

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 914

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO PUBLIC SCHOOL PERSONNEL; AMENDING THE SCHOOL
PERSONNEL ACT TO CLARIFY THE PROCESS FOR TERMINATION AND
DISCHARGE OF SCHOOL EMPLOYEES.

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

Section 1. Section 22-10A-2 NMSA 1978 (being Laws 1975,
Chapter 306, Section 2, as amended) is amended to read:

"22-10A-2. DEFINITIONS.--As used in the School Personnel
Act:

A. "discharge" means the act of severing the
employment relationship with a [~~certified~~] licensed school
employee prior to the expiration of the current employment
contract or severing the employment relationship of an
unlicensed school employee at any time;

B. "state agency" means any state institution or

underscored material = new
[bracketed material] = delete

1 state agency providing an educational program requiring the
2 employment of [~~certified~~] licensed school instructors;

3 C. "sabbatical leave" means leave of absence with
4 pay as set by the local school board or governing authority of
5 a state agency during all or part of a regular school term for
6 purposes of study or travel related to the staff member's
7 duties and of direct benefit to the instructional program;

8 D. "terminate" means [~~in the case of a certified~~
9 ~~school employee~~] the act of not reemploying [~~an~~] a licensed
10 school employee for the ensuing school year [~~and, in the case~~
11 ~~of a non-certified school employee, the act of severing the~~
12 ~~employment relationship with the employee~~];

13 E. "working day" means every calendar day,
14 excluding Saturday, Sunday or legal holiday; and

15 F. "just cause" means a reason that is rationally
16 related to [~~an~~] a school employee's competence or turpitude or
17 the proper performance of his duties and that is not in
18 violation of the school employee's civil or constitutional
19 rights."

20 Section 2. Section 22-10A-21 NMSA 1978 (being Laws 1967,
21 Chapter 16, Section 113, as amended) is amended to read:

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

23 A. All employment contracts between [~~local~~] a
24 school [~~boards~~] district or state agency and [~~certified~~]
25 licensed school [~~personnel and between governing authorities of~~

.155750B.1

underscored material = new
[bracketed material] = delete

1 ~~state agencies and certified school instructors~~ employees
2 shall be in writing on forms approved by the ~~[state board]~~
3 department. These forms shall contain and specify the term of
4 service, the salary to be paid, the method of payment, the
5 causes for termination of the contract and other provisions
6 required by ~~[the regulations of the state board]~~ rules of the
7 department.

8 B. All employment contracts between ~~[local]~~ a
9 school ~~[boards]~~ district or state agency and ~~[certified]~~
10 licensed school ~~[personnel and between governing authorities of~~
11 ~~state agencies and certified school instructors]~~ employees
12 shall be for a period of one school year except:

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

16 (2) contracts for the remainder of a school
17 year are permitted to staff programs when the availability of
18 funds for the programs is not known until after the beginning
19 of the school year;

20 (3) contracts for less than one school year
21 are permitted to staff summer school programs and to staff
22 federally funded programs in which the federally approved
23 programs are specified to be conducted for less than one school
24 year;

25 (4) contracts not to exceed three years are

.155750B.1

underscored material = new
[bracketed material] = delete

1 permitted for [~~certified~~] school administrators in public
2 schools who are engaged in administrative functions for more
3 than one-half of their employment time; and

4 (5) contracts not to exceed three years are
5 permitted at the discretion of the local [~~school board~~]
6 superintendent for [~~certified~~] licensed school [~~instructors~~]
7 employees in public schools or state agencies who have been
8 employed in the school district for three consecutive school
9 years.

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

15 D. In determination of eligibility for unemployment
16 compensation rights and benefits for [~~certified~~] licensed
17 school [~~instructors~~] employees where those rights and benefits
18 are claimed to arise from the employment relationship [~~between~~
19 ~~governing authorities of state agencies or local school boards~~
20 ~~and certified school instructors~~], that period of a year not
21 covered by a school year shall not be considered an
22 unemployment period.

23 E. Except as provided in Section [~~22-10-12~~]
24 22-10A-23 NMSA 1978, a person employed by contract pursuant to
25 this section has no legitimate objective expectancy of

.155750B.1

underscored material = new
[bracketed material] = delete

1 reemployment, and no contract entered into pursuant to this
2 section shall be construed as an implied promise of continued
3 employment pursuant to a subsequent contract."

4 Section 3. Section 22-10A-22 NMSA 1978 (being Laws 1967,
5 Chapter 16, Section 114, as amended) is repealed and a new
6 Section 22-10A-22 NMSA 1978 is enacted to read:

7 "22-10A-22. [NEW MATERIAL] DEFINITIONS--STATE AGENCY
8 COVERAGE.--

9 A. As used in Sections 22-10A-21 through 22-10A-30
10 NMSA 1978:

11 (1) "local superintendent" includes the
12 governing authority of a state agency; and

13 (2) "school principal" includes other school
14 district personnel who have authority to supervise school
15 employees and to correct their performance and recommend
16 termination or discharge; "school principal" also includes the
17 personnel of a state agency who have authority to supervise
18 licensed school employees of the state agency.

19 B. Licensed school employees in state agencies are
20 subject to the School Personnel Act. Employees of state
21 agencies who are not covered by the Personnel Act and who were
22 covered by the provisions of the School Personnel Act prior to
23 the effective date of this 2005 act shall continue to be
24 covered by the provisions of the School Personnel Act."

25 Section 4. Section 22-10A-23 NMSA 1978 (being Laws 1967,

.155750B.1

underscoring material = new
[bracketed material] = delete

1 Chapter 16, Section 115, as amended) is repealed and a new
2 Section 22-10A-23 NMSA 1978 is enacted to read:

3 "22-10A-23. [NEW MATERIAL] LICENSED SCHOOL EMPLOYEES--
4 REEMPLOYMENT.--

5 A. Each school principal shall recommend to the
6 local superintendent the reemployment or termination of each
7 licensed school employee under the principal's supervision.

8 B. Twenty working days before the last day of the
9 school year of the existing employment contract, the school
10 principal shall serve written notice of his intention to
11 recommend reemployment or termination on each licensed school
12 employee he supervises. The local superintendent may accept or
13 reject the school principal's recommendation and shall notify
14 the licensed school employee on or before the last day of the
15 school year.

16 C. A notice of reemployment issued by a local
17 superintendent is an offer of employment for the ensuing year.
18 Each licensed school employee shall deliver to the local
19 superintendent by whom he is employed a written acceptance or
20 rejection of reemployment for the ensuing school year within
21 fifteen days from the date written notice of reemployment is
22 served upon the licensed school employee.

23 D. Delivery of the written acceptance of
24 reemployment by a licensed school employee creates a binding
25 employment contract between the licensed school employee and

.155750B.1

underscored material = new
[bracketed material] = delete

1 the school district or state agency until the parties enter
2 into a formal written employment contract. Written contracts
3 between school districts or state agencies and licensed school
4 employees shall be executed by the parties not later than ten
5 days before the first day of a school year.

6 E. Failure of a local superintendent to serve a
7 written notice of reemployment or termination on a licensed
8 school employee shall be construed to mean that a notice of
9 reemployment was served on the licensed school employee for the
10 ensuing school year according to the terms of the existing
11 employment contract, but subject to any additional compensation
12 allowed other licensed school employees of like qualifications
13 and experience employed by the school district or state agency.
14 Nothing in this subsection shall be construed to mean that
15 failure of a local superintendent to serve a written notice of
16 reemployment or termination automatically extends a licensed
17 school employee's employment contract for a period in excess of
18 one school year."

19 Section 5. Section 22-10A-24 NMSA 1978 (being Laws 1986,
20 Chapter 33, Section 22, as amended) is repealed and a new
21 Section 22-10A-24 NMSA 1978 is enacted to read:

22 "22-10A-24. [NEW MATERIAL] LICENSED SCHOOL EMPLOYEES--
23 TERMINATION.--

24 A. The written notice of the school principal's
25 intention to recommend termination or the local

.155750B.1

underscoring material = new
[bracketed material] = delete

1 superintendent's decision to terminate shall include the
2 reasons for the recommendation or decision. The reasons shall
3 not be publicly disclosed by the school principal.

4 B. If a local superintendent rejects a school
5 principal's recommendation for reemployment of a licensed
6 school employee, he shall serve notice on the licensed school
7 employee on or before the last day of the school year, stating
8 his reasons for rejecting the recommendation. The reasons
9 shall not be publicly disclosed by the local superintendent.

10 C. If the licensed school employee has worked for
11 the school district or state agency for fewer than three
12 consecutive years, including the current school year, the
13 reason for recommending or deciding to terminate may be that
14 which the school principal or local superintendent deems
15 sufficient, and the reason shall not provide a basis for
16 contesting the decision under the School Personnel Act. The
17 licensed school employee may submit a written statement to the
18 school principal and the local superintendent contesting the
19 reason given for termination, which statement shall be made a
20 part of the licensed school employee's personnel file in the
21 school district or state agency.

22 D. If the school principal recommends termination
23 and the local superintendent accepts the recommendation or if
24 the local superintendent rejects a school principal's
25 recommendation for reemployment of a licensed school employee

.155750B.1

underscored material = new
[bracketed material] = delete

1 who has worked for the school district or state agency for at
2 least three consecutive years, including the current school
3 year, the licensed school employee may contest his termination
4 as provided in this section. A local superintendent may not
5 terminate a licensed school employee who has been employed by a
6 school district or state agency for at least three consecutive
7 years, including the current school year, without just cause.

8 E. Within five days of receiving written notice of
9 the school principal's intention to recommend termination or of
10 receiving written notice of the local superintendent's
11 rejection of the school principal's recommendation for
12 reemployment, the licensed school employee may request a
13 hearing. The local superintendent shall not issue his decision
14 on the school principal's recommendation for termination until
15 after the five days provided to the licensed school employee to
16 request a hearing.

17 F. A hearing requested by a licensed school
18 employee shall take place within fifteen days of the request
19 for hearing, unless the parties agree to a later date. The
20 hearing shall be conducted by the local superintendent in the
21 case of a recommendation to terminate by a school principal.
22 The hearing shall be conducted by a qualified independent
23 arbitrator appointed in the same manner as one provided for
24 appeals in Section 22-10A-25 NMSA 1978 when the local
25 superintendent rejects the school principal's recommendation to

.155750B.1

underscored material = new
[bracketed material] = delete

1 reemploy. The school district shall bear the costs of a
2 hearing before an arbitrator provided pursuant to this
3 subsection.

4 G. If the local superintendent is unable by reason
5 of a conflict to hold the hearing, an independent arbitrator
6 shall be appointed in the same manner as provided in Subsection
7 F of this section.

8 H. The local superintendent or independent
9 arbitrator may issue subpoenas for the attendance of witnesses
10 and for the production of books, records, documents and other
11 evidence and shall have the power to administer oaths.

12 Subpoenas shall be served and enforced in the manner provided
13 by law for the service and enforcement of subpoenas in a civil
14 action.

15 I. The licensed school employee shall submit in
16 writing to the local superintendent or arbitrator a contention
17 that the recommendation or decision to terminate was made
18 without just cause. The written contention shall specify the
19 grounds on which it is contended that the recommendation or
20 decision was without just cause and shall include a statement
21 of the facts that the licensed school employee believes support
22 his contention. This written statement shall be submitted
23 within ten working days from the date the licensed school
24 employee requested the hearing.

25 J. The submission of the written contention

.155750B.1

underscoring material = new
[bracketed material] = delete

1 constitutes:

2 (1) a representation on the part of the
3 licensed school employee that he can support his contention;
4 and

5 (2) an acknowledgment that the school
6 principal or local superintendent may offer the causes for his
7 recommendation or decision and any relevant data in the school
8 principal's or local superintendent's possession in rebuttal of
9 the licensed school employee's contentions.

10 K. The local superintendent or arbitrator shall
11 meet to hear the licensed school employee's statement in no
12 fewer than five or more than fifteen working days after the
13 local superintendent receives the statement. The licensed
14 school employee and the school principal, or the licensed
15 school employee and the local superintendent if the hearing is
16 before an arbitrator, may each be accompanied by a
17 representative of his choice. First the school principal or
18 local superintendent shall present the factual basis for the
19 recommendation or decision that just cause exists for the
20 termination of the licensed school employee, limited to those
21 reasons provided to the employee. The licensed school employee
22 shall then present his contentions, limited to those grounds
23 specified in Subsection I of this section. The school
24 principal or local superintendent may offer such rebuttal
25 testimony as he deems relevant. All witnesses may be

.155750B.1

underscored material = new
[bracketed material] = delete

1 questioned by the licensed school employee or his
2 representative and the school principal or the local
3 superintendent or his representative, as applicable. The local
4 superintendent or arbitrator may consider only such evidence as
5 is presented at the hearing and need consider only such
6 evidence as he considers reliable. No record shall be made of
7 the proceeding.

8 L. The local superintendent shall notify the
9 licensed school employee and the school principal of the
10 decision to reemploy or terminate in writing within five
11 working days from the conclusion of the hearing. The decision
12 of the local superintendent or arbitrator may be appealed as
13 provided in Section 22-10A-25 NMSA 1978."

14 Section 6. Section 22-10A-25 NMSA 1978 (being Laws 1986,
15 Chapter 33, Section 23, as amended) is amended to read:

16 "22-10A-25. LICENSED SCHOOL EMPLOYEES--APPEALS--
17 INDEPENDENT ARBITRATOR--QUALIFICATIONS--PROCEDURE--BINDING
18 DECISION.--

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

.155750B.1

underscored material = new
[bracketed material] = delete

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

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

23 C. A qualified independent arbitrator shall be
24 appointed who is an attorney versed in employment practices and
25 school procedures and who [~~preferably~~] has experience in the

.155750B.1

underscored material = new
[bracketed material] = delete

1 practice of law. No person shall be appointed to serve as the
2 independent arbitrator who has any direct or indirect financial
3 interest in the outcome of the proceeding, has any relationship
4 to any party in the proceeding, is employed by the ~~[local]~~
5 school ~~[board or governing authority]~~ district or state agency
6 or is a member of or employed by any professional or labor
7 organization of which the employee is a member.

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

15 E. The de novo hearing shall be held within thirty
16 working days from the selection of the independent arbitrator
17 unless the parties and the arbitrator agree to a later date.
18 The arbitrator shall give written notice of the date, time and
19 place of the hearing, and such notice shall be sent to the
20 employee and the local ~~[school board or governing authority]~~
21 superintendent.

22 F. Each party has the right to ~~[be represented by~~
23 ~~counsel]~~ have a representative of his choice at the hearing
24 before the independent arbitrator.

25 G. Discovery shall be limited to depositions and

underscored material = new
[bracketed material] = delete

1 requests for production of documents on a time schedule to be
2 established by the independent arbitrator.

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

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

20 J. The local [~~school board or governing authority~~]
21 superintendent has the burden of proof and shall prove by a
22 preponderance of the evidence that, at the time the notice of
23 termination was served on the licensed school employee, the
24 local [~~school board or governing authority~~] superintendent had
25 just cause to terminate the employee. If the local [~~school~~

.155750B.1

underscored material = new
[bracketed material] = delete

1 ~~board or governing authority~~ superintendent proves by a
2 preponderance of the evidence that there was just cause for
3 ~~[its]~~ his action, then the burden shifts to the licensed school
4 employee to rebut the evidence presented by the local ~~[school~~
5 ~~board or governing authority]~~ superintendent.

6 K. The independent arbitrator shall uphold the
7 local ~~[school board's or governing authority's]~~
8 superintendent's decision only if ~~[it]~~ the local superintendent
9 proves by a preponderance of the evidence that, at the time the
10 notice of termination was served on the licensed school
11 employee, ~~[the local school board or governing authority]~~ the
12 local superintendent had just cause to terminate the employee.
13 If the local ~~[school board or governing authority]~~
14 superintendent fails to meet ~~[its]~~ the burden of proof or if
15 the licensed school employee rebuts the proof offered by the
16 local ~~[school board or governing authority]~~ superintendent, the
17 arbitrator shall reverse the decision of the local ~~[school~~
18 ~~board or governing authority]~~ superintendent.

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

.155750B.1

underscored material = new
[bracketed material] = delete

1 M. The independent arbitrator shall render a
2 written decision affirming or reversing the action of the local
3 ~~[school board or governing authority]~~ superintendent. The
4 decision shall contain findings of fact and conclusions of law.
5 The parties shall receive actual written notice of the decision
6 of the independent arbitrator within ten working days from the
7 conclusion of the de novo hearing.

8 N. The sole remedies available under this section
9 shall be ~~[reinstatement or payment of compensation reinstated~~
10 ~~in full but subject to]~~ reemployment and any additional
11 compensation allowed other licensed school employees of like
12 qualifications and experience employed by the school district
13 or state agency and including reimbursement for compensation
14 during the entire period for which compensation was terminated,
15 or both, less an offset for any compensation received by the
16 licensed school employee during the period the compensation was
17 terminated.

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

22 P. The decision of the independent arbitrator shall
23 be binding on both parties and shall be final and nonappealable
24 except where the decision was procured by corruption, fraud,
25 deception or collusion, in which case it shall be appealed to

.155750B.1

underscored material = new
[bracketed material] = delete

1 the district court in the judicial district in which the public
2 school or state agency is located.

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

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

10 Section 7. Section 22-10A-26 NMSA 1978 (being Laws 1967,
11 Chapter 16, Section 118, as amended) is amended to read:

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

15 A. a [~~certified~~] licensed school [~~instructor~~]
16 employee employed to fill the position of a [~~certified~~]
17 licensed school [~~instructor~~] employee entering military
18 service;

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

21 C. [~~a non-certified~~] an unlicensed school employee
22 employed to perform primarily district-wide management
23 functions."

24 Section 8. Section 22-10A-27 NMSA 1978 (being Laws 1986,
25 Chapter 33, Section 24, as amended) is amended to read:

.155750B.1

1 "22-10A-27. SCHOOL EMPLOYEES--DISCHARGE HEARING--

2 PROCEDURES.--

3 A. A local [~~school board or the governing authority~~
4 ~~of a state agency~~] superintendent may discharge a [~~certified~~]
5 school employee only for just cause according to the following
6 procedure:

7 (1) the [~~superintendent~~] school principal
8 shall serve a written notice of [~~his~~] intent to recommend
9 discharge on the [~~certified~~] school employee in accordance with
10 the law for service of process in civil actions; and

11 (2) the [~~superintendent~~] school principal
12 shall state in the notice of [~~his~~] intent to recommend
13 discharge, the cause for [~~his~~] the recommendation and shall
14 advise the [~~certified~~] school employee of his right to a
15 discharge hearing before the local [~~school board or governing~~
16 ~~authority~~] superintendent as provided in this section.

17 B. The local superintendent may accept or reject
18 the recommendation of the school principal and shall serve
19 notice of his decision on the school employee.

20 [~~B.~~] C. A [~~certified~~] school employee who receives
21 a notice of intent to [~~recommend~~] discharge pursuant to
22 Subsection [~~A~~] B of this section may exercise his right to a
23 hearing before the local [~~school board or governing authority~~]
24 superintendent by giving the local superintendent [~~or~~
25 ~~administrator~~] written notice of that election within five

.155750B.1

underscored material = new
[bracketed material] = delete

1 working days of [~~his~~] the employee's receipt of the notice [~~to~~
2 ~~recommend~~] of discharge.

3 D. If the local superintendent is unable by reason
4 of a conflict to hold the hearing, an independent arbitrator
5 shall be appointed in the same manner as one provided for
6 appeals in Section 22-10A-28 NMSA 1978. The school district
7 shall bear the costs of a hearing before an arbitrator provided
8 for in this subsection.

9 [~~E.~~] E. The local [~~school board or governing~~
10 ~~authority~~] superintendent or arbitrator shall hold a discharge
11 hearing, no [~~less~~] fewer than twenty and no more than forty
12 working days after [~~the local superintendent or administrator~~]
13 he receives the written election from the [~~certified~~] school
14 employee, and shall give the [~~certified~~] school employee at
15 least ten days written notice of the date, time and place of
16 the discharge hearing.

17 [~~D.~~ Each party, the local superintendent or
18 administrator] F. The school principal and the [~~certified~~]
19 school employee may each be accompanied by a [~~person~~]
20 representative of his choice.

21 [~~E.~~] G. The parties shall complete and respond to
22 discovery by deposition and production of documents prior to
23 the discharge hearing.

24 [~~F.~~] H. The local [~~school board or governing~~
25 ~~authority~~] superintendent or arbitrator shall have the

.155750B.1

underscored material = new
[bracketed material] = delete

1 authority to issue subpoenas for the attendance of witnesses
2 and to produce books, records, documents and other evidence at
3 the request of either party and shall have the power to
4 administer oaths. Subpoenas shall be served and enforced in
5 the manner provided by law for the service and enforcement of
6 subpoenas in a civil action.

7 [G.] I. The [~~local superintendent or administrator~~]
8 school principal shall have the burden of proving by a
9 preponderance of the evidence that, at the time of the notice
10 of intent to recommend discharge, [~~he had~~] there was just cause
11 to discharge the [~~certified~~] school employee.

12 [H.] J. The [~~local superintendent or administrator~~]
13 school principal shall present [~~his~~] evidence first, with the
14 [~~certified~~] school employee presenting [~~his~~] evidence
15 thereafter. The local [~~school board or governing authority~~]
16 superintendent or arbitrator shall permit either party or his
17 representative to call, examine and cross-examine witnesses and
18 to introduce documentary evidence.

19 [I.] K. An official record shall be made of the
20 hearing. Either party may have one copy of the record at the
21 expense of the [~~local~~] school [~~board or governing authority~~]
22 district or state agency.

23 [J.] L. The local [~~school board~~] superintendent or
24 arbitrator shall render [~~its~~] a written decision within twenty
25 days of the conclusion of the discharge hearing. A school

.155750B.1

underscored material = new
[bracketed material] = delete

1 employee may appeal the local superintendent's or arbitrator's
2 decision as provided in Section 22-10A-28 NMSA 1978."

3 Section 9. Section 22-10A-28 NMSA 1978 (being Laws 1986,
4 Chapter 33, Section 25, as amended) is amended to read:

5 "22-10A-28. SCHOOL EMPLOYEE DISCHARGE--APPEALS--
6 INDEPENDENT ARBITRATOR--QUALIFICATIONS--PROCEDURE--BINDING
7 DECISION.--

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

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

.155750B.1

underscored material = new
[bracketed material] = delete

1 five working days from the date of the parties' request.

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

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

24 E. The hearing shall be held within thirty working
25 days from the selection of the independent arbitrator. The

.155750B.1

underscored material = new
[bracketed material] = delete

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

5 F. Each party has the right to [~~be represented by~~
6 ~~counsel~~] have a representative of his choice at the hearing
7 before the independent arbitrator.

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

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

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

.155750B.1

underscored material = new
[bracketed material] = delete

1 the admissibility of evidence, the independent arbitrator may
2 require reasonable substantiation of statements or records
3 tendered, the accuracy or truth of which is in reasonable
4 doubt.

5 J. The local superintendent has the burden of proof
6 and shall prove by a preponderance of the evidence that, at the
7 time the notice of discharge was served on the school employee,
8 the local superintendent had just cause to discharge the
9 employee. If the local superintendent proves by a
10 preponderance of the evidence that there was just cause for his
11 action, then the burden shifts to the school employee to rebut
12 the evidence presented by the local superintendent.

13 K. The independent arbitrator shall uphold the
14 local superintendent's decision only if the local
15 superintendent proves by a preponderance of the evidence that,
16 at the time the notice of discharge was served on the school
17 employee, the local superintendent had just cause to discharge
18 the employee. If the local school superintendent fails to meet
19 the burden of proof or the school employee rebuts the proof
20 offered by the local superintendent, the arbitrator shall
21 reverse the decision of the local superintendent.

22 [~~J.~~] L. An official record shall be made of the
23 hearing. Either party may order a transcript of the record at
24 [~~his~~] the party's own expense.

25 [~~K.~~] M. The independent arbitrator shall render a

.155750B.1

underscored material = new
[bracketed material] = delete

1 written decision affirming or reversing the action of the local
2 [~~school board or governing authority~~] superintendent. The
3 decision shall contain findings of fact and conclusions of law.
4 The parties shall receive the written decision of the
5 independent arbitrator within thirty working days from the
6 conclusion of the hearing.

7 [~~H.~~] N. Unless a party can demonstrate prejudice
8 arising from a departure from the procedures established in
9 this section and in Section [~~22-10-17~~] 22-10A-27 NMSA 1978,
10 such departure shall be presumed to be harmless error.

11 [~~M.~~] O. The decision of the independent arbitrator
12 shall be final and binding on both parties and shall be
13 nonappealable except where the decision was procured by
14 corruption, fraud, deception or collusion, in which case it may
15 be appealed to the [~~court of appeals by filing a notice of~~
16 ~~appeal as provided by the New Mexico rules of appellate~~
17 ~~procedure~~] district court in the judicial district in which the
18 public school or state agency is located.

19 [~~N.~~] P. Each party shall bear its own costs and
20 expenses. The independent arbitrator's fees and other expenses
21 incurred in the conduct of the arbitration shall be assigned at
22 the discretion of the independent arbitrator."

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

25 "22-10A-29. COMPENSATION PAYMENTS TO DISCHARGED

.155750B.1

underscored material = new
[bracketed material] = delete

1 PERSONNEL.--

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

19 B. In the event the action of the local [~~school~~
20 ~~board~~] superintendent in discharging a [~~certified~~] school
21 [~~instructor or administrator or the action of the governing~~
22 ~~authority of a state agency in discharging a certified school~~
23 ~~instructor~~] employee is reversed on appeal, payment of
24 compensation to the person shall be reinstated in full but
25 subject to any additional compensation allowed other

.155750B.1

underscored material = new
[bracketed material] = delete

1 [certified] school [~~instructor or administrator~~] employees of
2 like qualifications and experience employed by the school
3 district or state agency and including reimbursement for
4 compensation during the entire period the compensation was
5 terminated less an offset for any compensation received by the
6 [person] school employee from a school district or state agency
7 during the period the compensation was terminated."

8 Section 11. Section 22-10A-30 NMSA 1978 (being Laws 1967,
9 Chapter 16, Section 123, as amended) is amended to read:

10 "22-10A-30. SUPERVISION AND CORRECTION PROCEDURES.--The
11 [~~state board~~] department shall prescribe by [~~regulations~~] rule
12 procedures to be followed by a [~~local~~] school [~~board or the~~
13 ~~governing authority of a~~] district or state agency in
14 supervising and correcting unsatisfactory work performance of
15 [certified] school [~~personnel~~] employees before notice of
16 intent to discharge is served upon them [~~and by the governing~~
17 ~~authority of a state agency in supervising and correcting~~
18 ~~unsatisfactory work performance of certified school instructors~~
19 ~~before notice of intent to discharge is served upon them.~~
20 ~~These regulations~~]. The rules shall provide that written
21 records shall be kept on all action taken by a [~~local~~] school
22 [~~board or the governing authority of a~~] district or state
23 agency to improve [~~any person's~~] a school employee's
24 unsatisfactory work performance and all improvements made in
25 [~~the person's~~] that employee's work performance. These written

.155750B.1

underscoring material = new
[bracketed material] = delete

1 records shall be introduced as evidence at any hearing for the
2 [~~person~~] school employee conducted by the [~~local~~] school [~~board~~
3 ~~or the governing authority of the~~] district or state agency."

4 - 29 -
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

.155750B.1

- 29 -