



## ANALYSIS

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 1982, No. 155

**An Act to amend the Education Act 1964**
*[16 December 1982]*

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Education Amendment Act (No. 2) 1982, and shall be read together with and deemed part of the Education Act 1964 (hereinafter referred to as the principal Act).

(2) Subject to section 17 (3) of this Act, this Act shall come into force on the day it receives the Governor-General's assent.

**2. Payment of fees by foreign students in certain cases**—Section 9A of the principal Act (as inserted by section 2 (1) of the Education Amendment Act 1979) is hereby amended by adding the following subsection:

“(10) Where a student who has paid fees under this section in respect of a course of study in any year withdraws from that course before its completion, the following provisions shall apply:

“(a) If that course is a block course, the governing body of the tertiary institution concerned shall refund to him such proportion (if any) of those fees as the Director-General, on the recommendation of that body, specifies:

“(b) Subject to paragraph (a) of this subsection, if that student so withdraws before the 1st day of April in that year, the governing body of the tertiary institution concerned shall refund those fees to him:

“(c) Subject to paragraph (a) of this subsection, if that student so withdraws after the 31st day of March and before the 1st day of June in that year, the governing body of the tertiary institution concerned shall refund to him—

“(i) Half those fees; or

“(ii) If the Director-General is satisfied that there are exceptional circumstances justifying that student’s withdrawal, such larger proportion of those fees as the Director-General specifies.”

**3. Governing bodies of other secondary schools**—(1) Section 51 of the principal Act is hereby amended by adding the following subsections:

“(7) The Minister may, by notice in the *Gazette*, specify the constitution of a Board of Governors for a private secondary school that, in his opinion, is likely to be established as an integrated school under the Private Schools Conditional Integration Act 1975.

“(8) Subject to subsection (9) of this section, for the purposes of subsection (1) of this section, and any regulations made under this Act relating to the election or appointment of members of Boards of Governors of secondary schools,—

“(a) Every notice under subsection (7) of this section shall be deemed to be a notice under subsection (1) of this section; and

“(b) The school concerned shall be deemed to be a secondary school established after the commencement of this Act; and

“(c) The teachers of the school concerned shall be deemed to be employed at a school controlled by the Board of Governors constituted by that notice.

“(9) A Board of Governors constituted in accordance with a notice under subsection (7) of this section—

“(a) Shall have no powers, functions, duties, or liabilities until the school concerned is established as an integrated school as aforesaid; and

“(b) If the school concerned is so established within 12 months of the date of that notice, shall be deemed to have held its elections on the date that school was so established; and

“(c) If the school concerned is not so established within 12 months of the date of that notice, shall thereupon go out of existence, together with its constitution.”

(2) Every notice published in the *Gazette* before the commencement of this section that purported to be a notice under section 51 (1) of the principal Act constituting a Board of Governors for a private secondary school that—

(a) Had not then been established as an integrated school; and

(b) Thereafter was, or is, so established,—

and the purported election or appointment of any member of that Board of Governors, and every action of any person in relation to any such election or appointment, shall be deemed to have been or, as the case requires, to be, as valid and effectual as if this section had been in force when that notice was published.

**4. Provision of pre-school education**—Section 70 of the principal Act (as substituted by section 12 of the Education Amendment Act (No. 2) 1974) is hereby amended by adding, as subsection (2), the following subsection:

“(2) Without limiting the generality of paragraphs (b) and (c) of subsection (1) of this section, regulations made under that subsection may provide for all or any of the following matters:

“(a) The constitution and functions of a Kindergarten Teachers’ Appointments Committee:

“(b) The constitution and functions of a National Advisory Committee on the appointment and promotion of kindergarten teachers:

- “(c) The procedures relating to the appointment and promotion of kindergarten teachers:
- “(d) The establishment of an Appeal Board to hear and determine appeals against the appointment or promotion of kindergarten teachers:
- “(e) The manner in which members of that Appeal Board are to be appointed and hold office:
- “(f) The manner in which that Appeal Board is to hear and dispose of appeals made to it:
- “(g) The payment to all, or any class of, the members of that Appeal Board, or of either or both of the committees for whose establishment paragraphs (a) and (b) of this subsection provide, out of money appropriated by Parliament for the purpose, of remuneration by way of fees, salary, or allowances, and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951 as if they were members of a statutory Board:
- “(h) Transfers from one position to another (whether in the service of the same employing body or some other) of kindergarten teachers:
- “(i) The duration of appointment of kindergarten teachers.”

### **5. Organisation and conduct of State primary schools and intermediate departments of secondary schools—**

Section 75 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections:

“(1) Subject to subsection (1A) of this section, every State primary school, every intermediate department attached to a secondary school, and the primary classes of every composite school, shall be organised and conducted in accordance with regulations made under this Act.

“(1A) The Minister may from time to time prescribe syllabuses, courses, studies, and activities or any of them, to be included in the programmes of instruction of State primary schools, intermediate departments attached to secondary schools, and the primary departments of composite schools; and every such school or department shall include those syllabuses, courses, studies, and activities in its programme of instruction.

“(1B) Whenever he prescribes any course, class, or study, under subsection (1A) of this section, the Minister shall cause to be published in the *Gazette* a notice describing, in general terms, the subject or topics and classes to which it applies.”

**6. Composite schools**—(1) Section 86 of the principal Act is hereby amended by inserting, after subsection (4), the following subsection:

“(4A) The Minister may, having due regard to the educational requirements of the pupils resident in the locality concerned, and after consultation with its controlling authority, its Committee of Management (if any), and any Secondary Schools Council, and every governing body of a secondary school, he thinks fit, disestablish any composite school.”

(2) Section 86 (5) of the principal Act (as added by section 12 (2) of the Education Amendment Act 1976) is hereby consequentially amended by omitting the expression “(4)”, and substituting the expression “(4A)”.

**7. Correspondence schools and classes**—(1) Section 105 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Having regard to the education of persons who cannot conveniently attend any suitable school or, as the case requires, any suitable institution providing pre-school education, the Minister shall, in addition to his powers conferred on him by section 96 of this Act, have the power to establish any school, institution, or classes to provide instruction (which may be or include pre-school instruction) by correspondence.”

(2) Section 2 of the principal Act is hereby consequentially amended by omitting from the definition of the terms “correspondence school” and “correspondence classes” the words “any classes”, and substituting the words “institution, or any classes,”.

**8. Terms and holidays**—(1) The principal Act is hereby amended by inserting, after section 129B (as inserted by section 3 (1) of the Education Amendment Act 1978), the following section:

“129C. (1) The Governor-General may from time to time, by Order in Council, make regulations—

- “(a) Fixing, or specifying means for ascertaining, the terms and holidays to be observed in State primary schools, secondary schools, and composite schools, or any of them; and different terms and holidays may be fixed or ascertained for schools of different classes; and
- “(b) Prescribing, or prescribing means for ascertaining, the total number of half days in each year on which any such school is required to be open; and different numbers or means may be prescribed for schools of different classes; and
- “(c) Defining the public holidays and other occasions on which any such school may be closed, and the conditions subject to which its School Committee or controlling authority may grant holidays on particular occasions or for particular purposes; and different holidays and occasions, and different conditions, may be defined for schools of different classes.

“(2) Without limiting the generality of subsection (1) of this section, it is hereby declared that regulations made under that subsection may do all or any of the following things:

- “(a) Empower the Director-General to authorise particular schools to be open for fewer half days in a particular year than those generally applicable to the class of school to which it belongs:
- “(b) Empower the Minister to authorise particular schools to be open for fewer half days in a particular year than generally applicable to the class of school to which it belongs where, in his opinion, closure for any period is necessary:
- “(c) Authorise the controlling authorities or School Committees of schools of any specified class or classes to grant holidays for any schools they control on any occasions that are, in their opinion, special occasions warranting the granting of holidays:
- “(d) Authorise the controlling authorities of schools of any specified class or classes to require schools to be open on a Saturday or Sunday where, in their opinion, special circumstances justify such opening:
- “(e) Empower the Director-General to authorise, in any individual case, any variation he sees fit from the terms and holidays that would otherwise apply.

“(3) The Minister may, with the consent of the controlling authorities of the schools concerned, by notice in the *Education Gazette* direct that any State primary schools, secondary schools, or composite schools observe a year divided into 4 terms.

“(4) Every notice under subsection (3) of this section shall come into force on the 1st day of January following the 1st day of September after its publication.

“(5) Every direction under subsection (3) of this section shall—

“(a) Specify, by name or location, the school or schools to which it applies:

“(b) Indicate the manner in which the regime specified in regulations made under subsection (1) of this section that would otherwise apply to that school or those schools is to be modified:

“(c) Specify either—

“(i) The date upon which the 4-term regime is to cease to apply to that school or those schools; and, unless it is earlier terminated under subsection (6) of this section, it shall cease so to apply on that day; or

“(ii) That the 4-term year is to continue indefinitely.

“(6) A 4-term regime shall cease to apply to the school or schools concerned, or any specified school or schools to which it applies, upon the 1st day of January following the 1st day of July after the date upon which the Minister publishes a direction to that effect in the *Education Gazette*.

“(7) For so long as a 4-term regime applies to any school, any regulations made under subsection (1) of this section shall apply to that school, and to the actions of the School Committee (if any) and controlling authority of that school in respect of that school, as if those regulations had been modified in the manner indicated in the appropriate direction under subsection (3) of this section.”

(2) Section 77 of the principal Act is hereby amended by omitting the word “Every”, and substituting the following words:

“Except to the extent that—

“(a) A school term commences on any day other than a Monday or ends with any day other than a Friday;  
or

“(b) A school is lawfully closed pursuant to section 129C of this Act,—  
every”.

(3) Section 203 of the principal Act is hereby consequentially amended by repealing paragraph (f) (as amended by section 10 of the Education Amendment Act 1977), and substituting the following paragraph:

“(f) Fixing the terms and holidays to be observed in technical institutes, community colleges, and teachers colleges; and defining the public holidays and other occasions on which any such institute or college may be closed, and the conditions under which the controlling authority of any such institute or college may grant holidays on special occasions:”.

(4) Section 10 of the Education Amendment Act 1977 is hereby consequentially repealed.

**9. Governing body may appoint teachers or lecturers—**(1) Section 148 of the principal Act (as substituted by section 29 of the Education Amendment Act (No. 2) 1974) is hereby amended by adding, as subsection (2), the following subsection:

“(2) Every teachers college council shall, in accordance with such regulations as may be made by the Governor-General from time to time by Order in Council under this Act, appoint such lecturers as may be required for each teachers college under its control; but, except in special cases for which the prior consent of the Minister has been obtained, no lecturer shall be eligible for permanent appointment who is in receipt of a retiring allowance from the Government Superannuation Fund.”

(2) Section 153 of the principal Act is hereby amended by inserting, after subsection (3A) (as inserted by section 12 of the Education Amendment Act 1971), the following subsection:

“(3B) Notwithstanding any provision to the contrary in this Act, if a position at a teachers college to which a lecturer has been permanently appointed has been disestablished, the following provisions shall apply:

“(a) If that lecturer—

“(i) Is appointed to a position that is another lecturing position at a teachers college; and

“(ii) Would, within 4 years of the disestablishment concerned, be entitled to retire on superannuation from the Government Superannuation Fund—

he shall be entitled to be paid the salary appropriate to his former position until he so becomes eligible or earlier ceases to hold such a position:

“(b) Subject to paragraph (a) of this subsection, if that lecturer is appointed to another lecturing position at a teachers college, he shall be entitled to be paid the salary appropriate to his former position until the expiration of 2 years from the date that former position was disestablished or he earlier ceases to hold such a position:

“Provided that where, in the opinion of the Director-General, that lecturer has been making reasonable efforts to obtain some other position in the Education Service, he may from time to time extend the period during which that lecturer is so entitled by a further period not exceeding 12 months:

“(c) If that lecturer is appointed to some other position in the Education Service (not being a lecturing position at a teachers college), he shall be entitled to be paid the salary he was receiving when that former position was disestablished until the expiration of 2 years from the date that former position was disestablished or he earlier ceases to hold a position in the Education Service.”

(3) Section 153 (4) of the principal Act is hereby consequentially amended by inserting, after the word “teacher”, the words “or lecturer”.

**10. New sections substituted**—The principal Act is hereby amended by repealing section 152, and substituting the following sections:

**“152. Proposed transfers of secondary teachers and teachers at composite schools**—(1) In this section, unless the context otherwise requires,—

“ ‘Employing authority’,—

“(a) In relation to a relevant teacher appointed by the Director-General, means the Director-General:

“(b) In relation to any other relevant teacher, means the governing body of the school at which he is employed:

“ ‘Relevant teacher’ means a teacher employed—

“(a) At a secondary school; or

“(b) At a composite school; or

“(c) At a manual training centre.

“(2) Where a relevant teacher’s employing authority proposes to transfer him from one position to another (whether at the same or a different school or centre under its control), the following provisions shall apply:

“(a) That employing authority shall give the teacher, by notice in writing, at least 21 days notice of its intention to transfer him and of the position to which it proposes to transfer him:

“(b) Within 14 days of receiving that notice, the teacher may, by notice in writing to the person who signed it, object to his proposed transfer and state the grounds upon which he objects:

“(c) If the teacher does not so object within that period, the transfer shall take effect in accordance with the notice given to him:

“(d) If the teacher so objects within that period, his employing authority shall, as soon as is practicable thereafter, reconsider the proposed transfer, taking into account the grounds upon which the teacher has objected; and shall notify the teacher in writing as aforesaid whether or not it intends to proceed with the proposed transfer:

“(e) If the teacher’s employing authority notifies him that it intends to proceed with the proposed transfer, he shall be entitled to appeal against that transfer in accordance with Part VI of this Act:

“(f) If the teacher appeals against that transfer, the Teachers Court of Appeal shall determine, having regard to all the circumstances of the case, whether or not that transfer is reasonable and, in the light of its determination, either confirm the transfer or order the reinstatement of the teacher; and that confirmation or order shall have effect accordingly.

“(3) The transfer of a teacher under subsection (2) of this section shall be held to be reasonable—

“(a) If the salary attached to the position to which his employing authority proposes to transfer him is

higher than that of the grade of salary pertaining to the position he holds; or

“(b) In any case where he is receiving a salary higher than the salary pertaining to the position he holds, or where he has lost or is about to lose his position through a change in grade or status or the closing of the school concerned, or where through no fault of his own he has suffered or is about to suffer a reduction in salary, or where he is not promoted when his position rises in grade, if he is being transferred without reduction in salary, other than that represented by any additional salary payable in respect of the position he holds by reason of his being appointed an associate teacher; or

“(c) If in any special case (to be defined by regulations made under this Act) he is being transferred from a normal school without reduction of salary other than that represented by the special allowance attached to that position.

“152A. **Proposed transfer of primary teachers**—(1) In this section, unless the context otherwise requires,—

“ ‘Employing authority’,—

“(a) In relation to a primary teacher appointed by the Director-General, means the Director-General:

“(b) In relation to any other primary teacher, means the governing body of the school at which he is employed:

“ ‘Primary teacher’ does not include a teacher employed at a composite school.

“(2) Where—

“(a) In the opinion of a primary teacher’s employing authority and Director-General or, as the case requires, the Director-General alone, the efficient conduct of the school at which that teacher is employed requires his transfer from his present position; or

“(b) A primary teacher—

“(i) Wishes to be transferred from a position at a school that is classified (on a list compiled by the Central Advisory Committee and approved by the Director-General) as very remote; and

“(ii) Has, since taking up that position, completed 3 years service in schools so classified; or

“(c) The transfer of a primary teacher from a position at a normal school (without reduction of salary other than that represented by the special allowance attached to that position) would be a special case as defined in regulations made under this Act; or

“(d) A primary teacher has lost or is about to lose his position because of a change in the status (not being a change in status resulting from a fluctuation in that school’s roll), or closure, of the school at which he is employed,—

that teacher’s employing authority may, by notice in writing to him, transfer him to some other position.

“(3) Every teacher transferred under subsection (2) of this section may appeal against the transfer in accordance with Part VI of this Act.

“(4) If a teacher appeals against a transfer under subsection (2) of this section, the Teachers Court of Appeal shall determine, having regard to all the circumstances of the case, whether or not that transfer is reasonable and, in the light of its determination, either confirm that transfer or order the reinstatement of that teacher; and that confirmation or order shall have effect accordingly.”

**11. Protection of teachers in certain cases**—Section 154 of the principal Act is hereby amended by repealing subsections (1) and (2), and substituting the following subsections:

“(1) The Minister may from time to time, by notice in the *Gazette*, designate a specified school or schools, (whether already established or to be established) as the replacement school or schools for any specified school or schools, or any specified department of any school or departments of any schools, or both; and in that case, where any teacher has lost or will lose his position as a result of the disestablishment or intended disestablishment of any school or department for which that first-mentioned school or those first-mentioned schools (hereafter in this subsection referred to as a replacement school) was designated as a replacement school, and has neither resigned (or given notice of his intention to resign) from the Education Service nor been appointed to any other position in the Education Service, the following provisions shall apply:

“(a) Every new position at a replacement school created as a result of the closure of the schools or departments

concerned shall be advertised; and, subject to paragraph (b) of this subsection, where that teacher applies for any such position—

“(i) For appointment to which he is eligible; and

“(ii) Appointment to which would not be a promotion for him—

he shall be appointed to that position:

“(b) Where 2 or more teachers who have applied for a position at a replacement school would all, but for this paragraph, be entitled under paragraph (a) of this subsection to be appointed to that position, the provisions of this Act shall apply to that position as if—

“(i) They were the only applicants for that position; and

“(ii) It were not a position at a replacement school:

“(c) If, by the time he has lost his position, that teacher has not been appointed to a position at a replacement school under paragraph (a) or paragraph (b) of this subsection, the Minister shall establish a supernumerary position at some school, and appoint that teacher to that position:

“(d) Notwithstanding any provision in this Act to the contrary, no person shall have any right to appeal against any appointment under paragraph (a) or paragraph (c) of this subsection to any position.

“(1A) Where any teacher has lost or will lose his position as a result of the closure or intended closure of any school or department for which no school has under subsection (1) of this section been designated the replacement school, and has not resigned (or given notice of his intention to resign) from the Education Service or been appointed to any other position in the Education Service, the following provisions shall apply:

“(a) The Director-General shall, after consultation with the teacher concerned, establish a supernumerary position at some school, and offer it in writing to that teacher:

“(b) If within 21 days of being offered a position under paragraph (a) of this subsection, that teacher accepts it by notice in writing to the Director-General, he shall thereupon be deemed to have been appointed to that position; and, notwithstanding any provision to the contrary in this Act,

no person shall have any right to appeal against his appointment to that position:

- “(c) If, within 21 days of so being offered a position, that teacher does not so accept that position, his controlling authority shall forthwith terminate his employment, by giving him 3 months notice in writing of his dismissal; and in that case, notwithstanding any provision in this or any other Act to the contrary, he shall have no right to appeal against that dismissal:
- “(d) A controlling authority may place a teacher who has been given notice of his dismissal under paragraph (c) of this subsection on leave with pay for all or any part of the period of that notice:
- “(e) Notwithstanding any provision in this Act to the contrary, that teacher’s controlling authority shall not transfer him to any other position unless he agrees to the transfer.

“(1B) For so long as a teacher appointed to any position under subsection (1) or subsection (1A) of this section continues to be employed in the Education Service, he shall, for the period of 2 years after the appointment, receive the higher of—

- “(a) The salary to which he would be entitled if he still held his former position; and
- “(b) The salary for the position he holds.”

**12. Duration of appointment of teacher**—Section 155 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Notwithstanding subsection (4) of this section, where—

- “(a) On any day a teacher became absent without approved leave (whether by absenting himself without approved leave or by failing or refusing to return to his duties after the expiration of any period of approved leave); and
- “(b) For a period of 3 months since that day he has continued to be absent without approved leave; and
- “(c) During that period the Board or governing body under which he holds his appointment (or the Director-General if he was appointed by the Director-General)—

“(i) Attempted to contact him by registered letter at his last known address; and

“(ii) Made all other reasonable efforts to contact him; and

“(iii) Failed to contact him,—

he shall be deemed to have given the Chief Executive Officer of that Board, or the Secretary of that governing body, or the Director-General (as the case requires), notice in writing of his intention to relinquish his engagement on that day, and to have relinquished his engagement at the expiration of that period.”

**13. When teachers deemed to be dismissed**—Section 177 of the principal Act is hereby amended by inserting in the first proviso, after paragraph (c), the following paragraph:

“(ca) In the case of a teacher dismissed from a position for appointment to which classification as a secondary teacher is necessary, his having ceased to be classified as a secondary teacher:”.

**14. Registration and inspection of private schools**—(1) Section 186 of the principal Act is hereby amended by repealing subsections (3) and (4), and substituting the following subsections:

“(3A) The managers of an unregistered private school or proposed private school may apply to the Director-General for registration of that school under subsection (3B) of this section.

“(3B) If, and only if, the Director-General is satisfied that the premises, staffing, equipment, and curriculum of a school in respect of which an application has been made under subsection (3A) of this section are likely to be satisfactory, he shall register that school.

“(3C) Every registration under subsection (3B) of this section shall (unless earlier revoked) continue in force for 6 months and then expire; but the managers of the school concerned may, at any time (whether before or after the expiry of that registration), make a further application under subsection (3A) of this section.

“(3D) The managers of a private school registered under subsection (3B) of this section may apply to the Director-General for the registration of that school under subsection (4) of this section.

“(3E) Where the Director-General receives an application under subsection (3D) of this section, he shall, as soon as is practicable cause the school concerned to be inspected by an Inspector.

“(4) If and only if, on the basis of the Inspector’s report, the Director-General is satisfied that a school in respect of which an application has been made under subsection (3D) of this section is efficient, he shall register that school, and revoke its registration under subsection (3B) of this section.”

(2) The said section 186 is hereby further amended by repealing subsection (8), and substituting the following subsection:

“(8) Where—

“(a) A private school that is not registered under this section commences operations; or

“(b) A private school whose registration has been revoked under subsection (7) of this section continues or recommences its operations after the revocation concerned and before it has again become registered under this section; or

“(c) A private school ceases operations before informing the Director-General of the date of its closure,— every manager of that school shall be deemed to commit an offence against this Act, and shall be liable on summary conviction to a fine not exceeding \$1,000, and to a further fine not exceeding \$50 for every day or part thereof upon which that school has continued operations while unregistered.”

(3) The said section 186 is hereby consequentially amended by omitting from subsection (7) the words “has ceased to be an efficient private school, within the meaning of this section, the Director-General shall”, and substituting the words “is not efficient, he shall revoke that school’s registration under this section, and shall”.

(4) Every private school that was, immediately before the commencement of this section, registered or deemed to have been registered under section 186 of the principal Act shall be deemed to have been registered under subsection (4) of that section (as substituted by subsection (1) of this section) on that commencement.

**15. Nelson Education Board may co-opt additional member**—Notwithstanding section 15 of the principal Act,—

(a) The Education Board of the District of Nelson may have, in addition to the members specified in that section, one further member, who shall be appointed by that Board on the nomination of the Nelson Secondary Schools Council:

(b) Every such member, unless he sooner dies, resigns his office, or ceases to be eligible to be a member of a

Secondary Schools Council, shall go out of office on the second anniversary of his appointment; but he may from time to time be reappointed.

**16. Change of name of former South Auckland Education District and Board**—The name of the education district whose name immediately before the commencement of this section was the South Auckland education district shall be the Hamilton education district; and section 21 (1) of the principal Act shall apply to the name of the Board of that education district accordingly.

**17. Broadbanding appointments validated**—(1) Regulation 12 (2) (b) of the Education (Salaries and Staffing) Regulations 1957, Amendment No. 18 is hereby amended—

(a) By omitting from subparagraph (i) the words “receiving a salary”, and substituting the words “of a salary grade”; and

(b) By omitting from subparagraph (ii) the words “receiving the same salary, being a salary”, and substituting the words “of the same salary grade, being a salary grade”.

(2) The said regulation 12 (as amended by subsection (1) of this section) may at any time be amended or revoked by regulations made under the principal Act.

(3) Subsections (1) and (2) of this section shall be deemed to have come into force on the commencement of the Education (Salaries and Staffing) Regulations 1957, Amendment No. 18.

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This Act is administered in the Department of Education.

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