

1 SENATE BILL 581

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Linda M. Lopez

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10 AN ACT

11 RELATING TO SCHOOL PERSONNEL; REQUIRING CONFIDENTIALITY OF
12 SCHOOL PERSONNEL PERSONAL INFORMATION AND PERSONNEL RECORDS.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

17 "22-10A-2. DEFINITIONS.--As used in the School Personnel
18 Act:

19 A. "discharge" means the act of severing the
20 employment relationship with a certified school employee prior
21 to the expiration of the current employment contract;

22 B. "just cause" means a reason that is rationally
23 related to an employee's competence or turpitude or the proper
24 performance of the employee's duties and that is not in
25 violation of the employee's civil or constitutional rights;

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1 C. "personal information" means a school employee's
2 name, age, gender, social security number, contact information,
3 medical history, employment history, current employer or
4 supervisor, job duties or responsibilities, personal financial
5 data, marital status, dependents or beneficiaries;

6 D. "personnel records" means any personal
7 information related to a current, prospective or past school
8 employee and any information on that employee's application;
9 selection or nonselection; licensure; promotion; demotion;
10 transfer; leave; salary; benefits; contract for employment;
11 performance or competency evaluation, observation or rating;
12 disciplinary actions; suspension; or termination of employment;

13 [~~B-~~] E. "responsibility factor" means a value of
14 1.20 for an elementary school principal, 1.40 for a middle
15 school or junior high school principal, 1.60 for a high school
16 principal, 1.10 for an assistant elementary school principal,
17 1.15 for an assistant middle school or assistant junior high
18 school principal and 1.25 for an assistant high school
19 principal;

20 F. "sabbatical leave" means leave of absence with
21 pay as set by the local school board or governing authority of
22 a state agency during all or part of a regular school term for
23 purposes of study or travel related to the staff member's
24 duties and of direct benefit to the instructional program;

25 [~~G-~~] G. "state agency" means any state institution

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1 or state agency providing an educational program requiring the
2 employment of certified school instructors;

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

13 ~~[F.]~~ I. "working day" means every calendar day,
14 excluding Saturday, Sunday or legal holiday [~~and~~

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

19 SECTION 2. Section 22-10A-5 NMSA 1978 (being Laws 1997,
20 Chapter 238, Section 1, as amended) is amended to read:

21 "22-10A-5. BACKGROUND CHECKS--KNOWN CONVICTIONS--ALLEGED
22 ETHICAL MISCONDUCT--REPORTING REQUIRED--LIMITED IMMUNITY--
23 PENALTY FOR FAILURE TO REPORT.--

24 A. As used in this section, "ethical misconduct"
25 means unacceptable behavior or conduct engaged in by a licensed

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

5 B. An applicant for initial licensure shall be
6 fingerprinted and shall provide two fingerprint cards or the
7 equivalent electronic fingerprints to the department to obtain
8 the applicant's federal bureau of investigation record.
9 Convictions of felonies or misdemeanors contained in the
10 federal bureau of investigation record shall be used in
11 accordance with the Criminal Offender Employment Act. Other
12 information contained in the federal bureau of investigation
13 record, if supported by independent evidence, may form the
14 basis for the denial, suspension or revocation of a license for
15 good and just cause. Personnel records and related information
16 shall be confidential and privileged and shall not be disclosed
17 to a person not directly involved in the licensure or
18 employment decisions affecting the specific applicant. The
19 applicant for initial licensure shall pay for the cost of
20 obtaining the federal bureau of investigation record.

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

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1 D. An applicant for employment who has been
2 initially licensed within twenty-four months of applying for
3 employment with a local school board, regional education
4 cooperative or a charter school shall not be required to submit
5 to another background check if the department has copies of the
6 applicant's federal bureau of investigation records on file.
7 An applicant who has been offered employment, a contractor or a
8 contractor's employee with unsupervised access to students at a
9 public school shall provide two fingerprint cards or the
10 equivalent electronic fingerprints to the local school board,
11 regional education cooperative or charter school to obtain the
12 applicant's federal bureau of investigation record. The
13 applicant, contractor or contractor's employee who has been
14 offered employment by a regional education cooperative or at a
15 public school may be required to pay for the cost of obtaining
16 a background check. At the request of a local school board,
17 regional education cooperative or charter school, the
18 department is authorized to release copies of federal bureau of
19 investigation records that are on file with the department and
20 that are not more than twenty-four months old. Convictions of
21 felonies or misdemeanors contained in the federal bureau of
22 investigation record shall be used in accordance with the
23 Criminal Offender Employment Act; provided that other
24 information contained in the federal bureau of investigation
25 record, if supported by independent evidence, may form the

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1 basis for the employment decisions for good and just cause.
2 Records and related information shall be privileged and shall
3 not be disclosed to a person not directly involved in the
4 employment decision affecting the specific applicant who has
5 been offered employment, contractor or contractor's employee
6 with unsupervised access to students at a public school.

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

13 F. A local superintendent, charter school
14 administrator or director of a regional education cooperative
15 or their respective designees shall investigate all allegations
16 of ethical misconduct about any licensed school employee who
17 resigns, is being discharged or terminated or otherwise leaves
18 employment after an allegation has been made. If the
19 investigation results in a finding of wrongdoing, the local
20 superintendent, charter school administrator or director of a
21 regional education cooperative shall report the identity of the
22 licensed school employee and the attendant circumstances of the
23 ethical misconduct on a standardized form to the department and
24 to the licensed school employee within thirty days following
25 the separation from employment. Copies of that form shall not

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1 be maintained in public school, school district or regional
2 education cooperative records. No agreement between a
3 departing licensed school employee and the local school board,
4 school district, charter school or regional education
5 cooperative shall diminish or eliminate the responsibility of
6 investigating and reporting the alleged ethical misconduct, and
7 any such agreement to the contrary is void. Unless the
8 department has commenced its own investigation of the licensed
9 school employee prior to receipt of the form, the department
10 shall serve the licensed school employee with a notice of
11 contemplated action involving that employee's license within
12 ninety days of receipt of the form. If that notice of
13 contemplated action is not served on the licensed school
14 employee within ninety days of receipt of the form, the form,
15 together with any documents related to the alleged ethical
16 misconduct, shall be expunged from the licensed school
17 employee's records with the department and shall not be subject
18 to public inspection.

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

24 H. A person who in good faith reports as provided
25 in Subsections E and F of this section shall not be held liable

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1 for civil damages as a result of the report. The person being
2 accused shall have the right to sue for any damages sustained
3 as a result of negligent or intentional reporting of inaccurate
4 information or the disclosure of any information to an
5 unauthorized person."

6 SECTION 3. Section 22-10A-19 NMSA 1978 (being Laws 2003,
7 Chapter 153, Section 50, as amended) is amended to read:

8 "22-10A-19. TEACHERS AND SCHOOL PRINCIPALS--
9 ACCOUNTABILITY--EVALUATIONS--PROFESSIONAL DEVELOPMENT--PEER
10 INTERVENTION--MENTORING--CONFIDENTIALITY.--

11 A. The department shall adopt criteria and minimum
12 highly objective uniform statewide standards of evaluation for
13 the annual performance evaluation of licensed school employees.
14 The professional development plan for teachers shall include
15 documentation on how a teacher who receives professional
16 development that has been required or offered by the state or a
17 school district or charter school incorporates the results of
18 that professional development in the classroom.

19 B. The local superintendent shall adopt policies,
20 guidelines and procedures for the performance evaluation
21 process. Evaluation by other school employees shall be one
22 component of the evaluation tool for school administrators.

23 C. As part of the highly objective uniform
24 statewide standard of evaluation for teachers, the school
25 principal shall observe each teacher's classroom practice to

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1 determine the teacher's ability to demonstrate state-adopted
2 competencies.

3 D. At the beginning of each school year, teachers
4 and school principals shall devise professional development
5 plans for the coming year, and performance evaluations shall be
6 based in part on how well the professional development plan was
7 carried out.

8 E. If a level two or three-A teacher's performance
9 evaluation indicates less than satisfactory performance and
10 competency, the school principal may require the teacher to
11 undergo peer intervention, including mentoring, for a period
12 the school principal deems necessary. If the teacher is unable
13 to demonstrate satisfactory performance and competency by the
14 end of the period, the peer interveners may recommend
15 termination of the teacher.

16 F. The results of an evaluation or part of an
17 evaluation of a teacher or principal shall be confidential and
18 privileged and shall not be disclosed to a person not directly
19 involved in the licensure or employment decisions affecting the
20 teacher or principal; provided that the school district and the
21 department may aggregate data from evaluation results for each
22 school district when the data contains no personal information.

23 [~~F.~~] G. At least every two years, school principals
24 shall attend a training program approved by the department to
25 improve their evaluation, administrative and instructional

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1 leadership skills."

2 SECTION 4. Section 22-10A-19.2 NMSA 1978 (being Laws
3 2007, Chapter 264, Section 2, as amended) is amended to read:

4 "22-10A-19.2. EDUCATOR ACCOUNTABILITY REPORT--DATA--
5 CONFIDENTIALITY--

6 A. The department shall:

7 (1) design a uniform statewide educator
8 accountability reporting system to measure and track teacher
9 and administrator education candidates from pre-entry to
10 post-graduation in order to benchmark the productivity and
11 accountability of New Mexico's educator work force; provided
12 that the system shall be designed in collaboration with:

13 (a) all public post-secondary teacher
14 and administrator preparation programs in New Mexico, including
15 those programs that issue alternative or provisional licenses;

16 (b) the teacher and administrator
17 preparation programs' respective public post-secondary
18 educational institutions; and

19 (c) the higher education department;

20 (2) require all public post-secondary teacher
21 and administrator preparation programs to submit the data
22 required for the uniform statewide educator accountability
23 reporting system through the department's student teacher
24 accountability reporting system;

25 (3) use the uniform statewide educator

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1 accountability reporting system, in conjunction with the
2 department's student teacher education accountability reporting
3 system, to assess the status of the state's efforts to
4 establish and maintain a seamless pre-kindergarten through
5 post-graduate system of education;

6 (4) adopt the format for reporting the outcome
7 measures of each teacher and administrator preparation program
8 in the state; and

9 (5) issue an annual statewide educator
10 accountability report.

11 B. The annual educator accountability report format
12 shall be clear, concise and understandable to the legislature
13 and the general public. All annual program and statewide
14 accountability reports shall ensure that the privacy of
15 individual students is protected.

16 C. Each teacher and administrator preparation
17 program's annual educator accountability report shall include
18 the demographic characteristics of the students and the
19 following indicators of program success:

20 (1) the standards for entering and exiting the
21 program;

22 (2) the number of hours required for field
23 experience and for student teaching or administrator
24 internship;

25 (3) the number and percentage of students

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1 needing developmental course work upon entering the program;

2 (4) the number and percentage of students
3 completing each program;

4 (5) the number and types of degrees received
5 by students who complete each program;

6 (6) the number and percentage of students who
7 pass the New Mexico teacher or administrator assessments for
8 initial licensure on the first attempt;

9 (7) a description of each program's placement
10 practices; and

11 (8) the number and percentage of students
12 hired by New Mexico school districts.

13 D. The educator accountability report shall include
14 an evaluation plan that includes high performance objectives.
15 The plan shall include objectives and measures for:

16 (1) increasing student achievement for all
17 students;

18 (2) increasing teacher and administrator
19 retention, particularly in the first three years of a teacher's
20 or administrator's career;

21 (3) increasing the percentage of students who
22 pass the New Mexico teacher or administrator assessments for
23 initial licensure on the first attempt;

24 (4) increasing the percentage of secondary
25 school classes taught in core academic subject areas by

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1 teachers who demonstrate by means of rigorous content area
2 assessments a high level of subject area mastery and a thorough
3 knowledge of the state's academic content and performance
4 standards;

5 (5) increasing the percentage of elementary
6 school classes taught by teachers who demonstrate by means of a
7 high level of performance in core academic subject areas their
8 mastery of the state academic content and performance
9 standards; and

10 (6) increasing the number of teachers trained
11 in math, science and technology.

12 E. In addition to the specifications in Subsections
13 C and D of this section, the annual educator accountability
14 report shall also include itemized information on program
15 revenues and expenditures, including staff salaries and
16 benefits and the operational cost per credit hour.

17 F. The annual educator accountability report shall
18 not include any personal information.

19 [~~F.~~] G. The annual educator accountability report
20 shall be adopted by each public post-secondary educational
21 institution, reported in accordance with guidelines established
22 by the department to ensure effective communication with the
23 public and disseminated to the governor, legislators and other
24 policymakers and business and economic development
25 organizations by November 1 of each year."

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