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FISCAL IMPACT REPORT

SPONSOR HLVMC **ORIGINAL DATE** 2/28/2019 **431/HLVMCS/aHEC/**
LAST UPDATED 3/8/2019 **HB** aHF1#1/aSEC

SHORT TITLE Termination of School Employees **SB** _____

ANALYST Eckberg

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)

Public Schools Insurance Authority (PSIA)

SUMMARY

Synopsis of SEC Amendment

The Senate Education Committee amendment to House Labor, Veterans’ and Military Affairs Committee Substitute for House Bill 431 strikes “, sexual assault” on page 10, line 22. The language now requires a superintendent to immediately report to PED knowledge of ethical misconduct by a licensed school employee if the misconduct is sexual harassment or sexual abuse of an adult or child.

Synopsis of HF1#1 Amendment

The House Floor #1 amendment to House Labor, Veterans’ and Military Affairs Committee Substitute for House Bill 431 strikes all House Education Committee amendments and strikes Sections 7 through 10, sections addressing termination proceedings for educational assistants and nonlicensed school employees.

The amendment also inserts “, volunteer, contractor or contractor’s employee” on page 11, line 3, after “employee”, making it clear a superintendent shall report allegations of sexual assault or sexual abuse involving any school employee including volunteers, contractors, or contractor’s employees, to the appropriate law enforcement agency.

Synopsis of HEC Amendment

The House Education Committee amendment to House Labor, Veterans & Military Affairs Committee Substitute for House Bill 431 inserts “a comma volunteer, contractor or contractor’s employees” on page 11, line 3, after “employee”.

The new language makes clear a superintendent shall report allegations of sexual assault or sexual abuse involving any school employee including volunteers, contractors, or contractor’s employees, to the appropriate law enforcement agency.

Synopsis of Original Bill

House Labor, Veterans’ and Military Affairs Committee Substitute for House Bill 431 amends the School Personnel Act concerning termination and discharge of licensed and unlicensed public school employees, alters and adds definitions and adds two new sections to govern the termination of educational assistants and unlicensed school employees. Additionally, the bill expands ethical misconduct and background-check provisions to include sexual assault or abuse, and applies all requirements to school volunteers and contractors.

FISCAL IMPLICATIONS

The bill does not include an appropriation. The fiscal implications are indeterminate. The two new sections of law the bill proposes to add are similar to existing laws regarding termination and will not likely result in additional costs for school districts.

SIGNIFICANT ISSUES

House Bill 431 repeals and replaces 22-10A-2 NMSA 1978. The new section provides definitions and linguistic changes including

- “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 now means the act of severing the employment relationship with a school employee.

The bill amends Section 22-10A-5 to define “ethical misconduct” as unacceptable behavior or conduct engaged in by a school employee and adds school volunteers, contractors, or contractor employees. Ethical misconduct includes “unlawful discriminatory practices, sexual harassment, sexual assault or sexual abuse involving an adult or child, regardless of a child’s enrollment status; and behavior intended to induce a child into engaging in illegal, immoral or other prohibited behavior.”

The bill also changes reporting requirements and requires reporting of known ethical misconduct to PED and the appropriate law enforcement agency immediately if the misconduct is sexual harassment, sexual assault, or sexual abuse of an adult or child.

The bill also adds sections to govern the termination of educational assistants and unlicensed school employees. An educational assistant may be terminated if they have not been offered and accepted a notice of reemployment for the second consecutive school year for any reason. Unlicensed school employees serve their first year as probationary school employees and may be terminated for any reason until the probationary term expires. Unlicensed employees may also request the reason for their termination. Unlicensed employees may also request the opportunity to make a statement to their governing authority. Additionally, school employees, including educational assistants and unlicensed employees maintain a right to request appeals or arbitration for termination decisions.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

NMAG notes the following:

- Relates to HB5, which proposes unrelated changes to the School Personnel Act.
- Relates to HB44, which would amend the School Personnel Act with respect to professional development.
- Conflicts with HB47, which also proposes to amend Section 22-10A-24 of the School Personnel Act. This conflict is especially prevalent with respect to the two bills’ differing approaches to unlicensed school employees and licensed educational assistants. HB47 includes these within the scope of Section 22-10A-24, whereas HB431 proposes separate statutes for each category. There are also substantive differences in terms of termination timeframes.
- Relates to HB212, which proposes to create a new “Teacher and Principal Evaluation Act,” to evaluate teacher and principal performance. HB212 also proposes to amend Section 22-10A-19 of the School Personnel Act.
- Relates to SB 1, which appears to be quite similar to HB5 and proposes unrelated changes to the School Personnel Act.

TECHNICAL ISSUES

NMAG notes the definitions proposed by House Bill 431 do not mirror those found in NMSA 1978, Section 22-1-2, which provides definitions for all of the Public School Code. This could

lead to ambiguity and conflicts among different sections of the Public School Code. For example, the New Mexico Military Institute is a “state institution” for the purposes of Section 22-1-2, but not in House Bill 431 (where it is instead a “constitutional special school” and a “public school”).

NE/al/gb/al