

Proposed Rule Abstract

1. **Agency:** Public Education Department
2. **Rule Citation:** 6.60.8 NMAC, Background Checks for Educator Licensure
3. **Rulemaking Action:** Repeal and Replace
4. **Register Issue and Date of Notice of Proposed Rulemaking:** Volume 29, Issue 21, November 13, 2018
5. **Effective Date:** January 15, 2019
6. **Citation to Specific Legal Authority:** Sections 22-2-1, 22-2-2, 22-8-44, 22-10A-5, 22-10A-7, 22-10A-12, 22-10A-12.1, and 28-2-1 through 28-2-6 NMSA 1978
7. **Short Explanation of the Rule's Purpose:** To provide procedures for sharing background information and expand background check requirements for individuals with access to students.
8. **Link to Full Text of the Rule:** https://webnew.ped.state.nm.us/wp-content/uploads/2018/11/6.60.8_Background-Strikethrough_WEBSITE.docx
9. **How Information on the Rule Can Be Obtained:** <https://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>
10. **Comment Period and Deadlines:** November 13, 2018 to December 18, 2018 at 5:00 p.m. Written comments may be submitted to the Policy Division, New Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, NM 87501, rule.feedback@state.nm.us, or by fax to (505) 827-6520.
11. **Rule Hearing:** December 18, 2018 from 9:00 a.m. to 11:00 a.m. at 300 Don Gaspar Avenue in Mabry Hall, Santa Fe, NM 87501
12. **Link to Permanent Agency Rulemaking Record:** http://statenm.force.com/public/SSP_RuleHearingSearchPublic

Summary of Proposed Rule

The November 13, 2018 issue of the *New Mexico Register* contained a Notice of Proposed Rulemaking to repeal and replace 6.60.8 NMAC, which establishes the requirements for background checks on all applicants for initial teaching license, instructional support provider license, alternative license, and substitute certification. Additionally, the proposed rule outlines procedures for background checks for volunteers, dual credit instructors, and currently licensed and employed individuals who have not previously had a background check. The proposed rule outlines requirements for in-state and out-of-state licensure applicants and stipulates clarified background check disclosure procedures. See **Attachment 1, 6.60.8 NMAC, Background Checks for Educator Licensure**.

A substantially similar rule was proposed on August 14, 2018, but PED posted a Notice of Termination of the rule proposed in August concurrently with this Notice of

Proposed Rulemaking. Substantive changes from the first version of the proposed rule include the addition of background check requirements for volunteers, dual credit instructors, and currently employed, licensed individuals who have not previously had a background check.

The current version of 6.60.8 NMAC pertains to all persons applying for initial standard, alternative, or substitute licensure. The proposed rule, however, specifically lists the following classes of individuals that it pertains to: currently employed, licensed individuals; dual credit instructors; applicants for initial licensure; new employment applicants; and volunteers.

Analysis

Definitions. The proposed rule defines “background check” as a criminal history report produced by the FBI or New Mexico Department of Public Safety (DPS). The definition also indicates the new regulation would require all DPS reports to be certified by FBI criminal history files, adding an extra layer of scrutiny to ensure validity. Section 22-10A-5 NMSA 1978 requires acquisition of an applicant’s FBI record. Statute only authorizes PED to charge or make an applicant pay for an FBI record. See **Attachment 2, Section 22-10A-5 NMSA 1978.**

The proposed rule would require background checks to be conducted for:

- “Currently employed, licensed individuals,” which are defined as individuals who are employed by a school district or charter school and who have not previously had a background check;
- “Applicants for initial licensure,” which are defined as applicants for department licensure or certification including applicants for initial teaching licensure, initial instructional support provider, alternative licensure, and initial substitute certification;
- “New employment applicants,” which are defined as applicants for new employment with a different school district, charter school, or regional education cooperative including applicants for positions requiring a license issued by the department, contractors afforded unsupervised access to students, and employees of contractors who are afforded unsupervised access to students; and
- Certain volunteers and dual credit instructors.

Applicants for Initial Licensure Pursuant to the proposed rule, applicants for initial licensure would be required to obtain a background check through PED or a vendor approved or designated by PED, consistent with the current regulation. The proposed requirements for applicants for initial licensure are different for out-of-state and in-state applicants. Out-of-state applicants for initial licensure would be required to submit two completed fingerprint cards to PED, and in-state applicants would be required to be fingerprinted by using the electronic fingerprinting system. Out-of-state and in-state applicants are not defined in the proposed rule. Current rule does not differentiate between in-state and out-of-state applicants and requires any applicant for initial licensure to be fingerprinted using fingerprint cards or the equivalent electronic fingerprints. Currently, applicants are given the opportunity to disclose information related to their criminal history, including rehabilitation, while the proposed regulation would allow PED to request further information, including court documentation, proof of restitution, or actual evidence of rehabilitation, which

the applicant for initial licensure will be required to submit to PED in a timely manner; “timely” is not defined.

New Employment Applicants. Pursuant to the proposed rule, new employment applicants who have not completed a background check in over 24 months would be required to provide two fingerprint cards or their electronic equivalent to the school district, regional education cooperative, or charter school. Currently, applicants are given the opportunity to disclose information related to their criminal history, including rehabilitation, while the proposed regulation would allow PED to request further information, including court documentation, proof of restitution, or actual evidence of rehabilitation, which the new employment applicant will be required to submit to PED in a timely manner; “timely” is not defined. New employment applicants are not addressed in current regulation.

Volunteers. Pursuant to the proposed rule, individuals who volunteer with any public school who will be afforded unsupervised access to students will be required to provide two fingerprint cards or their electronic equivalent to the school district, regional education cooperative, or charter school if they have not completed a background check in over 24 months. Volunteers are not addressed in current regulation.

Dual Credit Instructors. Pursuant to the proposed rule, individuals who offer dual credit courses in a school district, charter school or regional education cooperative will be required to have a background check prior to being granted unsupervised access to students. School districts, charter schools, or regional education cooperatives will be required to retain the background check report and submit it to PED if the department requests such information. Dual credit instructors are not addressed in current regulation.

Currently Employed, Licensed Individuals. Currently employed, licensed individuals who have not previously had a background check would be required to obtain a background check from the department or a vendor designated by the department. It is unclear if they are to submit fingerprint cards or their electronic equivalent as there are wording inconsistencies in the proposed rule. This group of individuals is not addressed in current regulation.

Sharing of Background Check Information Requirements for disclosure of an applicant’s potential criminal background or history are more substantial and more specific in the proposed rule than in the current rule. The current rule makes school districts responsible for reporting any known felony or misdemeanor conviction involving moral turpitude of a licensed applicant or an applicant pending license to PED. Upon receipt of a report, the department is responsible for informing the license-holder of any impact to their license and current employment.

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

The proposed rule, however, would require any school district, charter school, or regional education cooperative to notify PED within 30 days of becoming aware of a conviction of a felony or misdemeanor involving moral turpitude of a licensed applicant employee, licensed employee contractor, or licensed contractor employee. The requirements for

disclosure only seem to apply to these specific individuals, similar requirements do not exist for other individuals defined in the proposed rule. Additionally, “licensed applicant employee”, “licensed employee contractor”, and “licensed contractor employee” are not defined in the proposed rule and are inconsistent with the language used throughout the rule, making it unclear exactly which individuals that have been convicted of a felony or misdemeanor of moral turpitude have to be reported to PED by superintendents, charter school administrators, and regional education cooperative directors. PED may want to define these terms in the proposed rule because of the direct impact on superintendents, charter school administrators, and regional education cooperative directors. Failure to comply with reporting requirements could result in the suspension or revocation of a superintendent’s, charter school administrator’s or regional education cooperative director’s license.

Technical Issues

The proposed regulation includes a definition of “applicant for initial teaching licensure” and “currently employed, licensed individuals”, but then uses both the terms and their definitions in 6.60.8.2 NMAC. The scope section should read, “This rule applies to all applicants for initial teaching licensure, applicants offered employment who have not completed a background check in over 24 months, volunteers, dual credit instructors, and currently employed, licensed individuals.” This issue exists for the use of “currently employed, licensed individuals” in Subsection F of 6.60.8.8 NMAC as well.

Throughout the proposed rule, language regarding the entity to conduct the background check is inconsistent. Subsection A of 6.60.8.8 NMAC states all background checks for licensure by the department shall be obtained through the department or through a vendor designated or approved by the department. Terminology related to vendors that are “designated or approved” by the department appears to be inconsistently used throughout the regulation. See Subsection B of 6.60.8.8 and Subsection F of 6.60.8.8 NMAC.

The first sentence of Paragraph 1 of Subsection F of Section 6.60.8.8 NMAC appears to contradict the second sentence. The first sentence requires any “currently employed, licensed individual” to submit two fingerprint cards or their electronic equivalent to PED or a vendor designated by PED; however, the second sentence notes “currently employed, licensed individuals” shall be fingerprinted using the electronic fingerprinting system, appearing to contradict the previous sentence’s allowance of non-electronic fingerprint cards.

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

~~**6.60.8.1** **ISSUING AGENCY:** Public Education Department
 [06/15/1998, 07/30/1999; 6.60.8.1 NMAC— Rn, 6 NMAC 4.2.4.8.1, 03/31/2001; A, 06/15/2006]~~

~~**6.60.8.2** **SCOPE:** All persons applying for initial standard, alternative or substitute licensure.
 [06/15/1998; 6.60.8.2 NMAC— Rn, 6 NMAC 4.2.4.8.2 & A, 03/31/2001]~~

~~**6.60.8.3** **STATUTORY AUTHORITY:** Sections 22-2-1, 22-2-2, 22-10A-5 NMSA 1978.
 [06/15/1998, 11/15/1999; 6.60.8.3 NMAC— Rn, 6 NMAC 4.2.4.8.3, 03/31/2001; A, 06/15/2006]~~

~~**6.60.8.4** **DURATION:** Permanent
 [06/15/1998; 6.60.8.4 NMAC— Rn, 6 NMAC 4.2.4.8.4, 03/31/2001]~~

~~**6.60.8.5** **EFFECTIVE DATE:** June 15, 1998, unless a later date is cited in the history note at the end of a section.
 [06/15/1998; 6.60.8.5 NMAC— Rn, 6 NMAC 4.2.4.8.5 & A, 03/31/2001]~~

~~**6.60.8.6** **OBJECTIVE:** This rule establishes the requirements for background checks on all initial applicants for licensure and for sharing information from employment background checks between school districts and the New Mexico public education department ("PED").
 [06/15/1998, 11/15/1999; 6.60.8.6 NMAC— Rn, 6 NMAC 4.2.4.8.6 & A, 03/31/2001; A, 06/15/2006]~~

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

~~**6.60.8.8** **REQUIREMENTS:**~~

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

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

~~**C.** The applicant shall pay by certified check, money order, or credit card, if authorized by the PED, a background check fee in an amount established by that agency sufficient to cover the agency's actual costs of obtaining criminal history background reports from the DPS and the FBI.
 [06/15/1998, 11/15/1999; 6.60.8.8 NMAC— Rn, 6 NMAC 4.2.4.8.8 & A, 03/31/2001; A, 06/15/2006]~~

~~**6.60.8.9** **IMPLEMENTATION:**~~

~~**A.** The PED will not issue an educator license until the applicant's background check has been successfully completed.~~

~~**B.** An applicant will be notified of any information in the background check reports that could result in licensure denial, suspension, or revocation prior to the initiation of any such action by the PED.~~

~~**C.** If requested by a local school board, a DPS or FBI criminal history report that is not more than twenty four months old may be provided by the PED to the applicant's school employer. The PED may inform a licensure applicant's school employer, if known, of any background check information that reveals a conviction of a~~

~~felony or misdemeanor of moral turpitude at the same time that the information is reported to the applicant.~~

~~**D.** School district officials, who in the course of their background checks of employment applicants, discover that a licensed applicant or applicant pending a license has a conviction of a felony or misdemeanor of moral turpitude that results in any kind of action against that individual, shall share that information with the professional licensure or educator ethics bureaus of the PED. If the applicant has education licensure, the PED will notify the license holder, and his/her current school employer, if known, of the conviction(s) following the procedures in Subsections B and C of 6.60.8.9 NMAC.~~

~~**E.** Applicants will be given the opportunity on the application form to disclose, explain, and provide information, including rehabilitation, related to their criminal history.~~

~~[06/15/1998, 11/15/1999; 6.60.8.9 NMAC – Rn, 6 NMAC 4.2.4.8.9 & A, 03/31/2001; A, 06/15/2006]~~

6.60.8.1 ISSUING AGENCY: Public Education Department, hereinafter the department.

[6.60.8.1 NMAC – Rp, 6.60.7.1 NMAC, 01/15/2019]

6.60.8.2 SCOPE: This rule applies to all applicants for initial teaching licensure, initial instructional support provider licensure, alternative licensure, initial substitute certification, applicants offered employment who have not completed a background check in over 24 months, volunteers, dual credit instructors, and currently employed, licensed individuals who have not previously had a background check.

[6.60.8.2 NMAC – Rp, 6.60.7.2 NMAC, 01/15/2019]

6.60.8.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, 22-8-44, 22-10A-5, 22-10A-7, 22-10A-12, 22-10A-12.1, and 28-2-1 through 28-2-6 NMSA 1978.

[6.60.8.3 NMAC – Rp, 6.60.8.3 NMAC, 01/15/2019]

6.60.8.4 DURATION: Permanent

[6.60.8.4 NMAC – Rp, 6.60.8.4 NMAC, 01/15/2019]

6.60.8.5 EFFECTIVE DATE: January 15, 2019, unless a later date is cited in the history note at the end of a section.

[6.60.8.5 NMAC – Rp, 6.60.8.5 NMAC, 01/15/2019]

6.60.8.6 OBJECTIVE: This rule establishes the provisions of the department’s educator background check program required by Section 22-8-44 NMSA 1978.

[6.60.8.6 NMAC – Rp, 6.60.8.6 NMAC, 01/15/2019]

6.60.8.7 DEFINITIONS:

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

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

C. “Currently employed, licensed individuals” means a licensed individual who is employed by a school district or charter school who has not previously had a background check.

D. “Dual credit instructor” means an individual that teaches academic or career technical postsecondary courses to public school students for credit at both the higher education institution and the public school.

E. “Applicant for initial licensure” means an applicant for department licensure or certification including applicants for initial teaching licensure, applicants for initial instructional support provider licensure, applicants for alternative licensure, and applicants for initial substitute certification.

F. “New employment applicant” means an applicant for new employment with a different school district, charter school, or regional education cooperative including applicants for positions requiring a license issued by the department, contractors afforded unsupervised access to students, and employees of contractors who are afforded unsupervised access to students. A new employment applicant shall not include unlicensed applicants, contractors, or employees of contractors who are not afforded unsupervised access to students.

G. “Volunteer” means an individual who volunteers with any public school who will be afforded unsupervised access to students.
[6.60.8.7 NMAC – Rp, 6.60.8.7 NMAC, 01/15/2019]

6.60.8.8 REQUIREMENTS:

A. All background checks for licensure by the department shall be obtained through the department or through a vendor designated or approved by the department, including currently employed, licensed individuals and applicants for initial licensure. All other background checks, including those for new employment applicants, volunteers, and dual credit instructors may be obtained through the school district, charter school, or regional education cooperative or through the department.

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

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

B. Applicant for initial licensure. All applicants for initial licensure shall be required to obtain a current and valid background check from the department or a vendor designated by the department.

(1) Applicants for initial licensure shall submit two fingerprint cards or their electronic equivalent to the department or a vendor designated by the department.

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

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

(2) Applicants for initial licensure shall pay all fees required by the department or the department-approved fingerprint processing vendor.

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

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

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

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

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

D. Volunteer. Volunteers who will have unsupervised access to students who do not have copies of FBI records on file with the department or who have not completed a background check in over 24 months, shall provide two fingerprint cards or their electronic equivalent to the school district, regional education cooperative, or charter school.

E. Dual credit instructor. For public schools that offer dual credit courses, the school district, charter school, or regional education cooperative shall ensure that any individual with unsupervised access to public school students shall have a background check prior to being granted unsupervised access to students. Background checks shall be retained by the school district, charter school, or regional education cooperative and shall be available to the department upon request.

F. Currently employed, licensed individual. All currently employed, licensed individuals who have not previously had a background check shall be required to obtain a current and valid background check from the department or a vendor designated by the department.

(1) Currently employed, licensed individuals shall submit two fingerprint cards or their

electronic equivalent to the department or a vendor designated by the department. Currently employed, licensed individuals shall be fingerprinted using the electronic fingerprinting system with the department-approved fingerprint processing vendor either prior to or within five business days of submitting a licensure application. Fingerprints submitted without the correct department code shall not be accepted.

(2) Currently employed, licensed individuals shall pay all fees required by the department or the department-approved fingerprint processing vendor.

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

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

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

[6.60.8.8 NMAC – Rp, 6.60.8.8 NMAC, 01/15/2019]

6.60.8.9 SHARING OF BACKGROUND CHECK INFORMATION:

A. A local superintendent, charter school administrator, or director of a regional education cooperative, or their designees, at any time, may request documentation of an applicant employee, an employee, contractor, or contractor employee's criminal history record.

B. The department may disseminate to a requesting local superintendent, charter school administrator, or director of a regional education cooperative, or their designees, criminal history records that were generated and issued within 24 months of the date of dissemination. Any criminal history record shall be released or disseminated pursuant to FBI and DPS guidelines.

C. A local superintendent, charter school administrator, or director of a regional education cooperative shall, within 30 days, report to the department any known conviction of a felony or misdemeanor involving moral turpitude of a licensed applicant employee, licensed employee contractor, or licensed contractor employee that results in any type of employment or disciplinary action against the licensed individual. Pursuant to 22-10A-5 NMSA 1978, any failure to comply with the reporting requirements outlined in this section may result in a decision from the secretary to suspend, revoke or refuse to renew the license of a local superintendent, charter school administrator or regional education cooperative director.

[6.60.8.9 NMAC – Rp, 6.60.8.9 NMAC, 01/15/2019]

HISTORY OF 6.60.8 NMAC: [RESERVED]

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 licensed school employee and includes inappropriate touching, sexual harassment, discrimination and behavior intended to induce a child into engaging in illegal, immoral or other prohibited behavior.

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

C. Local school boards and regional education cooperatives shall develop policies and procedures to require background checks on an applicant who has been offered employment, a contractor or a contractor's employee with unsupervised access to students at a public school.

D. An applicant for employment who has been initially licensed within twenty-four months of applying for employment with a local school board, regional education cooperative or a charter school shall not be required to submit to another background check if the department has copies of the applicant's federal bureau of investigation records on file. An applicant who has been offered employment, a contractor or a contractor's employee with unsupervised access to students at a public school shall provide two fingerprint cards or the equivalent electronic fingerprints to the local school board, regional education cooperative or charter school to obtain the applicant's federal bureau of investigation record. The applicant, contractor or contractor's employee who has been offered employment by a regional education cooperative or at a public school may be required to pay for the cost of obtaining a background check. At the request of a local school board, regional education cooperative or charter school, the department is authorized to release copies of federal bureau of investigation records that are on file with the department and that are not more than twenty-four months old. 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 good and just cause. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the employment decision affecting the specific applicant who has been offered employment, contractor or

contractor's employee with unsupervised access to students at a public school.

E. A local superintendent, charter school administrator or regional education cooperative shall report to the department any known conviction of a felony or misdemeanor involving moral turpitude of a licensed school employee that results in any type of action against the licensed school employee.

F. A local superintendent, charter school administrator or director of a regional education cooperative or their respective designees shall investigate all allegations of ethical misconduct about any licensed 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 wrongdoing, the local superintendent, charter school administrator or director of a 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. Copies of that form shall not be maintained in public school, school district or regional education cooperative records. No agreement between a departing licensed school employee and the local school board, school district, charter school or regional education cooperative shall diminish or eliminate the responsibility of investigating and reporting the alleged ethical misconduct, and any such agreement to the contrary is void. Unless the department has commenced its own investigation of the licensed school employee prior to receipt of the form, the department shall serve the licensed school employee with a notice of contemplated action involving that employee's license within ninety days of receipt of the form. If that 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 with the department and shall not be subject to public inspection.

G. The secretary may suspend, revoke or refuse to renew the license of a local superintendent, charter school administrator or regional education cooperative director who fails to report as required by Subsections E and F of this section.

H. A person who in good faith reports as provided in Subsections E and F 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.

History: Laws 1997, ch. 238, § 1; 1998, ch. 60, § 1; 1999, ch. 281, § 24; 2001, ch. 293, § 6; 1978 Comp., § 22-10-3.3, recompiled and amended as § 22-10A-5 by Laws 2003, ch. 153, § 36; 2007, ch. 263, § 1.

Recompilations. — Laws 2003, ch. 153, § 36 recompiled and amended former 22-10-3.3 NMSA 1978 as 22-10A-5 NMSA 1978, effective April 4, 2003.

Cross references. — For transfer of powers and duties of former state board of education, see 9-24-15 NMSA 1978.

The 2007 amendment, effective June 15, 2007, deleted former subsections and added new Subsections A, F and G.

The 2003 amendment, effective April 4, 2003, in Subsection A, substituted "licensure" for "certification" three times, deleted "of education" following "the department" near the beginning, and substituted "license" for "certificate" near the middle; divided former Subsection B into present Subsections B and C and deleted former Subsection C; deleted "including a charter school" at the end of present Subsection B; in present Subsection C substituted "licensed" for "certified" following "been initially" near the beginning of the first sentence, substituted "twenty-four" for "twelve" following "within" near the beginning of the first sentence, deleted "of education" following "the department" near the end of the first sentence, deleted "including a charter school" near the middle of the second sentence, inserted "or charter school" following "education cooperative" near the end of the second sentence, deleted "including a charter school" following "public school" near the middle of the third sentence, deleted "of education" following "the department" twice in the fourth sentence, substituted "twenty-four" for "twelve" following "not more than" near the end of the fourth sentence, and deleted "including a charter school" at the end; and added present Subsections D, E and F.

The 2001 amendment, effective June 15, 2001, in Subsection B, added "regional education cooperative" to each of the first five sentences and added "contractor or contractor's employee" to the fourth sentence.

The 1999 amendment, effective June 18, 1999, inserted "at a public school, including a charter school" and "or a charter school" throughout Subsection B.

The 1998 amendment, effective May 20, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

ANNOTATIONS

Liability of licensing officials. — Student who allegedly suffered inappropriate touching by a teacher established no cause of action against a state licensing official for injury inflicted by the teacher based on the theory that the license-related investigation of the teacher was recklessly deficient. *B.T. v. Davis*, 557 F. Supp.2d 1262 (D.N.M. 2007).