

SENATE FINANCE COMMITTEE SUBSTITUTE FOR  
SENATE EDUCATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 502

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

AN ACT

RELATING TO SCHOOL PERSONNEL; REQUIRING SCHOOL DISTRICTS AND  
CHARTER SCHOOLS TO ADOPT THE STATE TEACHER EVALUATION FRAMEWORK  
TO IMPROVE STUDENT ACHIEVEMENT AND A SCHOOL PRINCIPAL  
EVALUATION BASED ON SCHOOL ACHIEVEMENT; PROVIDING TIME LINES;  
AMENDING THE SCHOOL PERSONNEL ACT TO CHANGE THE TERMINATION  
PROCESS; DECLARING AN EMERGENCY.

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

SECTION 1. A new section of the School Personnel Act is  
enacted to read:

"NEW MATERIAL TEACHER EVALUATIONS--SCHOOL PRINCIPAL  
EVALUATIONS--REQUIREMENTS--TIME LINES--WORK GROUP.--

A. As used in this section:

(1) "school district" includes a charter  
school; and

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underscored material = new  
[bracketed material] = delete

1                   (2) "school principal" or "local  
2 superintendent" includes the head administrator of a charter  
3 school.

4                   B. Each school district shall evaluate teachers  
5 using the state evaluation framework and its own evaluation  
6 program to measure teacher effectiveness and improve student  
7 achievement. Each teacher evaluation program shall use  
8 multiple methods of evaluation that are rigorous, fair and  
9 transparent, and the results must be provided to the teacher in  
10 a timely manner. The teacher evaluation program may include  
11 opportunities for input and participation by peers, subject-  
12 matter experts, educational leaders other than a direct  
13 supervisor and others specified in the program. Each teacher  
14 evaluation program shall be approved by the department prior to  
15 implementation, and the department shall monitor the program's  
16 use and efficacy in improving teacher effectiveness and student  
17 achievement in the school district. In 2013-2014, the  
18 department shall commence an outside independent evaluation to  
19 monitor the positive and negative consequences of implementing  
20 the statewide evaluation framework and school district  
21 evaluation programs. The school district performance-based  
22 teacher evaluation shall:

23                   (1) identify teachers who are most effective  
24 at helping students succeed;

25                   (2) provide targeted assistance and

1 professional development opportunities for teachers to improve;

2 (3) inform the match between teacher  
3 assignments and student and school needs; and

4 (4) inform incentives for effective teachers.

5 C. For teachers in grades and courses that have  
6 required statewide standards-based assessments, forty percent  
7 of their evaluations shall be based on student academic growth  
8 in reading and mathematics as demonstrated on the standards-  
9 based assessments and ten percent on other assessments  
10 recommended by the work group and approved by the department.  
11 Student academic growth shall be defined by the work group.

12 D. For teachers in grades and courses that do not  
13 have required statewide standards-based assessments,  
14 evaluations shall be as follows:

15 (1) at least one-half of their evaluations  
16 shall be based on student academic growth determined by  
17 designated school district assessments that indicate that  
18 students are improving at an adequate growth rate as defined by  
19 the work group; or

20 (2) if no designated school district school  
21 assessments apply, at least one-half of their evaluations shall  
22 be based on teacher-developed assessments after those  
23 assessments have been reviewed and approved by the local  
24 superintendent or the school administrator designated by the  
25 local superintendent.

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1           E. In addition to the requirements of Subsections C  
2 and D of this section, the remainder of teacher evaluations  
3 shall include:

4                   (1) classroom observations of teachers using a  
5 research-based protocol or a district-developed protocol  
6 approved by the department completed by a school administrator  
7 at least once a school year; and

8                   (2) additional measures of teacher  
9 effectiveness developed by each school district that may  
10 include:

- 11                           (a) student and parent surveys;
- 12                           (b) teacher performance portfolios;
- 13                           (c) video classroom observations with  
14 teacher reflection after viewing the videos; or
- 15                           (d) other evidence-based measures that  
16 effectively measure teacher performance.

17           F. School district teacher evaluation rating scales  
18 shall include at least four levels of evaluating effectiveness.

19           G. School districts shall document and use the  
20 results of teacher evaluations to tailor professional  
21 development for individual teachers.

22           H. The department shall make available to school  
23 districts the evaluation framework and other materials from  
24 evidence-based sources as models to help them develop and adopt  
25 their own programs.

1 I. Each school district shall evaluate school  
2 principals on their school's achievement and growth in  
3 achievement based on the state accountability system and inform  
4 incentives for effective school principals. The highly  
5 objective uniform statewide standard of evaluation for  
6 principals shall be aligned with the principal evaluation  
7 system. The governing board of a charter school shall evaluate  
8 its school principal on the school's achievement based on the  
9 state accountability system and inform the incentive for an  
10 effective principal.

11 J. The department and school districts shall follow  
12 the time line provided in Subsections K through R of this  
13 section to implement teacher and school principal evaluation  
14 programs in all school districts.

15 K. During April 2011 to August 2011, the department  
16 shall convene a work group to develop and make recommendations  
17 for a statewide evaluation framework for teacher evaluation  
18 models and school principal evaluations and propose a  
19 performance-based compensation system that incentivizes  
20 effective teachers and school principals. The department shall  
21 conduct three public hearings across the state to gather input  
22 from parents, students, school personnel and other  
23 constituencies. The department shall report to the governor in  
24 August 2011 on the statewide evaluation framework. The  
25 department shall present a final report, with recommendations

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1 for legislative changes as necessary, to the legislative  
2 education study committee and the legislative finance committee  
3 by December 1, 2011. The work group shall reflect the  
4 geographic distribution and cultural diversity of the state and  
5 shall be composed of:

6 (1) the secretary or the secretary's designee,  
7 who shall serve as chair;

8 (2) the director of the legislative education  
9 study committee;

10 (3) the director of the legislative finance  
11 committee; and

12 (4) other members appointed by the secretary,  
13 including:

14 (a) a representative nominated by an  
15 organization of school administrators;

16 (b) a representative nominated by each  
17 public school teacher organization;

18 (c) a representative nominated by a  
19 public school parent organization;

20 (d) a representative nominated by  
21 charter schools;

22 (e) two representatives from the  
23 business community;

24 (f) a representative nominated by the  
25 New Mexico school boards association;

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1 (g) a representative nominated by the  
2 Hispanic education advisory council;

3 (h) a representative nominated by the  
4 Indian education advisory council;

5 (i) representation from public  
6 elementary, middle and high school teachers or principals;

7 (j) a parent of a public school student;

8 (k) an expert on teacher evaluation  
9 models; and

10 (l) an expert on value-added models.

11 L. The department shall provide to school districts  
12 regular updates on the progress of the work group and provide  
13 assistance to school districts to ensure that they are prepared  
14 to implement the recommendations.

15 M. During April to August 2011, school districts  
16 shall designate district-wide assessments and approve teacher-  
17 developed assessments and make staff aware of evaluation models  
18 and provide training for school principals and evaluators.

19 N. During the 2011-2012 school year, school  
20 districts shall adopt their evaluation programs based on the  
21 state teacher evaluation framework and school principal  
22 evaluations based on school achievement and use them to  
23 determine teacher and school principal effectiveness to create  
24 a baseline of performance.

25 O. Beginning with the 2012-2013 school year, each

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1 school district's teacher and school principal evaluation  
2 programs and performance-based compensation systems shall be  
3 operational. A teacher earning the lowest effectiveness rating  
4 on the school district's evaluation scale for three consecutive  
5 years shall be terminated unless the teacher can demonstrate  
6 through the appeal process that the data or other information  
7 relied on for the teacher's evaluation results was inaccurate  
8 or misrepresented. A school district shall provide additional  
9 professional development to a teacher who earns a low  
10 effectiveness rating. If the teacher earns the lowest  
11 effectiveness rating for two consecutive years, the teacher  
12 shall be placed on a professional growth plan and shall be  
13 terminated if the teacher earns the lowest effectiveness rating  
14 for the third consecutive year.

15 P. A school principal whose school earns the lowest  
16 ranking on the state's accountability system for three  
17 consecutive years shall be terminated unless the school  
18 principal can demonstrate through an appeal process that the  
19 data or other information relied on for the school principal's  
20 evaluation was inaccurate or misrepresented. A school district  
21 shall provide additional professional development to a school  
22 principal whose school earns the lowest ranking on the state's  
23 accountability system. If the school earns the lowest ranking  
24 for two consecutive years, the school principal shall be placed  
25 on a professional growth plan and shall be terminated if the

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1 school earns the lowest ranking for the third consecutive year.

2 Q. Beginning with the 2012-2013 school year, when a  
3 school district with a collective bargaining agreement must  
4 terminate teachers through a reduction in force, the school  
5 district and the bargaining agent shall demonstrate to the  
6 department that they considered the effectiveness of individual  
7 teachers as shown by their evaluations and the programmatic  
8 needs of the public school when determining which teachers to  
9 terminate.

10 R. The work group shall develop a recognition  
11 program to reward effective teachers and school principals.  
12 Financial awards are subject to the availability of funding."

13 SECTION 2. Section 22-8B-5 NMSA 1978 (being Laws 1999,  
14 Chapter 281, Section 5, as amended) is amended to read:

15 "22-8B-5. CHARTER SCHOOLS--STATUS--LOCAL SCHOOL BOARD  
16 AUTHORITY.--

17 A. The local school board may waive only locally  
18 imposed school district requirements for locally chartered  
19 charter schools.

20 B. A state-chartered charter school is exempt from  
21 school district requirements. A state-chartered charter school  
22 is responsible for developing its own written policies and  
23 procedures in accordance with this section.

24 C. The department shall waive requirements or rules  
25 and provisions of the Public School Code pertaining to

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1 individual class load, teaching load, length of the school day,  
2 staffing patterns, subject areas, purchase of instructional  
3 material, evaluation standards for school personnel, school  
4 principal duties and driver education; provided, however, that  
5 the charter school shall have teacher and head administrator  
6 evaluation programs as provided in Section 1 of this 2011 act  
7 by the 2012-2013 school year. The department may waive  
8 requirements or rules and provisions of the Public School Code  
9 pertaining to graduation requirements. Any waivers granted  
10 pursuant to this section shall be for the term of the charter  
11 granted but may be suspended or revoked earlier by the  
12 department.

13 D. A charter school shall be a public school  
14 accredited by the department and shall be accountable to the  
15 chartering authority for purposes of ensuring compliance with  
16 applicable laws, rules and charter provisions.

17 E. A local school board shall not require any  
18 employee of the school district to be employed in a charter  
19 school.

20 F. A local school board shall not require any  
21 student residing within the geographic boundary of its district  
22 to enroll in a charter school.

23 G. A student who is suspended or expelled from a  
24 charter school shall be deemed to be suspended or expelled from  
25 the school district in which the student resides."

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1           **SECTION 3.** Section 22-10A-4 NMSA 1978 (being Laws 2003,  
2 Chapter 153, Section 35, as amended by Laws 2005, Chapter 315,  
3 Section 4 and by Laws 2005, Chapter 316, Section 1) is amended  
4 to read:

5           "22-10A-4. TEACHERS AND SCHOOL ADMINISTRATORS--  
6 PROFESSIONAL STATUS--LICENSURE LEVELS--SALARY ALIGNMENT.--

7           A. Teaching and school administration are  
8 recognized as professions, with all the rights,  
9 responsibilities and privileges accorded professions, having  
10 their first responsibility to the public they serve. The  
11 primary responsibilities of the teaching and school  
12 administration professions are to educate the children of this  
13 state and to improve the professional practices and ethical  
14 conduct of their members.

15           B. The New Mexico licensure framework for teachers  
16 and school administrators is a progressive career system in  
17 which licensees are required to demonstrate increased  
18 competencies and undertake increased duties as they progress  
19 through the licensure levels. The minimum salary provided as  
20 part of the career system shall not take effect until the  
21 department has adopted increased competencies for the  
22 particular level of licensure and a highly objective uniform  
23 statewide standard of evaluation.

24           C. A level one license is a provisional license  
25 that gives a beginning teacher the opportunity, through a

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1 formal mentorship program, for additional preparation to be a  
2 quality teacher. A level two license is given to a teacher who  
3 is a fully qualified professional who is primarily responsible  
4 for ensuring that students meet and exceed department-adopted  
5 academic content and performance standards; a teacher may  
6 choose to remain at level two for the remainder of the  
7 teacher's career. A level three-A license is the highest level  
8 of teaching licensure for those teachers who choose to advance  
9 as instructional leaders in the teaching profession and  
10 undertake greater responsibilities such as curriculum  
11 development, peer intervention and mentoring. A level three-B  
12 license is for teachers who commence a new career path in  
13 school administration by becoming school administrators.

14 D. Beginning in the 2012-2013 school year, all  
15 teacher and school administrator salary systems shall be  
16 aligned with the licensure framework in a professional educator  
17 licensing and [~~salary~~] performance-based compensation system.

18 E. All teachers and school administrators who hold  
19 teaching or administrator certificates on the effective date of  
20 the 2003 act shall meet the requirements for their level of  
21 licensure by September 1, 2006 and shall be issued licenses."

22 SECTION 4. Section 22-10A-7 NMSA 1978 (being Laws 2003,  
23 Chapter 153, Section 38, as amended) is amended to read:

24 "22-10A-7. LEVEL ONE LICENSURE.--

25 A. A level one license is a provisional five-year

1 license for beginning teachers that requires as a condition of  
2 licensure that the licensee undergo a formal mentorship program  
3 for at least one full school year and an annual intensive  
4 performance evaluation by a school administrator for at least  
5 three full school years before applying for a level two  
6 license.

7           B. Each school district, in accordance with  
8 department rules, shall provide for the mentorship and  
9 evaluation of level one teachers. At the end of each year and  
10 at the end of the license period, the level one teacher shall  
11 be evaluated for [~~competency~~] teacher effectiveness. If the  
12 teacher fails to demonstrate satisfactory progress and  
13 [~~competence~~] effectiveness annually, the teacher may be  
14 terminated as provided in Section [~~22-10A-24~~] 22-10A-22 NMSA  
15 1978. If the teacher has not demonstrated satisfactory  
16 progress and [~~competence~~] effectiveness by the end of the five-  
17 year period, the teacher shall not be granted a level two  
18 license.

19           C. Except in exigent circumstances defined by  
20 department rule, a level one license shall not be extended  
21 beyond the initial period.

22           D. The department shall issue a standard level one  
23 license to an applicant who is at least eighteen years of age  
24 who:

- 25           (1) holds a baccalaureate degree from an

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1 accredited educational institution;

2 (2) has successfully completed a department-  
3 approved teacher preparation program from a nationally  
4 accredited or state-approved educational institution;

5 (3) has passed the New Mexico teacher  
6 assessments examination; and

7 (4) meets other qualifications for level one  
8 licensure, including clearance of the required background  
9 check.

10 E. The department shall issue an alternative level  
11 one license to an applicant who meets the requirements of  
12 Section 22-10A-8 NMSA 1978.

13 F. The department shall establish competencies and  
14 qualifications for specific grade levels, types and subject  
15 areas of level one licensure, including early childhood,  
16 elementary, middle school, secondary, special education and  
17 vocational education.

18 G. Beginning with the 2003-2004 school year, with  
19 the adoption by the department of a highly objective uniform  
20 statewide standard of evaluation for level one teachers, the  
21 minimum salary for a level one teacher shall be thirty thousand  
22 dollars (\$30,000) for a standard nine and one-half month  
23 contract.

24 H. Teachers who hold level one licenses on the  
25 effective date of the 2003 act must be evaluated by the end of

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1 the 2006-2007 school year.

2 I. Beginning with the 2012-2013 school year, level  
 3 one teachers shall be evaluated and retained pursuant to their  
 4 school district's or charter school's teacher evaluation  
 5 program and compensated pursuant to the school district's  
 6 performance-based compensation system."

7 SECTION 5. Section 22-10A-10 NMSA 1978 (being Laws 2003,  
 8 Chapter 153, Section 41, as amended by Laws 2005, Chapter 315,  
 9 Section 7 and by Laws 2005, Chapter 316, Section 4) is amended  
 10 to read:

11 "22-10A-10. LEVEL TWO LICENSURE.--

12 A. A level two license is a nine-year license  
 13 granted to a teacher who meets the qualifications for that  
 14 level and who annually demonstrates [~~essential competency to~~  
 15 ~~teach~~] effectiveness in teaching. If a level two teacher does  
 16 not demonstrate [~~essential competency~~] effectiveness in a given  
 17 school year, the school district shall provide the teacher with  
 18 additional professional development and peer intervention  
 19 during the following school year. [~~If by the end of that~~  
 20 ~~school year the teacher fails to demonstrate essential~~  
 21 ~~competency, a school district may choose not to contract with~~  
 22 ~~the teacher to teach in the classroom.~~]

23 B. The department shall issue a level two license  
 24 to an applicant who successfully completes the level one  
 25 license or is granted reciprocity as provided by department

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1 rules; demonstrates [~~essential competency~~] effectiveness in  
2 teaching required by the [~~department as verified by the local~~  
3 ~~superintendent through the highly objective uniform statewide~~  
4 ~~standard of evaluation~~] school district's or charter school's  
5 teacher evaluation program; and meets other qualifications as  
6 required by the department.

7 C. The department shall provide for qualifications  
8 for specific grade levels, types and subject areas of level two  
9 licensure, including early childhood, elementary, middle,  
10 secondary, special education and vocational education.

11 D. [~~With the adoption by the department of the~~  
12 ~~statewide objective performance evaluation for level two~~  
13 ~~teachers~~] The minimum salary for a level two teacher for a  
14 standard nine and one-half month contract shall be as follows:

15 (1) for the 2003-2004 school year,  
16 thirty thousand dollars (\$30,000);

17 (2) for the 2004-2005 school year,  
18 thirty-five thousand dollars (\$35,000); and

19 (3) for the 2005-2006 school year and  
20 subsequent school years, forty thousand dollars (\$40,000).

21 E. Beginning with the 2012-2013 school year, level  
22 two teachers shall be evaluated and retained pursuant to their  
23 school district's or charter school's teacher evaluation  
24 program and compensated pursuant to the school district's  
25 performance-based compensation system."

1           SECTION 6. Section 22-10A-11 NMSA 1978 (being Laws 2003,  
2 Chapter 153, Section 42, as amended) is amended to read:

3           "22-10A-11. LEVEL THREE LICENSURE--TRACKS FOR TEACHERS,  
4 COUNSELORS AND SCHOOL ADMINISTRATORS.--

5           A. A level three-A license is a nine-year license  
6 granted to a teacher who meets the qualifications for that  
7 level and who annually demonstrates [~~instructional leader~~  
8 ~~competencies~~] effectiveness in teaching. If a level three-A  
9 teacher does not demonstrate [~~essential competency~~  
10 effectiveness in a given school year, the school district shall  
11 provide the teacher with additional professional development  
12 and peer intervention during the following school year. [~~If by~~  
13 ~~the end of that school year the teacher fails to demonstrate~~  
14 ~~essential competency, a school district may choose not to~~  
15 ~~contract with the teacher to teach in the classroom.~~]

16           B. The department shall grant a level three-A  
17 license to an applicant who has been a level two teacher for at  
18 least three years and holds a post-baccalaureate degree or  
19 national board for professional teaching standards  
20 certification; demonstrates [~~instructional leader competence as~~  
21 ~~required by the department and verified by the local~~  
22 ~~superintendent through the highly objective uniform statewide~~  
23 ~~standard of~~] effectiveness in teaching as provided by the  
24 school district's or charter school's teacher evaluation  
25 program; and meets other qualifications for the license.

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1           C. ~~[With the adoption by the department of a highly~~  
2 ~~objective uniform statewide standard of evaluation for level~~  
3 ~~three-A teachers]~~ The minimum salary for a level three-A  
4 teacher for a standard nine and one-half month contract shall  
5 be as follows:

6                   (1) for the 2003-2004 school year, thirty  
7 thousand dollars (\$30,000);

8                   (2) for the 2004-2005 school year,  
9 thirty-five thousand dollars (\$35,000);

10                  (3) for the 2005-2006 school year, forty  
11 thousand dollars (\$40,000);

12                  (4) for the 2006-2007 school year,  
13 forty-five thousand dollars (\$45,000); and

14                  (5) for the 2007-2008 school year and  
15 subsequent school years, fifty thousand dollars (\$50,000).

16           D. Beginning with the 2012-2013 school year, level  
17 three teachers shall be evaluated and retained pursuant to  
18 their school district's or charter school's teacher evaluation  
19 program and compensated pursuant to the school district's  
20 adopted compensation system.

21           ~~[D.]~~ E. A level three-B license is a nine-year  
22 license granted to a school administrator who meets the  
23 qualifications for that level. Licenses may be renewed upon  
24 satisfactory annual demonstration of instructional leader and  
25 administrative competency. School principals shall be

1 evaluated on their school's achievement based on the state  
2 accountability system.

3 ~~[E.]~~ F. The department shall grant a level three-B  
4 license to an applicant who:

5 (1) holds a level two license and meets the  
6 requirements for a level three-A license or who holds a current  
7 level two teacher's license and for at least four years, has  
8 held the highest-ranked counselor license as provided in  
9 Chapter 22, Article 10A NMSA 1978 and rules promulgated by the  
10 department;

11 (2) holds a post-baccalaureate degree or  
12 national board for professional teaching standards  
13 certification;

14 (3) has satisfactorily completed department-  
15 approved courses in administration and a department-approved  
16 administration apprenticeship program; and

17 (4) demonstrates instructional leader  
18 competence as required by the department [~~and verified by the~~  
19 ~~local superintendent through the highly objective uniform~~  
20 ~~statewide standard of evaluation~~].

21 ~~[F.]~~ G. Beginning with the 2007-2008 school year,  
22 the minimum annual salary for a level three-B school principal  
23 or assistant school principal shall be fifty thousand dollars  
24 (\$50,000) multiplied by the applicable responsibility factor.

25 ~~[G.]~~ H. By the beginning of the 2008-2009 school

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1 year, the department shall adopt a highly objective uniform  
2 statewide standard of evaluation, which includes data sources  
3 linked to student achievement and educational plan for student  
4 success progress, for level three-B school principals and  
5 assistant school principals and rules for the implementation of  
6 that evaluation system linked to the level of responsibility at  
7 each school level.

8 I. By the 2012-2013 school year, school principals  
9 shall be evaluated on their school's achievement based on the  
10 state accountability system."

11 **SECTION 7.** Section 22-10A-19 NMSA 1978 (being Laws 2003,  
12 Chapter 153, Section 50, as amended) is amended to read:

13 "22-10A-19. TEACHERS AND SCHOOL PRINCIPALS--  
14 ACCOUNTABILITY--EVALUATIONS--PROFESSIONAL DEVELOPMENT--PEER  
15 INTERVENTION--MENTORING.--

16 A. The department shall adopt criteria and minimum  
17 highly objective uniform statewide standards of evaluation for  
18 the annual performance evaluation of licensed school employees  
19 except teachers. A teacher shall be evaluated through the  
20 school district's or charter school's teacher evaluation  
21 program as provided in Section 1 of this 2011 act. The  
22 professional development plan for teachers shall include  
23 documentation on how a teacher who receives professional  
24 development that has been required or offered by the state or a  
25 school district or charter school incorporates the results of

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1 that professional development in the classroom.

2 B. The local superintendent shall adopt policies,  
3 guidelines and procedures for the performance evaluation  
4 process. Evaluation by other school employees shall be one  
5 component of the evaluation tool for school administrators.

6 ~~[G. As part of the highly objective uniform~~  
7 ~~statewide standard of evaluation for teachers, the school~~  
8 ~~principal shall observe each teacher's classroom practice to~~  
9 ~~determine the teacher's ability to demonstrate state-adopted~~  
10 ~~competencies.~~

11 ~~D.]~~ C. At the beginning of each school year,  
12 teachers and school principals shall devise professional  
13 development plans for the coming year, and performance  
14 evaluations shall be based in part on how well the professional  
15 development plan was carried out.

16 ~~[E.]~~ D. If a level two or three-A teacher's  
17 performance evaluation indicates less than [~~satisfactory~~]  
18 effective performance [~~and competency~~], the school principal  
19 may require the teacher to undergo peer intervention, including  
20 mentoring, for a period the school principal deems necessary.  
21 If the teacher is unable to demonstrate [~~satisfactory~~]  
22 effective performance [~~and competency~~] by the end of the  
23 period, the peer interveners may recommend termination of the  
24 teacher.

25 ~~[F.]~~ E. At least every two years, school principals

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1 shall attend a training program [~~approved by the department~~] to  
2 improve their evaluation, administrative and instructional  
3 leadership skills.

4 F. As used in this section and Sections 22-10A-21  
5 through 22-10A-31 NMSA 1978:

6 (1) "local school board" includes governing  
7 authorities of state agencies;

8 (2) "school district" includes state agencies;  
9 and

10 (3) "school principal" and "local  
11 superintendent" for state agencies mean those analogous  
12 positions identified by the state agency governing authority."

13 SECTION 8. Section 22-10A-21 NMSA 1978 (being Laws 1967,  
14 Chapter 16, Section 113, as amended) is amended to read:

15 "22-10A-21. EMPLOYMENT CONTRACTS--DURATION.--

16 A. All employment contracts between [~~local~~] a  
17 school [~~boards~~] district and [~~certified~~] licensed school  
18 [~~personnel and between governing authorities of state agencies~~  
19 ~~and certified school instructors~~] employees shall be in writing  
20 on forms approved by the [~~state board~~] department. These forms  
21 shall contain and specify the term of service, the salary to be  
22 paid, the method of payment, the causes for termination of the  
23 contract and other provisions required by the [~~regulations of~~  
24 ~~the state board~~] rules of the department.

25 B. All employment contracts between [~~local~~] a

1 school [~~boards~~] district and [~~certified~~] licensed school  
2 [~~personnel and between governing authorities of state agencies~~  
3 ~~and certified school instructors~~] employees shall be for a  
4 period of one school year except:

5 (1) contracts for less than one school year  
6 are permitted to fill personnel vacancies [~~which~~] that occur  
7 during the school year;

8 (2) contracts for the remainder of a school  
9 year are permitted to staff programs when the availability of  
10 funds for the programs is not known until after the beginning  
11 of the school year;

12 (3) contracts for less than one school year  
13 are permitted to staff summer school programs and to staff  
14 federally funded programs in which the federally approved  
15 programs are specified to be conducted for less than one school  
16 year;

17 (4) contracts not to exceed three years are  
18 permitted for [~~certified~~] school administrators in public  
19 schools who are engaged in administrative functions for more  
20 than one-half of their employment time; and

21 (5) contracts not to exceed three years are  
22 permitted at the discretion of the local [~~school board~~]  
23 superintendent for certified school instructors in public  
24 schools who have been employed in the school district for three  
25 consecutive school years.

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1 C. Persons employed under contracts for periods of  
2 less than one school year as provided in Paragraphs (1) and (2)  
3 of Subsection B of this section shall be accorded all the  
4 duties, rights and privileges of the ~~[Certified]~~ School  
5 Personnel Act.

6 D. In determination of eligibility for unemployment  
7 compensation rights and benefits for ~~[certified]~~ licensed  
8 school ~~[instructors]~~ employees where those rights and benefits  
9 are claimed to arise from the employment relationship between  
10 ~~[governing authorities of state agencies or local school boards~~  
11 ~~and certified school instructors]~~ school districts and the  
12 licensed school employees, that period of a year not covered by  
13 a school year shall not be considered an unemployment period.

14 E. ~~[Except as provided in Section 22-10-12 NMSA~~  
15 ~~1978]~~ A person employed by contract pursuant to this section  
16 has no legitimate objective expectancy of reemployment, and no  
17 contract entered into pursuant to this section shall be  
18 construed as an implied promise of continued employment  
19 pursuant to a subsequent contract."

20 SECTION 9. Section 22-10A-22 NMSA 1978 (being Laws 1967,  
21 Chapter 16, Section 114, as amended) is amended to read:

22 "22-10A-22. NOTICE OF REEMPLOYMENT--TERMINATION OF  
23 LICENSED SCHOOL EMPLOYEES.--

24 A. Each school principal shall recommend to the  
25 local superintendent the reemployment or termination of each

1 licensed school employee under the school principal's  
2 supervision. On or before the last day of the school year of  
3 the existing employment contract, the local [~~school board or~~  
4 ~~the governing authority of the state agency~~] superintendent  
5 shall serve written notice of reemployment or termination on  
6 each [~~certified~~] licensed school [~~instructor~~] employee employed  
7 by the school district [~~or state agency~~]. A notice of  
8 reemployment shall be an offer of employment for the ensuing  
9 school year. A notice of termination shall be a notice of  
10 intention not to reemploy for the ensuing school year. Failure  
11 of the local school board [~~or the governing authority of the~~  
12 ~~state agency~~] to serve a written notice of reemployment or  
13 termination on a [~~certified~~] licensed school [~~instructor~~]  
14 employee shall be construed to mean that notice of reemployment  
15 has been served upon the person for the ensuing school year  
16 according to the terms of the existing employment contract but  
17 subject to any additional compensation allowed other  
18 [~~certified~~] licensed school [~~instructors~~] employees of like  
19 qualifications and experience employed by the school district  
20 [~~or state agency~~].

21 B. Nothing in this section shall be construed to  
22 mean that failure of a local [~~school board or the governing~~  
23 ~~authority of the state agency~~] superintendent to serve a  
24 written notice of reemployment or termination shall  
25 automatically extend a [~~certified~~] licensed school

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1 [instructor's] employee's employment contract for a period in  
2 excess of one school year.

3 C. Beginning with the 2012-2013 school year and the  
4 implementation of teacher evaluation programs, a teacher who  
5 earns the lowest effectiveness rating on the school district's  
6 rating scale for three consecutive years shall be terminated."

7 **SECTION 10.** Section 22-10A-23 NMSA 1978 (being Laws 1967,  
8 Chapter 16, Section 115, as amended) is amended to read:

9 "22-10A-23. REEMPLOYMENT--ACCEPTANCE--REJECTION--BINDING  
10 CONTRACT.--

11 A. Each [~~certified~~] licensed school [~~instructor~~]  
12 employee shall deliver to the local [~~school board of the school~~  
13 ~~district or to the governing authority of the state agency in~~  
14 ~~which~~] superintendent by whom the person is employed a written  
15 acceptance or rejection of reemployment for the ensuing school  
16 year within fifteen days from the following:

17 (1) the date written notice of reemployment is  
18 served upon the person; or

19 (2) the last day of the school year when no  
20 written notice of reemployment or termination is served upon  
21 the person on or before the last day of the school year.

22 B. Delivery of the written acceptance of  
23 reemployment by a [~~certified~~] licensed school [~~instructor~~]  
24 employee creates a binding employment contract between the  
25 [~~certified~~] licensed school [~~instructor~~] employee and the

1 ~~[local school board or the governing authority of the state~~  
 2 ~~agency]~~ school district until the parties enter into a formal  
 3 written employment contract. Written employment contracts  
 4 between ~~[local]~~ school ~~[boards or governing authorities of~~  
 5 ~~state agencies]~~ districts and ~~[certified]~~ licensed school  
 6 ~~[instructors]~~ employees shall be executed by the parties not  
 7 later than ten days before the first day of a school year."

8 SECTION 11. Section 22-10A-24 NMSA 1978 (being Laws 1986,  
 9 Chapter 33, Section 22, as amended) is amended to read:

10 "22-10A-24. TERMINATION DECISIONS--LOCAL ~~[SCHOOL BOARD~~  
 11 ~~--GOVERNING AUTHORITY OF A STATE AGENCY]~~ SUPERINTENDENT--  
 12 PROCEDURES.--

13 A. ~~[A local school board or governing authority of~~  
 14 ~~a state agency may terminate an employee with fewer than three~~  
 15 ~~years of consecutive service for any reason it deems~~  
 16 ~~sufficient.]~~ A school principal may recommend the termination  
 17 of a school employee under the principal's supervision who has  
 18 worked for the school district for less than three consecutive  
 19 years for any reason the principal deems sufficient. Based  
 20 upon this recommendation, the local superintendent may  
 21 terminate the school employee. Upon request of the  
 22 school employee, the local superintendent ~~[or administrator]~~  
 23 shall provide written reasons for the decision to terminate.  
 24 The reasons shall be provided within ten working days of the  
 25 request. The reasons shall not be publicly disclosed by the

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1 local superintendent [~~administrator, local school board or~~  
2 ~~governing authority~~]. The reasons shall not provide a basis  
3 for contesting the decision under the School Personnel Act.

4 B. Before terminating [~~a noncertified~~] an  
5 unlicensed school employee, the local [~~school board or~~  
6 ~~governing authority~~] superintendent shall serve the unlicensed  
7 school employee with a written notice of termination.

8 C. [~~An~~] A school employee who has been employed by  
9 a school district [~~or state agency~~] for three consecutive years  
10 and who receives a notice of termination pursuant to either  
11 Section [~~22-10-12~~] 22-10A-22 NMSA 1978 or this section may  
12 request an opportunity to make a statement to the local school  
13 board [~~or governing authority~~] on the decision to terminate  
14 [~~him~~] the school employee by submitting a written request to  
15 the local superintendent [~~or administrator~~] within five working  
16 days from the date written notice of termination is served  
17 [~~upon him~~]. The school employee may also request in writing  
18 the reasons for the termination action [~~to terminate him~~]. The  
19 local superintendent [~~or administrator~~] shall provide written  
20 reasons for the notice of termination to the school employee  
21 within five working days from the date the written request for  
22 a meeting and the written request for the reasons were received  
23 by the local superintendent [~~or administrator. Neither~~]. The  
24 local superintendent [~~or administrator nor the local school~~  
25 ~~board or governing authority~~] shall not publicly disclose [~~its~~]

1 the reasons for termination.

2           D. A local [~~school board or governing authority~~]  
3 superintendent may not terminate [~~an~~] a school employee who has  
4 been employed by a school district or state agency for three  
5 consecutive years without just cause. "Just cause" for the  
6 termination of a teacher includes low effectiveness ratings and  
7 unsatisfactory, uncorrected work performance. A teacher who  
8 earns the lowest effectiveness rating on the school district's  
9 evaluation scale for three consecutive years shall be  
10 terminated unless the teacher can demonstrate that the data or  
11 other information relied on for the teacher's evaluation  
12 results was inaccurate or misrepresented. Other reasons for  
13 just cause may also apply.

14           E. The school employee's request pursuant to  
15 Subsection C of this section shall be granted if [~~he~~] the  
16 school employee responds to the local superintendent's [~~or~~  
17 ~~administrator's~~] written reasons as provided in Subsection C of  
18 this section by submitting in writing to the local  
19 superintendent [~~or administrator~~] a contention that the  
20 decision to terminate [~~him~~] was made without just cause. The  
21 written contention shall specify the grounds on which it is  
22 contended that the decision was without just cause and shall  
23 include a statement of the facts that the school employee  
24 believes support [~~his~~] the school employee's contention. This  
25 written statement shall be submitted within ten working days

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1 from the date the school employee receives the written reasons  
2 from the local superintendent [~~or administrator~~]. The  
3 submission of this statement constitutes:

4 (1) a representation on the part of the school  
5 employee that [~~he~~] the school employee can support [~~his~~] the  
6 school employee's contentions; and

7 (2) an acknowledgment that the local [~~school~~  
8 ~~board or governing authority~~] superintendent may offer the  
9 causes for [~~its~~] the school principal's decision and any  
10 relevant data in [~~its~~] the local superintendent's possession in  
11 rebuttal of [~~his~~] the school employee's contentions.

12 F. A local school board [~~or governing authority~~]  
13 shall meet to hear the school employee's statement in no less  
14 than five or more than fifteen working days after the local  
15 school board [~~or governing authority~~] receives the statement.  
16 The hearing shall be conducted informally in accordance with  
17 the provisions of the Open Meetings Act. The school employee  
18 and the local superintendent [~~or administrator~~] may each be  
19 accompanied by a person of [~~his~~] the school employee's or the  
20 superintendent's choice. First, the superintendent shall  
21 present the factual basis for [~~his~~] the determination that just  
22 cause exists for the termination of the school employee,  
23 limited to those reasons provided to the school employee  
24 pursuant to Subsection C of this section. [~~Then~~] Second, the  
25 school employee shall present [~~his~~] the school employee's

1 contentions, limited to those grounds specified in Subsection E  
 2 of this section. The local [~~school board or governing~~  
 3 ~~authority~~] superintendent may offer such rebuttal testimony as  
 4 [~~it~~] the local superintendent deems relevant. All witnesses  
 5 may be questioned by the local school board [~~or governing~~  
 6 ~~authority~~], the school employee or [~~his~~] the school employee's  
 7 representative and the local superintendent [~~or administrator~~]  
 8 or [~~his~~] the local superintendent's representative. The local  
 9 school board [~~or governing authority~~] may consider only such  
 10 evidence as is presented at the hearing and need consider only  
 11 such evidence as it considers reliable. No record shall be  
 12 made of the proceeding. The local school board [~~or governing~~  
 13 ~~authority~~] shall notify the school employee and the local  
 14 superintendent [~~or administrator~~] of its decision in writing  
 15 within five working days from the conclusion of the meeting."

16 **SECTION 12.** Section 22-10A-25 NMSA 1978 (being Laws 1986,  
 17 Chapter 33, Section 23, as amended) is amended to read:

18 "22-10A-25. APPEALS--INDEPENDENT ARBITRATOR--  
 19 QUALIFICATIONS--PROCEDURE--BINDING DECISION.--

20 A. [~~An~~] A school employee who is still aggrieved by  
 21 a decision of a local school board [~~or governing authority~~]  
 22 rendered pursuant to Section [~~22-10-14~~] 22-10A-24 NMSA 1978 may  
 23 appeal the decision to an arbitrator. A written appeal shall  
 24 be submitted to the local superintendent [~~or administrator~~]  
 25 within five working days from the receipt of the local school

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1 board's [~~or governing authority's~~] written decision or the  
2 refusal of the board [~~or authority~~] to grant a hearing. The  
3 appeal shall be accompanied by a statement of particulars  
4 specifying the grounds on which it is contended that the  
5 decision was impermissible pursuant to Subsection E of Section  
6 [~~22-10-14~~] 22-10A-24 NMSA 1978 and including a statement of  
7 facts supporting the contentions. Failure of the school  
8 employee to submit a timely appeal or a statement of  
9 particulars with the appeal shall disqualify [~~him~~] the school  
10 employee for any appeal and render the local school board's [~~or~~  
11 ~~governing authority's~~] decision final.

12 B. The local school board [~~or governing authority~~]  
13 and the school employee shall meet within ten working days from  
14 the receipt of the request for an appeal and select an  
15 independent arbitrator to conduct the appeal. If the parties  
16 fail to agree on an independent arbitrator, they shall request  
17 the presiding judge in the judicial district in which the  
18 school employee's public school is located to select one. The  
19 presiding judge shall select the independent arbitrator within  
20 five working days from the date of the parties' request.

21 C. A qualified independent arbitrator shall be  
22 appointed who is versed in employment practices and school  
23 procedures and who preferably has experience in the practice of  
24 law. No person shall be appointed to serve as the independent  
25 arbitrator who has any direct or indirect financial interest in

1 the outcome of the proceeding, has any relationship to any  
2 party in the proceeding, is employed by the local school board  
3 [~~or governing authority~~] or is a member of or employed by any  
4 professional or labor organization of which the school employee  
5 is a member.

6 D. Appeals from the decision of the local school  
7 board [~~or governing authority~~] shall be decided after a de novo  
8 hearing before the independent arbitrator. The issue to be  
9 decided by the independent arbitrator is whether there was just  
10 cause for the decision of the local school board [~~or governing~~  
11 ~~authority~~] to terminate the school employee.

12 E. The de novo hearing shall be held within thirty  
13 working days from the selection of the independent arbitrator.  
14 The arbitrator shall give written notice of the date, time and  
15 place of the hearing, and such notice shall be sent to the  
16 school employee and the local school board [~~or governing~~  
17 ~~authority~~].

18 F. Each party has the right to be represented by  
19 counsel at the hearing before the independent arbitrator.

20 G. Discovery shall be limited to depositions and  
21 requests for production of documents on a time schedule to be  
22 established by the independent arbitrator.

23 H. The independent arbitrator may issue subpoenas  
24 for the attendance of witnesses and for the production of  
25 books, records, documents and other evidence and shall have the

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1 power to administer oaths. Subpoenas so issued shall be served  
2 and enforced in the manner provided by law for the service and  
3 enforcement of subpoenas in a civil action.

4 I. The rules of civil procedure shall not apply to  
5 the de novo hearing, but it shall be conducted so that both  
6 contentions and responses are amply and fairly presented. To  
7 this end, the independent arbitrator shall permit either party  
8 to call and examine witnesses, cross-examine witnesses and  
9 introduce exhibits. The technical rules of evidence shall not  
10 apply, but, in ruling on the admissibility of evidence, the  
11 independent arbitrator shall require reasonable substantiation  
12 of statements or records tendered, the accuracy or truth of  
13 which is in reasonable doubt.

14 J. The local school board [~~or governing authority~~]  
15 has the burden of proof and shall prove by a preponderance of  
16 the evidence that, at the time the notice of termination was  
17 served on the school employee, the local school board [~~or~~  
18 ~~governing authority~~] had just cause to terminate the school  
19 employee. If the local school board [~~or governing authority~~]  
20 proves by a preponderance of the evidence that there was just  
21 cause for [~~its~~] the action, then the burden shifts to the  
22 school employee to rebut the evidence presented by the local  
23 school board [~~or governing authority~~].

24 K. The independent arbitrator shall uphold the  
25 local school board's [~~or governing authority's~~] decision only

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1 if it proves by a preponderance of the evidence that, at the  
2 time the notice of termination was served on the school  
3 employee, the local school board [~~or governing authority~~] had  
4 just cause to terminate the school employee. If the local  
5 school board [~~or governing authority~~] fails to meet [~~its~~] the  
6 burden of proof or if the school employee rebuts the proof  
7 offered by the local school board [~~or governing authority~~], the  
8 arbitrator shall reverse the decision of the local school board  
9 [~~or governing authority~~].

10 L. No official record shall be made of the hearing.  
11 Either party desiring a record of the arbitration appeal  
12 proceedings may, at [~~his~~] the party's own expense, record or  
13 otherwise provide for a transcript of the proceedings;  
14 provided, however, that the record so provided shall not be  
15 deemed an official transcript of the proceedings nor shall it  
16 imply any right of automatic appeal or review.

17 M. The independent arbitrator shall render a  
18 written decision affirming or reversing the action of the local  
19 school board [~~or governing authority~~]. The decision shall  
20 contain findings of fact and conclusions of law. The parties  
21 shall receive actual written notice of the decision of the  
22 independent arbitrator within ten working days from the  
23 conclusion of the de novo hearing.

24 N. The sole remedies available under this section  
25 shall be reinstatement or payment of compensation reinstated in

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1 full but subject to any additional compensation allowed other  
2 school employees of like qualifications and experience employed  
3 by the school district or state agency and including  
4 reimbursement for compensation during the entire period for  
5 which compensation was terminated, or both, less an offset for  
6 any compensation received by the school employee during the  
7 period the compensation was terminated.

8 O. Unless a party can demonstrate prejudice arising  
9 from a departure from the procedures established in this  
10 section and in Section [~~22-10-14~~] 22-10A-24 NMSA 1978, such  
11 departure shall be presumed to be harmless error.

12 P. The decision of the independent arbitrator shall  
13 be binding on both parties and shall be final and nonappealable  
14 except where the decision was procured by corruption, fraud,  
15 deception or collusion, in which case it shall be appealed to  
16 the district court in the judicial district in which the public  
17 school or state agency is located.

18 Q. Each party shall bear its own costs and  
19 expenses. The independent arbitrator's fees and other expenses  
20 incurred in the conduct of the arbitration shall be assigned at  
21 the discretion of the independent arbitrator.

22 R. [~~Local~~] School districts shall file a record  
23 with the department [~~of education~~] of all terminations and all  
24 actions arising from terminations annually."

25 SECTION 13. Section 22-10A-26 NMSA 1978 (being Laws 1967,

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1 Chapter 16, Section 118, as amended) is amended to read:

2 "22-10A-26. EXCEPTED FROM PROVISIONS.--Sections [~~22-10-12~~  
3 ~~through 22-10-14.1~~] 22-10A-22 through 22-10A-25 NMSA 1978 do  
4 not apply to the following:

5 A. a [~~certified~~] licensed school [~~instructor~~  
6 employee employed to fill the position of a [~~certified~~]  
7 licensed school [~~instructor~~] employee entering military  
8 service;

9 B. a person who is employed as a [~~certified~~] school  
10 administrator; or

11 C. [~~a non-certified~~] an unlicensed school employee  
12 employed to perform primarily district-wide management  
13 functions."

14 SECTION 14. Section 22-10A-27 NMSA 1978 (being Laws 1986,  
15 Chapter 33, Section 24, as amended) is amended to read:

16 "22-10A-27. DISCHARGE HEARING--PROCEDURES.--

17 A. A local [~~school board or the governing authority~~  
18 ~~of a state agency~~] superintendent may discharge a [~~certified~~]  
19 licensed school employee only for just cause according to the  
20 following procedure:

21 (1) the [~~superintendent~~] school principal  
22 shall serve a written notice of [~~his~~] intent to recommend  
23 discharge on the [~~certified~~] licensed school employee in  
24 accordance with the law for service of process in civil  
25 actions; [~~and~~]

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1                   (2) the ~~[superintendent]~~ school principal  
2 shall state in the notice of ~~[his]~~ intent to recommend  
3 discharge the cause for ~~[his]~~ the recommendation; and

4                   (3) the superintendent shall issue a notice of  
5 discharge to the licensed school employee and shall advise the  
6 ~~[certified]~~ licensed school employee of ~~[his]~~ the licensed  
7 school employee's right to a discharge hearing before the local  
8 school board ~~[or governing authority]~~ as provided in this  
9 section.

10                  B. A ~~[certified]~~ licensed school employee who  
11 receives a notice of ~~[intent to recommend]~~ discharge ~~[pursuant~~  
12 ~~to Subsection A of this section]~~ from the local superintendent  
13 may exercise ~~[his]~~ the licensed school employee's right to a  
14 hearing before the local school board ~~[or governing authority]~~  
15 by giving the local superintendent ~~[or administrator]~~ written  
16 notice of that election within five working days of ~~[his]~~ the  
17 licensed school employee's receipt of the notice ~~[to recommend]~~  
18 of discharge.

19                  C. The local school board ~~[or governing authority]~~  
20 shall hold a discharge hearing no less than twenty and no more  
21 than forty working days after the local superintendent ~~[or~~  
22 ~~administrator]~~ receives the written election from the  
23 ~~[certified]~~ licensed school employee and shall give the  
24 ~~[certified]~~ licensed school employee at least ten days written  
25 notice of the date, time and place of the discharge hearing.

underscored material = new  
[bracketed material] = delete

1           D. ~~[Each party]~~ The local superintendent ~~[or~~  
2 ~~administrator]~~ and the ~~[certified]~~ licensed school employee may  
3 be accompanied by a person of ~~[his]~~ the party's choice.

4           E. The parties shall complete and respond to  
5 discovery by deposition and production of documents prior to  
6 the discharge hearing.

7           F. The local school board ~~[or governing authority]~~  
8 shall have the authority to issue subpoenas for the attendance  
9 of witnesses and to produce books, records, documents and other  
10 evidence at the request of either party and shall have the  
11 power to administer oaths.

12           G. The local superintendent ~~[or administrator]~~  
13 shall have the burden of proving by a preponderance of the  
14 evidence that, at the time of the notice of ~~[intent to~~  
15 ~~recommend]~~ discharge, ~~[he]~~ the superintendent had just cause to  
16 discharge the ~~[certified]~~ licensed school employee.

17           H. The local superintendent ~~[or administrator]~~  
18 shall present ~~[his]~~ evidence first, with the ~~[certified]~~  
19 licensed school employee presenting ~~[his]~~ evidence thereafter.  
20 The local school board ~~[or governing authority]~~ shall permit  
21 either party to call, examine and cross-examine witnesses and  
22 to introduce documentary evidence.

23           I. An official record shall be made of the hearing.  
24 Either party may have one copy of the record at the expense of  
25 the ~~[local school board or governing authority]~~ school

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1 district.

2 J. The local school board shall render [~~its~~] a  
3 written decision within twenty days of the conclusion of the  
4 discharge hearing."

5 SECTION 15. Section 22-10A-28 NMSA 1978 (being Laws 1986,  
6 Chapter 33, Section 25, as amended) is amended to read:

7 "22-10A-28. APPEALS--INDEPENDENT ARBITRATOR--  
8 QUALIFICATIONS--PROCEDURE--BINDING DECISION.--

9 A. A [~~certified~~] licensed school employee aggrieved  
10 by a decision of a local school board [~~or governing authority~~]  
11 to discharge [~~him~~] the licensed school employee after a  
12 discharge hearing held pursuant to Section [~~22-10-17~~] 22-10A-27  
13 NMSA 1978 may appeal the decision to an independent arbitrator.  
14 A written notice of appeal shall be submitted to the local  
15 superintendent [~~or administrator~~] within five working days from  
16 the receipt of the copy of the written decision of the local  
17 school board [~~or governing authority~~].

18 B. The local school board [~~or governing authority~~]  
19 and the [~~certified~~] licensed school employee shall meet within  
20 ten calendar days from the receipt of the notice of appeal and  
21 select an independent arbitrator to conduct the appeal, or, in  
22 the event the parties fail to agree on an independent  
23 arbitrator, they shall request the presiding judge in the  
24 judicial district in which the public school is located to  
25 select the independent arbitrator. The presiding judge shall

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underscored material = new  
[bracketed material] = delete

1 select the independent within five working days from the date  
2 of the parties' request.

3 C. A qualified independent arbitrator shall be  
4 appointed who is versed in employment practices and school  
5 procedures. No person shall be appointed to serve as the  
6 independent arbitrator who has any direct or indirect financial  
7 interest in the outcome of the proceeding, has any relationship  
8 to any party in the proceeding, is employed by the local school  
9 board [~~or governing authority~~] or is a member of or employed by  
10 any professional organization of which the [~~certified~~] licensed  
11 school employee is a member.

12 D. Appeals from the decision of the local school  
13 board [~~or governing authority~~] shall be decided after a de novo  
14 hearing before the independent arbitrator. The local school  
15 board [~~or governing authority~~] shall have the burden of proving  
16 by a preponderance of the evidence that, at the time of the  
17 notice of [~~intent to recommend~~] discharge, the local  
18 superintendent [~~or administrator~~] had just cause to discharge  
19 the [~~certified~~] licensed school employee. The local school  
20 board [~~or governing authority~~] shall present [~~its~~] evidence  
21 first, with the [~~certified~~] licensed school employee presenting  
22 [~~his~~] evidence thereafter.

23 E. The hearing shall be held within thirty working  
24 days from the [~~selection of the independent arbitrator. The~~  
25 independent arbitrator] notice of appeal. The local school

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1 board shall give written notice of the date, time and place of  
2 the hearing, and such notice shall be sent to the [~~certified~~  
3 licensed school employee and the local school board [~~or~~  
4 ~~governing authority~~].

5 F. Each party has the right to be represented by  
6 counsel at the hearing. [~~before the independent arbitrator.~~]

7 G. Discovery shall be limited to depositions and  
8 requests for production of documents on a time schedule to be  
9 established by the independent arbitrator.

10 H. The independent arbitrator may issue subpoenas  
11 for the attendance of witnesses and for the production of  
12 books, records, documents and other evidence and shall have the  
13 power to administer oaths. Subpoenas so issued shall be served  
14 and enforced in the manner provided by law for the service and  
15 enforcement of subpoenas in a civil action or in the manner  
16 provided by the American arbitration association's voluntary  
17 labor arbitration rules if that entity is used by the parties.

18 I. The rules of civil procedure shall not apply to  
19 the hearing, but it shall be conducted so that both contentions  
20 and responses are amply and fairly presented. To this end, the  
21 independent arbitrator shall permit either party to call and  
22 examine witnesses, cross-examine witnesses and introduce  
23 exhibits. The technical rules of evidence shall not apply,  
24 but, in ruling on the admissibility of evidence, the  
25 independent arbitrator may require reasonable substantiation of

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1 statements or records tendered, the accuracy or truth of which  
2 is in reasonable doubt.

3 J. An official record shall be made of the hearing.  
4 Either party may order a transcript of the record at [~~his~~] the  
5 party's own expense.

6 K. The independent arbitrator shall render a  
7 written decision affirming or reversing the action of the local  
8 school board [~~or governing authority~~]. The decision shall  
9 contain findings of fact and conclusions of law. The parties  
10 shall receive the written decision of the independent  
11 arbitrator within thirty working days from the conclusion of  
12 the hearing.

13 L. Unless a party can demonstrate prejudice arising  
14 from a departure from the procedures established in this  
15 section and in Section [~~22-10-17~~] 22-10A-27 NMSA 1978, such  
16 departure shall be presumed to be harmless error.

17 M. The decision of the independent arbitrator shall  
18 be final and binding on both parties and shall be nonappealable  
19 except where the decision was procured by corruption, fraud,  
20 deception or collusion, in which case it may be appealed to the  
21 court of appeals by filing a notice of appeal as provided by  
22 the New Mexico rules of appellate procedure.

23 N. Each party shall bear its own costs and  
24 expenses. The independent arbitrator's fees and other expenses  
25 incurred in the conduct of the arbitration shall be assigned at

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1 the discretion of the independent arbitrator."

2 SECTION 16. Section 22-10A-29 NMSA 1978 (being Laws 1967,  
3 Chapter 16, Section 120, as amended) is amended to read:

4 "22-10A-29. COMPENSATION PAYMENTS TO DISCHARGED  
5 PERSONNEL.--

6 A. Payment of compensation to any [~~certified~~]  
7 licensed school [instructor] employee employed by a [~~local~~  
8 ~~school board or by the governing authority of a state agency~~]  
9 school district and payment of compensation to any [~~certified~~]  
10 school administrator employed by a [~~local~~] school [~~board~~]  
11 district shall terminate as of the date, after a hearing, that  
12 a written copy of the decision of the local [~~school board or~~  
13 ~~the governing authority of the state agency~~] superintendent to  
14 discharge the [~~person~~] licensed school employee is served on  
15 the person. If the compensation of the person discharged  
16 during the term of a written employment contract is to be paid  
17 monthly during a twelve-month period for services to be  
18 performed during a period less than twelve months, the person  
19 shall be entitled to a pro rata share of the compensation  
20 payments due for the period during the twelve months in which  
21 no services were to be performed.

22 B. In the event the action of the local [~~school~~  
23 ~~board~~] superintendent in discharging a [~~certified~~] licensed  
24 school [~~instructor or administrator or the action of the~~  
25 ~~governing authority of a state agency in discharging a~~

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1 ~~certified school instructor~~ employee is reversed on appeal,  
 2 payment of compensation to the person shall be reinstated in  
 3 full but subject to any additional compensation allowed other  
 4 [~~certified~~] licensed school [~~instructor~~] employees or  
 5 [~~administrator~~] administrators of like qualifications and  
 6 experience employed by the school district [~~or state agency~~]  
 7 and including reimbursement for compensation during the entire  
 8 period the compensation was terminated less an offset for any  
 9 compensation received by the person from a school district [~~or~~  
 10 ~~state agency~~] during the period the compensation was  
 11 terminated."

12 SECTION 17. Section 22-10A-30 NMSA 1978 (being Laws 1967,  
 13 Chapter 16, Section 123, as amended) is amended to read:

14 "22-10A-30. SUPERVISION AND CORRECTION PROCEDURES.--

15 A. The [~~state board~~] department shall prescribe by  
 16 [~~regulations~~] rule procedures to be followed by a [~~local school~~  
 17 ~~board or the governing authority of a state agency~~] school  
 18 district in supervising and correcting unsatisfactory work  
 19 performance of [~~certified~~] licensed school [~~personnel~~]  
 20 employees before notice of [~~intent to~~] discharge is served upon  
 21 them [~~and by the governing authority of a state agency in~~  
 22 ~~supervising and correcting unsatisfactory work performance of~~  
 23 ~~certified school instructors before notice of intent to~~  
 24 ~~discharge is served upon them. These regulations~~].

25 B. The department's rules shall provide that

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1 written records shall be kept on all action taken by a [~~local~~]  
2 school [~~board or the governing authority of a state agency~~]  
3 district to improve [~~any person's~~] a school employee's  
4 unsatisfactory work performance and all improvements made in  
5 the [~~person's~~] school employee's work performance. These  
6 written records shall be introduced as evidence at any hearing  
7 for termination or discharge of the [~~person~~] school employee  
8 conducted by the local school board [~~or the governing authority~~  
9 ~~of the state agency~~]."

10 SECTION 18. Section 22-10A-31 NMSA 1978 (being Laws 1967,  
11 Chapter 16, Section 124, as amended) is amended to read:

12 "22-10A-31. DENIAL, SUSPENSION AND REVOCATION OF  
13 LICENSES.--In accordance with the procedures provided in the  
14 Uniform Licensing Act, the [~~state board~~] department may deny,  
15 suspend or revoke a department-issued license for incompetency,  
16 moral turpitude or any other good and just cause."

17 SECTION 19. APPLICABILITY.--The provisions of Sections 2  
18 through 18 of this act apply to contracts signed for the 2012-  
19 2013 and subsequent school years and for termination and  
20 discharge actions occurring after July 1, 2012.

21 SECTION 20. EFFECTIVE DATE.--The effective date of the  
22 provisions of Sections 2 through 19 of this act is July 1,  
23 2012.

24 SECTION 21. EMERGENCY.--It is necessary for the public  
25 peace, health and safety that this act take effect immediately.