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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**54th Legislature, 1st Session, 2019**

<b>Bill Number</b>	<u>HB431/HLVMCS/aHEC/aHFI/aSEC</u>	<b>Sponsor</b>	<u>HLVMC</u>
<b>Tracking Number</b>	<u>.214211.1</u>	<b>Committee Referrals</b>	<u>HLVMC/HEC; SEC</u>
<b>Short Title</b>	<u>Termination of School Employees</u>		
		<b>Original Date</b>	<u>2/27/19</u>
<b>Analyst</b>	<u>Force</u>	<b>Last Updated</b>	<u>3/8/19</u>

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**BILL SUMMARY**

Synopsis of SEC Amendment

The Senate Education Committee Amendment to the House Labor, Veterans' and Military Affairs Committee Substitute for HB431 as twice amended (HB431/HLVMCS/aHEC/aHFI/aSEC) removes sexual assault of an adult or child from the list of potential acts of ethical misconduct that would require the immediate report of the misconduct and perpetrator to the Public Education Department (PED).

Synopsis of House Floor Amendment

The House Floor Amendment to the House Labor, Veterans' and Military Affairs Committee Substitute for House Bill 431 as amended by the House Education Committee (HB431/HLVMC/aHEC/HFI) strikes all sections of the bill that would address termination proceedings for licensed school employees, generally, as well as termination proceedings for educational assistants and non-licensed school employees, including procedures for appeals of termination decisions. The bill also makes technical corrections to statutory language, and revises language throughout to match newly defined and redefined terms.

The bill exempts teaching interns from the requirement they have a license or certificate issued by PED, but adds volunteers and contractors to those parties who might be guilty of ethical misconduct as outlined by the bill and who must undergo background checks.

Synopsis of HEC Amendment

The House Education Committee Amendment to the House Labor, Veterans' and Military Affairs Committee Substitute for HB431 (HB431/HLVMCS/aHEC) clarifies that superintendents are to report all allegations of sexual abuse or assault involving school volunteers, contractors, or contractors' employees to law enforcement, in addition to regular school employees.

Synopsis of Original Bill

House Labor, Veterans’ and Military Affairs Committee Substitute for House Bill 431 (HB431/HLVMCS) would amend proceedings for the termination and discharge of school employees in several respects. The bill repeals Section 22-10A-2 NMSA 1978, the definitions for the School Personnel Act, and replaces it with a new definitions section that adds several newly defined terms and amends several current definitions. The bill proposes two new sections of the School Personnel Act to specifically govern termination proceedings for educational assistants and for non-licensed school employees. HB431/HLVMCS proposes adding a new exception to the application of termination proceedings found in Sections 22-10A-22 through 22-10A-25 NMSA 1978 for persons who lack a license or who have not yet completed procedures for obtaining one.

The bill would also expand ethical misconduct and background-check provisions specifically to include sexual assault or abuse, and applies all requirements to school volunteers and contractors, in addition to employees. HB431/HLVMCS proposes to make required reporting of the identity of an employee against whom allegations of sexual misconduct have been substantiated immediate, rather than within 30 days following a substantiated allegation of misconduct leading to the resignation, termination, or discharge of an employee. The bill also mandates reporting of allegations to law enforcement.

HB431/HLVMCS makes a number of changes to language throughout to include the proper terminology for the amended provisions according to the bill’s new definition section, as well as replacing outdated terms such as “State Board of Education” with their appropriate terms from current law, such as “Public Education Department.”

**FISCAL IMPACT**

HB431/HLVMCS/aHEC/aHF1/aSEC does not contain an appropriation.

**SUBSTANTIVE ISSUES**

HB431/HLVMCS/aHEC/aHF1/aSEC proposes to amend requirements and procedures for background checks and discharge proceedings of certain school employees. First, the bill defines new terms and amends the definition of some existing terms. Newly defined terms include:

- “Constitutional special schools,” which means the New Mexico Military Institute, the New Mexico School for the Deaf, and the New Mexico School for the Blind and Visually Impaired.
- “Employed for three consecutive school years,” which means a licensed employee has been offered and accepted a written notice of reemployment for the third consecutive year.
- “Governing authority,” which means the policy-setting body of a school district, charter school, constitutional special school or regional education cooperative, or the final decision-maker of another state agency.
- “Public school,” which means a school district, a charter school, constitutional special school, regional education cooperative, or the educational program of another state agency.
- “School employee,” which includes both licensed and unlicensed employees of a public school.
- “State agency,” which means a regional education cooperative or state institution.
- “State institution,” which means the New Mexico boys' school, girls' welfare home, New Mexico youth diagnostic and development center, Sequoyah adolescent treatment center,

Carrie Tingley crippled children's hospital, New Mexico behavioral health institute at Las Vegas and any other state agency responsible for educating resident children.

- “Superintendent,” which means a local superintendent, head administrator of a charter school or regional educational cooperative, superintendent or commandant of a special school or head administrator of the educational program of a state agency.
- “Terminate,” which means severing the employment relationship with a school employee.

The New Mexico Attorney General’s office (AG), in its analysis of the substantially similar original HB431, notes that several definitions HB431/HLVMC/aHEC/aHF1/aSEC has in common with those definitions in the general provisions of the Public School Code differ, potentially creating ambiguity in interpretation, including, for example:

- “Public school,” which means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either an elementary, middle, junior high or high school or any combination of those and includes a charter school.
- “State agency,” which now comprises those institutions listed in the definition of “state institution” from HB431/HLVMCS/aHEC/aHF1/aSEC.

While the AG is correct, it is not unusual for specific acts within the larger Public School Code to have defined terms that differ from those offered in other acts or the general provisions.

The bill would require immediate reporting of allegations of sexual harassment or assault to appropriate law enforcement agencies.

HB431/HLVMCS/aHEC/aHF1/aSEC proposes to shift the date by which a licensed school employee must receive written notice of termination or an offer of reemployment from the last day of the school year to May 5 of the existing employment contract, and would require written employment contracts be executed by August 1 before the ensuing school year rather than 10 days before the beginning of the new school term.

The bill would require a school or school district chief executive officer to discharge a licensed school employee if they fail to exercise their right to a hearing after being notified of a recommendation of their discharge from employment, but also permits governing authorities to delegate responsibility for arbitration of discharge disputes to chief executive officers.

## **RELATED BILLS**

HB47, School Employee & Assistants Probation Time, reduces the probationary period for educational assistants and unlicensed school employees to one year.

HB397, School Employee Minimum Salaries, would increase the minimum wage for school personnel from \$6 per hour to \$12 per hour.

## **SOURCES OF INFORMATION**

- LESC files
- New Mexico Attorney General (AG)