

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 128

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

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AN ACT

RELATING TO SCHOOL PERSONNEL; SEC→REQUIRING REPORTS OF ETHICAL MISCONDUCT BY SCHOOL DISTRICT PERSONNEL, SCHOOL EMPLOYEES, SCHOOL VOLUNTEERS, CONTRACTORS OR CONTRACTORS' EMPLOYEES TO BE REPORTED TO THE PUBLIC EDUCATION DEPARTMENT OR A SUPERINTENDENT;←SEC REQUIRING APPLICANTS FOR SCHOOL EMPLOYMENT OR SCHOOL VOLUNTEER POSITIONS TO DISCLOSE PAST ETHICAL MISCONDUCT; REQUIRING LOCAL SCHOOL BOARDS TO ADOPT POLICIES TRACKING CHILD ABUSE SEC→AND ETHICAL MISCONDUCT←SEC

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ALLEGATIONS; PROVIDING DEFINITIONS; REQUIRING THE PUBLIC EDUCATION DEPARTMENT TO MAINTAIN A LIST OF REPORTS INVOLVING CHILD ABUSE OR ETHICAL MISCONDUCT; ALLOWING TERMINATION OF SCHOOL EMPLOYMENT OR SCHOOL VOLUNTEER POSITION DECISIONS TO BE PUBLIC; ADDING ETHICAL MISCONDUCT TO SCHOOL TRAINING PROGRAMS; REQUIRING SEC→SCHOOL DISTRICT PERSONNEL AND←SEC SCHOOL VOLUNTEERS TO COMPLETE SCHOOL TRAINING PROGRAMS; SEC→REQUIRING REPORTS OF CHILD ABUSE BY SCHOOL PERSONNEL, SCHOOL VOLUNTEERS, CONTRACTORS OR CONTRACTOR'S EMPLOYEES TO BE REPORTED TO THE PUBLIC EDUCATION DEPARTMENT; REQUIRING CHILD ABUSE BY OTHER ADULTS, IN ADDITION TO CHILD ABUSE BY A PARENT, CUSTODIAN OR GUARDIAN, TO BE REPORTED←SEC SEC→ADDING ETHICAL MISCONDUCT TO THE REASONS FOR POTENTIAL DENIAL, SUSPENSION OR REVOCATION OF A DEPARTMENT-ISSUED LICENSE←SEC .

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

SEC→SECTION 1. A new section of the School Personnel Act is enacted to read:

"[NEW MATERIAL] APPLICANTS FOR SCHOOL EMPLOYMENT-- REQUIREMENTS FOR WORK HISTORY AND OTHER INFORMATION.--

A. A public school shall require any applicant for employment, including a school volunteer, a contractor or a contractor's employee, to provide:

(1) a list of the applicant's current and former employers that were schools or that employed the

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~~applicant in a position involving unsupervised contact with children or students. The list shall include the name, address, telephone number and other relevant contact information for each of the applicant's listed employers;~~

~~(2) a written statement describing whether the applicant:~~

~~(a) has ever been under investigation for, or has been found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses prohibited in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated;~~

~~(b) has ever been under investigation for, or found to have violated, any ethical rule or policy approved by a former employer that previously employed the applicant, unless the allegations were false or unsubstantiated; or~~

~~(c) has ever had a professional license or certificate denied, suspended, surrendered or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation; and~~

~~(3) a written authorization that authorizes disclosure of information requested under Subsection B or D of this section and the release of related records by the~~

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~~applicant's previous employers, releasing the applicant's previous employers from any liability related to the disclosure or release of records.~~

~~B. A public school shall conduct a review of the applicant's employment history and contact the applicant's current and former employers listed under Subsection A of this section and request:~~

~~(1) the applicant's dates of employment; and~~

~~(2) a written a statement describing whether the applicant:~~

~~(a) has ever been under investigation for, or has been found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses prohibited in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated;~~

~~(b) has ever been under investigation for, or found to have violated, any ethical rule or policy approved by a former employer that previously employed the applicant, unless the allegations were false or unsubstantiated; or~~

~~(c) has ever had a professional license or certificate denied, suspended, surrendered or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending~~

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~~or under investigation.~~

~~C. An applicant's current or former employer shall disclose the information requested under Subsection B of this section within thirty days of receiving the request.~~

~~D. During the course of a public school's review of the applicant's employment history, an applicant's current or former employer may disclose any other information the applicant's current or former employer deems pertinent and substantive to the prospective employee's suitability for employment in a position that includes unsupervised contact with children or students.~~

~~E. A public school shall make and document efforts to:~~

~~(1) verify the information provided under Subsections A and B of this section; and~~

~~(2) obtain from an applicant's current or former out-of-state employer the information required under Subsection B of this section.~~

~~F. A public school may terminate an individual's employment or rescind an applicant's offer of employment if the applicant is offered or commences employment with a public school after the effective date of this 2021 act and information regarding the applicant's history of child abuse or ethical misconduct that is determined to disqualify the applicant from employment is subsequently obtained by the~~

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~~public school.~~

~~G. When a reference on a former or current employee is requested, the employer shall respond and provide the requested information pursuant to Subsection B of this section.~~

~~H. An applicant who provides false information or willfully neglects to disclose information required under this section shall be subject to discipline including termination or denial of employment or action to deny, suspend or revoke a license."~~

~~SECTION 2. Section 22-5-4.2 NMSA 1978 (being Laws 1985, Chapter 94, Section 1) is amended to read:~~

~~"22-5-4.2. CHILD ABUSE--REPORT COORDINATION--  
CONFIRMATION.--"~~

~~A. A local school board [may] shall adopt policies providing for the coordination and internal tracking of reports made by school district personnel, school volunteers, contractors and contractor's employees pursuant to Section [32-1-15] 32A-4-3 NMSA 1978. Such policies, however, shall not require any notification to school district personnel, school volunteers, contractors or contractor's employees before the report is made to [one of] the offices listed in Subsection A of [that] Section 32A-4-3 NMSA 1978. Such policies shall include measures to protect the identity of victims of abuse. No policy shall purport to relieve any person having a duty to report under [that] Section 32A-4-3 NMSA 1978 from that duty.~~

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~~B. After a report is made to [a county social services office of the human services department] the children, youth and families department or a law enforcement agency pursuant to Section [32-1-15] 32A-4-3 NMSA 1978 by any school district personnel, school volunteer, contractor or contractor's employee, that office shall notify the person making the report within five days after the report was made that the office is investigating the matter. Mailing a notice within five days shall constitute compliance with this subsection.~~

~~C. As used in this section:~~

~~(1) "contractor" means an individual who is under contract with a public school and is hired to provide services to the public school, but does not include a general contractor or a building or maintenance contractor who is supervised and has no access to students at the public school; and~~

~~(2) "school volunteer" means a person, including a relative of a student, who commits to serve on a regular basis at a school district, charter school or other educational entity without compensation."~~

~~SECTION 3. Section 22-10A-2 NMSA 1978 (being Laws 2019, Chapter 238, Section 1) is amended to read:~~

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

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~~A. "child abuse" means a child:~~

~~(1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian, custodian or other adult;~~

~~(2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian, custodian or other adult;~~

~~(3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian, custodian or other adult;~~

~~(4) whose parent, guardian, custodian or other adult has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or~~

~~(5) whose parent, guardian, custodian or other adult has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;~~

~~[A.] B. "constitutional special school" means the New Mexico military institute, New Mexico school for the deaf and New Mexico school for the blind and visually impaired;~~

~~G. "contractor" means an individual who is under contract with a public school and is hired to provide services to the public school, but does not include a general contractor or a building or maintenance contractor who is supervised and has no access to students at the public school;~~

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~~{B.} D. "discharge" means the act of severing the employment relationship with a licensed school employee prior to the expiration of the current employment contract;~~

~~{C.} E. "employed for three consecutive school years" means a licensed school employee has been offered and accepted in writing a notice of reemployment for the third consecutive school year;~~

~~F. "ethical misconduct" means the following behavior or conduct by a school employee, school volunteer, contractor or contractor's employee:~~

~~(1) discriminatory practice based on race, age, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, mental or physical disability, marital status, religion, citizenship, domestic abuse reporting status or serious medical condition;~~

~~(2) sexual misconduct or any sexual offense prohibited by Chapter 30, Article 9 or Chapter 30, Article 6A NMSA 1978 involving an adult or child, regardless of a child's enrollment status;~~

~~(3) fondling a child or student, including touching private body parts, such as breasts, buttocks, genitals, inner thighs, groin or anus; or~~

~~(4) any other behavior, including licentious, enticing or solicitous behavior, that is reasonably apparent to result in inappropriate sexual contact with a child or student~~

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~~or to induce a child or student into engaging in illegal, immoral or other prohibited behavior;~~

~~{D.} G. "governing authority" 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;~~

~~{E.} H. "instructional support provider" means a person who is employed to support the instructional program of a public school, including educational assistant, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, marriage and family therapist, interpreter for the deaf and diagnostician;~~

~~{F.} I. "just cause" means a reason that is rationally related to a school employee's competence or turpitude or the proper performance of the school employee's duties and that is not in violation of the school employee's civil or constitutional rights;~~

~~J. "moral turpitude" means an act or behavior that gravely violates the accepted standards of moral conduct, justice or honesty and may include ethical misconduct;~~

~~{G.} K. "public school" means a school district, charter school, constitutional special school, regional education cooperative or the educational program of another~~

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~~state agency;~~

~~{H.} L. "responsibility factor" means a value of 1.20 for an elementary school principal, 1.40 for a middle school or junior high school principal, 1.60 for a high school principal, 1.10 for an assistant elementary school principal, 1.15 for an assistant middle school or assistant junior high school principal and 1.25 for an assistant high school principal;~~

~~{I.} M. "sabbatical leave" means leave of absence with pay as approved by the governing authority during all or part of a regular school term for purposes of study or travel related to a licensed school employee's duties and of direct benefit to the instructional program;~~

~~{J.} N. "school administrator" means a person licensed to administer in a school district, charter school, constitutional special school or regional education cooperative or a person employed with another state agency who administers an educational program and includes local superintendents, school principals, central district administrators, business managers, charter school head administrators and state agency education supervisors;~~

~~{K.} O. "school employee" includes licensed and unlicensed employees of a public school;~~

~~{L.} P. "school premises" means:~~

~~(1) the buildings and grounds, including~~

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~~playgrounds, playing fields and parking areas and a school bus of a public school, in or on which school or school-related activities are being operated under the supervision of a local school board, charter school or state agency; or~~

~~(2) any other public buildings or grounds, including playing fields and parking areas that are not public school property, in or on which public school-related and -sanctioned activities are being performed;~~

~~Q. "school volunteer" means a person, including a relative of a student, who commits to serve on a regular basis at a school district, charter school or other educational entity without compensation;~~

~~{M.} R. "state agency" means a regional education cooperative or state institution;~~

~~{N.} S. "state institution" 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;~~

~~{O.} T. "substitute teacher" means a person who holds a certificate to substitute for a teacher in the classroom;~~

~~{P.} U. "superintendent" means a local superintendent, head administrator of a charter school or~~

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~~regional education cooperative, superintendent or commandant of a special school or head administrator of the educational program of a state agency;~~

~~{Q.} V. "teacher" means a person who holds a level one, level two or level three-A license and whose primary job is classroom instruction or the supervision, below the school principal level, of an instructional program or whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers;~~

~~{R.} W. "terminate" means the act of severing the employment relationship with a school employee; {and}~~

~~X. "unsupervised contact with children or students" means access to or contact with, or the opportunity to have access to or contact with, a child or student for any length of time in the absence of:~~

~~(1) a licensed staff person from the same school or institution;~~

~~(2) a school volunteer who has undergone a background check pursuant to Section 22-10A-5 NMSA 1978; or~~

~~(3) any adult relative or guardian of the child or student; and~~

~~{S.} Y. "working day" means every school calendar day, excluding Saturdays, Sundays and legal holidays."~~

~~SECTION 4. Section 22-10A-5 NMSA 1978 (being Laws 1997,~~

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~~Chapter 238, Section 1, as amended by Laws 2019, Chapter 209, Section 2 and by Laws 2019, Chapter 238, Section 3) is amended to read:~~

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

~~[A. As used in this section, "ethical misconduct" means unacceptable behavior or conduct engaged in by a school employee, school volunteer, contractor or contractor's employee and includes unlawful discriminatory practice; 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.~~

~~B.) A. An applicant for initial licensure shall be fingerprinted only upon initial licensure and shall provide two fingerprint cards or the equivalent electronic fingerprints to the department or superintendent to obtain the applicant's federal bureau of investigation record. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act. Other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the denial, suspension or revocation of a license for just cause. Records~~

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

~~[C.] B. Governing authorities shall develop policies and procedures to require background checks on an applicant who has been offered employment or who applies to be a school volunteer or works for the public school as a contractor or a contractor's employee and who may have unsupervised [access to students] contact with children or students on school premises.~~

~~[D.] C. An applicant who has been offered employment or a school volunteer, contractor or contractor's employee shall provide two fingerprint cards or the equivalent electronic fingerprints to the superintendent to obtain the applicant's, school volunteer's, contractor's or contractor's employee's federal bureau of investigation record. The public school shall pay for an applicant's background check. A school volunteer, contractor or contractor's employee may be required to pay for the cost of obtaining a background check.~~

~~[E.] D. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act; provided that other information contained in the federal~~

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~~bureau of investigation record, if supported by independent evidence, may form the basis for the employment decisions for just cause.~~

~~[F.] E. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the employment, volunteering or contracting decision affecting the specific applicant, school volunteer, contractor or contractor's employee who has been offered employment, a school volunteer position or a contract and will have unsupervised [access to students] contact with children or students on school premises.~~

~~[G.] F. A superintendent shall report immediately to the department any known conviction of [a] any felony or misdemeanor involving moral turpitude of a [licensed] school employee [that results in any type of action against the licensed school employee] or school volunteer.~~

~~[H.] G. A superintendent [or the superintendent's designated representative] may appoint a designated representative to act on the superintendent's behalf. The superintendent or the designated representative shall investigate all allegations of ethical misconduct about any school employee who resigns, is being discharged or terminated or otherwise leaves employment after an allegation has been made. If the investigation results in a finding of ethical misconduct by a licensed school employee, the superintendent or~~

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~~the superintendent's designated representative shall report the identity of the licensed school employee and attendant circumstances of the ethical misconduct on a standardized form to the department and the licensed school employee within thirty days following the separation from employment or immediately if knowledge of the ethical misconduct is sexual [harassment or sexual abuse of] misconduct with an adult or child. [Copies of that form shall not be maintained in the school employee's personnel file] The superintendent or the superintendent's designated representative shall also report allegations of sexual assault or sexual abuse involving any school employee, school volunteer, contractor or a contractor's employee to the appropriate law enforcement agency. No agreement between a departing school employee and the governing authority or superintendent shall diminish or eliminate the responsibility of investigating and reporting the alleged ethical misconduct to the department or, if legally mandated, to law enforcement, and any such agreement to the contrary is void.~~

~~[I.] H. Unless the department has commenced its own investigation of a licensed school employee prior to receipt of the form, the department shall serve the licensed school employee with a notice of investigation and a notice of contemplated action pursuant to the Uniform Licensing Act within sixty days of receipt of the form. [If a notice of~~

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~~contemplated action is not served on the licensed school employee within ninety days of receipt of the form, the form, together with any documents related to the alleged ethical misconduct, shall be expunged from the licensed school employee's records.]~~

~~I. The department shall maintain a list of the names of persons reported to the department as required by Subsections F and G of this section and update that list each month. The department shall provide that list to a governing authority upon request.~~

~~J. The secretary may initiate action to suspend, revoke or refuse to renew the license of:~~

~~(1) a superintendent who fails to report as required by Subsections F and G [and H] of this section; or~~

~~(2) any licensed school employee who fails to report child abuse, neglect or ethical misconduct pursuant to Section 32A-4-3 NMSA 1978.~~

~~K. As used in this section, "designated representative" means a representative chosen by a superintendent and may include a regional education cooperative."~~

~~SECTION 5. Section 22-10A-24 NMSA 1978 (being Laws 1986, Chapter 33, Section 22, as amended) is amended to read:~~

~~"22-10A-24. TERMINATION DECISIONS--LOCAL SCHOOL BOARD--GOVERNING AUTHORITY OF A STATE AGENCY--PROCEDURES.--"~~

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~~A. A local school board or governing authority of a state agency may terminate a licensed school employee, excluding licensed educational assistants who have not been offered and accepted the third consecutive contract, for any reason it deems sufficient. A local school board or governing authority of a state agency may terminate a nonlicensed school employee or a licensed educational assistant with less than one year of employment for any reason it deems sufficient. Upon request of the employee, the local superintendent or state agency administrator shall provide written reasons for the decision to terminate. The reasons shall be provided within ten working days of the request. [The reasons shall not be publicly disclosed by the local superintendent, state agency administrator, local school board or governing authority] The reasons shall not provide a basis for contesting the decision under the School Personnel Act.~~

~~B. Before terminating a nonlicensed school employee or a licensed educational assistant, the local school board or governing authority shall serve the employee or assistant with a written notice of termination.~~

~~C. A licensed school employee who has been employed by a school district or state agency for more than two consecutive years or a nonlicensed school employee or licensed educational assistant who has been employed for more than one year and who receives a notice of termination pursuant to~~

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~~either Section 22-10A-22 NMSA 1978 or this section may request an opportunity to make a statement to the local school board or governing authority on the decision to terminate the employee or assistant by submitting a written request to the local superintendent or state agency administrator within five working days from the date written notice of termination is served upon the employee or assistant. The employee or assistant may also request in writing the reasons for the termination action. The local superintendent or state agency administrator shall provide written reasons for the notice of termination to the employee or assistant within five working days from the date the written request for a meeting and the written request for the reasons were received by the local superintendent or state agency administrator. [Neither the local superintendent or state agency administrator nor the local school board or governing authority shall publicly disclose its reasons for termination.]~~

~~D. A local school board or governing authority may not terminate a licensed school employee who has been offered and accepted a third-year contract or a nonlicensed school employee or licensed educational assistant who has been employed by a school district or state agency for more than one year without just cause.~~

~~E. The employee's request pursuant to Subsection G of this section shall be granted if the employee responds to~~

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~~the local superintendent's or state agency administrator's written reasons as provided in Subsection C of this section by submitting in writing to the local superintendent or state agency administrator a contention that the decision to terminate was made without just cause. The written contention shall specify the grounds on which it is contended that the decision was without just cause and shall include a statement of the facts that the employee believes support the employee's contention. This written statement shall be submitted within ten working days from the date the employee receives the written reasons from the local superintendent or state agency administrator. The submission of this statement constitutes a representation on the part of the employee that the employee can support the employee's contentions and an acknowledgment that the local school board or governing authority may offer the causes for its decision and any relevant data in its possession in rebuttal of the employee's contentions.~~

~~F. A local school board or governing authority shall meet to hear the employee's statement in no less than five or more than fifteen working days after the local school board or governing authority receives the statement. The hearing shall be conducted informally in accordance with the provisions of the Open Meetings Act. The employee and the local superintendent or state agency administrator may each be accompanied by a person of the employee's and the local~~

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~~superintendent's or state agency administrator's choice.~~

~~First, the local superintendent shall present the factual basis for the determination that just cause exists for the termination of the employee, limited to those reasons provided to the employee pursuant to Subsection C of this section.~~

~~Then, the employee shall present the employee's contentions, limited to those grounds specified in Subsection E of this section. The local school board or governing authority may offer such rebuttal testimony as it deems relevant. All witnesses may be questioned by the local school board or governing authority, the employee or the employee's representative and the local superintendent or state agency administrator or the local superintendent's or state agency administrator's representative. The local school board or governing authority may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable. [No record shall be made of the proceeding] The local school board or governing authority shall notify the employee and the local superintendent or state agency administrator of its decision in writing within five working days from the conclusion of the meeting."~~

~~SECTION 6. Section 22-10A-25 NMSA 1978 (being Laws 1986, Chapter 33, Section 23, as amended) is amended to read:~~

~~"22-10A-25. APPEALS--INDEPENDENT ARBITRATOR--  
 QUALIFICATIONS--PROCEDURE--BINDING DECISION.--"~~

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~~A. An employee who is still aggrieved by a decision of a local school board or governing authority rendered pursuant to Section [22-10-14] 22-10A-24 NMSA 1978 may appeal the decision to an arbitrator. A written appeal shall be submitted to the local superintendent or administrator within five working days from the receipt of the local school board's or governing authority's written decision or the refusal of the board or authority to grant a hearing. The appeal shall be accompanied by a statement of particulars specifying the grounds on which it is contended that the decision was impermissible pursuant to Subsection E of Section [22-10-14] 22-10A-24 NMSA 1978 and including a statement of facts supporting the contentions. Failure of the employee to submit a timely appeal or a statement of particulars with the appeal shall disqualify [him] the employee for any appeal and render the local school board's or governing authority's decision final.~~

~~B. The local school board or governing authority and the employee shall meet within ten working days from the receipt of the request for an appeal and select an independent arbitrator to conduct the appeal. If the parties fail to agree on an independent arbitrator, they shall request the presiding judge in the judicial district in which the employee's public school is located to select one. The presiding judge shall select the independent arbitrator within five working days from~~

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~~the date of the parties' request.~~

~~C. A qualified independent arbitrator shall be appointed who is versed in employment practices and school procedures and who preferably has experience in the practice of law. No person shall be appointed to serve as the independent arbitrator who has any direct or indirect financial interest in the outcome of the proceeding, has any relationship to any party in the proceeding, is employed by the local school board or governing authority or is a member of or employed by any professional or labor organization of which the employee is a member.~~

~~D. Appeals from the decision of the local school board or governing authority shall be decided after a de novo hearing before the independent arbitrator. The issue to be decided by the independent arbitrator is whether there was just cause for the decision of the local school board or governing authority to terminate the employee.~~

~~E. The de novo hearing shall be held within thirty working days from the selection of the independent arbitrator. The arbitrator shall give written notice of the date, time and place of the hearing, and such notice shall be sent to the employee and the local school board or governing authority.~~

~~F. Each party has the right to be represented by counsel at the hearing before the independent arbitrator.~~

~~G. Discovery shall be limited to depositions and~~

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~~requests for production of documents on a time schedule to be established by the independent arbitrator.~~

~~H. The independent arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.~~

~~I. The rules of civil procedure shall not apply to the de novo hearing, but it shall be conducted so that both contentions and responses are amply and fairly presented. To this end, the independent arbitrator shall permit either party to call and examine witnesses, cross-examine witnesses and introduce exhibits. The technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator shall require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.~~

~~J. The local school board or governing authority has the burden of proof and shall prove by a preponderance of the evidence that, at the time the notice of termination was served on the employee, the local school board or governing authority had just cause to terminate the employee. If the local school board or governing authority proves by a preponderance of the evidence that there was just cause for its~~

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~~action, then the burden shifts to the employee to rebut the evidence presented by the local school board or governing authority.~~

~~K. The independent arbitrator shall uphold the local school board's or governing authority's decision only if it proves by a preponderance of the evidence that, at the time the notice of termination was served on the employee, the local school board or governing authority had just cause to terminate the employee. If the local school board or governing authority fails to meet its burden of proof or if the employee rebuts the proof offered by the local school board or governing authority, the arbitrator shall reverse the decision of the local school board or governing authority.~~

~~L. [No official record shall be made of the hearing] Either party desiring a record of the arbitration proceedings may, at [his] the party's own expense, record or otherwise provide for a transcript of the proceedings; provided, however, that the record so provided shall not [be deemed an official transcript of the proceedings nor shall it] imply any right of automatic appeal or review.~~

~~M. The independent arbitrator shall render a written decision affirming or reversing the action of the local school board or governing authority. The decision shall contain findings of fact and conclusions of law. The parties shall receive actual written notice of the decision of the~~

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~~independent arbitrator within ten working days from the conclusion of the de novo hearing.~~

~~N. The sole remedies available under this section shall be reinstatement or payment of compensation reinstated in full but subject to any additional compensation allowed other employees of like qualifications and experience employed by the school district or state agency and including reimbursement for compensation during the entire period for which compensation was terminated, or both, less an offset for any compensation received by the employee during the period the compensation was terminated.~~

~~O. Unless a party can demonstrate prejudice arising from a departure from the procedures established in this section and in Section [22-10-14] 22-10A-24 NMSA 1978, such departure shall be presumed to be harmless error.~~

~~P. The decision of the independent arbitrator shall be binding on both parties and shall be final and nonappealable except where the decision was procured by corruption, fraud, deception or collusion, in which case it shall be appealed to the district court in the judicial district in which the public school or state agency is located.~~

~~Q. Each party shall bear its own costs and expenses. The independent arbitrator's fees and other expenses incurred in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.~~

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~~R. [Local] School districts shall file a record with the department [of education] of all terminations and all actions arising from terminations annually."~~

~~SECTION 7. Section 22-10A-32 NMSA 1978 (being Laws 1988, Chapter 48, Section 1, as amended) is amended to read:~~

~~"22-10A-32. [LICENSED] SCHOOL EMPLOYEES, SCHOOL VOLUNTEERS, CONTRACTORS AND CONTRACTOR'S EMPLOYEES--REQUIRED TRAINING PROGRAM.--"~~

~~A. All [licensed] school employees, school volunteers, contractors and contractor's employees shall be required to complete training in the detection and reporting of child abuse and neglect, including ethical misconduct, professional responsibilities, sexual abuse and assault, and substance abuse. Except as otherwise provided in this subsection, this requirement shall be completed within the [licensed] school employee's, school volunteer's, contractor's or contractor's employee's first year of employment [by a school district. Licensed school employees hired prior to the 2014-2015 school year shall complete the sexual abuse and assault component of the required training during the 2014-2015 school year].~~

~~B. The department shall develop [a] or adopt training [program] programs, including training materials and necessary training staff, to meet the [requirement] requirements of Subsection A of this section to make the~~

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~~training available in every [school district] public school.~~  
~~The department shall promulgate rules for the administration of the training programs.~~ The department shall coordinate the development of the [program] programs with appropriate staff in [school districts and at] public schools, the human services department, the department of health, the early childhood education and care department and the children, youth and families department. The department shall consult with the federal centers for disease control and prevention when developing or adopting the evidence-based training component on child sexual abuse and assault to include methods and materials that have proven to be effective. At a minimum, training required under this section shall include:

- ~~(1) reporting requirements, including minimal standards triggering reporting;~~
- ~~(2) trauma-informed instruction;~~
- ~~(3) identification of circumstances and factors that are indicators of likely abuse or inappropriate behaviors;~~
- ~~(4) ethical misconduct;~~
- ~~(5) professional responsibilities;~~
- ~~(6) investigations and procedures; and~~
- ~~(7) relevant legal and regulatory definitions.~~

~~G. The training [program] programs developed or adopted pursuant to this section shall be made available by the~~

~~department to the deans of every college of education in New Mexico for use in providing such training to students seeking elementary and secondary education licensure."~~

~~SECTION 8. Section 32A-4-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 97, as amended) is amended to read:~~

~~"32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD NEGLECT-- RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR NEGLECT--PENALTY-- NOTIFICATION OF PLAN OF CARE.--~~

~~A. Every person, including a licensed physician; a resident or an intern examining, attending or treating a child; a law enforcement officer; a judge presiding during a proceeding; a registered nurse; a visiting nurse; a [schoolteacher; a school official] school employee; a social worker acting in an official capacity; or a member of the clergy who has information that is not privileged as a matter of law, who knows or has a reasonable suspicion that a child is an abused or a neglected child or has been subject to physical, emotional, psychological or sexual abuse or sexual exploitation by an adult other than a parent, guardian or custodian shall report the matter immediately to:~~

~~(1) a local law enforcement agency; and~~

~~(2) the department; or~~

~~(3) a tribal law enforcement or social~~

~~services agency for any Indian child residing in Indian country.~~

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~~B. If the alleged perpetrator is school personnel, a school volunteer, a contractor or contractor's employee, a report shall be made to the public education department.~~

~~[B.] C. A law enforcement agency receiving the report pursuant to Subsection A of this section shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to the department and shall transmit the same information in writing within forty-eight hours. The department shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to a local law enforcement agency and shall transmit the same information in writing within forty-eight hours. The written report shall contain the names and addresses of the child and the child's parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person responsible for the injuries. The written report shall be submitted upon a standardized form agreed to by the law enforcement agency and the department.~~

~~[C.] D. The recipient of a report under Subsection A of this section shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure~~

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~~that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect. A local law enforcement officer trained in the investigation of child abuse and neglect is responsible for investigating reports of alleged child abuse or neglect at schools, daycare facilities or child care facilities.~~

~~E. After a report of suspected child abuse is made to the public education department or the department and a law enforcement agency pursuant to this section, that office shall notify the person making the report within five days after the report was made that the office is investigating the matter. Mailing a notice within five days shall constitute compliance with this subsection.~~

~~[D.] F. If the child alleged to be abused or neglected is in the care or control of or in a facility administratively connected to the department, the report shall be investigated by a local law enforcement officer trained in the investigation of child abuse and neglect. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect.~~

~~[E.] G. A law enforcement agency or the department shall have access to any of the records pertaining to a child~~

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~~abuse or neglect case maintained by any of the persons enumerated in Subsection A of this section, except as otherwise provided in the Abuse and Neglect Act.~~

~~[F.] H. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.~~

~~I. A law enforcement agency receiving a report under Subsection A of this section shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to the department and shall transmit the same information in writing within forty-eight hours. If the alleged perpetrator is school personnel, a school volunteer, a contractor or contractor's employee, the law enforcement agency shall also transmit a report to the public education department in writing within forty-eight hours. The written report shall contain the names and addresses of the child and the child's parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person responsible for the injuries. The written report shall be submitted upon a standardized form agreed to by the law enforcement agency and the department.~~

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~~[G.] J. A finding that a pregnant woman is using or abusing drugs made pursuant to an interview, self-report, clinical observation or routine toxicology screen shall not alone form a sufficient basis to report child abuse or neglect to the department pursuant to Subsection A of this section. A volunteer, contractor or staff of a hospital or freestanding birthing center shall not make a report based solely on that finding and shall make a notification pursuant to Subsection [H.] K of this section. Nothing in this subsection shall be construed to prevent a person from reporting to the department a reasonable suspicion that a child is an abused or neglected child based on other criteria as defined by Section 32A-4-2 NMSA 1978, or a combination of criteria that includes a finding pursuant to this subsection.~~

~~[H.] K. A volunteer, contractor or staff of a hospital or freestanding birthing center shall:~~

~~(1) complete a written plan of care for a substance-exposed newborn as provided for by department rule and the Children's Code; and~~

~~(2) provide notification to the department.~~

~~Notification by a health care provider pursuant to this paragraph shall not be construed as a report of child abuse or neglect.~~

~~[I.] L. As used in this section, "notification" means informing the department that a substance-exposed newborn~~

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~~was born and providing a copy of the plan of care that was created for the child; provided that notification shall comply with federal guidelines and shall not constitute a report of child abuse or neglect.~~

~~M. As used in this section:~~

~~(1) "contractor" means an individual who is under contract with a public school and is hired to provide services to the public school, but does not include a general contractor or a building or maintenance contractor who is supervised and has no access to students at the public school;~~

~~(2) "school employee" includes licensed and unlicensed employees of a public school; and~~

~~(3) "school volunteer" means a person, including a relative of a student, who commits to serve on a regular basis at a school district, charter school or other educational entity without compensation."~~ ←SEC

SEC → SECTION 1. A new section of the School Personnel Act is enacted to read:

"[NEW MATERIAL] DUTY TO REPORT ETHICAL MISCONDUCT-- RESPONSIBILITY TO INVESTIGATE ETHICAL MISCONDUCT--ETHICAL MISCONDUCT REPORT COORDINATION.--

A. School district personnel, a school employee, a contractor or a contractor's employee who knows or has a reasonable suspicion that a child or student has been subject to ethical misconduct by school district personnel, a school

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employee, a school volunteer, a contractor or a contractor's employee shall report the matter immediately to:

- (1) the superintendent; or
- (2) the department.

B. If a superintendent receives a report pursuant to Subsection A of this section, the superintendent shall immediately transmit to the department by telephone the facts of the report and the name, address and telephone number of the reporter. The superintendent shall transmit the same information in writing within forty-eight hours.

C. If department staff receives a report pursuant to Subsection A of this section, department staff shall immediately transmit to the superintendent by telephone the facts of the report and the name, address and telephone number of the reporter. Department staff shall transmit the same information in writing within forty-eight hours.

D. A written report shall contain the name, address and age of the child or student; the child's or student's parents, guardians or custodians; the school district personnel, school employee, school volunteer, contractor or contractor's employee who is alleged to have committed ethical misconduct; and any evidence of ethical misconduct, including the nature and extent of any injuries and other information that the maker of the report believes might be helpful to investigate a report of ethical misconduct. The written report

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shall be submitted upon a standardized form developed by the department.

E. Upon receipt of a report of ethical misconduct pursuant to Subsection A of this section, the department shall immediately notify law enforcement if the allegation of ethical misconduct is criminal in nature; provided that the department shall notify a tribal law enforcement or social services agency for any Indian child residing in Indian country.

F. The recipient of a report pursuant to Subsection A of this section shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health or welfare of a student or child who is the subject of a report under Subsection A of this section. A school shall take immediate steps to ensure the safety of enrolled students.

G. After a report of suspected ethical misconduct against a student or child is made to a law enforcement agency, the department or a superintendent pursuant to this section, the office receiving the report shall notify the person making the report within five days after the report was made the office receiving the report is investigating the matter. Mailing a notice within five days shall constitute compliance with this subsection.

H. A law enforcement agency, the department or a superintendent shall have access to any of the records

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pertaining to an ethical misconduct case maintained by any of the persons enumerated in Subsection A of this section.

I. A local school board shall adopt policies providing for the coordination and internal tracking of reports made pursuant to this section. Such policies shall include measures to protect the identity of any alleged victims. No policy shall relieve any person having a duty to report pursuant to this section from that duty."

SECTION 2. A new section of the School Personnel Act is enacted to read:

"[NEW MATERIAL] APPLICANTS FOR SCHOOL EMPLOYMENT, CONTRACTS OR VOLUNTEER POSITIONS--REQUIREMENTS FOR WORK HISTORY AND OTHER INFORMATION.--"

A. A public school shall require an applicant for employment to provide:

(1) a list of the applicant's current and former employers that were schools or that employed the applicant in a position involving unsupervised contact with children or students. The list shall include the name, address, telephone number and other relevant contact information for each of the applicant's listed employers;

(2) a written statement describing whether the applicant:

(a) has ever been under investigation for, or has been found to have violated, any state or federal

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statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses prohibited in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated;

(b) has ever been under investigation for, or found to have violated, any ethical rule or policy approved by a former employer that previously employed the applicant, unless the allegations were false or unsubstantiated; or

(c) has ever had a professional license or certificate denied, suspended, surrendered or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation; and

(3) a written authorization that authorizes disclosure of information requested under Subsection B or D of this section and the release of related records by the applicant's previous employers, releasing the applicant's previous employers from any liability related to the disclosure or release of records.

B. A public school shall conduct a review of the applicant's employment history and contact the applicant's current and former employers listed under Subsection A of this section and request:

(1) the applicant's dates of employment; and

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(2) a written a statement describing whether the applicant:

(a) has ever been under investigation for, or has been found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses prohibited in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated;

(b) has ever been under investigation for, or found to have violated, any ethical rule or policy approved by a former employer that previously employed the applicant, unless the allegations were false or unsubstantiated; or

(c) has ever had a professional license or certificate denied, suspended, surrendered or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation.

C. An applicant's current or former employer shall disclose the information requested under Subsection B of this section within thirty days of receiving the request.

D. During the course of a public school's review of the applicant's employment history, an applicant's current or former employer may disclose any other information the applicant's current or former employer deems pertinent and

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substantive to the prospective employee's suitability for employment in a position that includes unsupervised contact with children or students.

E. A public school shall make and document efforts to:

(1) verify the information provided under Subsections A and B of this section; and

(2) obtain from an applicant's current or former out-of-state employer the information required under Subsection B of this section.

F. A public school may terminate an individual's employment or contract or rescind an applicant's offer of employment or offer of a contract if the applicant is offered or commences employment with a public school after the effective date of this 2021 act and information regarding the applicant's history of child abuse or ethical misconduct that is determined to disqualify the applicant from employment or a contract is subsequently obtained by the public school.

G. When a reference on a former or current employee, contractor or volunteer is requested, the employer shall respond and provide the requested information pursuant to Subsection B of this section.

H. An applicant who provides false information or willfully neglects to disclose information required under this section shall be subject to discipline including termination or

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denial of employment or action to deny, suspend or revoke a license.

I. For the purposes of this section, "applicant" means an applicant for employment, an individual who is being considered as a contractor, a contractor's employee or an individual who wants to be a school volunteer."

SECTION 3. Section 22-5-4.2 NMSA 1978 (being Laws 1985, Chapter 94, Section 1) is amended to read:

"22-5-4.2. CHILD ABUSE--REPORT COORDINATION--  
CONFIRMATION.--

A. A local school board ~~[may]~~ shall adopt policies providing for the coordination and internal tracking of reports made ~~[by school district personnel]~~ pursuant to Section ~~[32-1-15]~~ 32A-4-3 NMSA 1978. Such policies, however, shall not require any notification to school district personnel before the report is made to ~~[one of]~~ the offices listed in Subsection A of ~~[that]~~ Section 32A-4-3 NMSA 1978. Such policies shall include measures to protect the identity of any alleged victims. No policy shall purport to relieve any person having a duty to report under ~~[that]~~ Section 32A-4-3 NMSA 1978 from that duty.

B. After a report is made ~~[to a county social services office of the human services department]~~ pursuant to Section ~~[32-1-15]~~ 32A-4-3 NMSA 1978, ~~[by any school district personnel that]~~ the office receiving the notification shall

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notify the person making the report within five days after the report was made that the office is investigating the matter. Mailing a notice within five days shall constitute compliance with this subsection."

SECTION 4. Section 22-10A-2 NMSA 1978 (being Laws 2019, Chapter 238, Section 1) is amended to read:

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

A. "child abuse" means a child:

(1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian, custodian or other adult;

(2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian, custodian or other adult;

(3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian, custodian or other adult;

(4) whose parent, guardian, custodian or other adult has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or

(5) whose parent, guardian, custodian or other adult has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;

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~~[A-]~~ B. "constitutional special school" means the New Mexico military institute, New Mexico school for the deaf and New Mexico school for the blind and visually impaired;

C. "contractor" means an individual who is under contract with a public school and is hired to provide services to the public school, but does not include a general contractor or a building or maintenance contractor who is supervised and has no access to students at the public school;

~~[B-]~~ D. "discharge" means the act of severing the employment relationship with a licensed school employee prior to the expiration of the current employment contract;

~~[G-]~~ E. "employed for three consecutive school years" means a licensed school employee has been offered and accepted in writing a notice of reemployment for the third consecutive school year;

F. "ethical misconduct" means the following behavior or conduct by school district personnel, school employees, school volunteers, contractors or contractors' employees:

(1) discriminatory practice based on race, age, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, mental or physical disability, marital status, religion, citizenship, domestic abuse reporting status or serious medical condition;

(2) sexual misconduct or any sexual offense

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prohibited by Chapter 30, Article 6A or 9 NMSA 1978 involving an adult or child, regardless of a child's enrollment status;

(3) fondling a child or student, including touching private body parts, such as breasts, buttocks, genitals, inner thighs, groin or anus; or

(4) any other behavior, including licentious, enticing or solicitous behavior, that is reasonably apparent to result in inappropriate sexual contact with a child or student or to induce a child or student into engaging in illegal, immoral or other prohibited behavior;

~~[D.]~~ G. "governing authority" 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;

~~[E.]~~ H. "instructional support provider" means a person who is employed to support the instructional program of a public school, including educational assistant, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, marriage and family therapist, interpreter for the deaf and diagnostician;

~~[F.]~~ I. "just cause" means a reason that is rationally related to a school employee's competence or turpitude or the proper performance of the school employee's

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duties and that is not in violation of the school employee's civil or constitutional rights;

J. "moral turpitude" means an act or behavior that gravely violates the accepted standards of moral conduct, justice or honesty and may include ethical misconduct;

~~[G.]~~ K. "public school" means a school district, charter school, constitutional special school, regional education cooperative or the educational program of another state agency;

~~[H.]~~ L. "responsibility factor" means a value of 1.20 for an elementary school principal, 1.40 for a middle school or junior high school principal, 1.60 for a high school principal, 1.10 for an assistant elementary school principal, 1.15 for an assistant middle school or assistant junior high school principal and 1.25 for an assistant high school principal;

~~[I.]~~ M. "sabbatical leave" means leave of absence with pay as approved by the governing authority during all or part of a regular school term for purposes of study or travel related to a licensed school employee's duties and of direct benefit to the instructional program;

~~[J.]~~ N. "school administrator" means a person licensed to administer in a school district, charter school, constitutional special school or regional education cooperative or a person employed with another state agency who administers

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an educational program and includes local superintendents, school principals, central district administrators, business managers, charter school head administrators and state agency education supervisors;

[K-] O. "school employee" includes licensed and unlicensed employees of a public school;

[L-] P. "school premises" means:

(1) the buildings and grounds, including playgrounds, playing fields and parking areas and a school bus of a public school, in or on which school or school-related activities are being operated under the supervision of a local school board, charter school or state agency; or

(2) any other public buildings or grounds, including playing fields and parking areas that are not public school property, in or on which public school-related and -sanctioned activities are being performed;

Q. "school volunteer" means a person, including a relative of a student, who commits to serve on a regular basis at a school district, charter school or other educational entity without compensation;

[M-] R. "state agency" means a regional education cooperative or state institution;

[N-] S. "state institution" means the New Mexico boys' school, girls' welfare home, New Mexico youth diagnostic and development center, Sequoyah adolescent treatment center,

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

[Ø-] T. "substitute teacher" means a person who holds a certificate to substitute for a teacher in the classroom;

[P-] U. "superintendent" means a local superintendent, head administrator of a charter school or regional education cooperative, superintendent or commandant of a special school or head administrator of the educational program of a state agency;

[Q-] V. "teacher" means a person who holds a level one, level two or level three-A license and whose primary job is classroom instruction or the supervision, below the school principal level, of an instructional program or whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers;

[R-] W. "terminate" means the act of severing the employment relationship with a school employee; [~~and~~]

X. "unsupervised contact with children or students" means access to or contact with, or the opportunity to have access to or contact with, a child or student for any length of time in the absence of:

(1) a licensed staff person from the same

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school or institution;

(2) a school volunteer who has undergone a background check pursuant to Section 22-10A-5 NMSA 1978; or

(3) any adult relative or guardian of the child or student; and

~~[S-]~~ Y. "working day" means every school calendar day, excluding Saturdays, Sundays and legal holidays."

SECTION 5. Section 22-10A-5 NMSA 1978 (being Laws 1997, Chapter 238, Section 1, as amended by Laws 2019, Chapter 209, Section 2 and by Laws 2019, Chapter 238, Section 3) is amended to read:

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

~~[A. As used in this section, "ethical misconduct" means unacceptable behavior or conduct engaged in by a school employee, school volunteer, contractor or contractor's employee and includes unlawful discriminatory practice; 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.~~

~~B-]~~ A. An applicant for initial licensure shall be fingerprinted only upon initial licensure and shall provide two fingerprint cards or the equivalent electronic fingerprints to

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the department or superintendent to obtain the applicant's federal bureau of investigation record. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act. Other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the denial, suspension or revocation of a license for just cause. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the licensure or employment decisions affecting the specific applicant. The applicant for initial licensure shall pay for the cost of obtaining the federal bureau of investigation record.

~~[G.]~~ B. Governing authorities shall develop policies and procedures to require background checks on an applicant who has been offered employment or who applies to be a school volunteer or works for the public school as a contractor or a contractor's employee and who may have unsupervised ~~[access to students]~~ contact with children or students on school premises.

~~[D.]~~ C. An applicant who has been offered employment or a school volunteer, contractor or contractor's employee shall provide two fingerprint cards or the equivalent electronic fingerprints to the superintendent to obtain the applicant's, school volunteer's, contractor's or contractor's

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employee's federal bureau of investigation record. The public school shall pay for an applicant's background check. A school volunteer, contractor or contractor's employee may be required to pay for the cost of obtaining a background check.

~~[E.]~~ D. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act; provided that other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the employment decisions for just cause.

~~[F.]~~ E. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the employment, volunteering or contracting decision affecting the specific applicant, school volunteer, contractor or contractor's employee who has been offered employment, a school volunteer position or a contract and will have unsupervised ~~[access to students]~~ contact with children or students on school premises.

~~[G.]~~ F. A superintendent shall report immediately to the department any known conviction of ~~[a]~~ any felony or misdemeanor involving moral turpitude of school district personnel, a ~~[licensed]~~ school employee ~~[that results in any type of action against the licensed school employee]~~, a school volunteer, a contractor or a contractor's employee.

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[H.] G. A superintendent ~~[or the superintendent's designated representative]~~ may appoint a designated representative to act on the superintendent's behalf. The superintendent or the designated representative shall investigate all allegations of ethical misconduct about any school district personnel, school employee, school volunteer, contractor or contractor's employee who resigns, is being discharged or terminated or otherwise leaves employment after an allegation has been made. If the investigation results in a finding of ethical misconduct by a licensed school employee, the superintendent or the superintendent's designated representative shall report the identity of the licensed school employee and attendant circumstances of the ethical misconduct on a standardized form to the department and the licensed school employee within thirty days following the separation from employment or immediately if [knowledge of] the finding of ethical misconduct is sexual [harassment or sexual abuse of] misconduct with an adult or child. [Copies of that form shall not be maintained in the school employee's personnel file] The superintendent or the superintendent's designated representative shall also report allegations of sexual assault or sexual abuse involving any school district personnel, school employee, school volunteer, contractor or a contractor's employee to the appropriate law enforcement agency. No agreement between a departing school employee and the governing

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authority or superintendent shall diminish or eliminate the responsibility of investigating and reporting the alleged ethical misconduct to the department or, if legally mandated, to law enforcement, and any such agreement to the contrary is void.

~~[F.]~~ H. Unless the department has commenced its own investigation of a licensed school employee prior to receipt of the form, the department shall serve the licensed school employee with a notice of investigation and a notice of contemplated action pursuant to the Uniform Licensing Act within sixty days of receipt of the form. ~~[If a notice of contemplated action is not served on the licensed school employee within ninety days of receipt of the form, the form, together with any documents related to the alleged ethical misconduct, shall be expunged from the licensed school employee's records.]~~

I. The department shall maintain a list of the names of persons reported to the department as required by Subsection F of this section who have been convicted of a felony or misdemeanor involving moral turpitude, and as required by Subsection G of this section and Section 1 of this 2021 act who have been found to have committed ethical misconduct. The department shall update that list each month. The department shall provide that list to a governing authority upon request.

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J. The secretary may initiate action to suspend, revoke or refuse to renew the license of:

(1) a superintendent who fails to report as required by Subsections F and G [~~and H~~] of this section or Section 1 of this 2021 act;

(2) any licensed school district personnel or licensed school employee who fails to report child abuse or neglect pursuant to Section 32A-4-3 NMSA 1978; or

(3) any licensed school district personnel or school employee who fails to report ethical misconduct pursuant to Subsection G of this section or Section 1 of this 2021 act.

K. As used in this section, "designated representative" means a representative chosen by a superintendent and may include the staff of regional education cooperative."

SECTION 6. Section 22-10A-24 NMSA 1978 (being Laws 1986, Chapter 33, Section 22, as amended) is amended to read:

"22-10A-24. TERMINATION DECISIONS--LOCAL SCHOOL BOARD--GOVERNING AUTHORITY OF A STATE AGENCY--PROCEDURES.--

A. A local school board or governing authority of a state agency may terminate a licensed school employee, excluding licensed educational assistants who have not been offered and accepted the third consecutive contract, for any reason it deems sufficient. A local school board or governing authority of a state agency may terminate a nonlicensed school

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employee or a licensed educational assistant with less than one year of employment for any reason it deems sufficient. Upon request of the employee, the local superintendent or state agency administrator shall provide written reasons for the decision to terminate. The reasons shall be provided within ten working days of the request. ~~[The reasons shall not be publicly disclosed by the local superintendent, state agency administrator, local school board or governing authority]~~ The reasons shall not provide a basis for contesting the decision under the School Personnel Act.

B. Before terminating a nonlicensed school employee or a licensed educational assistant, the local school board or governing authority shall serve the employee or assistant with a written notice of termination.

C. A licensed school employee who has been employed by a school district or state agency for more than two consecutive years or a nonlicensed school employee or licensed educational assistant who has been employed for more than one year and who receives a notice of termination pursuant to either Section 22-10A-22 NMSA 1978 or this section may request an opportunity to make a statement to the local school board or governing authority on the decision to terminate the employee or assistant by submitting a written request to the local superintendent or state agency administrator within five working days from the date written notice of termination is

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served upon the employee or assistant. The employee or assistant may also request in writing the reasons for the termination action. The local superintendent or state agency administrator shall provide written reasons for the notice of termination to the employee or assistant within five working days from the date the written request for a meeting and the written request for the reasons were received by the local superintendent or state agency administrator. ~~[Neither the local superintendent or state agency administrator nor the local school board or governing authority shall publicly disclose its reasons for termination.]~~

D. A local school board or governing authority may not terminate a licensed school employee who has been offered and accepted a third-year contract or a nonlicensed school employee or licensed educational assistant who has been employed by a school district or state agency for more than one year without just cause.

E. The employee's request pursuant to Subsection C of this section shall be granted if the employee responds to the local superintendent's or state agency administrator's written reasons as provided in Subsection C of this section by submitting in writing to the local superintendent or state agency administrator a contention that the decision to terminate was made without just cause. The written contention shall specify the grounds on which it is contended that the

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decision was without just cause and shall include a statement of the facts that the employee believes support the employee's contention. This written statement shall be submitted within ten working days from the date the employee receives the written reasons from the local superintendent or state agency administrator. The submission of this statement constitutes a representation on the part of the employee that the employee can support the employee's contentions and an acknowledgment that the local school board or governing authority may offer the causes for its decision and any relevant data in its possession in rebuttal of the employee's contentions.

F. A local school board or governing authority shall meet to hear the employee's statement in no less than five or more than fifteen working days after the local school board or governing authority receives the statement. The hearing shall be conducted informally in accordance with the provisions of the Open Meetings Act. The employee and the local superintendent or state agency administrator may each be accompanied by a person of the employee's and the local superintendent's or state agency administrator's choice. First, the local superintendent shall present the factual basis for the determination that just cause exists for the termination of the employee, limited to those reasons provided to the employee pursuant to Subsection C of this section. Then, the employee shall present the employee's contentions,

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limited to those grounds specified in Subsection E of this section. The local school board or governing authority may offer such rebuttal testimony as it deems relevant. All witnesses may be questioned by the local school board or governing authority, the employee or the employee's representative and the local superintendent or state agency administrator or the local superintendent's or state agency administrator's representative. The local school board or governing authority may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable. ~~[No record shall be made of the proceeding]~~ The local school board or governing authority shall notify the employee and the local superintendent or state agency administrator of its decision in writing within five working days from the conclusion of the meeting."

SECTION 7. Section 22-10A-25 NMSA 1978 (being Laws 1986, Chapter 33, Section 23, as amended) is amended to read:

"22-10A-25. APPEALS--INDEPENDENT ARBITRATOR--  
 QUALIFICATIONS--PROCEDURE--BINDING DECISION.--

A. An employee who is still aggrieved by a decision of a local school board or governing authority rendered pursuant to Section ~~[22-10-14]~~ 22-10A-24 NMSA 1978 may appeal the decision to an arbitrator. A written appeal shall be submitted to the local superintendent or administrator within five working days from the receipt of the local school board's

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or governing authority's written decision or the refusal of the board or authority to grant a hearing. The appeal shall be accompanied by a statement of particulars specifying the grounds on which it is contended that the decision was impermissible pursuant to Subsection E of Section ~~[22-10-14]~~ 22-10A-24 NMSA 1978 and including a statement of facts supporting the contentions. Failure of the employee to submit a timely appeal or a statement of particulars with the appeal shall disqualify ~~[him]~~ the employee for any appeal and render the local school board's or governing authority's decision final.

B. The local school board or governing authority and the employee shall meet within ten working days from the receipt of the request for an appeal and select an independent arbitrator to conduct the appeal. If the parties fail to agree on an independent arbitrator, they shall request the presiding judge in the judicial district in which the employee's public school is located to select one. The presiding judge shall select the independent arbitrator within five working days from the date of the parties' request.

C. A qualified independent arbitrator shall be appointed who is versed in employment practices and school procedures and who preferably has experience in the practice of law. No person shall be appointed to serve as the independent arbitrator who has any direct or indirect financial interest in

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the outcome of the proceeding, has any relationship to any party in the proceeding, is employed by the local school board or governing authority or is a member of or employed by any professional or labor organization of which the employee is a member.

D. Appeals from the decision of the local school board or governing authority shall be decided after a de novo hearing before the independent arbitrator. The issue to be decided by the independent arbitrator is whether there was just cause for the decision of the local school board or governing authority to terminate the employee.

E. The de novo hearing shall be held within thirty working days from the selection of the independent arbitrator. The arbitrator shall give written notice of the date, time and place of the hearing, and such notice shall be sent to the employee and the local school board or governing authority.

F. Each party has the right to be represented by counsel at the hearing before the independent arbitrator.

G. Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the independent arbitrator.

H. The independent arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served

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and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

I. The rules of civil procedure shall not apply to the de novo hearing, but it shall be conducted so that both contentions and responses are amply and fairly presented. To this end, the independent arbitrator shall permit either party to call and examine witnesses, cross-examine witnesses and introduce exhibits. The technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator shall require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

J. The local school board or governing authority has the burden of proof and shall prove by a preponderance of the evidence that, at the time the notice of termination was served on the employee, the local school board or governing authority had just cause to terminate the employee. If the local school board or governing authority proves by a preponderance of the evidence that there was just cause for its action, then the burden shifts to the employee to rebut the evidence presented by the local school board or governing authority.

K. The independent arbitrator shall uphold the local school board's or governing authority's decision only if it proves by a preponderance of the evidence that, at the time

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the notice of termination was served on the employee, the local school board or governing authority had just cause to terminate the employee. If the local school board or governing authority fails to meet its burden of proof or if the employee rebuts the proof offered by the local school board or governing authority, the arbitrator shall reverse the decision of the local school board or governing authority.

L. ~~[No official record shall be made of the hearing]~~ Either party desiring a record of the arbitration proceedings may, at ~~[his]~~ the party's own expense, record or otherwise provide for a transcript of the proceedings; provided, however, that the record so provided shall not ~~[be deemed an official transcript of the proceedings nor shall it]~~ imply any right of automatic appeal or review.

M. The independent arbitrator shall render a written decision affirming or reversing the action of the local school board or governing authority. The decision shall contain findings of fact and conclusions of law. The parties shall receive actual written notice of the decision of the independent arbitrator within ten working days from the conclusion of the de novo hearing.

N. The sole remedies available under this section shall be reinstatement or payment of compensation reinstated in full but subject to any additional compensation allowed other employees of like qualifications and experience employed by the

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school district or state agency and including reimbursement for compensation during the entire period for which compensation was terminated, or both, less an offset for any compensation received by the employee during the period the compensation was terminated.

O. Unless a party can demonstrate prejudice arising from a departure from the procedures established in this section and in Section ~~[22-10-14]~~ 22-10A-24 NMSA 1978, such departure shall be presumed to be harmless error.

P. The decision of the independent arbitrator shall be binding on both parties and shall be final and nonappealable except where the decision was procured by corruption, fraud, deception or collusion, in which case it shall be appealed to the district court in the judicial district in which the public school or state agency is located.

Q. Each party shall bear its own costs and expenses. The independent arbitrator's fees and other expenses incurred in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.

R. ~~[Local]~~ School districts shall file a record with the department ~~[of education]~~ of all terminations and all actions arising from terminations annually."

SECTION 8. Section 22-10A-31 NMSA 1978 (being Laws 1967, Chapter 16, Section 124, as amended) is amended to read:

"22-10A-31. DENIAL, SUSPENSION AND REVOCATION OF

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LICENSES.--In accordance with the procedures provided in the Uniform Licensing Act, the ~~[state board]~~ department may deny, suspend or revoke a department-issued license for incompetency, moral turpitude, ethical misconduct or any other good and just cause."

SECTION 9. Section 22-10A-32 NMSA 1978 (being Laws 1988, Chapter 48, Section 1, as amended) is amended to read:

"22-10A-32. ~~[LICENSED]~~ SCHOOL DISTRICT PERSONNEL, SCHOOL EMPLOYEES, SCHOOL VOLUNTEERS, CONTRACTORS AND CONTRACTORS' EMPLOYEES--REQUIRED TRAINING PROGRAM.--

A. All ~~[licensed]~~ school district personnel, school employees, school volunteers, contractors and contractors' employees shall be required to complete training in the detection and reporting of child abuse and neglect, ~~[including]~~ ethical misconduct, professional responsibilities, sexual abuse and assault and substance abuse. Except as otherwise provided in this subsection, this requirement shall be completed within the ~~[licensed]~~ school district employee's, school employee's, school volunteer's, contractor's or contractor's employee's first year of employment ~~[by a school district. Licensed school employees hired prior to the 2014-2015 school year shall complete the sexual abuse and assault component of the required training during the 2014-2015 school year].~~

B. The department shall develop ~~[a]~~ or adopt training ~~[program]~~ programs, including training materials and

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necessary training staff, to meet the [requirement] requirements of Subsection A of this section to make the training available in every [school-district] public school. The department shall promulgate rules for the administration of the training programs. The department shall coordinate the development of the [program] programs with appropriate staff in school districts and at public schools, the human services department, the department of health, the early childhood education and care department and the children, youth and families department. The department shall consult with the federal centers for disease control and prevention when developing or adopting the evidence-based training component on child sexual abuse and assault to include methods and materials that have proven to be effective. At a minimum, training required under this section shall include:

- (1) reporting requirements, including minimal standards triggering reporting;
- (2) trauma-informed instruction;
- (3) identification of circumstances and factors that are indicators of likely abuse or inappropriate behaviors;
- (4) ethical misconduct;
- (5) professional responsibilities;
- (6) investigations and procedures; and
- (7) relevant legal and regulatory definitions.

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C. The training ~~[program]~~ programs developed or adopted pursuant to this section shall be made available by the department to the deans of every college of education in New Mexico for use in providing such training to students seeking elementary and secondary education licensure."

SECTION 10. Section 32A-4-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 97, as amended) is amended to read:

"32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD NEGLECT-- RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR NEGLECT--PENALTY-- NOTIFICATION OF PLAN OF CARE.--

A. Every person, including a licensed physician; a resident or an intern examining, attending or treating a child; a law enforcement officer; a judge presiding during a proceeding; a registered nurse; a visiting nurse; a ~~[schoolteacher; a school official]~~ school employee; a social worker acting in an official capacity; or a member of the clergy who has information that is not privileged as a matter of law, who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter immediately to:

- (1) a local law enforcement agency;
- (2) the department; or
- (3) a tribal law enforcement or social

services agency for any Indian child residing in Indian country.

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B. A law enforcement agency receiving the report shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to the department and shall transmit the same information in writing within forty-eight hours. The department shall immediately transmit the facts of the report and the name, address and phone number of the reporter by telephone to a local law enforcement agency and shall transmit the same information in writing within forty-eight hours. The written report shall contain the names and addresses of the child and the child's parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person responsible for the injuries. The written report shall be submitted upon a standardized form agreed to by the law enforcement agency and the department.

C. The recipient of a report under Subsection A of this section shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect. A local law enforcement officer trained in

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the investigation of child abuse and neglect is responsible for investigating reports of alleged child abuse or neglect at schools, daycare facilities or child care facilities.

D. If the child alleged to be abused or neglected is in the care or control of or in a facility administratively connected to the department, the report shall be investigated by a local law enforcement officer trained in the investigation of child abuse and neglect. The investigation shall ensure that immediate steps are taken to protect the health or welfare of the alleged abused or neglected child, as well as that of any other child under the same care who may be in danger of abuse or neglect.

E. A law enforcement agency or the department shall have access to any of the records pertaining to a child abuse or neglect case maintained by any of the persons enumerated in Subsection A of this section, except as otherwise provided in the Abuse and Neglect Act.

F. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

G. A finding that a pregnant woman is using or abusing drugs made pursuant to an interview, self-report, clinical observation or routine toxicology screen shall not alone form a sufficient basis to report child abuse or neglect

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to the department pursuant to Subsection A of this section. A volunteer, contractor or staff of a hospital or freestanding birthing center shall not make a report based solely on that finding and shall make a notification pursuant to Subsection H of this section. Nothing in this subsection shall be construed to prevent a person from reporting to the department a reasonable suspicion that a child is an abused or neglected child based on other criteria as defined by Section 32A-4-2 NMSA 1978, or a combination of criteria that includes a finding pursuant to this subsection.

H. A volunteer, contractor or staff of a hospital or freestanding birthing center shall:

(1) complete a written plan of care for a substance-exposed newborn as provided for by department rule and the Children's Code; and

(2) provide notification to the department.

Notification by a health care provider pursuant to this paragraph shall not be construed as a report of child abuse or neglect.

I. As used in this section, "notification" means informing the department that a substance-exposed newborn was born and providing a copy of the plan of care that was created for the child; provided that notification shall comply with federal guidelines and shall not constitute a report of child abuse or neglect.

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J. As used in this section, "school employee" includes employees of a school district or a public school."←SEC

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