

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 190

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

INTRODUCED BY

David E. Adkins and Brian Egolf

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 TO STUDENTS 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

.205961.1

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

underscored 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 completed a background check prior to entering the system; 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

underscored material = new  
[bracketed material] = delete

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

underscored material = new  
[bracketed material] = delete

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

.205961.1

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

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

.205961.1

underscored material = new  
[bracketed material] = delete

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

.205961.1

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

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]~~

.205961.1

underscored material = new  
[bracketed material] = delete

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:

.205961.1



underscored material = new  
[bracketed material] = delete

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

.205961.1

underscored material = new  
[bracketed material] = delete

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.--

.205961.1

underscored material = new  
[bracketed material] = delete

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.

.205961.1

1                   B. Until the rules have been effective for a period  
2 deemed sufficient by the department for a deaf or hard-of-  
3 hearing person to submit a portfolio, any eligible deaf or  
4 hard-of-hearing person who has a degree from an accredited  
5 teacher education program shall be granted a temporary teaching  
6 license for the level of licensure for which the person will  
7 likely qualify when the person's portfolio is submitted to the  
8 department. The temporary teaching license shall be effective  
9 for no longer than two school years."

10   - 12 -

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

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25