



HOUSE MEMORIAL 57 STRATEGIC PLAN

Educator Ethical Misconduct

NMPED

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House Memorial 57 Task Force on Ethical and Sexual Misconduct by Educators

Executive Summary

House Memorial 57 (HM57) requested the New Mexico Public Education Department (PED) convene a task force to identify issues of concern regarding the investigation, reporting, and documentation of ethical misconduct within the public school system. The task force was to develop a strategic plan to ameliorate these concerns, including discussion of hiring practices, training practices, and reporting practices and policies. Further, the task force was to study potential legislative changes to existing statutes pertaining to ethical misconduct among school staff relating to investigations, reporting, and a statewide process for disciplinary action.

The task force was to be composed of representatives from the PED, the National Education Association, the American Federation of Teachers, the Children, Youth and Families Department (CYFD), the New Mexico School Boards Association (NMSBA), the Coalition of Educational Leaders, the Attorney General's Office, the Public Schools Insurance Authority, the Albuquerque Public School District, a parent teacher organization, the New Mexico Coalition of Sexual Assault Programs, and Cooperative Educational Services. The task force met on three occasions for over three hours each time, to identify policy concerns in the areas noted in the memorial.

In brief, after reviewing current law and policy, and engaging in extensive discussions of practice by task force members who are experts in their respective fields, the task force recommends:

- Changes to law and administrative rule encompassing background checks, reporting, and training on procedures and recognizing signs of abuse;
- Increases in PED's, school districts' and regional education cooperatives' (RECs') investigatory capacity;
- Establishment of a central database and website for reporting ethical misconduct involving moral turpitude; and
- Revisions to the educator ethical code and professional standards.

Issue Statement

At issue is the protection of New Mexico's students from predatory and abusive behavior by school personnel, while remaining mindful of employees' privacy, employment, and property rights.

The task force discussed statutory and regulatory fields of law including the Public School Code, employment law, the Children's Code, criminal law, licensure, and ethics. The task force found the issues implicated by the memorial will be difficult to address singularly, as they are interconnected, and involve disparate areas of law and several regulatory bodies, such as PED, CYFD, and law enforcement. Thus, communication strategies, including new reporting, training, and collaboration requirements, will be key to addressing the issues presented by HM57.

Goals

The task force recommends changes to existing statutory law, enactment of new sections of law, amendment to several sections of the New Mexico Administrative Code and, finally, the expansion and establishment of certain services at the PED. Specifically, the task force suggests:

- Including non-licensed personnel who have regular unsupervised contact with students, such as non-licensed instructors, bus drivers, custodians, lunch servers, crossing guards, and the like, in background check, reporting, and training requirements;
- Providing for similar background check, reporting and training requirements for volunteers, reflective of their different status than paid school personnel;
- Improving cross-agency communication, for example, by requiring interagency reporting of potential instances of child abuse and certain types of ethical misconduct, including sexual misconduct, among PED, CYFD, and law enforcement;
- Enacting legislation to require prospective employees to report their work history and background related to any previous ethical or sexual misconduct and, also, to require exchange of such information between prospective and former employers;
- Hiring additional licensure investigator(s) at PED and encouraging RECs to have contract investigators available to help local school districts investigate allegations of misconduct;
- Establishing an anonymous hotline and centralized dispatch for reporting suspected incidents of ethical or sexual misconduct by school personnel;
- Creating a webpage where information on investigations of misconduct involving school personnel can be stored;
- Promulgating rules for reporting, training, and licensure requirements;
- Revising the Code of Ethical Responsibility of the Education Profession; and
- Ensuring legislative appropriations to support implementation of these measures.

Background Checks. The task force suggests amending the School Personnel Act to make the requirement and administration of background checks more explicitly related to the issue of sexual misconduct on the part of school personnel. (See Appendix A, Background Checks Bill Draft. For additional discussion of issues related to background checks, see Appendix F, Supplementary Material, Item 1.) Specifically, the task force recommends:

- Adding certain definitions to the act for such terms as, “ethical misconduct,” “sexual misconduct,” and “unsupervised contact with children”;
- PED maintain a list of persons reported to PED for ethical misconduct, and for felonies and misdemeanors involving moral turpitude;
- Allowing RECs to assist school districts and charter schools in investigating allegations of ethical misconduct by school employees;
- Amending sections of the School Personnel Act with regard to termination and appeals from termination of school personnel to permit a public record of the proceedings to be maintained.

The taskforce also discussed granting superintendents and charter school head administrators – as well as administrators of RECs and state agencies that house resident children – the power to review school personnel termination decisions, removing administrative appellate authority from school boards and governing councils. Some members felt that the small, rural nature of some school districts might implicate personal or inappropriately political issues in decisions related to educator misconduct, and proposed the change as a way to ameliorate the possibility. However, while the matter did seem related to the taskforce’s purview, it was tangential, and after NMSBA raised objections to the proposed change, it was withdrawn from the final plan.

Reporting. The Children’s Code, at Section 32A-4-3 NMSA 1978, makes every person a mandated reporter of reasonable suspicions of child abuse, although “abused” and “neglected child” are narrowly defined to include only those acts perpetrated by a parent, guardian, or custodian; mandated reporting of

suspicions of child abuse does not include acts perpetrated by persons other than those in a custodial relationship with children (see Appendix B, Reporting and Training Requirements Bill Draft).

The task force suggests:

- Mandating reports of parental abuse be made to both law enforcement and the Children, Youth and Families Department, rather than either, as current law requires (this suggestion is technically outside the scope of the task force’s work);
- Requiring reporting of reasonable suspicions of abuse or neglect perpetrated by non-custodians (people who are not parents or guardians) to a law enforcement agency, and to PED, as well, when the abuse is alleged to have been perpetrated by school personnel or volunteers, but not to CYFD, as that agency lacks capacity to investigate allegations against non-custodians;
- Limiting required reporting of non-custodial abuse to abuse perpetrated by adults;
- Adding reports made by volunteers to those that must be tracked under Section 22-5-4.2 NMSA 1978, which provides that local school boards may adopt policies to coordinate and track reports of child abuse and neglect made by school personnel; and
- Amending Section 22-5-4.2 NMSA 1978 to mandate coordination and tracking of reports of child abuse made by school personnel, rather than merely permitting it, and include measures to protect the identity of alleged victims. (For additional discussion of tracking reports of child abuse, see Appendix F, Supplementary Material, Item 2.)

Training. The task force was concerned that not all school personnel are fully aware of their duties and obligations for reporting potential child abuse, emphasizing the need for comprehensive training in this area. (For additional discussion of issues related to training, see Appendix F, Supplementary Material, Item 3.) Further, under Section 22-10A-32 NMSA 1978 of the School Personnel Act, training is only required of licensed personnel, while the task force suggests training be required of all school personnel. The taskforce also recommends adapting training programs to address the somewhat different issues presented by volunteers with unsupervised contact with children (see Appendix C, Reporting and Training Requirements Bill Draft). Specifically, the task force recommends:

- Training requirements be either developed or adopted to permit school districts and charter schools to take advantage of the expertise of organizations such as the New Mexico Public School Insurance Authority (NMPSIA) in formulating required training programs, which should apply to anyone involved in school activities, including all personnel with unsupervised contact with children.
- Best practices or guidelines for the administration of the training programs be developed or adopted, to cover at least areas including reporting requirements, trauma-informed instruction, identification of factors that are potential indicators of abuse or inappropriate behavior, ethics and professional responsibility, investigations and procedures, and understanding of the meaning of “ethical misconduct” and other relevant legal definitions.
- Allowing administration of a separate training program for current and potential school volunteers who have unsupervised access to children, designed to be less onerous than that required of regular school personnel, to avoid chilling volunteerism in the schools. Representatives from POMS & Associates and NMPSIA indicated they would be willing to develop an effective but brief training module for school volunteers.
- Amending Subsection D of Section 9 of 6.29.1 NMAC, which addresses training on reporting of child abuse and neglect, to reflect the proposed statutory changes noted above (see Appendix E, Training Requirements Rule Draft).

Interagency Communication. Under the circumstances of many allegations of sexual or ethical misconduct, there may be multiple parallel investigations conducted by several agencies:

- School districts have a responsibility to conduct civil rights investigations under Title IX of the Education Amendments of 1972;
- CYFD and law enforcement, as previously noted, are involved in most allegations of child abuse as required by the Children’s Code;
- PED conducts licensure investigations;
- School districts conduct background checks on employees and volunteers with unsupervised contact with children; and
- Under task force recommendations, RECs and PED would have the ability to take a more active role in investigations in the future.

Interagency communication is necessary for the effective execution of agencies’ respective responsibilities. The task force recommends required reporting to PED when the alleged victim of misconduct is a student or the alleged perpetrator is a public school employee or volunteer.

Hiring Practices. The task force found that current requirements for background checks do not succeed in weeding out applicants with a history of abuse or inappropriate behavior, as can be seen by the problem colloquially referred to as “passing the trash,” when an applicant for employment may have engaged in unethical or criminal behavior in one school district, only to move to employment in a new district, exploiting a loophole in procedures to avoid responsibility for their actions. For example, applicants submit to an FBI background check, but if their conduct did not result in a conviction, the background check would not reveal any incidence of wrongdoing.

This issue is not exclusive to New Mexico and is one that has been addressed in other jurisdictions. Several states have enacted legislation referred to as SESAME laws (“Stop Educator Sex Abuse, Misconduct and Exploitation”). These laws have thus far been adopted successfully in several states, including, initially, Pennsylvania, as well as Connecticut, Nevada, New Jersey, and Maryland. The task force recommends New Mexico enact similar provisions in the School Personnel Act. At the heart of SESAME statutes is communication among former, current, and prospective employers of school personnel. These laws typically require:

- Applicants to provide a list of current and former employers that were schools or that involved unsupervised, unmonitored, or any other substantial contact with children, which should include relevant contact information and written authorization for disclosure of work history, including any investigations, discipline, separation from employment, licensure suspension or revocation related to ethical misconduct, and all other information related to the applicant’s employment, including personnel records.
- Applicants to provide a written statement to local school districts as to whether they have ever been the subject of an abuse or ethical misconduct investigation, or been disciplined or separated from employment due to a finding of misconduct or while allegations of misconduct were pending, including any procedures for licensure revocation or suspension.
- Current and former employers to provide similar information to prospective employers within a certain timeframe (see Appendix A, Background Checks Bill Draft).

Additionally, these other states’ laws note applicants who willfully fail to disclose required information or provide false information are subject to discipline, including termination or denial of employment. Finally, the task force recommends adding to the School Personnel Act the provision of immunity to

liability for former or current employers who report according to these provisions – which already exists in Section 50-12-1 NMSA 1978 – though that immunity does not extend to false, misleading, or maliciously supplied information. (For additional discussion of issues related to hiring practices, see Appendix F, Supplementary Material, Item 4.)

Investigatory Capacity. The task force is concerned that some local school districts, particularly districts serving rural or impoverished communities, might lack capacity to undertake investigations of ethical and sexual misconduct of school personnel. With that in mind, it recommends permitting RECs to shore up capacity at those school districts by allowing them to offer human resources, investigatory, and other support to districts in meeting reporting requirements and investigating allegations of misconduct by school personnel (see Appendix C, Regional Educational Cooperatives’ Investigations Bill Draft). Further, the task force feels PED should take on more of a role in assisting with employee investigations of ethical misconduct, particularly for school districts with fewer financial resources, although it acknowledged this may only be accomplished with a sufficient appropriation. The task force recommends:

- Hiring additional licensure investigator(s). It should be noted that 6.60.7 NMAC, Educator Licensure Application Fee, was recently updated to increase such fees for the first time in at least 10 years, but these increases are insufficient to support any additional FTEs.
- PED consider the possibility of providing contractors to support efforts by local school districts and charter schools that may lack financial capacity to investigate allegations of ethical misconduct, although PED and school districts and charter schools should be mindful that their interests in a given situation might not always align, potentially creating conflict in the supervision of investigators and oversight of investigations problematic.

Code of Ethical Responsibility of the Education Profession. The code of ethical responsibility is located in Part 9 of 6.60 NMAC. That part is loosely divided between an ethical code and professional standards of the educator profession, and is focused largely on licensed school personnel. The task force discussed the possibility of reorganizing this section of the NMAC to reflect the task force’s general preference to include all school personnel in provisions related to ethical and sexual misconduct, rather than only licensed personnel. This might be done by bifurcating the ethical code and professional standards elements – with the code of ethics to be applicable to all school personnel, including licensed and non-licensed personnel, such as JROTC instructors, and personnel who may be employed by a contractor, such as bus drivers and custodians – and the professional standards to be applicable to licensed school personnel. However, currently, PED lacks investigatory and enforcement authority for nonlicensed personnel; discussion of how to best address the issue of nonlicensed school staff who violate the code will take more time and consideration. Finally, the task force also considered PED taking on a larger, more centralized role in the warehousing of data and reports related to ethical and sexual misconduct among school personnel, provided that adequate funding is appropriated for these purposes.

Specifically, the task force recommends:

- Changing the regulatory definition of “ethical misconduct” to reflect statutory definitions proposed by the task force;
- Establishing a hotline where suspicions and allegations of misconduct could be submitted and a database where such allegations could be preserved;
- Including information about ethical misconduct investigation and licensure actions in the PED website, which would be accessible to school districts; and

- Adding specific reporting requirements for licensed personnel to 6.60.9 NMAC, reflective of those currently included in statute, so licensed personnel would be required to report:
 - Reasonable suspicions of child abuse or neglect, as required by Section 32A-4-3 NMSA 1978;
 - Reasonable suspicion of conduct that would constitute child abuse if committed by a parent, guardian, or custodian, when such conduct is perpetrated by licensed school personnel, to the local school authority, PED, and law enforcement;
 - Any knowledge of inappropriate contact between licensed personnel and students (see Appendix D, Code of Ethics Rule Draft).

Timing for Action Steps

Going forward, next steps can be divided into short- and long-term goals. Short-term goals include:

- Amendments to 6.60.9 NMAC, the Code of Ethical Responsibility of the Educator Profession, to include reporting requirements for alleged violations of the code of ethics or professional standards. Because the amendments proposed for this part of rule are related to the organization of standards and requirements, they could be completed without statutory amendment.
- Statutory amendments related to budget and appropriations could be attempted during the 2021 legislative session. Potential budget-related legislation might include:
 - Permitting or requiring RECs to offer human resources and investigatory support to school districts, which may require an appropriation; and
 - Appropriations to afford PED the ability to hire additional investigator(s); and
 - Appropriations to support PED efforts to establish a hotline and website for reporting and storage of information related to ethical misconduct by school personnel.

More long-term goals include programmatic legislative proposals that may be attempted during the 2021 session or subsequent general legislative sessions. These proposals include:

- Amendments to the School Personnel Act related to background checks, including updated definitions, requiring background checks upon license renewal, and the requirement that PED maintain a list of persons reported to the department for possible ethical misconduct investigations, provided that sufficient funding is appropriated to support these purposes.
- Expansion of requirements for local school boards to track and coordinate reports of child abuse or neglect to include reports by volunteers.
- Inclusion of volunteers who have unsupervised contact with children in statutory training requirements on child abuse and neglect and ethical and sexual misconduct, and the establishment of minimal elements to be included in training programs.
- The addition of a duty to report to PED and law enforcement suspicions of conduct that would constitute child abuse if committed by a parent, custodian, or guardian, when such conduct is perpetrated by school personnel.
- The requirement that PED be notified when an alleged perpetrator of abuse or ethical misconduct is school personnel.
- Adding “SESAME” provisions for hiring practices to the School Personnel Act, to include requiring:
 - applicants for employment to provide statements regarding any history of allegations of misconduct in past employment;

- applicants for employment to provide their employment history that involved work in schools or other access to children; and
- former and current employers to provide prospective employers with information on applicants’ work background with regard to any history of ethical or sexual misconduct.
- Amending administrative rule related to training, located at 6.29.1.9(D) NMAC, reflective of related statutory amendments.
- Eventually including non-licensed school personnel in the Code of Ethics, found at 6.60.9 NMAC

The most substantial proposal requiring long-term planning and implementation would be the establishment of a hotline and website at PED for tracking and housing information on school personnel alleged to have engaged in ethical or sexual misconduct. This project would likely require:

- Changes to statute, administrative code, and PED policy;
- Fiscal support in the form of appropriations for the project;
- The involvement and support of more than one bureau or division of PED; and
- A marketing campaign for the rollout of the new website, hotline, and associated procedural and substantive program elements.

Table of Potential Timelines

Action Step	Responsible Party	Target Timeline
Amend 6.60.9 NMAC, Code of Ethics, to include additional reporting requirements for alleged violations of the code of ethics or professional standards.	PED	2020 – 2021
Amend Sections 22-2B-3 and 22-2B-5 NMSA 1978 of the Regional Cooperative Education Act to permit investigatory support for school districts and charter schools, with supporting appropriation.	Legislature	Legislative Session 2021
Appropriation to support additional licensure investigators at PED.	Legislature	Legislative Session 2021
Appropriation to support PED in the establishment of an anonymous hotline and website for reporting ethical misconduct by school personnel.	Legislature	Legislative Session 2021
Amend the School Personnel Act to: <ul style="list-style-type: none"> • Update definitions, at Section 22-10A-2 NMSA 1978; • Require PED to maintain a list of persons reported to the department for ethical misconduct; and • Empower the secretary to initiate licensure action against any licensed school personnel for failure to report child abuse or neglect. 	Legislature	Legislative Session 2021
Amend Section 22-5-4.2 of the Public School Code to require local school boards to track reports of child abuse made by volunteers and protect the identity of alleged victims of abuse.	Legislature	Legislative Session 2021
Amend Section 32A-4-3 of the Children’s Code to: <ul style="list-style-type: none"> • Require reports of child abuse be sent to PED if the suspected perpetrator is school personnel or a school volunteer; and • Mandate reports of reasonable suspicions of child abuse perpetrated by adults other than parents, guardians, or custodians to law enforcement. 	Legislature	Legislative Session 2021
Add “SESAME” law to the School Personnel Act to require disclosure of misconduct-related work history by applicants for	Legislature	Legislative Session 2021

Action Step	Responsible Party	Target Timeline
employment and require communication of work history between former and current employers and prospective employers.		
Amend Section 22-10A-32 NMSA 1978 to include volunteers who have unsupervised access to children in training programs and establish minimum elements of training programs on ethical misconduct, with differing elements for personnel and volunteers reflective of their respective status.	Legislature	Legislative Session 2021
Amend 6.29.1.9(D) NMAC to update training requirements established by amendments to Section 22-10A-32 NMSA 1978.	PED	2020 – 2021
Anonymous hotline and webpage for the reporting and storage of information on school personnel alleged to have engaged in ethical misconduct to include: <ul style="list-style-type: none"> • Changes to statute and administrative rule; • Supporting appropriations; • Marketing campaign for rollout of the new website and hotline. 	Legislature and PED	Legislative Session 2021
Eventual inclusion of non-licensed school personnel in the Code of Ethics, at 6.60.9 NMAC.	PED	Ongoing
PED review the possibility of providing contractors to offer investigative services to districts that may lack the financial capability to conduct their own investigations into alleged instances of ethical misconduct.	PED	Ongoing
Other related or required amendments to PED rule.	PED	Ongoing

APPENDIX A, Background Checks Bill Draft

Section 22-10A-2 NMSA 1978

Section 1. Section 22-10A-2 NMSA 1978 is amended to read:

22-10A-2. Definitions

As used in the School Personnel Act:

- A. "constitutional special school" means the New Mexico military institute, New Mexico school for the deaf and New Mexico school for the blind and visually impaired;
- B. "discharge" means the act of severing the employment relationship with a licensed school employee prior to the expiration of the current employment contract;
- C. "employed for three consecutive school years" means a licensed school employee has been offered and accepted in writing a notice of reemployment for the third consecutive school year;
- D. "ethical misconduct" means the following behavior or conduct by a school employee, school volunteer, contractor or contractor's employee:

1. discriminatory comments or practice based on race, age, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, mental or physical disability, marital status, religion, citizenship, domestic abuse reporting status, or serious medical condition;
2. sexual misconduct or any sexual offense prohibited by Chapter 30, Article 9 or Chapter 30, Article 6A NMSA 1978 involving an adult or child, regardless of a child's enrollment status;
3. fondling or touching a student or child, including but not limited to private body parts, such as breasts, buttocks, genitals, inner thighs, groin, or anus;
4. any other behavior, including licentious, enticing, or solicitous behavior that is intended to result in inappropriate sexual contact with a child, or student or to induce a child or student into engaging in illegal, immoral, or other prohibited behavior. For purposes of this section, "child" means a person who is less than 18 years of age; or
5. as prescribed by department rule.

~~DE~~. "governing authority" means the policy setting body of a school district, charter school, constitutional special school, ~~or~~ regional education cooperative, or the final decision maker of another state agency;

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

~~FG~~. "just cause" means a reason that is rationally related to a school employee's competence or turpitude or the proper performance of the school employee's duties and that is not in violation of the school employee's civil or constitutional rights;

H. "moral turpitude" means an act or behavior that gravely violates the accepted standards of moral conduct, justice, or honesty, and may include but does not necessarily include all ethical misconduct;

~~GI~~. "public school" means a school district, charter school, constitutional special school, regional education cooperative or the educational program of another state agency;

~~HJ~~. "responsibility factor" means a value of 1.20 for an elementary school principal, 1.40 for a middle school or junior high school principal, 1.60 for a high school principal, 1.10 for an assistant elementary school principal, 1.15 for an assistant middle school or assistant junior high school principal and 1.25 for an assistant high school principal;

~~IK~~. "sabbatical leave" means leave of absence with pay as approved by the governing authority during all or part of a regular school term for purposes of study or travel related to a licensed school employee's duties and of direct benefit to the instructional program;

JL. "school administrator" means a person licensed to administer in a school district, charter school, constitutional special school or regional education cooperative or a person employed with another state agency who administers an educational program and includes local superintendents, school principals, central district administrators, business managers, charter school head administrators and state agency education supervisors;

KM. "school employee" includes licensed and unlicensed employees of a public school;

LN. "school premises" means:

(1) the buildings and grounds, including playgrounds, playing fields and parking areas and a school bus of a public school, in or on which school or school-related activities are being operated under the supervision of a local school board, charter school or state agency; or

(2) any other public buildings or grounds, including playing fields and parking areas that are not public school property, in or on which public school-related and -sanctioned activities are being performed;

O. "sexual misconduct" means any act, including, but not limited to:

(1) any verbal, nonverbal, written or electronic communication or physical activity with or directed toward a child or student, regardless of the age of the child or student, that appears designed to establish a romantic relationship or sexual contact with the child or student. Such acts include, but are not limited to, sexual or romantic invitation; dating or soliciting dates; engaging in sexualized or romantic dialog; making sexually suggestive comments; self-disclosure or physical exposure of a sexual, romantic, or erotic nature; voyeurism; and any sexual, indecent, romantic, or erotic contact with a child or student, including but not limited to touching private body parts, such as breasts, buttocks, genitals, inner thighs, groin, or anus; or

(2) any association with child pornography, whether criminally prosecuted or not, including, but not limited to viewing, displaying, procuring, selling, receiving electronically or otherwise, distributing, transferring, producing, or replicating, any pornographic images depicting or purporting to depict children, and enticing or inducing any child to engage in any conduct with knowledge that such conduct will be used in pornographic materials.

MP. "state agency" means a regional education cooperative or state institution;

NQ. "state institution" means the New Mexico boys' school, girls' welfare home, New Mexico youth diagnostic and development center, Sequoyah adolescent treatment center, Carrie Tingley crippled children's hospital, New Mexico behavioral health institute at Las Vegas and any other state agency responsible for educating resident children;

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

PS. "superintendent" means a local superintendent, head administrator of a charter school or regional education cooperative, superintendent or commandant of a special school or head administrator of the educational program of a state agency;

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

RU. "terminate" means the act of severing the employment relationship with a school employee; and

V. “unsupervised contact with children” means access to or contact with, or the opportunity to have access to or contact with a child for any length of time:

1. in the absence of:

- a. a licensed staff person from the same school or institution;
- b. a volunteer who has undergone a background check pursuant to Section 22-10A-5 NMSA 1978; or
- c. any adult relative or guardian of the child; or

2. if outdoors with a child, such access or contact will be deemed to be “unsupervised contact with a child” unless there is a licensed staff person from the same school or institution; a volunteer who has undergone a background check pursuant to Section 22-10A-5 NMSA 1978; or an adult relative or guardian of the child within a 30-yard radius or visual contact with the child.

SW. "working day" means every school calendar day, excluding Saturdays, Sundays and legal holidays.

Section 22-10A-5 NMSA 1978

Section 2. Section 22-10A-5 is amended to read:

22-10A-5. Background checks; known convictions; alleged ethical misconduct; reporting required; limited immunity; penalty for failure to report

~~A. As used in this section, "ethical misconduct" means unacceptable behavior or conduct engaged in by a school employee, school volunteer, contractor or contractor's employee and includes unlawful discriminatory practice; sexual harassment, sexual assault or sexual abuse involving an adult or child, regardless of a child's enrollment status; and behavior intended to induce a child into engaging in illegal, immoral or other prohibited behavior.~~

BA. An applicant for initial licensure shall be fingerprinted only upon initial licensure and shall provide two fingerprint cards or the equivalent electronic fingerprints to the department or

superintendent to obtain the applicant's federal bureau of investigation record. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act [28-2-1 through [28-2-6](#) NMSA 1978]. Other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the denial, suspension or revocation of a license for just cause. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the licensure or employment decisions affecting the specific applicant. The applicant for initial licensure shall pay for the cost of obtaining the federal bureau of investigation record.

~~€B.~~ Governing authorities shall develop policies and procedures to require background checks on an applicant who has been offered employment or who applies to be a volunteer or works for the public school as a contractor or a contractor's employee and who may have unsupervised ~~access to students~~ contact with children or students on school premises.

~~ĐC.~~ An applicant who has been offered employment or a school volunteer, contractor or contractor's employee shall provide two fingerprint cards or the equivalent electronic fingerprints to the superintendent to obtain the applicant's, school volunteer's, contractor's or contractor's employee's federal bureau of investigation record. The public school shall pay for an applicant's background check. A school volunteer, contractor or contractor's employee may be required to pay for the cost of obtaining a background check.

~~ÈD.~~ Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act; provided that other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the employment decisions for just cause.

~~ƒE.~~ Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the employment, volunteering or contracting decision affecting the specific applicant, volunteer, contractor or contractor's employee who has been offered employment, a volunteer position or a contract and will have unsupervised ~~access to students~~ contact with children or students on school premises.

~~ĞF.~~ A superintendent shall report immediately to the department any known conviction of any felony or any misdemeanor or arrest involving moral turpitude of a ~~licensed~~ school employee or volunteer ~~that results in any type of action against the licensed school employee.~~

~~ĤG.~~ A superintendent, ~~or~~ the superintendent's designated representative, or a regional education cooperative shall investigate all allegations of ethical misconduct about any school employee who resigns, is being discharged or terminated or otherwise leaves employment after an allegation has been made. If the investigation results in a finding of ethical misconduct by a licensed school employee, the superintendent, their designee, or the regional education cooperative shall report the identity of the licensed school employee and attendant circumstances of the ethical misconduct on a standardized form to the department and the licensed school employee within thirty days following the separation from employment or immediately if knowledge of the ethical misconduct is sexual ~~harassment or sexual abuse of~~ misconduct with an

adult or child. ~~Copies of that form shall not be maintained in the school employee's personnel file.~~ The superintendent, their designee, or the regional education cooperative shall also report allegations of sexual assault or sexual abuse involving any school employee, volunteer, contractor or a contractor's employee to the appropriate law enforcement agency. No agreement between a departing school employee and the governing authority or superintendent shall diminish or eliminate the responsibility of investigating and reporting the alleged ethical misconduct to the department or, if legally mandated, to law enforcement, and any such agreement to the contrary is void.

H. Unless the department has commenced its own investigation of a licensed school employee prior to receipt of the form, the department shall serve the licensed school employee with a notice of investigation and a notice of contemplated action pursuant to the Uniform Licensing Act [61-1-1 through [61-1-31](#) NMSA 1978] within sixty days of receipt of the form. ~~If a notice of contemplated action is not served on the licensed school employee within ninety days of receipt of the form, the form, together with any documents related to the alleged ethical misconduct, shall be expunged from the licensed school employee's records.~~

I. The department shall maintain a list of the names of persons reported to the department as required by subsections G and H of this section and update that list each month. The department shall provide that list to a governing authority upon request.

J. The secretary may initiate action to suspend, revoke or refuse to renew the license of:

1. a superintendent who fails to report as required by Subsections G and H of this section; or
2. any licensed school employee who fails to report child abuse or neglect pursuant to Section 32A-4-3 NMSA 1978.

K. A person who in good faith reports as provided in Subsections G and H of this section shall not be held liable for civil damages as a result of the report. The person being accused shall have the right to sue for any damages sustained as a result of negligent or intentional reporting of inaccurate information or the disclosure of any information to an unauthorized person.

(Please note this final subsection, Subsection K, will sunset as of July 1, 2020.)

[Section 22-10A-24 NMSA 1978](#)

Section 3. Section 22-10A-24 is amended to read:

22-10A-24. Termination decisions; local school board; governing authority of a state agency; procedures.

A. A local school board or governing authority may terminate a licensed school employee, excluding licensed educational assistants who have not been offered and accepted the third consecutive contract, for any reason it deems sufficient. A local school board or governing authority may terminate a nonlicensed school employee or a licensed educational assistant with less than one year of employment for any reason it deems sufficient. Upon request of the

employee, the local superintendent or state agency administrator shall provide written reasons for the decision to terminate. The reasons shall be provided within ten working days of the request. ~~The reasons shall not be publicly disclosed by the local superintendent, state agency administrator, local school board or governing authority.~~ The reasons shall not provide a basis for contesting the decision under the School Personnel Act.

B. Before terminating a nonlicensed school employee or a licensed educational assistant, the local school board or governing authority shall serve the employee or assistant with a written notice of termination.

C. A licensed school employee who has been employed by a school district or state agency for more than two consecutive years or a nonlicensed school employee or licensed educational assistant who has been employed for more than one year and who receives a notice of termination pursuant to either Section 22-10A-22 NMSA 1978 or this section may request an opportunity to make a statement to the local school board or governing authority on the decision to terminate the employee or assistant by submitting a written request to the local superintendent or state agency administrator within five working days from the date written notice of termination is served upon the employee or assistant. The employee or assistant may also request in writing the reasons for the termination action. The local superintendent or state agency administrator shall provide written reasons for the notice of termination to the employee or assistant within five working days from the date the written request for a meeting and the written request for the reasons were received by the local superintendent or state agency administrator. ~~Neither the local superintendent or state agency administrator nor the local school board or governing authority shall publicly disclose its reasons for termination.~~

D. A superintendent or state agency administrator may not terminate a licensed school employee who has been offered and accepted a third-year contract or a nonlicensed school employee or licensed educational assistant who has been employed by a school district or state agency for more than one year without just cause.

E. The employee's request pursuant to Subsection C of this section shall be granted if the employee responds to the local superintendent's or state agency administrator's written reasons as provided in Subsection C of this section by submitting in writing to the local superintendent or state agency administrator a contention that the decision to terminate was made without just cause. The written contention shall specify the grounds on which it is contended that the decision was without just cause and shall include a statement of the facts that the employee believes support the employee's contention. This written statement shall be submitted within ten working days from the date the employee receives the written reasons from the local superintendent or state agency administrator. The submission of this statement constitutes a representation on the part of the employee that the employee can support the employee's contentions and an acknowledgment that the local school board or governing authority may offer the causes for its decision and any relevant data in its possession in rebuttal of the employee's contentions.

F. A local school board or governing authority shall meet to hear the employee's statement in no less than five or more than fifteen working days after the local school board or governing

authority receives the statement. The hearing shall be conducted informally in accordance with the provisions of the Open Meetings Act. The employee and the local superintendent or state agency administrator may each be accompanied by a person of the employee's and the local superintendent's or state agency administrator's choice. First, the local superintendent shall present the factual basis for the determination that just cause exists for the termination of the employee, limited to those reasons provided to the employee pursuant to Subsection C of this section. Then, the employee shall present the employee's contentions, limited to those grounds specified in Subsection E of this section. The local school board or governing authority may offer such rebuttal testimony as it deems relevant. All witnesses may be questioned by the local school board or governing authority, the employee or the employee's representative and the local superintendent or state agency administrator or the local superintendent's or state agency administrator's representative. The local school board or governing authority may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable. ~~No record shall be made of the proceeding.~~ The local school board or governing authority shall notify the employee and the local superintendent or state agency administrator of its decision in writing within five working days from the conclusion of the meeting.

Section 22-10A-25 NMSA 1978

Section 4. Section 22-10A-25 is amended to read:

Section 22-10A-25. Appeals; independent arbitrator; qualifications; procedure; binding decision.

A. An employee who is still aggrieved by a decision of a local school board or governing authority rendered pursuant to Section [22-10-14](#) NMSA 1978 [recompiled] may appeal the decision to an arbitrator. A written appeal shall be submitted to the local superintendent or administrator within five working days from the receipt of the local school board's or governing authority's written decision or the refusal of the board or authority to grant a hearing. The appeal shall be accompanied by a statement of particulars specifying the grounds on which it is contended that the decision was impermissible pursuant to Subsection E of Section [22-10-14](#) NMSA 1978 [recompiled] and including a statement of facts supporting the contentions. Failure of the employee to submit a timely appeal or a statement of particulars with the appeal shall disqualify him for any appeal and render the local school board's or governing authority's decision final.

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

C. A qualified independent arbitrator shall be appointed who is versed in employment practices and school procedures and who preferably has experience in the practice of law. No person shall be appointed to serve as the independent arbitrator who has any direct or indirect financial interest in the outcome of the proceeding, has any relationship to any party in the proceeding, is

employed by the local school board or governing authority or is a member of or employed by any professional or labor organization of which the employee is a member.

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

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

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

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

H. The independent arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

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

J. The local school board or governing authority has the burden of proof and shall prove by a preponderance of the evidence that, at the time the notice of termination was served on the employee, the local school board or governing authority had just cause to terminate the employee. If the local school board or governing authority proves by a preponderance of the evidence that there was just cause for its action, then the burden shifts to the employee to rebut the evidence presented by the local school board or governing authority.

K. The independent arbitrator shall uphold the local school board's or governing authority's decision only if it proves by a preponderance of the evidence that, at the time the notice of termination was served on the employee, the local school board or governing authority had just cause to terminate the employee. If the local school board or governing authority fails to meet its burden of proof or if the employee rebuts the proof offered by the local school board or governing authority, the arbitrator shall reverse the decision of the local school board or governing authority.

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

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

N. The sole remedies available under this section shall be reinstatement or payment of compensation reinstated in full but subject to any additional compensation allowed other employees of like qualifications and experience employed by the school district or state agency and including reimbursement for compensation during the entire period for which compensation was terminated, or both, less an offset for any compensation received by the employee during the period the compensation was terminated.

O. Unless a party can demonstrate prejudice arising from a departure from the procedures established in this section and in Section [22-10-14](#) NMSA 1978 [recompiled], such departure shall be presumed to be harmless error.

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

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

R. Local school districts shall file a record with the department of education [public education department] of all terminations and all actions arising from terminations annually.

NEW MATERIAL: Applicants for School Employment Work Background

Section 5. A new section of the Public School Code is enacted to read:

[NEW MATERIAL] APPLICANTS FOR SCHOOL EMPLOYMENT WORK BACKGROUND

- A. A school district, charter school, or state agency shall require any applicant for employment to provide:
1. a list of the applicant's current and former employers that were schools or that employed the applicant in a position involving unsupervised contact with children. The list shall include the name, address, telephone number, and other relevant contact information for each of the applicant's listed employers;
 2. a written statement as to whether the applicant:

- a. has been the subject of a child abuse or ethical misconduct investigation by any employer, law enforcement agency, or other state agency, unless the investigation found allegations of child abuse or ethical misconduct were false or unsubstantiated;
 - b. has ever been disciplined or separated from any employment due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation; or
 - c. has ever had a professional license or certificate denied, suspended, surrendered, or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation; and
3. a written authorization that authorizes disclosure of information requested under subsection B or D of this section and the release of related records by the applicant's previous employers, releasing them from any liability related to the disclosure or release of records.
- B. A school district, charter school, or state agency shall conduct a review of the applicant's employment history and contact the applicant's current and former employers listed under subsection A of this section and request:
1. the applicant's dates of employment; and
 2. a statement describing whether the applicant:
 - a. has been the subject of a child abuse or ethical misconduct investigation by any employer, law enforcement agency, or other state agency, unless the investigation found allegations of child abuse or ethical misconduct were false or unsubstantiated;
 - b. has ever been disciplined or separated from any employment due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation; or
 - c. has ever had a professional license or certificate denied, suspended, surrendered, or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation.
- C. An applicant's current or former employer shall disclose the information requested under subsection B of this section within 30 days of receiving the request.
- D. During the course of a school district's, charter school's, or state agency's review of the applicant's employment history, an applicant's current or former employer may disclose any other information the applicant's current or former employer deems pertinent and substantive to the prospective employee's suitability for employment in a position that includes unsupervised contact with children.
- E. A school district, charter school, or state agency shall make and document efforts to:

1. verify the information provided under subsections A and B of this section; and
 2. obtain from an applicant's current or former out-of-state employer the information required under subsection B of this section.
- F. A school district, charter school, or state agency may terminate an individual's employment or rescind an applicant's offer of employment if the applicant is offered or commences employment with a school district, charter school or state agency after the effective date of this act and information regarding the applicant's history of child abuse or ethical misconduct that is determined to disqualify the applicant from employment is subsequently obtained by the school district, charter school, or state agency.
- G. When requested to provide a reference on a former or current employee, an employer acting in good faith is immune from liability for comments about the former employee's job performance. The immunity shall not apply when the reference information supplied was knowingly false or deliberately misleading, was rendered with malicious purpose, or violated any civil rights of the former employee.
- H. An applicant who provides false information or willfully neglects to disclose information required under this section shall be subject to discipline including termination or denial of employment, or action to deny, suspend, or revoke a license.

APPENDIX B, Reporting and Training Requirements Bill Draft

Section 22-5-4.2 NMSA 1978

Section 1. Section 22-5-4.2 is amended to read:

22-5-4.2. Child abuse; report coordination; confirmation.

A. A local school board ~~may~~ shall adopt policies providing for the coordination and internal tracking of reports made by school district personnel and volunteers pursuant to ~~Section 32-1-15 NMSA 1978 [repealed]~~ Section 32A-4-3 NMSA 1978. Such policies, however, shall not require any notification to school district personnel or volunteers before the report is made to ~~one of the~~ offices listed in Subsection A of that section. Such policies shall include measures to protect the identity of victims of abuse. No policy shall purport to relieve any person having a duty to report under that section from that duty.

B. After a report is made to a ~~county social services office of the human services department pursuant to Section 32-1-15 NMSA 1978 [repealed]~~ the children youth and families department and a law enforcement agency pursuant to Section 32A-4-3 NMSA 1978 by any school district personnel, that office shall notify the person making the report within five days after the report was made that the office is investigating the matter. Mailing a notice within five days shall constitute compliance with this subsection.

Section 22-10A-32 NMSA 1978

Section 2. Section 22-10A-32 is amended to read:

22-10A-32. ~~Licensed school~~ School employees and school volunteers with unsupervised access to children; required training program.

A. All ~~licensed~~ school employees and school volunteers who have unsupervised access to children shall be required to complete training in the detection and reporting of child abuse and neglect, including ethical misconduct, professional responsibilities, sexual abuse and assault, and substance abuse. Except as otherwise provided in this subsection, this requirement shall be completed within the ~~licensed~~ school employee's first year of employment ~~by a school district~~. ~~Licensed school employees hired prior to the 2014-2015 school year shall complete the sexual abuse and assault component of the required training during the 2014-2015 school year.~~

B. The department shall develop a or adopt training ~~program~~ programs, including training materials and necessary training staff, to meet the ~~requirement~~ requirements of Subsection A of this section to make the training available in every school district and charter school, and shall promulgate rules for the administration of the training programs. The department shall coordinate the development of the program with appropriate staff in school districts and charter schools, ~~and at~~ the human services department, the department of health, and the children, youth and families department. The department shall consult with the federal centers for disease control and prevention when developing or adopting the evidence-based training component on child

sexual abuse and assault to include methods and materials that have proven to be effective. At a minimum, training required under this section shall include:

- (1) reporting requirements, including minimal standards triggering reporting;
- (2) trauma-informed instruction;
- (3) identification of circumstances and factors that are indicators of likely abuse or inappropriate behaviors;
- (4) ethical misconduct;
- (5) professional responsibilities;
- (6) investigations and procedures; and
- (7) relevant legal and regulatory definitions.

C. The training ~~program~~ programs developed or adopted pursuant to this section shall be made available by the department to the deans of every college of education in New Mexico for use in providing such training to students seeking elementary and secondary education licensure.

Section 32A-4-3 NMSA 1978

Section 3. Section 32A-4-3 is amended to read:

32A-4-3. Duty to report child abuse and child neglect; responsibility to investigate child abuse or neglect; penalty; notification of plan of care.

A. Every person, including a licensed physician; a resident or an intern examining, attending or treating a child; a law enforcement officer; a judge presiding during a proceeding; a registered nurse; a visiting nurse; a schoolteacher; a school official; a social worker acting in an official capacity; or a member of the clergy who has information that is not privileged as a matter of law, who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter immediately to:

- (1) a local law enforcement agency; and
- (2) the department; or
- (3) a tribal law enforcement or social services agency for any Indian child residing in Indian country;

B. If the alleged perpetrator is school personnel or a school volunteer, a report shall be made to the public education department.

~~BC.~~ A law enforcement agency receiving the report under Subsection A shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to the department and shall transmit the same information in writing within forty-eight hours. The department shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to a local law enforcement agency and shall

transmit the same information in writing within forty-eight hours. The written report shall contain the names and addresses of the child and the child's parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person responsible for the injuries. The written report shall be submitted upon a standardized form agreed to by the law enforcement agency and the department.

€D. The recipient of a report under Subsection A of this section shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect. A local law enforcement officer trained in the investigation of child abuse and neglect is responsible for investigating reports of alleged child abuse or neglect at schools, daycare facilities or child care facilities.

E. After a report of suspected child abuse is made to the public education department or the children youth and families department and a law enforcement agency pursuant this section, that office shall notify the person making the report within five days after the report was made that the office is investigating the matter. Mailing a notice within five days shall constitute compliance with this subsection.

ÐE. If the child alleged to be abused or neglected is in the care or control of or in a facility administratively connected to the department, the report shall be investigated by a local law enforcement officer trained in the investigation of child abuse and neglect. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect.

EG. A law enforcement agency or the department shall have access to any of the records pertaining to a child abuse or neglect case maintained by any of the persons enumerated in Subsection A of this section, except as otherwise provided in the Abuse and Neglect Act.

FH. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section [31-19-1](#) NMSA 1978.

GI. Every person, including a licensed physician; a resident or an intern examining, attending or treating a child; a law enforcement officer; a judge presiding during a proceeding; a registered nurse; a visiting nurse; a schoolteacher; a school official; a social worker acting in an official capacity; or a member of the clergy who has information that is not privileged as a matter of law, who knows or has a reasonable suspicion that a child has been subject to physical or sexual abuse or sexual exploitation by an adult other than a parent, guardian, or custodian shall report the matter immediately to:

(1) a local law enforcement agency; or

(2) a tribal law enforcement or social services agency for any Indian child residing in Indian country.

HJ. A law enforcement agency receiving a report under Subsection I shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to the department and shall transmit the same information in writing within forty-eight hours. If the alleged perpetrator is school personnel or a school volunteer a report shall also be made to the public education department in writing within forty-eight hours. The written report shall contain the names and addresses of the child and the child's parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person responsible for the injuries. The written report shall be submitted upon a standardized form agreed to by the law enforcement agency and the department.

GK. A finding that a pregnant woman is using or abusing drugs made pursuant to an interview, self-report, clinical observation or routine toxicology screen shall not alone form a sufficient basis to report child abuse or neglect to the department pursuant to Subsection A of this section. A volunteer, contractor or staff of a hospital or freestanding birthing center shall not make a report based solely on that finding and shall make a notification pursuant to Subsection H of this section. Nothing in this subsection shall be construed to prevent a person from reporting to the department a reasonable suspicion that a child is an abused or neglected child based on other criteria as defined by Section [32A-4-2](#) NMSA 1978, or a combination of criteria that includes a finding pursuant to this subsection.

HL. A volunteer, contractor or staff of a hospital or freestanding birthing center shall:

- (1) complete a written plan of care for a substance-exposed newborn as provided for by department rule and the Children's Code; and
- (2) provide notification to the department. Notification by a health care provider pursuant to this paragraph shall not be construed as a report of child abuse or neglect.

HM. As used in this section, "notification" means informing the department that a substance-exposed newborn was born and providing a copy of the plan of care that was created for the child; provided that notification shall comply with federal guidelines and shall not constitute a report of child abuse or neglect.

APPENDIX C, Regional Education Cooperatives' Investigations Bill Draft

Section 22-2B-3 NMSA 1978

Section 1. Section 22-2B-3 is amended to read:

Section 22-2B-3. Regional education cooperatives authorized.

A. The department may authorize the existence and operation of "regional education cooperatives". Upon authorization by the department, local school boards may join with other local school boards or other state-supported educational institutions to form cooperatives to provide education-related services. Cooperatives shall be deemed individual state agencies administratively attached to the department; provided that:

(1) pursuant to the rules of the department, cooperatives may own, and have control and management over, buildings and land independent of the director of the facilities management division of the general services department;

(2) cooperatives shall not submit budgets to the department of finance and administration but shall submit them to the department. The department shall, by rule, determine the provisions of the Public School Finance Act [Chapter [22](#), Article [8](#) NMSA 1978] relating to budgets and expenditures that are applicable to cooperatives; and

(3) pursuant to the rules of the department, the secretary may, after considering the factors specified in Section [22-8-38](#) NMSA 1978, designate a cooperative council as a board of finance with which all funds appropriated or distributed to it shall be deposited. If such a designation is not made or if such a designation is suspended by the secretary, the money appropriated or to be distributed to a cooperative shall be deposited with the state treasurer. Unexpended or unencumbered balances in the account of a cooperative shall not revert.

B. The department shall, by rule, establish minimum criteria for the establishment and operation of cooperatives. The department shall also establish procedures for oversight of cooperatives to ensure compliance with department rule. Cooperatives shall be exempt from the provisions of the Personnel Act [Chapter [10](#), Article [9](#) NMSA 1978].

C. With council approval, a cooperative may provide revenue-generating education-related services to nonmembers, so long as those services do not detract from the cooperative's ability to fulfill its responsibilities to its members.

D. With council approval, a cooperative may apply for and receive public and private grants as well as gifts, donations, bequests and devises and use them to further the purposes and goals of the cooperative.

E. A cooperative may provide support to school districts, charter schools, and the department in meeting reporting requirements related to allegations of ethical misconduct by school employees, school volunteers, or contractors' employees and in conducting investigations relating to such allegations.

F. Each cooperative shall cooperate with the department as required by federal-state plans or department rules in the effectuation and administration of its educational programs. Each cooperative shall submit reports to the department at such times and in such form as required by department rule. Reports shall include an evaluation of the effectiveness of the technical assistance and other services provided to members of the cooperative and any nonmember public and private entities to which the cooperative provided educational services. The reports and evaluations submitted pursuant to this subsection shall be made available upon request to the legislative education study committee and the legislative finance committee.

Section 22-2B-5 NMSA 1978

Section 2. Section 22-2B-5 is amended to read:

Section 22-2B-5. Regional education coordinating councils; duties.

A. Each council shall oversee the function and operation of a cooperative. At the direction of the council, the cooperative shall provide:

- (1) education-related services to members of the cooperative;
- (2) technical assistance and staff development opportunities to members of the cooperative;
- (3) cooperative purchasing capabilities and fiscal management opportunities to members of the cooperative;
- (4) such additional services to members of the cooperative as may be determined by the council to be appropriate; and
- (5) revenue-generating education-related services to nonmembers when the council determines that the provision of such services will not interfere with the cooperative's ability to fulfill its responsibilities to its members.

B. At the direction of the council, the cooperative may provide support to school districts, charter schools, and the department in the investigation and reporting of allegations of ethical misconduct by school personnel and volunteers, including provision of personnel trained in the investigation of ethical and sexual misconduct.

BC. Pursuant to rule of the department, each council shall:

- (1) adopt a budget and administrative guidelines as necessary to carry out the purposes of the cooperative; and
- (2) hire an executive director and necessary additional staff.

APPENDIX D, CODE OF ETHICS RULE DRAFT

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 60 SCHOOL PERSONNEL-GENERAL PROVISIONS
PART 9 LICENSURE REQUIREMENTS, CODE OF ETHICAL
RESPONSIBILITY OF THE EDUCATION PROFESSION

6.60.9.1 ISSUING AGENCY: Public Education Department

[6.60.9.1 NMAC - N, 04-30-01; A, 10-17-05]

6.60.9.2 SCOPE: All licensed personnel. The New Mexico public education department (PED) hereby sets minimal standards of accepted ethical behavior and professional conduct in education that are applicable to all licensed school personnel, instructional personnel under contract, including any other person who provides instructional or education-related services in a school and who holds any license, certificate or written authority issued by the PED.

[6.60.9.2 NMAC - N, 04-30-01; A, 10-17-05; A, 10-31-06]

6.60.9.3 STATUTORY AUTHORITY: Sections 22-2-1B, 22-2-2J, 22-5-4.2, and 22-10A-31 NMSA 1978.

[6.60.9.3 NMAC - N, 04-30-01; A, 10-17-05]

6.60.9.4 DURATION: Permanent

[6.60.9.4 NMAC - N, 04-30-01]

6.60.9.5 EFFECTIVE DATE: April 30, 2001, unless a later date is specified at the end of a section.

[6.60.9.5 NMAC - N, 04-30-01]

6.60.9.6 OBJECTIVE: The PED seeks to make ethical values and ethical leadership an integral part of the ~~day-to-day~~ day-to-day activities of schools, and holds all persons within the scope of this rule accountable for adhering to minimal standards of accepted professional conduct and ethical behavior. The PED accepts the recommendations of its professional practices and standards council and the ethics subcommittee that a code of ethics and standards of professional conduct applicable to the education profession will infuse the learning environment with choices and values designed to assist in shaping young minds into educated, responsible citizens.

[6.60.9.6 NMAC - N, 04-30-01; A, 10-17-05; A, 10-31-06]

6.60.9.7 **DEFINITIONS:** ~~"Ethical misconduct" means behavior or conduct engaged in by a licensed or certified school employee that violates the minimal standards of accepted ethical behavior and or professional conduct listed in the standards of professional conduct section of this rule, or that constitutes the grounds for revoking licensure listed in 6.63.8 NMAC except for failure to meet level 3-A competencies.~~

A. "ethical misconduct" means the following behavior or conduct by school personnel:

1. discriminatory comments or practice based on race, age, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, mental or physical disability, marital status, religion, citizenship, domestic abuse reporting status, or serious medical condition;
2. sexual misconduct or any sexual offense prohibited by Chapter 30, Article 9 or Chapter 30, Article 6A NMSA 1978 involving an adult or child, regardless of a child's enrollment status;
3. fondling or touching a student or child, including but not limited to private body parts, such as breasts, buttocks, genitals, inner thighs, groin, or anus;
4. any other behavior, including licentious, enticing, or solicitous behavior that is intended to result in inappropriate sexual contact with a child, or student or to induce a child or student into engaging in illegal, immoral, or other prohibited behavior. For purposes of this section, "child" means a person who is less than 18 years of age; or
5. as prescribed by department rule.

B. "sexual misconduct" means any act, including, but not limited to:

(1) any verbal, nonverbal, written or electronic communication or physical activity directed toward or with a child or student, regardless of the age of the child or student, that appear designed to establish a romantic relationship or sexual contact with the child or student. Such acts include, but are not limited to, sexual or romantic invitation; dating or soliciting dates; engaging in sexualized or romantic dialog; making sexually suggestive comments; self-disclosure or physical exposure of a sexual, romantic, or erotic nature; voyeurism; and any sexual, indecent, romantic, or erotic contact with a child or student, including but not limited to touching private body parts, such as breasts, buttocks, genitals, inner thighs, groin, or anus; or

(2) any association with child pornography, whether criminally prosecuted or not, including, but not limited to possessing, viewing, displaying, procuring, selling, receiving electronically or otherwise, distributing, transferring, producing, replicating, any pornographic images depicting or purporting to depict children, and enticing or inducing any child to engage in any conduct with knowledge that such conduct will be used in pornographic materials.

[6.60.9.7 NMAC - N, 10-31-06]

6.60.9.8 **CODE OF ETHICS:** We, professional educators of New Mexico, affirm our belief in the worth and dignity of humanity. We recognize the supreme importance of the

pursuit of truth, the encouragement of scholarship, and the promotion of democratic citizenship. We regard as essential to these goals the protection of freedom to learn and to teach with the guarantee of equal educational opportunity for all. We affirm and accept our responsibility to practice our profession according to the highest ethical standards. We acknowledge the magnitude of the profession we have chosen, and engage ourselves, individually and collectively, to judge our colleagues and to be judged by them in accordance with the applicable provisions of this code.

A. Principle I: Commitment to the student. We measure success by the progress of each student toward achievement of his/her maximum potential. We therefore work to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals. We recognize the importance of cooperative relationships with other community institutions, especially the home. In fulfilling our obligation to the student, we:

- (1) deal justly and considerately with each student;
- (2) encourage the student to study and express varying points of view and respect his/her right to form his/her own judgment;
- (3) conduct conferences with or concerning students in an appropriate place and manner;
- (4) seek constantly to improve learning facilities and opportunities.

B. Principle II: Commitment to the community. We believe that patriotism in its highest form requires dedication to the principles of our democratic heritage. We share with all other citizens the responsibility for the development of sound public policy. As educators, we are particularly accountable for participating in the development of educational programs and policies and for interpreting them to the public. In fulfilling our obligations to the community, we:

- (1) share the responsibility for improving the educational opportunities for all;
- (2) recognize that each educational institution has a person authorized to interpret its official policies;
- (3) acknowledge the right and responsibility of the public to participate in the formulation of educational policy;
- (4) evaluate through appropriate professional procedures conditions within a district or institution of learning, make known serious deficiencies, and take action deemed necessary and proper;
- (5) assume full political and citizenship responsibilities, but refrain from exploiting the institutional privileges of our professional positions to promote political candidates or partisan activities;

(6) protect the educational program against undesirable infringement, and promote academic freedom.

C. Principle III: Commitment to the profession. We believe that the quality of the services of the education profession directly ~~influence~~ influences the future of the nation and its citizens. We therefore exert every effort to raise educational standards, to improve our service, to promote a climate in which the exercise of professional judgment is encouraged, to demonstrate integrity in all work-related activities and interactions in the school setting, and to achieve conditions which attract persons worthy of the trust to careers in education. Aware of the value of united effort, we contribute actively to the support, planning, and programs of our professional organizations. In fulfilling our obligations to the profession, we:

(1) recognize that a profession must accept responsibility for the conduct of its members and understand that our own conduct may be regarded as representative of our profession;

(2) participate and conduct ourselves in a responsible manner in the development and implementation of policies affecting education;

(3) cooperate in the selective recruitment of prospective teachers and in the orientation of student teachers, interns, and those colleagues new to their positions;

(4) accord just and equitable treatment to all members of the profession in the exercise of their professional rights and responsibilities;

(5) refrain from assigning professional duties to nonprofessional personnel when such assignment is not in the best interest of the student;

(6) refrain from exerting undue influence based on the authority of our positions in the determination of professional decisions by colleagues;

(7) keep the trust under which confidential information is exchanged;

(8) make appropriate use of the time granted for professional purposes;

(9) interpret and use the writings of others and the findings of educational research with intellectual honesty;

(10) maintain our integrity when dissenting by basing our public criticism of education on valid assumptions as established by careful evaluation of facts;

(11) respond accurately to requests for evaluation of colleagues seeking professional positions;

(12) provide applicants seeking information about a position with an honest description of the assignment, the conditions of work and related matters.

D. Principle IV: Commitment to professional employment practices. We regard the employment agreement as a solemn pledge to be executed both in spirit and in fact in a manner consistent with the highest ideals of professional service. Sound professional personnel relationships with governing boards are built upon integrity, dignity, and mutual respect between employees, administrators, and local school boards. In fulfilling our obligations to professional employment practices, we:

- (1) apply for or offer a position on the basis of professional and legal qualifications;
- (2) apply for a specific position only when it is known to be vacant and refrain from such practices as underbidding or commenting adversely about other candidates;
- (3) fill no vacancy except where the terms, conditions, and policies are known;
- (4) adhere to and respect the conditions of a contract or to the terms of an appointment until either has been terminated legally or by mutual consent;
- (5) give prompt notice of any change in availability of service, in status of applications, or in change in position;
- (6) conduct professional business through recognized educational and professional channels.

[6.60.9.8 NMAC - N, 04-30-01]

6.60.9.9 STANDARDS OF PROFESSIONAL CONDUCT:

A. Preamble

(1) We, licensed New Mexico educators acknowledge that ethical values in our schools cannot exist without ethical leadership. It is our ultimate goal to educate children so that they may become productive citizens; we understand that our guidance and ability to provide choices has a profound effect on reaching this goal. In affording students and each other choices, we agree to consider the consequence of each choice, the moral value best exemplified by the recommended choice, and our position on the choice if it were applied to us. These principles apply equally to all licensed educators in all schools except where they are uniquely applicable to public schools or where they conflict with principles of religious freedom.

(2) Moral values are to ethical leadership what years of experience are to a successful educator. The former sets the stage for success of the latter. Abstract principles that espouse excellence do not easily equate into simple behavioral maxims. We are certain that some foundational concepts can be embraced because they truly celebrate desirable moral values. These concepts are: respect for one's self and others, honesty and openness, the delicate balance between absolute freedom and safety, the equally delicate balance between

confidentiality and the right to know, equality of opportunity, fairness to all, and personal integrity.

(3) In the final analysis it is our consistent ethical leadership that wins the most allies and produces the best results. Not only does this code highlight our professional responsibilities, but also it stimulates us to discuss the professional implications of our ethical choices and ethical recommendations, causes us to assess and reassess our application of moral values, and sets forth concrete behaviors appropriate for education professionals. We are committed to this code and understand that it provides minimally accepted standards of professional conduct in education.

B. Standard I: Duty to the student. We endeavor to stimulate students to think and to learn while at the same time we seek to protect them from any harm. Ethical leadership requires licensed educators to teach not only by use of pedagogical tools, but also by consistent and justifiable personal example. To satisfy this obligation, we:

(1) shall, in compliance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g, 34C.F.R. Part 99), the Individuals with Disabilities Education Act (20 U.S.C. Section 1401 *et seq.*, 34 C.F.R. Part 300), the Mental Health and Developmental Disabilities Code (Section 43-1-19, NMSA 1978), the Inspection of Public Records Act (Section 14-2-1 *et seq.*, NMSA 1978), the Public School Code (Section 22-1-8, NMSA 1978), and the Children's Code (Sections 32A-2-32, 32A-4-3, NMSA 1978), withhold confidential student records or information about a student or ~~his/her~~ their personal and family life unless release of information is allowed, permitted by the student's parent(s)/legal guardian, or required by law;

(2) shall not discriminate or permit students within our control, supervision or responsibility to discriminate against any other student on the basis of race, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, disability, religion, citizenship, domestic abuse reporting status, or serious medical condition;

(3) shall avoid using our positions as licensed school employees to exploit or unduly influence a student into engaging in an illegal act, immoral act, or any other behavior that would subject a licensed school employee or student to discipline for misconduct whether or not the student actually engages in the behavior;

(4) shall tutor students only in accordance with local board policies, if any, only after written permission from the student's parent(s)/legal guardian, and only at a place or time approved by the local school and/or the student's parent(s)/legal guardian;

(5) shall not give a gift to any one student unless all students situated similarly receive or are offered gifts of equal value for the same reason;

(6) shall not lend a student money except in clear and occasional circumstances, such as where a student may go without food or beverage or be unable to participate in a school activity without financial assistance;

(7) shall not have inappropriate contact with any student, whether or not on school property, which includes but is not limited to:

- (a) all forms of sexual touching, sexual relations or romantic relations;
- (b) inappropriate touching which is any physical touching, embracing, petting, hand-holding, or kissing that is unwelcome by the student or is otherwise inappropriate given the age, sex and maturity of the student;
- (c) any open displays of affection toward mostly-boys or mostly-girls; and
- (d) offering or giving a ride to a student unless absolutely unavoidable, such as where a student has missed his/her usual transportation and is unable to make reasonable substitute arrangements;

(8) shall not interfere with a student's right to a public education by sexually harassing a student or permitting students within our control, supervision, or responsibility to sexually harass any other student, which prohibited behavior includes: making any sexual advances, requests for sexual favors, repeated sexual references, any name-calling by means of sexual references or references based on gender, or any other verbal or physical conduct of a physical nature with a student, and any display or distribution of sexually oriented materials where students can see them; and

~~—————(a)—— making any sexual advances, requests for sexual favors, repeated sexual references, any name calling by means of sexual references or references directed at gender-specific students, any other verbal or physical conduct of a physical nature with a student even where the licensed educator believes the student consents or the student actually initiates the activity, and any display/distribution of sexually oriented materials where students can see them; and~~

~~(b)—— creating an intimidating, hostile or offensive work/school environment by at a minimum engaging in any of the prohibited behaviors set forth at Paragraph (7) or Subparagraph (a) of Paragraph (8), Subsection B of 6.60.9.9 NMAC, above.~~

(9) shall not create an intimidating, hostile or offensive work or school environment by, at a minimum, engaging in any of the prohibited behaviors set forth at Paragraph (7) or Paragraph (8), Subsection B of 6.60.9.9 NMAC, above.

C. Standard II: The education profession has been vested by the public with an awesome trust and responsibility. To live up to that lofty expectation, we must continually engender public confidence in the integrity of our profession, and must strive consistently in educating the children of New Mexico, all of whom will one-day shape the future. To satisfy this obligation, we:

(1) shall not make a false or misleading statement or fail to disclose a material fact in any application for educational employment or licensure;

(2) shall not orally or in writing misrepresent our professional qualifications;

(3) shall not assist persons into educational employment whom we know to be unqualified in respect to their character, education, or employment history;

(4) shall not make a false or misleading statement concerning the qualifications of anyone in or desiring employment in education;

(5) shall not permit or assist unqualified or unauthorized persons to engage in teaching or other employment within a school;

(6) shall not disclose personal, medical, or other confidential information about other educational colleagues to anyone unless disclosure is required or authorized by law;

(7) shall not knowingly make false or derogatory personal comments about an educational colleague, although first amendment protected comments on or off campus are not prohibited;

(8) shall not accept any gratuity, gift, meal, discount, entertainment, hospitality, loan, forbearance, favor, or other item having monetary value whose market value exceeds \$100, excluding approved educational awards, honoraria, plaques, trophies, and prizes;

(9) shall avoid conduct connected with official duties that is unfair, improper, illegal or gives the appearance of being improper or illegal;

(10) shall not sexually harass any school employee, any school visitor or anyone else we might encounter in the course of our official duties, which includes:

(a) making any sexual advances, requests for sexual favors, repeated sexual references, and name calling by means of sexual references or references directed at any gender-specific individuals named above;

(b) making any other verbal gesture or physical conduct with any of the above-named individuals even where the licensed educator believes they consent or they actually initiate the activity;

(c) displaying or distributing any sexually oriented materials where the above-named individuals can see them; and

~~_____ (d) creating an intimidating, hostile, or offensive work/school environment by engaging in any of the prohibited behaviors set forth at Subparagraphs (a), (b) or (c), Paragraph (10), Subsection C of 6.60.9.9 NMAC, above;~~

(11) shall not create an intimidating, hostile, or offensive work or school environment by engaging in any of the prohibited behaviors set forth at Subparagraphs (a), (b), or (c), Paragraph (10), Subsection C of 6.60.9.9 NMAC, above;

~~(11)~~ (12) shall educate oneself at least annually about avoiding sexual harassment by either attending periodic training, reviewing sexual harassment literature or the EEOC guidelines found at Title 29 Code of Federal Regulations Part 1604 (29 C.F.R. Section 1604.1 *et seq.*), or contacting appropriate school human resources personnel;

~~(12)~~ (13) shall not engage in inappropriate displays of affection, even with consenting adults, while on school property or during school events off campus;

~~(13)~~ (14) shall not without permission of a supervisor use public school property to conduct personal business or our personal affairs;

~~(14)~~ (15) shall use educational facilities and property only for educational purposes or purposes for which they are intended consistent with applicable policy, law and regulation;

~~(15)~~ (16) shall not discriminate against any school employee, or any other person with whom we have any dealings or contact in the course of our official duties, on the basis of race, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, disability, religion, citizenship, domestic abuse reporting status, or serious medical condition;

~~(16)~~ (17) shall not engage in any outside employment:

(a) the performance of which conflicts with our public school duties, such as where a licensed educator takes a private job that would require performance in the very school district where he/she is employed;

(b) where we use confidential/privileged information obtained from our public school employment as part or all of our private employment duties; and

(c) that impairs our physical ability to perform our school duties;

~~(17)~~ (18) shall not, with the intent to conceal/confuse a fact, change or alter any writing or encourage anyone else to change or alter any document:

(a) in connection with our official school duties;

(b) in connection with another licensed person's official school duties;

(c) in connection with any standardized or non-standardized testing;

(d) in connection with any school application or disclosure process; and

(e) in connection with any writing submitted to the public education department related to our initial or continued licensure, including endorsements;

~~(18)~~ (19) shall not in connection with any state board-approved teacher test knowingly make any misrepresentations about one's identity, or engage in any false or deceptive acts of test-taking or test-registering;

~~(19)~~ (20) shall not engage in any conduct or make any statement:

(a) that would breach the security of any standardized or non-standardized tests;

(b) that would ignore administering portions or the entirety of any standardized or non-standardized testing instructions;

(c) that would give students an unfair advantage in taking a standardized or non-standardized test;

(d) that would give a particular school or a particular classroom an unfair advantage in taking a standardized or non-standardized test; and

(e) that would assist students in obtaining services or benefits for which they do not qualify or are not entitled;

~~(20)~~ (21) shall not, when on school property or off campus while representing the school or attending a school function, engage in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to disturb the peace;

~~(21)~~ (22) shall not hold, or continue to hold, employment for which educator licensure or certification is required when the individual knew, should have known or is informed by the PED, that the individual does not hold the required credentials; and

~~(22)~~ (23) shall not use school information technology equipment, hardware, software or internet access to view, download, display, store or print pornographic images or advertisements, nude images, or sexually explicit depictions or language;

~~(23)~~ (24) shall not engage in unprofessional conduct, which conduct shall include but not be limited to the following:

(a) striking, assaulting or restraining a student for no valid reason;

(b) using any written or spoken words in public schools or at school events that are inflammatory, derogatory or otherwise demonstrate a bias against a person or group, on the basis of their race, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, disability, religion, citizenship, domestic abuse reporting status, or serious medical condition;

(c) bringing firearms onto school property or possessing them on school property, except with proper authorization;

- (d) possessing or consuming alcohol beverages at school;
- (e) possessing or using illegal drugs;
- (f) being under the influence of alcohol or illegal drugs at school;
- (g) actively obstructing an investigation into the possible unethical or illegal conduct of a school employee; and
- (h) engaging in favoritism or preferential treatment toward any school employee or applicant in regards to that individual's hiring, discipline, terms of employment, working conditions or work performance due to that individual's familial relationship with the licensee;

~~_____ (24) shall report any knowledge of inappropriate contact, as provided by Paragraph (7) of Subsection B of 6.60.9 NMAC with a student or other school employee to the local school authority within 30 days of obtaining such knowledge.~~

[6.60.9.9 NMAC - N, 04-30-01; A, 10-17-05; A, 10-31-06]

6.60.9.10 FAILURE TO COMPLY WITH THIS CODE: The PED finds that adherence to this code of ethical responsibility has a significant bearing on licensed personnel's competence, turpitude or the proper performance of their duties. It makes the same finding for any other person providing instructional or education-related services in a school who holds any license, certificate or written authority issued by the instructional or education-related services in a school who hold any license, certificate or written authority issued by the PED. Both the code of ethics and standards of professional conduct are intended to provide a valuable framework of personal ethics to assist educators, ~~and administrators, and other licensed personnel~~ in their interaction with colleagues, students and parents. However, the standards of professional conduct establish minimal standards of acceptable professional conduct with which all educators and administrators are required to comply. Therefore, the PED through the educator ethics bureau may revoke, suspend or take other appropriate action against any educator license of any person, or may deny applications for initial licensure or continuing licensure to any person, who is within the scope of this rule, and who after hearing, is found to have engaged in ethical misconduct, as defined in paragraph (A) of 6.60.9.7 NMAC; by failing to comply with one or more of the enumerated provisions of the standards of professional conduct set forth in 6.60.9.9 NMAC, above, exclusive of the preamble; and for incompetency, immorality, or any other good and just cause pursuant to 6.68.3.8(B) or 6.68.2.10(A) NMAC. All hearings and attendant notices shall be conducted and served pursuant to the Uniform Licensing Act 61-1-1 through 61-1-31, NMSA 1978 and either 6.68.2 NMAC or 6.68.3 NMAC.

[6.60.9.10 NMAC - N, 04-30-01; A, 10-17-05; A, 10-31-06]

6.60.9.11 DISSEMINATION OF THIS CODE: The PED shall adopt measures to ensure that this code of ethical responsibility receives the widest possible dissemination to all persons falling within its scope. Such measures include but are not limited to:

A. providing information about the code of ethical responsibility directly through the PED and the PED's application process;

B. providing information about the code of ethical responsibility to all school districts, charter schools, and non-public schools accredited by the PED;

C. notifying any school district, charter school or private school accredited by the PED of the decision and order of the PED after the PED has taken final licensure action against one of that school's PED licensed employees based in whole or in part on a failure to comply with the standards of professional conduct;

D. any other reasonable measure that is calculated to result in the widest dissemination of the PED's code of ethical responsibility and notification of the consequences of failure to comply with the standards of professional conduct.

[6.60.9.11 NMAC - N, 04-30-01; A, 10-17-05; A, 10-31-06]

6.60.9.12 REPORTING REQUIREMENT REQUIREMENTS:

A. Licensed school personnel shall report:

(1) reasonable suspicions of child abuse or neglect as required by Section 32A-4-3 NMSA 1978;

(2) reasonable suspicion of conduct that would constitute child abuse if committed by a parent, guardian, or custodian, when such conduct is perpetrated by school personnel or a school volunteer to the local school authority, the department, and law enforcement; and

(2) any knowledge of inappropriate contact, as provided by Paragraph (7) or Paragraph (8) of Subsection B of 6.60.9.9 NMAC with a student or other school employee to the local school authority and the department immediately.

B. It is the duty of each school superintendent or charter school administrator to provide prompt written notification to the director of the educator ethics bureau after taking final action to discharge or terminate the employment, based in whole or in part on a violation of the standards of professional conduct in this rule, of any certified or licensed school employee, or any other person providing instructional or education-related services in a school under written authority of the PED.

[6.60.9.12 NMAC - N, 04-30-01; A, 10-17-05; A, 10-31-06]

HISTORY OF 6.60.9 NMAC:

PRE-NMAC REGULATORY FILING HISTORY: The material in this part was derived from that previously filed with the State Records Center and Archives under:

SBE Regulation No. 90-4, Professional Licensure Unit Operational Bylaws of the Professional Standards Commission including Code of Ethics of the Education profession, filed November 21, 1990.

SBE Regulation No. 93-16, Professional Licensure Unit Operational By laws of the Professional Standards Commission including Code of Ethics of the Education Profession, filed July 20, 1993.

NMAC HISTORY:

6 NMAC 4.2.1.1, Operational Bylaws of the Professional Standards Commission Including Code of Ethics of the Education Profession, filed December 11, 1998.

HISTORY OF REPEALED MATERIAL: [RESERVED]

APPENDIX E, Training Requirements Rule Draft

6.29.1 NMAC

6.29.1.7 Definitions

A. "ethical misconduct" means the following behavior or conduct by a school employee, school volunteer, contractor or contractor's employee:

1. discriminatory comments or practice based on race, age, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, mental or physical disability, marital status, religion, citizenship, domestic abuse reporting status, or serious medical condition;
2. sexual misconduct or any sexual offense prohibited by Chapter 30, Article 9 or Chapter 30, Article 6A NMSA 1978 involving an adult or child, regardless of a child's enrollment status;
3. fondling or touching a student or child, including but not limited to private body parts, such as breasts, buttocks, genitals, inner thighs, groin, or anus;
4. any other behavior, including licentious, enticing, or solicitous behavior that is intended to result in inappropriate sexual contact with a child, or student or to induce a child or student into engaging in illegal, immoral, or other prohibited behavior. For purposes of this section, "child" means a person who is less than 18 years of age; or
5. as prescribed by department rule.

B. "sexual misconduct" means any act, including, but not limited to:

(1) any verbal, nonverbal, written or electronic communication or physical activity directed toward or with a child or student, regardless of the age of the child or student, that appear designed to establish a romantic relationship or sexual contact with the child or student. Such acts include, but are not limited to, sexual or romantic invitation; dating or soliciting dates; engaging in sexualized or romantic dialog; making sexually suggestive comments; self-disclosure or physical exposure of a sexual, romantic, or erotic nature; voyeurism; and any sexual, indecent, romantic, or erotic contact with a child or student, including but not limited to touching private body parts, such as breasts, buttocks, genitals, inner thighs, groin, or anus; or

(2) any association with child pornography, whether criminally prosecuted or not, including, but not limited to viewing, displaying, procuring, selling, receiving electronically or otherwise, distributing, transferring, producing, replicating, any pornographic images depicting or purporting to depict children, and enticing or inducing any child to engage in any conduct with knowledge that such conduct will be used in pornographic materials.

C. "unsupervised contact with children" means access to or contact with, or the opportunity to have access to or contact with a child for any length of time:

1. in the absence of:

- a. a licensed staff person from the same school or institution;
- b. a volunteer who has undergone a background check pursuant to Section 22-10A-5 NMSA 1978; or
- c. any adult relative or guardian of the child; or

2. if outdoors, with no other person within a 30-yard radius or visual contact with a child, who is:

- a. a licensed staff person from the same school or institution;
- b. a volunteer who has undergone a background check pursuant to Section 22-10A-5 NMSA 1978; or
- c. any adult relative or guardian of the child.

6.29.1.9 Procedural Requirements

D. ~~Licensed staff~~ School personnel, volunteers, and administrators.

(1) The licensed staff shall exercise duties specified in law and those assigned by the local district or charter school.

(2) As required by state and federal law, all licensed staff and administrators shall be evaluated on an annual basis.

(3) The detection and reporting of child abuse or neglect is required by both the Children's Code (32A-4-3 NMSA 1978) and the Public School Code (22-5-4.2 NMSA 1978). Abuse of a child under the Children's Code refers to the physical, sexual, emotional or psychological abuse of a child by a parent, guardian or custodian. According to the Children's Code, failure to report abuse or neglect of a child is a misdemeanor. The terms "abuse" and "neglect" are defined in detail in Section 32A-4-2 NMSA 1978 of the Children's Code. There is also the crime of child abuse, detailed at Section 20-6-1 NMSA 1978 which consists of anyone who knowingly, intentionally, negligently or without cause, causes or permits a child to be placed in a situation of endangerment to the child's life or health, torturing or cruelly confining a child, or exposing a child to the inclemency of weather. To address the detection and reporting of child abuse or neglect in public schools:

(a) school districts and charter schools shall adopt written policies that establish a process for the coordination and internal tracking of child abuse or neglect reports made by district personnel;

(b) school districts and charter schools shall include in their policies a requirement that all personnel shall immediately report suspected child abuse or neglect to: ~~either a law enforcement agency,~~

i. the New Mexico children, youth and families department;
ii. the New Mexico public education department; and
iii. a law enforcement agency or,
iv. for any Indian child residing on tribal land, a tribal law enforcement or social services agency ~~for any Indian child residing on tribal land;~~

(c) school districts and charter schools shall not require their personnel to first report to or notify designated school personnel or go through their chain of command before making the mandatory report described in Subparagraph (a) of Paragraph (3) of Subsection D of 6.29.1.9 NMAC;

(d) no school district or charter school shall adopt a policy that relieves any personnel of their duty to report suspected child abuse or neglect;

(e) school personnel detecting suspected child abuse or neglect, including the suspected crime of child abuse, shall immediately - i.e., the same day - report their observations to one of the offices designated in Subparagraph (b) of Paragraph (3) of Subsection D of 6.29.1.9 NMAC;

(f) ~~all licensed~~ school personnel, volunteers and contractor employees with unsupervised access to children shall complete training provided by the department in the detection and reporting of child abuse or neglect, within their first year of employment by, or providing services to, a school district or charter school, which at a minimum shall include:

(i) reporting requirements, including minimal standards triggering reporting;

(ii) trauma-informed instruction;

(iii) identification of circumstances and factors that are indicators of likely abuse or inappropriate behaviors;

(iv) ethical misconduct;

(v) professional responsibilities;

(vi) investigations and procedures; and

(vii) relevant legal and regulatory definitions.

(g) all persons who have never received training required under Subparagraph (f) of Paragraph (3) of Subsection D of 6.29.1.9 NMAC shall make arrangements to receive training before the end of their current school year;

(h) the department shall develop a training program to detect child abuse or neglect and ethical and sexual misconduct in coordination with the New Mexico human services department and the New Mexico department of health. This program shall be made available to all colleges, school districts and charter schools in the state offering teacher preparation courses;

APPENDIX F, Supplementary Material

Item 1. BACKGROUND CHECKS

AZ Fingerprint Clearance Card

One of the task force members recommended exploring a fingerprint system similar to Arizona's for tracking education professionals and instances of ethical misconduct. Arizona requires many professions, including educators, to have an active fingerprint clearance card as a condition of licensure, certification, or employment. The system is housed and administered by the Arizona Department of Public Safety, which receives applications for the cards, and reviews criminal history records of applicants to determine whether they should receive a clearance card. They also periodically update current clearance cards.

Professions and occupations requiring fingerprint clearance cards include many involving contact with children, such as childcare, child nutrition programs, childcare home providers, employment at Child Protective Services, teacher certification, charter school employment, adoption and foster care licensure, and work at homeless shelters or with people who have developmental disabilities.

Offenses that can prevent one from receiving a clearance card include many crimes affecting children, such as:

- Sexual abuse of a vulnerable adult;
- Sexual assault;
- Sexual exploitation of a minor;
- Child sex-trafficking;
- Child abuse;
- Felony child neglect;
- Sexual conduct with a minor;
- Molestation of a child or vulnerable adult;
- Dangerous crimes against children, including many sexual offenses and the manufacture of methamphetamine that causes harm to a child;
- Exploitation of minors involving drug offenses;
- Child prostitution;
- Furnishing harmful items to minors;
- Obscene or indecent telephonic communication with minors for commercial purposes;
- Contributing to the delinquency of a minor;
- Sale or purchase of children;
- Felonies involving domestic violence; and
- Felony indecent exposure.

The Arizona fingerprint clearance card system is well developed but involves multiple state agencies and implicates many sections of statute and administrative rule. The development of such a system in New Mexico would require a substantial effort by several agencies in collaboration, and investment of significant time and resources. It may be possible to develop a

more limited system, applicable to educational staff and within the purview of PED, with less investment of resources, but it would likely still be a very significant undertaking.

Item 2. REPORTING AND TRACKING CHID ABUSE UNDER SECTION 22-5-4.2 NMSA 1978

NMSBA Policy on Tracking Reports of Abuse

Under Section 22-5-4.2 NMSA 1978, local school boards are empowered to track reports of child abuse made by school personnel. The task force recommends mandating this tracking, and extending it to include reports made by school volunteers. NMSBA reports the policy has been adopted by all 71 of its member school boards. The policy mandates training in the detection and reporting of child abuse and neglect, as required by Section 22-10A-32 NMSA 1978, and requires reporting of incidents and reasonable suspicions of abuse and neglect, as mandated by Section 32A-4-3 NMSA 1978 of the Children's Code. In addition to requiring reporting to CYFD and law enforcement, the NMSBA policy also requires reporting to the New Mexico Child Abuse Hotline.

School administrators should be informed, and reports should be followed up. Reports are to be made on an approved form, and should include:

- the names and addresses of the child and their parents or custodians;
- the age of the child;
- the nature and extent of any injuries or neglect, including any evidence of prior neglect of injury; and
- any other information a person reporting believes might be helpful in establishing the cause of the injury or physical neglect.

The task force discussed the pros and cons of including volunteers in reporting requirements, acknowledging they have minimal training and are not employees. Ultimately, in the interests of comprehensively addressing the issue of misconduct, the task force decided to maintain the reporting requirement for volunteers, although their inclusion should be supported by adequate funding for implementation. Representatives from NMPSIA indicated their organization would be able to develop a training module for school volunteers that would include appropriate information while maintaining brevity.

Item 3. TRAINING

New Mexico School Boards Association Boundary Policy

The NMSBA Boundary Policy was drafted by POMS & Associates, and adopted by NMPSIA before final adoption by NMSBA. The intent of the document was to address potential targeting and grooming behaviors beyond what is included in the Code of Ethical Conduct, at Part 9 of 6.60 NMAC. The policy may serve as a useful model for training on how to spot grooming behaviors or as potential changes to the NMAC.

The focus of the policy is respect for clear and reasonable boundaries for interactions between staff and students. It is important to note the observance of this policy, and others like it, is to

protect not just students from inappropriate advances and contact, but also to protect staff from misunderstandings and false accusations.

The policy includes numerous examples of inappropriate invasions of boundaries, social contact, and relationships, and addresses a number of potential types of interaction between students and school personnel, including:

- Interactions that may arise as a result of work or other activity in the greater community;
- Inappropriate behavior initiated by a student;
- Working one-on-one with students;
- Managing privacy expectations;
- Conducting home visits;
- Avoiding appearances of impropriety; and
- Electronic communication.

Item 4. **HIRING PRACTICES**

CYFD Prison Rape Elimination Act Screening Tools

The proposed new legislation to address hiring practices and require communication regarding applicants for employment between prospective and current and former employers will require new procedures to fulfill requirements. The task force representative from CYFD offered several forms that might be adapted from their original source to meet those needs. The proposed bill draft requires an applicant to supply their prospective employer with their work history, including contact information, of jobs involving access to children, and include a statement regarding any allegations of misconduct they may have faced at prior employment. Very similar information is required on the Prison Rape Elimination Act Questionnaire for Prior Institutional Employers (see 28 C.F.R. Part 115). Also offered were other screening tools addressing a number of different possible prohibited acts by potential employees. Finally, CYFD offered abuse prevention policies for internal CYFD use for screening potential employees at juvenile facilities, adapted for potential use by PED and the school districts. Any or all of these documents might be of use in drafting rules and policy for the implementation of task force recommendations, particularly the proposed legislation on hiring practices.