

Proposed Rule Abstract

1. **Agency:** Public Education Department
2. **Rule Citation:** 6.60.8 NMAC, Background Checks for Educator Licensure
3. **Rulemaking Action:** Repeal and Replace
4. **Register Issue and Date of Notice of Proposed Rulemaking:** Volume 29, Issue 15, August 14, 2018
5. **Effective Date:** October 16, 2018
6. **Citation to Specific Legal Authority:** Sections 22-2-1, 22-2-2, 22-8-44, 22-10A-5, 22-10A-7, 22-10A-12, 22-10A-12.1, and 28-2-1 through 28-2-6 NMSA 1978
7. **Short Explanation of the Rule's Purpose:** To clarify the requirements for in-state versus out-of-state educator licensure applicants.
8. **Link to Full Text of the Rule:** https://webnew.ped.state.nm.us/wp-content/uploads/2018/08/6.60.8-NMAC_integrated_web.docx
9. **How Information on the Rule Can Be Obtained:** <https://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>
10. **Comment Period and Deadlines:** August 14, 2018 to September 19, 2018 at 5:00 p.m. Written comments may be submitted to Jamie Gonzales, Policy Division, New Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, NM 87501, rule.feedback@state.nm.us, or by fax to (505) 827-6520.
11. **Rule Hearing:** September 19, 2018 from 9:00 a.m. to 11:00 a.m. at 300 Don Gaspar Avenue in Mabry Hall, Santa Fe, NM 87501
12. **Link to Permanent Agency Rulemaking Record:** http://statenm.force.com/public/SSP_RuleHearingSearchPublic

Summary of Proposed Rule

The August 14 issue of the *New Mexico Register* contained a Notice of Proposed Rulemaking to repeal and replace the current rule that establishes the requirements for background checks on all applicants for initial teaching license, instructional support provider license, alternative license, and substitute certification. The proposed rule specifies the differences between in-state and out-of-state licensure applicants and provides definitions for an educator applicant and a non-educator employment applicant. Also, the language that stipulates disclosure procedures has been clarified. See Attachment 1 **6.60.8 NMAC, Background Checks for Educator Licensure**.

Analysis

Definitions. The proposed rule includes a number of definitions that provide more specificity in the enforcement of background checks. A “background check” is defined as a criminal history report produced by the FBI or New Mexico Department of Public Safety (DPS). Section 6.60.8.7 NMAC indicates the new regulation will require all DPS reports to be certified by FBI criminal history files. Essentially, background checks should be carried out with an extra layer of scrutiny to ensure validity. Section 22-10A-5 NMSA 1987, however, contemplates only FBI records as a source for background checks.

The new regulation explicitly defines educator applicant and employment applicant. An educator applicant is an applicant for licensure in the area of teaching, instructional support, alternative licensure, or substitute certification. An employment applicant is an individual who will be afforded unsupervised access to students but may or may not require a license, such as a contractor.

Requirements. The proposed requirements for educator applicants are different for out-of-state and in-state applicants. Out-of-state educator applicants will be required to submit two completed fingerprint cards to PED whereas in-state educator applicants will be required to be fingerprinted using the electronic fingerprinting system.

Non-educator employment applicants who do not require a license will be allowed to complete their background checks through PED or their employment organization (school district, charter school, or regional education cooperative). The proposed rule stipulates that employment organizations must adopt policies and regulations addressing background check requirements.

Currently, applicants are given the opportunity to disclose information related to their criminal history including rehabilitation. The proposed regulation will allow PED to request further information, including court documentation, proof of restitution, or actual evidence of rehabilitation, which the educator applicant must submit in a timely manner, although “timely” is not defined.

A school district, charter school, or regional education cooperative may request documentation of an employee’s criminal history record at any time. PED will honor the request by disseminating any criminal history records that were generated within 24 months of the original date of dissemination pursuant to FBI and DPS guidelines.

Disclosure. The language regarding background history disclosure is more specific in the proposed rule when compared with the current rule. The current rule states school districts are responsible for reporting any felony or misdemeanor conviction involving moral turpitude to PED. Upon receipt of a report, the department will be responsible for informing the license holder of how it affects their current employment and license. The proposed rule will require any school district, charter school, or regional education cooperative to notify PED within 30 days of becoming aware of a conviction of a felony or misdemeanor involving moral turpitude. The current rule does not specify a time period within which a report has to be made to PED.

**PROPOSED REPEAL AND REPLACE
STRIKETHROUGH**

~~Strikethrough~~ represents original language being taken out

Underline represents new language

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 60 SCHOOL PERSONNEL - GENERAL PROVISIONS
PART 8 BACKGROUND CHECKS FOR EDUCATOR LICENSURE**

6.60.8.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
[6.60.8.1 NMAC – Rp, 6.60.7.1 NMAC, 10/16/2018]

6.60.8.2 SCOPE: ~~[All persons applying for initial standard, alternative or substitute licensure.]~~ This rule applies to all applicants for initial teaching licensure, initial instructional support provider licensure, alternative licensure, initial substitute certification, and applicants offered employment who have not completed a background check in over 24 months.
[6.60.8.2 NMAC – Rp, 6.60.7.2 NMAC, 10/16/2018]

6.60.8.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, 22-8-44, 22-10A-5, 22-10A-7, 22-10A-12, 22-10A-12.1, and 28-2-1 through 28-2-6 NMSA 1978.
[6.60.8.3 NMAC – Rp, 6.60.8.3 NMAC, 10/16/2018]

6.60.8.4 DURATION: Permanent
[6.60.8.4 NMAC – Rp, 6.60.8.4 NMAC, 10/16/2018]

6.60.8.5 EFFECTIVE DATE: October 16, 2018, unless a later date is cited in the history note at the end of a section.
[6.60.8.5 NMAC – Rp, 6.60.8.5 NMAC, 10/16/2018]

6.60.8.6 OBJECTIVE: ~~[This rule establishes the requirements for background checks on all initial applicants for licensure and for sharing information from employment background checks between school districts and the New Mexico public education department ("PED").]~~ This rule establishes the provisions of the department's educator background check program required by Section 22-8-44 NMSA 1978.
[6.60.8.6 NMAC – Rp, 6.60.8.6 NMAC, 10/16/2018]

~~**6.60.8.7 DEFINITIONS: "Criminal history"** means convictions of felonies or misdemeanors of moral turpitude, or other information concerning a person's arrests, indictments, other formal criminal charges and any dispositions arising therefrom, including convictions, dismissals, acquittals, sentencing, and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation ("FBI"), the national law enforcement telecommunications system, the New Mexico department of public safety ("DPS"), or the repositories of criminal history information of other states.
[06/15/1998, 11/15/1999; 6.60.8.7 NMAC – Rn, 6 NMAC 4.2.4.8.7 & A, 03/31/2001]~~

6.60.8.7 DEFINITIONS:

A. "Background check" means a criminal history report produced by the federal bureau of investigation (FBI) or the New Mexico department of public safety (DPS). Reports produced by DPS shall be valid only if created and produced after a check or review of FBI criminal history files.

B. "Criminal history record" means convictions of felonies or misdemeanors of moral turpitude, or other information contained within the records of the federal bureau of investigation (FBI), New Mexico department of public safety (DPS), and other criminal history information disclosed pursuant to the character and fitness sections of the educator licensure application process.

C. "Educator applicant" means applicants for department licensure or certification including applicants for initial teaching licensure, applicants for initial instructional support provider licensure, applicants for alternative licensure, and applicants for initial substitute certification.

D. "Employment applicant" means applicants for new employment with a different school district.

charter school, or regional education cooperative including applicants for positions requiring a license issued by the department, contractor applicants, and contractor employee applicants afforded unsupervised access to students. Employment applicant shall not include unlicensed applicants, contractors, or contractor employees who are not afforded unsupervised access to students.

[6.60.8.7 NMAC – Rp, 6.60.8.7 NMAC, 10/16/2018]

6.60.8.8 REQUIREMENTS:

A. An applicant for initial educator licensure shall be fingerprinted using fingerprint cards supplied by the PED or the equivalent electronic fingerprints. The applicant will submit the two completed fingerprint cards or equivalent electronic fingerprints to the PED either prior to or with the initial application for educator licensure. A criminal history background record issued by either the DPS or the FBI shall be valid and may be disseminated by the PED pursuant to FBI and DPS guidelines for 24 months from the date of issuance entered on the criminal history background record.

B. The PED shall not disseminate a DPS or FBI criminal history background record more than 24 months from the date of issuance, regardless of when an applicant for initial employment already possessing current New Mexico educator licensure is offered employment or commences employment duties for any new employer.

C. The applicant shall pay by certified check, money order, or credit card, if authorized by the PED, a background check fee in an amount established by that agency sufficient to cover the agency's actual costs of obtaining criminal history background reports from the DPS and the FBI.]

A. All background checks shall be obtained through the department or through a vendor designated or approved by the department.

B. Educator applicants. All educator applicants shall be required to obtain a current and valid background check from the department or a vendor designated by the department.

(1) Educator applicants shall submit two fingerprint cards or their electronic equivalent to the department or a vendor designated by the department.

(a) Out-of-state educator applicants shall be fingerprinted using fingerprint cards supplied by the department. The educator applicant shall submit two completed fingerprint cards to the department either prior to or within five business days of submitting a licensure application.

(b) In-state educator applicants shall be fingerprinted using the electronic fingerprinting system with the department-approved fingerprint processing vendor either prior to or within five business days of submitting a licensure application. Fingerprints submitted without the correct department code shall not be accepted.

(2) Educator applicants shall pay all fees required by the department or the department-approved fingerprint processing vendor.

(3) Educator applicants shall be given the opportunity to disclose and explain a criminal history record, including evidence of rehabilitation. Any disclosure of criminal history shall require a signed, detailed explanation.

(a) The department may choose to request further information from the educator applicant including court documentation, proof of restitution, or evidence of rehabilitation.

(b) Educator applicants shall provide a timely response to department requests for further information including court documentation, proof of restitution, or evidence of rehabilitation.

(4) Licensure applications submitted by educator applicants that do not meet the requirements of Paragraphs (1) through (3) of Subsection C of 6.60.8.8 NMAC shall be considered to be missing background information and shall therefore be considered incomplete and not properly made. Incomplete or not properly made applications shall neither be accepted nor denied.

C. Employment applicants. Employment applicants offered employment with a school district, charter school, or regional education cooperative who do not have copies of FBI records on file with the department or who have not completed a background check in over 24 months, shall provide two fingerprint cards or their electronic equivalent to the local school board, regional education cooperative, or charter school. Employment applicants may choose to obtain the background check through the school district, charter school, or regional education cooperative or through the department.

(1) Local school boards, charter school governing bodies, and regional education cooperatives shall adopt policies and regulations addressing background check requirements.

(2) Background check policies and regulations shall meet, at a minimum, the requirements of 6.60.8 NMAC and all relevant state and federal law.

[6.60.8.8 NMAC – Rp, 6.60.8.8 NMAC, 10/16/2018]

[6.60.8.9 IMPLEMENTATION:

- ~~A. The PED will not issue an educator license until the applicant’s background check has been successfully completed.~~
 - ~~B. An applicant will be notified of any information in the background check reports that could result in licensure denial, suspension, or revocation prior to the initiation of any such action by the PED.~~
 - ~~C. If requested by a local school board, a DPS or FBI criminal history report that is not more than twenty four months old may be provided by the PED to the applicant's school employer. The PED may inform a licensure applicant's school employer, if known, of any background check information that reveals a conviction of a felony or misdemeanor of moral turpitude at the same time that the information is reported to the applicant.~~
 - ~~D. School district officials, who in the course of their background checks of employment applicants, discover that a licensed applicant or applicant pending a license has a conviction of a felony or misdemeanor of moral turpitude that results in any kind of action against that individual, shall share that information with the professional licensure or educator ethics bureaus of the PED. If the applicant has education licensure, the PED will notify the license holder, and his/her current school employer, if known, of the conviction(s) following the procedures in Subsections B and C of 6.60.8.9 NMAC.~~
 - ~~E. Applicants will be given the opportunity on the application form to disclose, explain, and provide information, including rehabilitation, related to their criminal history.~~
- [06/15/1998, 11/15/1999; 6.60.8.9 NMAC – Rn, 6 NMAC 4.2.4.8.9 & A, 03/31/2001; A, 06/15/2006]

6.60.8.9 SHARING OF BACKGROUND CHECK INFORMATION:

- A. A local superintendent, charter school administrator, or director of a regional education cooperative, or their designees, at any time, may request documentation of an applicant employee, an employee, contractor, or contractor employee’s criminal history record.
 - B. The department may disseminate to a requesting local superintendent, charter school administrator, or director of a regional education cooperative, or their designees, criminal history records that were generated and issued within 24 months of the date of dissemination. Any criminal history record shall be released or disseminated pursuant to FBI and DPS guidelines.
 - C. A local superintendent, charter school administrator, or director of a regional education cooperative shall, within 30 days, report to the department any known conviction of a felony or misdemeanor involving moral turpitude of a licensed applicant employee, licensed employee contractor, or licensed contractor employee that results in any type of employment or disciplinary action against the licensed individual.
- [6.60.8.9 NMAC – Rp, 6.60.8.9 NMAC, 10/16/2018]

HISTORY OF 6.60.8 NMAC: [RESERVED]