22 follow the provisions of Subsection A or B of this section, as
23 applicable.

24 D. Notwithstanding the provisions of Subsections A
25 through C of this section, each charter school that was in

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1 existence in fiscal year 2009 shall be held harmless in the
2 calculation of its instructional staff training and experience
3 index for two fiscal years. For fiscal years 2010 and 2011,
4 the department shall use the greater of the charter school's
5 2008-2009 funded instructional staff training and experience
6 index or the charter school's own instructional staff training
7 and experience index. Beginning in fiscal year 2012, each
8 charter school shall use its own instructional staff training
9 and experience index."

10 Section 3. Section 22-8-13 NMSA 1978 (being Laws 1974,
11 Chapter 8, Section 3, as amended) is amended to read:

12 "22-8-13. REPORTS.--

13 A. Each public school shall keep accurate records
14 concerning membership in the public school.

15 B. The dates for which MEM is reported are as
16 follows:

17 (1) the first reporting date, the second
18 Wednesday in October;

19 (2) the second reporting date, the second
20 Wednesday in December; and

21 (3) the third reporting date, the second
22 Wednesday in February.

23 C. The superintendent of each school district or
24 head administrator of a state-chartered charter school shall
25 maintain the following reports for each reporting period:

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1 (1) the basic program MEM by grade in each
2 public school;

3 (2) the early childhood education MEM;

4 (3) the special education MEM in each public
5 school in class C and class D programs as defined in Section
6 22-8-21 NMSA 1978;

7 (4) the number of class A and class B
8 programs as defined in Section 22-8-21 NMSA 1978; and

9 (5) the full-time-equivalent MEM for
10 bilingual multicultural education programs.

11 D. The superintendent of each school district and
12 the head administrator of each state-chartered charter school
13 shall furnish all reports required by law or the department to
14 the department within ten days of the close of each reporting
15 period. Failure of the department to approve timely
16 submissions shall not cause a school district or charter
17 school to be found noncompliant with the requirements of this
18 section.

19 E. All information required pursuant to this
20 section shall be on forms prescribed and furnished by the
21 department. A copy of any report made pursuant to this
22 section shall be kept as a permanent record of the school
23 district or charter school and shall be subject to inspection
24 and audit at any reasonable time.

25 F. The department may withhold up to one hundred

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1 percent of allotments of funds to any school district or
2 state-chartered charter school where the superintendent or
3 head administrator has failed to comply with the requirements
4 of this section. Withholding may continue until the
5 superintendent or head administrator complies with and agrees
6 to continue complying with requirements of this section.

7 G. The provisions of this section may be modified
8 or suspended by the department for any school district or
9 school or state-chartered charter school operating under the
10 Variable School Calendar Act. The department shall require
11 MEM reports consistent with the calendar of operations of such
12 school district or school or state-chartered charter school
13 and shall calculate an equivalent MEM for use in projecting
14 school district or charter school revenue."

15 Section 4. Section 22-8-23.1 NMSA 1978 (being Laws 1990
16 (1st S.S.), Chapter 3, Section 7, as amended) is amended to
17 read:

18 "22-8-23.1. ENROLLMENT GROWTH PROGRAM UNITS.--

19 A. A school district or charter school with an
20 increase in MEM equal to or greater than one percent, when
21 compared with the immediately preceding year, is eligible for
22 additional program units. The increase in MEM shall be
23 calculated as follows:

24 (Current Year MEM - Previous Year MEM)

25 Previous Year MEM X 100 = Percent Increase.

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1 The number of additional program units shall be calculated as
2 follows:

3 ((Current Year MEM - Previous Year MEM) - (Current Year
4 MEM x .01)) X 1.5 = Units.

5 B. In addition to the units calculated in
6 Subsection A of this section, a school district or charter
7 school with an increase in MEM equal to or greater than one
8 percent, when compared with the immediately preceding year, is
9 eligible for additional program units. The increase in MEM
10 shall be calculated in the following manner:

11 (Current Year MEM - Previous Year MEM)

12 Previous Year MEM X 100 = Percent Increase.

13 The number of additional program units to which an eligible
14 school district or charter school is entitled under this
15 subsection is the number of units computed in the following
16 manner:

17 (Current Year MEM - Previous Year MEM) X .50 = Units.

18 C. As used in this section:

19 (1) "current year MEM" means MEM on the
20 first reporting date of the current year;

21 (2) "MEM" means the total school district or
22 charter school membership, including early childhood education
23 full-time-equivalent membership and special education
24 membership, but excluding full-day kindergarten membership for
25 the first year that full-day kindergarten is implemented in a

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1 school pursuant to Subsection D of Section 22-13-3.2 NMSA
2 1978; and

3 (3) "previous year MEM" means MEM on the
4 first reporting date of the previous year."

5 Section 5. Section 22-8-23.4 NMSA 1978 (being Laws
6 2003, Chapter 144, Section 2 and Laws 2003, Chapter 152,
7 Section 9, as amended) is amended to read:

8 "22-8-23.4. NATIONAL BOARD FOR PROFESSIONAL TEACHING
9 STANDARDS--CERTIFIED TEACHERS PROGRAM UNITS.--The number of
10 program units for teachers certified by the national board for
11 professional teaching standards is determined by multiplying
12 by one and one-half the number of teachers certified by the
13 national board for professional teaching standards employed by
14 the school district or charter school on or before the first
15 reporting date of the school year and verified by the
16 department. Department approval of these units shall be
17 contingent on verification by the school district or charter
18 school that these teachers are receiving a one-time salary
19 differential equal to or greater than the amount generated by
20 the units multiplied by the program unit value during the
21 fiscal year in which the school district or charter school
22 will receive these units."

23 Section 6. Section 22-8-25 NMSA 1978 (being Laws 1981,
24 Chapter 176, Section 5, as amended) is amended to read:

25 "22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--

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1 DEFINITIONS--DETERMINATION OF AMOUNT.--

2 A. The state equalization guarantee distribution
3 is that amount of money distributed to each school district to
4 ensure that its operating revenue, including its local and
5 federal revenues as defined in this section, is at least equal
6 to the school district's program cost. For state-chartered
7 charter schools, the state equalization guarantee distribution
8 is the difference between the state-chartered charter school's
9 program cost and the two percent withheld by the department
10 for administrative services.

11 B. "Local revenue", as used in this section, means
12 seventy-five percent of receipts to the school district
13 derived from that amount produced by a school district
14 property tax applied at the rate of fifty cents (\$.50) to each
15 one thousand dollars (\$1,000) of net taxable value of property
16 allocated to the school district and to the assessed value of
17 products severed and sold in the school district as determined
18 under the Oil and Gas Ad Valorem Production Tax Act and upon
19 the assessed value of equipment in the school district as
20 determined under the Oil and Gas Production Equipment Ad
21 Valorem Tax Act.

22 C. "Federal revenue", as used in this section,
23 means receipts to the school district, excluding amounts that,
24 if taken into account in the computation of the state
25 equalization guarantee distribution, result, under federal law

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1 or regulations, in a reduction in or elimination of federal
2 school funding otherwise receivable by the school district,
3 derived from the following:

4 (1) seventy-five percent of the school
5 district's share of forest reserve funds distributed in
6 accordance with Section 22-8-33 NMSA 1978; and

7 (2) seventy-five percent of grants from the
8 federal government as assistance to those areas affected by
9 federal activity authorized in accordance with Title 20 of the
10 United States Code, commonly known as "PL 874 funds" or
11 "impact aid".

12 D. To determine the amount of the state
13 equalization guarantee distribution, the department shall:

14 (1) calculate the number of program units to
15 which each school district or charter school is entitled using
16 an average of the MEM on the second and third reporting dates
17 of the prior year; or

18 (2) calculate the number of program units to
19 which a school district or charter school operating under an
20 approved year-round school calendar is entitled using an
21 average of the MEM on appropriate dates established by the
22 department; or

23 (3) calculate the number of program units to
24 which a school district or charter school with a MEM of two
25 hundred or less is entitled by using an average of the MEM on

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1 the second and third reporting dates of the prior year or the
2 fortieth day of the current year, whichever is greater; and

3 (4) using the results of the calculations in
4 Paragraph (1), (2) or (3) of this subsection and the
5 instructional staff training and experience index from the
6 October report of the prior school year, establish a total
7 program cost of the school district or charter school;

8 (5) for school districts, calculate the
9 local and federal revenues as defined in this section;

10 (6) deduct the sum of the calculations made
11 in Paragraph (5) of this subsection from the program cost
12 established in Paragraph (4) of this subsection;

13 (7) deduct the total amount of guaranteed
14 energy savings contract payments that the department
15 determines will be made to the school district from the public
16 school utility conservation fund during the fiscal year for
17 which the state equalization guarantee distribution is being
18 computed; and

19 (8) deduct ninety percent of the amount
20 certified for the school district by the department pursuant
21 to the Energy Efficiency and Renewable Energy Bonding Act.

22 E. Reduction of a school district's state
23 equalization guarantee distribution shall cease when the
24 school district's cumulative reductions equal its proportional
25 share of the cumulative debt service payments necessary to

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1 service the bonds issued pursuant to the Energy Efficiency and
2 Renewable Energy Bonding Act.

3 F. The amount of the state equalization guarantee
4 distribution to which a school district is entitled is the
5 balance remaining after the deductions made in Paragraphs (6)
6 through (8) of Subsection D of this section.

7 G. The state equalization guarantee distribution
8 shall be distributed prior to June 30 of each fiscal year.
9 The calculation shall be based on the local and federal
10 revenues specified in this section received from June 1 of the
11 previous fiscal year through May 31 of the fiscal year for
12 which the state equalization guarantee distribution is being
13 computed. In the event that a school district or charter
14 school has received more state equalization guarantee funds
15 than its entitlement, a refund shall be made by the school
16 district or charter school to the state general fund."

17 Section 7. Section 22-8-29 NMSA 1978 (being Laws 1967,
18 Chapter 16, Section 78, as amended) is amended to read:

19 "22-8-29. TRANSPORTATION DISTRIBUTIONS--REPORTS--
20 PAYMENTS.--

21 A. Prior to November 15 of each year, each local
22 school board of a school district and governing body of a
23 state-chartered charter school shall report to the state
24 transportation director, upon forms furnished by the state
25 transportation director, the following information concerning

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1 the school district's or state-chartered charter school's
2 operation on the first reporting date of the current year:

3 (1) the number and designation of school bus
4 routes in operation in the school district;

5 (2) the number of miles traveled by each
6 school bus on each school bus route, showing the route mileage
7 in accordance with the type of road surface traveled;

8 (3) the number of students transported on
9 the first reporting date of the current year and adjusted for
10 special education students on December 1;

11 (4) the projected number of students to be
12 transported in the next school year;

13 (5) the seating capacity, age and mileage of
14 each bus used in the school district for student
15 transportation; and

16 (6) the number of total miles traveled for
17 each school district's or state-chartered charter school's per
18 capita feeder routes.

19 B. Each local school board of a school district
20 and governing body of a state-chartered charter school
21 maintaining a school bus route shall make further reports to
22 the state transportation director at other times specified by
23 the state transportation director.

24 C. The state transportation director shall certify
25 to the secretary that the allocations from the transportation

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1 distributions to each school district and state-chartered
2 charter school are based upon the transportation distribution
3 formula established in the Public School Code. The
4 allocations for the first six months of a school year shall be
5 based upon the tentative transportation budget of the school
6 district or state-chartered charter school for the current
7 fiscal year. Allocations to a school district or state-
8 chartered charter school for the remainder of the school year
9 shall adjust the amount received by the school district or
10 state-chartered charter school so that it equals the amount
11 the school district or state-chartered charter school is
12 entitled to receive for the entire school year based upon the
13 November 15 report and subject to audit and verification.

14 D. The department shall make periodic installment
15 payments to school districts and state-chartered charter
16 schools during the school year from the transportation
17 distributions, based upon the allocations certified by the
18 state transportation director."

19 Section 8. Section 22-26-9 NMSA 1978 (being Laws 2007,
20 Chapter 366, Section 23) is amended to read:

21 "22-26-9. CHARTER SCHOOLS--RECEIPT OF LOCAL PROPERTY
22 TAX REVENUE.--If, in an election held after July 1, 2007, the
23 qualified electors of a school district have voted in favor of
24 the imposition of a property tax as provided in Section
25 22-26-3 NMSA 1978, the amount of tax revenue to be distributed

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1 to each charter school that was included in the resolution
2 shall be determined each year and shall be in the same
3 proportion as the average full-time-equivalent enrollment of
4 the charter school on the first reporting date of the prior
5 school year is to the total such enrollment in the district;
6 provided that, in the case of an approved charter school that
7 had not commenced classroom instruction in the prior school
8 year, the estimated full-time-equivalent enrollment in the
9 first year of instruction, as shown in the approved charter
10 school application, shall be used, subject to adjustment after
11 the first reporting date. Each year, the department shall
12 certify to the county treasurer of the county in which the
13 eligible charter schools in the school district are located
14 the percentage of the revenue to be distributed to each
15 charter school. The county treasurer shall distribute the
16 charter school's share of the property tax revenue directly to
17 the charter school."

18 Section 9. TEMPORARY PROVISION--STATUTORY REFERENCES TO
19 PUBLIC SCHOOL FORTIETH-, EIGHTIETH- AND ONE-HUNDRED-TWENTIETH-
20 DAY REPORTS--PROJECTIONS AND BUDGET PREPARATION.--

21 A. References in the Public School Code pertaining
22 to the fortieth-day or forty-day report of public school
23 membership or enrollment shall be deemed to be references to
24 the first reporting date, which is the second Wednesday in
25 October.

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1 B. References in the Public School Code pertaining
2 to the eightieth-day or eighty-day report of public school
3 membership or enrollment shall be deemed to be references to
4 the second reporting date, which is the second Wednesday in
5 December.

6 C. References in the Public School Code pertaining
7 to the one-hundred-twentieth-day or one-hundred-twenty-day
8 report of public school membership or enrollment shall be
9 deemed to be references to the third reporting date, which is
10 the second Wednesday in February.

11 D. As the public schools transition from former
12 reporting dates to new reporting dates, the public education
13 department may use any combination of former and new reporting
14 dates as necessary to develop membership and cost projections
15 and budgets for the 2010-2011 school year. _____

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Ben Lujan

BEN LUJAN, SPEAKER
HOUSE OF REPRESENTATIVES

Stephen R. Arias

STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES

Diane D. Denish

DIANE D. DENISH, PRESIDENT
SENATE

Lenore M. Naranjo

LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this 10th day of March, 2010

Bill Richardson

BILL RICHARDSON, GOVERNOR
STATE OF NEW MEXICO

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STEPHEN R. ARLES, CHIEF CLERK
HOUSE OF REPRESENTATIVES

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DIANE D. BERTSH, PRESIDENT
SENATE

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GEORGE M. BARBARO, CHIEF CLERK
SENATE

Approved by me this 10th day of March, 2010

[Signature]
WILL RICHARDSON, GOVERNOR

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