

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR
HOUSE BILL 127

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52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

AN ACT

RELATING TO PUBLIC EDUCATION; AMENDING THE PUBLIC SCHOOL CODE
TO REQUIRE THAT ALL PUBLIC SCHOOL DISTRICT APPLICANTS FOR
EMPLOYMENT, CURRENT EMPLOYEES AND OTHER PERSONS ALLOWED
UNSUPERVISED ACCESS BE SUBJECT TO A FINGERPRINT-BASED
BACKGROUND CHECK.

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

SECTION 1. Section 22-10A-3 NMSA 1978 (being Laws 2003,
Chapter 153, Section 34) is amended to read:

"22-10A-3. LICENSE OR CERTIFICATE REQUIRED--APPLICATION
FEE--GENERAL DUTIES.--

A. Except as otherwise provided in this subsection,
any person teaching, supervising an instructional program or
providing instructional support services in a public school or
state agency; any person administering in a public school; and

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underscoring material = new
~~[bracketed material] = delete~~

1 any person providing health care and administering medications
2 or performing medical procedures in a public school shall hold
3 a valid license or certificate from the department authorizing
4 the person to perform that function. This subsection does not
5 apply to a person performing the functions of a practice
6 teacher as defined by the [~~state board~~] department.

7 B. The [~~state board~~] department shall charge a
8 reasonable fee for each application for or the renewal of a
9 license or certificate. The application fee may be waived if
10 the applicant meets a standard of indigency established by the
11 department.

12 C. Pursuant to Section 22-10A-5 NMSA 1978, a person
13 performing the duties of a licensed school employee who does
14 not hold a valid license or certificate or has not submitted a
15 complete application for licensure or certification:

16 (1) shall not be hired without first having
17 prior to entering system completed a background check; and

18 (2) within the first three months from
19 beginning employment duties shall not be compensated thereafter
20 for services rendered until [~~he~~] the person demonstrates that
21 [~~he~~] the person holds a valid license or certificate. This
22 section does not apply to practice teachers as defined by rules
23 of the [~~state board~~] department.

24 D. Each licensed school employee shall:

25 (1) enforce all laws and rules applicable to

1 [his] the employee's public school and school district or to
2 the educational program of the state agency;

3 (2) if teaching, teach the prescribed courses
4 of instruction;

5 (3) exercise supervision over students on
6 property belonging to the public school or state agency and
7 while the students are under the control of the public school
8 or state agency; and

9 (4) furnish reports as required."

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

12 "22-10A-5. BACKGROUND CHECKS--KNOWN CONVICTIONS--ALLEGED
13 ETHICAL MISCONDUCT--REPORTING REQUIRED--LIMITED IMMUNITY--
14 PENALTY FOR FAILURE TO REPORT.--

15 A. As used in this section:

16 (1) "ethical misconduct" means unacceptable
17 behavior or conduct engaged in by a licensed school employee
18 and includes inappropriate touching, sexual harassment,
19 discrimination and behavior intended to induce a child into
20 engaging in illegal, immoral or other prohibited behavior; and

21 (2) "background check" means a department-
22 approved process that requires applicants and school district
23 employees to submit a complete set of fingerprints so that a
24 state and national criminal history background check may be
25 obtained. In all cases, the applicant's fingerprints shall be

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1 submitted to the federal bureau of investigation to obtain the
2 applicant's national criminal history background check.

3 Background checks shall be used in accordance with the Criminal
4 Offender Employment Act.

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. Records and related information shall be
16 privileged and shall not be disclosed to a person not directly
17 involved in the licensure or employment decisions affecting the
18 specific applicant. The applicant for initial licensure shall
19 pay for the cost of obtaining the federal bureau of
20 investigation record.

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

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1 public school. All employees or other persons allowed
2 unsupervised access to students of public schools, regional
3 education cooperatives and charter schools, regardless of the
4 employee's or person's date of hire, shall have a completed
5 fingerprint-based background check on file with the public
6 school, regional education cooperative or charter school before
7 commencing or continuing employment.

8 D. An applicant for employment who has been
9 initially licensed within twenty-four months of applying for
10 employment with a local school board, regional education
11 cooperative or the governing body of a charter school shall not
12 be required to submit to another background check if the
13 department has copies of the applicant's federal bureau of
14 investigation records on file. An applicant who has been
15 offered employment, a contractor or a contractor's employee
16 with unsupervised access to students at a public school shall
17 provide two fingerprint cards or the equivalent electronic
18 fingerprints to the local school board, regional education
19 cooperative or governing body of a charter school to obtain the
20 applicant's federal bureau of investigation record. The
21 applicant, contractor or contractor's employee who has been
22 offered employment by a regional education cooperative or at a
23 public school may be required to pay for the cost of obtaining
24 a background check. At the request of a local school board,
25 regional education cooperative or governing body of a charter

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1 school, the department is authorized to release copies of
2 federal bureau of investigation records that are on file with
3 the department and that are not more than twenty-four months
4 old. Convictions of felonies or misdemeanors contained in the
5 federal bureau of investigation record shall be used in
6 accordance with the Criminal Offender Employment Act; provided
7 that other information contained in the federal bureau of
8 investigation record, if supported by independent evidence, may
9 form the basis for the employment decisions for good and just
10 cause. Records and related information shall be privileged and
11 shall not be disclosed to a person not directly involved in the
12 employment decision affecting the specific applicant who has
13 been offered employment, contractor or contractor's employee
14 with unsupervised access to students at a public school.

15 E. A local superintendent, charter school
16 administrator or director of a regional education cooperative
17 shall report to the department any known conviction of a felony
18 or misdemeanor involving moral turpitude of a licensed [~~school~~]
19 employee that results in any type of action against the
20 licensed [~~school~~] employee. Any licensed employee who has been
21 convicted of any felony or any misdemeanor involving moral
22 turpitude shall report the conviction to a designated
23 administrator of a school district, a school, a regional
24 education cooperative or a charter school.

25 F. A local superintendent, charter school

1 administrator or director of a regional education cooperative
2 or their respective designees shall investigate all allegations
3 of ethical misconduct about any licensed [~~school~~] employee who
4 resigns, is being discharged or terminated or otherwise leaves
5 employment after an allegation has been made. If the
6 investigation results in a finding of wrongdoing, the local
7 superintendent, charter school administrator or director of a
8 regional education cooperative shall report the identity of the
9 licensed [~~school~~] employee and attendant circumstances of the
10 ethical misconduct on a standardized form to the department and
11 the licensed [~~school~~] employee within thirty days following the
12 separation from employment. Copies of that form shall not be
13 maintained in public school, school district or regional
14 education cooperative records. No agreement between a
15 departing licensed [~~school~~] employee and the local school
16 board, school district, charter school or regional education
17 cooperative shall diminish or eliminate the responsibility of
18 investigating and reporting the alleged ethical misconduct, and
19 any such agreement to the contrary is void. Unless the
20 department has commenced its own investigation of the licensed
21 [~~school~~] employee prior to receipt of the form, the department
22 shall serve the licensed [~~school~~] employee with a notice of
23 contemplated action involving that employee's license within
24 ninety days of receipt of the form. If that notice of
25 contemplated action is not served on the licensed [~~school~~]

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1 employee within ninety days of receipt of the form, the form,
2 together with any documents related to the alleged ethical
3 misconduct, shall be expunged from the licensed ~~[school]~~
4 employee's records with the department and shall not be subject
5 to public inspection.

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

11 H. A person who in good faith reports as provided
12 in Subsections E and F of this section shall not be held liable
13 for civil damages as a result of the report. The person being
14 accused shall have the right to sue for any damages sustained
15 as a result of negligent or intentional reporting of inaccurate
16 information or the disclosure of any information to an
17 unauthorized person."

18 **SECTION 3.** Section 22-10A-8 NMSA 1978 (being Laws 2003,
19 Chapter 153, Section 39, as amended by Laws 2011, Chapter 36,
20 Section 1 and by Laws 2011, Chapter 95, Section 2) is amended
21 to read:

22 "22-10A-8. ALTERNATIVE LEVEL ONE LICENSE.--

23 A. The department shall issue an alternative level
24 one license to a person who is at least eighteen years of age
25 and who:

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1 (1) has completed a baccalaureate degree at an
2 accredited institution of higher education and has received a
3 passing score on a state-approved subject-area examination in
4 the subject area of instruction for which the person is
5 applying for a license; or

6 (2) has completed a master's degree at an
7 accredited institution of higher education, including
8 completion of a minimum of twelve graduate credit hours in the
9 subject area of instruction for which the person is applying
10 for a license; or

11 (3) has completed a doctoral or law degree at
12 an accredited institution of higher education; and

13 (4) has passed the New Mexico teacher
14 assessments examination, including for elementary licensure
15 [~~beginning January 1, 2013~~], a rigorous assessment of the
16 candidate's knowledge of the science of teaching reading; [~~and~~]

17 (5) meets other requirements for an
18 alternative level one license, including a fingerprint-based
19 background check pursuant to the provisions of Section 22-10A-5
20 NMSA 1978; and

21 [~~(5)~~] (6) within two years of beginning
22 teaching, completes a minimum of twelve semester hours of
23 instruction in teaching principles in a program approved by the
24 department; or

25 [~~(6) demonstrated~~] (7) demonstrates to the

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1 department, in conjunction with the school district or state
2 agency, that the person has met the department-approved
3 competencies for level one teachers that correspond to the
4 grade level that will be taught.

5 B. A degree or examination referred to in
6 Subsection A of this section shall correspond to the subject
7 area of instruction and the particular grade level that will
8 enable the applicant to teach in a competent manner as
9 determined by the department.

10 C. An alternative level one teacher shall
11 participate in the same mentorship, evaluation and other
12 professional development requirements as other level one
13 teachers.

14 D. A school district or state agency shall not
15 discriminate against a teacher on the basis that the teacher
16 holds an alternative level one license.

17 E. The department shall provide by rule for
18 training and other requirements to support the use of
19 unlicensed content area experts as resources in classrooms,
20 team teaching, [~~on-line~~] online instruction, curriculum
21 development and other purposes."

22 SECTION 4. Section 22-10A-11.2 NMSA 1978 (being Laws
23 2009, Chapter 10, Section 1) is amended to read:

24 "22-10A-11.2. DEAF AND HARD-OF-HEARING TEACHERS--
25 ALTERNATIVE LICENSURE ASSESSMENT--SAVING PROVISION.--

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1 A. A person who has a degree from an accredited
2 teacher education program, ~~and~~ who is deaf or hard of hearing
3 and who has submitted to a fingerprint-based background check
4 pursuant to the provisions of Section 22-10A-5 NMSA 1978 may
5 elect to demonstrate competency for a level one, two or three
6 license through a portfolio assessment in lieu of all or part
7 of the New Mexico teacher assessment. A person who is deaf or
8 hard of hearing may apply for a lower level of licensure if the
9 person's portfolio assessment does not qualify the person for a
10 higher level. The department shall promulgate rules on the
11 requirements for the portfolio assessment and for who is
12 eligible for licensure pursuant to this section. The
13 department shall provide a process for portfolio review that
14 includes the designation of a review committee consisting of:

- 15 (1) a teacher of deaf and hard-of-hearing
16 students;
- 17 (2) a sign language interpreter;
- 18 (3) a school administrator from the New Mexico
19 school for the deaf;
- 20 (4) the parent of a deaf or hard-of-hearing
21 student;
- 22 (5) a deaf or hard-of-hearing teacher, if one
23 is available; and
- 24 (6) other appropriate persons as determined by
25 the department.

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