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SENATE BILL 144

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Cynthia Nava

AN ACT

RELATING TO PUBLIC SCHOOLS; ENACTING A NEW SECTION OF THE PUBLIC SCHOOL CODE REQUIRING SCHOOL DISTRICTS AND CHARTER SCHOOLS TO ESTABLISH FREE BREAKFAST PROGRAMS; AMENDING THE PUBLIC SCHOOL CODE TO ALLOW SCHOOL BREAKFAST SERVICE DURING INSTRUCTIONAL TIME.

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

**SECTION 1.** Section 22-2-8.1 NMSA 1978 (being Laws 1986, Chapter 33, Section 2, as amended) is amended to read:

"22-2-8.1. SCHOOL YEAR--LENGTH OF SCHOOL DAY--  
MINIMUM.--

A. A school year consists of at least one hundred eighty full instructional days for a regular school year calendar, exclusive of any release time for in-service training. A school year consists of at least one hundred fifty

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1 full instructional days for a variable school year calendar,  
2 exclusive of any release time for in-service training. Except  
3 as provided in [~~Subsection~~] Subsections D and G of this  
4 section, days or parts of days that are lost to weather, in-  
5 service training or other events that are not school-directed  
6 programs shall be made up so that students are given a full  
7 instructional school year.

8 B. Except as otherwise provided in this  
9 section, regular students shall be in school-directed programs,  
10 exclusive of lunch, for a minimum of the following:

11 (1) kindergarten, for half-day programs, two  
12 and one-half hours per day or, for full-day programs, five and  
13 one-half hours per day;

14 (2) grades one through six, five and one-half  
15 hours per day; and

16 (3) grades seven through twelve, six hours per  
17 day.

18 C. The department shall provide for the length and  
19 number of school days for variable school year calendars in  
20 accordance with the Variable School Calendar Act.

21 D. Up to thirty-three hours of the full-day  
22 kindergarten program may be used for home visits by the teacher  
23 or for parent-teacher conferences. Up to twenty-two hours of  
24 grades one through six programs may be used for home visits by  
25 the teacher or for parent-teacher conferences. Up to twelve

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1 hours of grades seven through twelve programs may be used to  
2 consult with parents to develop next step plans for students  
3 and for parent-teacher conferences.

4 E. Nothing in this section precludes a local school  
5 board from setting a school year or the length of school days  
6 in excess of the minimum requirements established by  
7 Subsections A and B of this section.

8 F. The secretary may waive the minimum length or  
9 number of school days in those school districts where such  
10 minimums would create undue hardships as defined by the  
11 department as long as the school year is adjusted to ensure  
12 that students in those school districts receive the same total  
13 instructional time as other students in the state.

14 G. Notwithstanding any other provision of this  
15 section, time used to serve students breakfast under a state or  
16 federal program shall be deemed to be time in a school-directed  
17 program and is part of the instructional day."

18 SECTION 2. Section 22-9-2 NMSA 1978 (being Laws 1967,  
19 Chapter 16, Section 102, as amended) is amended to read:

20 "22-9-2. FEDERAL AID TO EDUCATION--STATE EDUCATIONAL  
21 AGENCY.--The department shall be the sole educational agency of  
22 the state for the administration or for the supervision of the  
23 administration of any state plan established or funds received  
24 by the state by virtue of any federal statute relating to aid  
25 for education, school construction or school breakfast or lunch

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1 programs, except as is provided in Section 21-1-26 NMSA 1978  
2 and as may otherwise be provided by law."

3 SECTION 3. Section 22-9-4 NMSA 1978 (being Laws 1967,  
4 Chapter 16, Section 104) is amended to read:

5 "22-9-4. LIMITATION ON ACCEPTING GRANTS AND GIFTS.--  
6 Federal funds, gifts or grants relating to aid for education,  
7 school construction or school breakfast or lunch programs may  
8 be accepted by the state only if supervision and control of  
9 courses of instruction and the personnel of public schools is  
10 reserved to the state or its local subdivisions."

11 SECTION 4. Section 22-9-5 NMSA 1978 (being Laws 1967,  
12 Chapter 16, Section 105) is amended to read:

13 "22-9-5. CUSTODY OF FUNDS--BUDGETS--DISBURSEMENTS.--

14 A. The state treasurer shall be the custodian of  
15 all funds received by the state by virtue of a federal statute,  
16 gift or grant relating to aid for education, school  
17 construction or school breakfast or lunch programs. The state  
18 treasurer shall hold these funds in separate accounts according  
19 to the purpose of the grant or gift.

20 B. All federal funds, gifts or grants administered  
21 by the [~~state board~~] department shall be budgeted, accounted  
22 for and disbursed as provided by law and by the [~~regulations~~]  
23 rules of the department of finance and administration."

24 SECTION 5. A new section of Chapter 22, Article 13 NMSA  
25 1978 is enacted to read:

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1           "[NEW MATERIAL] BREAKFAST PROGRAM REQUIRED--WAIVER--  
2 DISTRIBUTION OF FUNDS.--

3           A. School districts and charter schools shall  
4 establish a school breakfast program providing free breakfast,  
5 after the instructional day has begun, to all students  
6 attending an elementary school in that school district in which  
7 eighty-five percent or more of the enrolled students at the  
8 elementary school were eligible for free or reduced-price lunch  
9 under the National School Lunch Act of 1946 during the prior  
10 school year.

11           B. A school district or charter school that  
12 includes an elementary school in which fewer than eighty-five  
13 percent of the enrolled students were eligible for free or  
14 reduced-price lunch during the prior school year under the  
15 National School Lunch Act of 1946 may establish a school  
16 breakfast program providing free breakfast, after the  
17 instructional day has begun, to all students attending that  
18 elementary school; provided that the program complies with all  
19 applicable department rules relating to the school breakfast  
20 program authorized by this section.

21           C. The school district or charter school may apply  
22 to the department for a waiver of the school breakfast program  
23 required under the provisions of Subsection A of this section  
24 if the school district or charter school can demonstrate that  
25 providing the program will result in undue financial hardship

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1 for the school district or charter school.

2 D. The department shall reimburse each school  
3 district or charter school that establishes a school breakfast  
4 program under the provisions of this section for costs  
5 associated with providing free breakfast to students on a per-  
6 meal basis at the federal maximum rate of reimbursement as set  
7 forth annually by the federal secretary of agriculture for  
8 educational grants awarded under the authority of the  
9 secretary. Reimbursement for the school breakfast program  
10 shall be paid in sequential order, until the state school  
11 breakfast funds are exhausted. School districts or charter  
12 schools whose elementary schools have the highest percentage of  
13 enrolled students eligible for free or reduced-price lunch  
14 under the National School Lunch Act of 1946 shall be paid  
15 first. School districts or charter schools whose elementary  
16 schools have the lowest percentage of enrolled students  
17 eligible for free or reduced-price lunch under the National  
18 School Lunch Act of 1946 shall be paid last.

19 E. The department shall promulgate rules necessary  
20 for implementation of this section, including:

21 (1) standards for school breakfast programs  
22 that meet federal school breakfast program standards;

23 (2) procedures for waiver requests and the  
24 award of waivers as provided for in Subsection C of this  
25 section, including what constitutes financial hardship; and

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(3) procedures for reimbursement.

F. The provisions of this section shall not apply until the 2011-2012 school year."

SECTION 6. REPEAL.--Section 22-9-1 NMSA 1978 (being Laws 1967, Chapter 16, Section 101) is repealed.