

1 HOUSE BILL 128

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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6

7  
8 FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE  
9

10 AN ACT

11 RELATING TO SCHOOL PERSONNEL; REQUIRING APPLICANTS FOR SCHOOL  
12 EMPLOYMENT OR SCHOOL VOLUNTEER POSITIONS TO DISCLOSE PAST  
13 ETHICAL MISCONDUCT; REQUIRING LOCAL SCHOOL BOARDS TO ADOPT  
14 POLICIES TRACKING CHILD ABUSE ALLEGATIONS; PROVIDING  
15 DEFINITIONS; REQUIRING THE PUBLIC EDUCATION DEPARTMENT TO  
16 MAINTAIN A LIST OF REPORTS INVOLVING CHILD ABUSE OR ETHICAL  
17 MISCONDUCT; ALLOWING TERMINATION OF SCHOOL EMPLOYMENT OR SCHOOL  
18 VOLUNTEER POSITION DECISIONS TO BE PUBLIC; ADDING ETHICAL  
19 MISCONDUCT TO SCHOOL TRAINING PROGRAMS; REQUIRING SCHOOL  
20 VOLUNTEERS TO COMPLETE SCHOOL TRAINING PROGRAMS; REQUIRING  
21 REPORTS OF CHILD ABUSE BY SCHOOL PERSONNEL, SCHOOL VOLUNTEERS,  
22 CONTRACTORS OR CONTRACTOR'S EMPLOYEES TO BE REPORTED TO THE  
23 PUBLIC EDUCATION DEPARTMENT; REQUIRING CHILD ABUSE BY OTHER  
24 ADULTS, IN ADDITION TO CHILD ABUSE BY A PARENT, CUSTODIAN OR  
25 GUARDIAN TO BE REPORTED.

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

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 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 applicant in a position involving unsupervised contact with children. 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 as to whether the applicant:

(a) has been the subject of a child abuse or ethical misconduct investigation by any employer, law enforcement agency or other state agency or agencies and law enforcement agencies in other states, unless the investigation found allegations of child abuse or ethical misconduct were false or unsubstantiated;

(b) has ever been disciplined or separated from any employment due to a finding of child abuse

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1 or ethical misconduct or while allegations of child abuse or  
2 ethical misconduct were pending or under investigation; or

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

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

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

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

19 (2) a statement describing whether the  
20 applicant:

21 (a) has been the subject of a child  
22 abuse or ethical misconduct investigation by any employer, law  
23 enforcement agency or other state agency, unless the  
24 investigation found allegations of child abuse or ethical  
25 misconduct were false or unsubstantiated;

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1 (b) has ever been disciplined or  
2 separated from any employment due to a finding of child abuse  
3 or ethical misconduct or while allegations of child abuse or  
4 ethical misconduct were pending or under investigation; or

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

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

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

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

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

24 (2) obtain from an applicant's current or  
25 former out-of-state employer the information required under

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1 Subsection B of this section.

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

10 G. When requested to provide a reference on a  
11 former or current employee, an employer acting in good faith is  
12 immune from liability for comments about the former employee's  
13 job performance. The immunity shall not apply when the  
14 reference information supplied was knowingly false or  
15 deliberately misleading, was rendered with malicious purpose or  
16 violated any civil rights of the former employee.

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

22 I. For the purposes of this section:

23 (1) "child abuse" means a child:

24 (a) who has suffered or who is at risk  
25 of suffering serious harm because of the action or inaction of

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1 the child's parent, guardian, custodian or other adult;

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

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

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

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

15 (2) "ethical misconduct" means the following  
16 behavior or conduct by a school employee, school volunteer,  
17 contractor or contractor's employee:

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

23 (b) sexual misconduct or any sexual  
24 offense prohibited by Chapter 30, Article 9 or Chapter 30,  
25 Article 6A NMSA 1978 involving an adult or child, regardless of

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1 a child's enrollment status;

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

5 (d) any other behavior, including  
6 licentious, enticing or solicitous behavior, that is intended  
7 to result in inappropriate sexual contact with a child or  
8 student or to induce a child or student into engaging in  
9 illegal, immoral or other prohibited behavior; or

10 (e) any other behavior as prescribed by  
11 department rule;

12 (3) "unsupervised contact with children" means  
13 access to or contact with or the opportunity to have access to  
14 or contact with a child for any length of time in the absence  
15 of:

16 (a) a licensed staff person from the  
17 same school or institution;

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

20 (c) any adult relative or guardian of  
21 the child; and

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

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

3           "22-5-4.2. CHILD ABUSE--REPORT COORDINATION--  
4 CONFIRMATION.--

5           A. A local school board [~~may~~] shall adopt policies  
6 providing for the coordination and internal tracking of reports  
7 made by school district personnel, school volunteers,  
8 contractors and contractor's employees pursuant to Section  
9 [~~32-1-15~~] 32A-4-3 NMSA 1978. Such policies, however, shall not  
10 require any notification to school district personnel, school  
11 volunteers, contractors or contractor's employees before the  
12 report is made to [~~one of~~] the offices listed in Subsection A  
13 of [~~that~~] Section 32A-4-3 NMSA 1978. Such policies shall  
14 include measures to protect the identity of victims of abuse.  
15 No policy shall purport to relieve any person having a duty to  
16 report under [~~that~~] Section 32A-4-3 NMSA 1978 from that duty.

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

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1 subsection.

2 C. As used in this section:

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

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

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

15 "22-10A-2. DEFINITIONS.--As used in the School Personnel  
16 Act:

17 A. "constitutional special school" means the New  
18 Mexico military institute, New Mexico school for the deaf and  
19 New Mexico school for the blind and visually impaired;

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

25 [~~B.~~] C. "discharge" means the act of severing the

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1 employment relationship with a licensed school employee prior  
2 to the expiration of the current employment contract;

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

7 E. "ethical misconduct" means the following  
8 behavior or conduct by a school employee, school volunteer,  
9 contractor or contractor's employee:

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

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

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

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

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1 immoral or other prohibited behavior; or

2 (5) any other behavior as prescribed by  
3 department rule;

4 ~~[D.]~~ F. "governing authority" means the policy  
5 setting body of a school district, charter school,  
6 constitutional special school or regional education  
7 cooperative, or the final decision maker of another state  
8 agency;

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

16 ~~[F.]~~ H. "just cause" means a reason that is  
17 rationally related to a school employee's competence or  
18 turpitude or the proper performance of the school employee's  
19 duties and that is not in violation of the school employee's  
20 civil or constitutional rights;

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

24 ~~[G.]~~ J. "public school" means a school district,  
25 charter school, constitutional special school, regional

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1 education cooperative or the educational program of another  
2 state agency;

3           ~~[H.]~~ K. "responsibility factor" means a value of  
4 1.20 for an elementary school principal, 1.40 for a middle  
5 school or junior high school principal, 1.60 for a high school  
6 principal, 1.10 for an assistant elementary school principal,  
7 1.15 for an assistant middle school or assistant junior high  
8 school principal and 1.25 for an assistant high school  
9 principal;

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

15           ~~[J.]~~ M. "school administrator" means a person  
16 licensed to administer in a school district, charter school,  
17 constitutional special school or regional education cooperative  
18 or a person employed with another state agency who administers  
19 an educational program and includes local superintendents,  
20 school principals, central district administrators, business  
21 managers, charter school head administrators and state agency  
22 education supervisors;

23           ~~[K.]~~ N. "school employee" includes licensed and  
24 unlicensed employees of a public school;

25           ~~[L.]~~ O. "school premises" means:

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

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

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

14 Q. "sexual misconduct" means:

15 (1) any verbal, nonverbal, written or  
16 electronic communication or physical activity with or directed  
17 toward a child or student, regardless of the age of the child  
18 or student, that appears designed to establish a romantic  
19 relationship or sexual contact with the child or student. Such  
20 acts include sexual or romantic invitation; dating or  
21 soliciting dates; engaging in sexualized or romantic dialogue;  
22 making sexually suggestive comments; self-disclosure or  
23 physical exposure of a sexual, romantic or erotic nature;  
24 voyeurism; and any sexual, indecent, romantic or erotic contact  
25 with a child or student, including touching private body parts,

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1 such as breasts, buttocks, genitals, inner thighs, groin or  
2 anus; or

3 (2) any association with child pornography,  
4 whether criminally prosecuted or not, including viewing,  
5 displaying, procuring, selling, receiving electronically or  
6 otherwise, distributing, transferring, producing or replicating  
7 any pornographic images depicting or purporting to depict  
8 children and enticing or inducing any child to engage in any  
9 conduct with knowledge that such conduct will be used in  
10 pornographic materials;

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

13 ~~[N.]~~ S. "state institution" means the New Mexico  
14 boys' school, girls' welfare home, New Mexico youth diagnostic  
15 and development center, Sequoyah adolescent treatment center,  
16 Carrie Tingley crippled children's hospital, New Mexico  
17 behavioral health institute at Las Vegas and any other state  
18 agency responsible for educating resident children;

19 ~~[O.]~~ T. "substitute teacher" means a person who  
20 holds a certificate to substitute for a teacher in the  
21 classroom;

22 ~~[P.]~~ U. "superintendent" means a local  
23 superintendent, head administrator of a charter school or  
24 regional education cooperative, superintendent or commandant of  
25 a special school or head administrator of the educational

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1 program of a state agency;

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

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

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

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

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

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

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

23 SECTION 4. Section 22-10A-5 NMSA 1978 (being Laws 1997,  
24 Chapter 238, Section 1, as amended by Laws 2019, Chapter 209,  
25 Section 2 and by Laws 2019, Chapter 238, Section 3) is amended

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1 to read:

2 "22-10A-5. BACKGROUND CHECKS--KNOWN CONVICTIONS--ALLEGED  
3 ETHICAL MISCONDUCT--REPORTING REQUIRED--PENALTY FOR FAILURE TO  
4 REPORT.--

5 ~~[A. As used in this section, "ethical misconduct"~~  
6 ~~means unacceptable behavior or conduct engaged in by a school~~  
7 ~~employee, school volunteer, contractor or contractor's employee~~  
8 ~~and includes unlawful discriminatory practice; sexual~~  
9 ~~harassment, sexual assault or sexual abuse involving an adult~~  
10 ~~or child, regardless of a child's enrollment status; and~~  
11 ~~behavior intended to induce a child into engaging in illegal,~~  
12 ~~immoral or other prohibited behavior.~~

13 B.] A. An applicant for initial licensure shall be  
14 fingerprinted only upon initial licensure and shall provide two  
15 fingerprint cards or the equivalent electronic fingerprints to  
16 the department or superintendent to obtain the applicant's  
17 federal bureau of investigation record. Convictions of  
18 felonies or misdemeanors contained in the federal bureau of  
19 investigation record shall be used in accordance with the  
20 Criminal Offender Employment Act. Other information contained  
21 in the federal bureau of investigation record, if supported by  
22 independent evidence, may form the basis for the denial,  
23 suspension or revocation of a license for just cause. Records  
24 and related information shall be privileged and shall not be  
25 disclosed to a person not directly involved in the licensure or

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1 employment decisions affecting the specific applicant. The  
2 applicant for initial licensure shall pay for the cost of  
3 obtaining the federal bureau of investigation record.

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

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

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

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

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

14           ~~[H.]~~ G. A superintendent ~~[or the superintendent's~~  
15 ~~designated representative]~~ of a school district may appoint a  
16 designated representative to act on the superintendent's  
17 behalf. The superintendent or the designated representative  
18 shall investigate all allegations of ethical misconduct about  
19 any school employee who resigns, is being discharged or  
20 terminated or otherwise leaves employment after an allegation  
21 has been made. If the investigation results in a finding of  
22 ethical misconduct by a licensed school employee, the  
23 superintendent or the superintendent's designated  
24 representative shall report the identity of the licensed school  
25 employee and attendant circumstances of the ethical misconduct

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

17 [~~F.~~] H. Unless the department has commenced its own  
18 investigation of a licensed school employee prior to receipt of  
19 the form, the department shall serve the licensed school  
20 employee with a notice of investigation and a notice of  
21 contemplated action pursuant to the Uniform Licensing Act  
22 within sixty days of receipt of the form. [~~If a notice of~~  
23 ~~contemplated action is not served on the licensed school~~  
24 ~~employee within ninety days of receipt of the form, the form,~~  
25 ~~together with any documents related to the alleged ethical~~

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1 ~~misconduct, shall be expunged from the licensed school~~  
2 ~~employee's records.]~~

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

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

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

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

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

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

21 "22-10A-24. TERMINATION DECISIONS--LOCAL SCHOOL BOARD--  
22 GOVERNING AUTHORITY OF A STATE AGENCY--PROCEDURES.--

23 A. A local school board or governing authority of a  
24 state agency may terminate a licensed school employee,  
25 excluding licensed educational assistants who have not been

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1 offered and accepted the third consecutive contract, for any  
2 reason it deems sufficient. A local school board or governing  
3 authority of a state agency may terminate a nonlicensed school  
4 employee or a licensed educational assistant with less than one  
5 year of employment for any reason it deems sufficient. Upon  
6 request of the employee, the local superintendent or state  
7 agency administrator shall provide written reasons for the  
8 decision to terminate. The reasons shall be provided within  
9 ten working days of the request. ~~[The reasons shall not be~~  
10 ~~publicly disclosed by the local superintendent, state agency~~  
11 ~~administrator, local school board or governing authority]~~ The  
12 reasons shall not provide a basis for contesting the decision  
13 under the School Personnel Act.

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

18 C. A licensed school employee who has been employed  
19 by a school district or state agency for more than two  
20 consecutive years or a nonlicensed school employee or licensed  
21 educational assistant who has been employed for more than one  
22 year and who receives a notice of termination pursuant to  
23 either Section 22-10A-22 NMSA 1978 or this section may request  
24 an opportunity to make a statement to the local school board or  
25 governing authority on the decision to terminate the employee

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1 or assistant by submitting a written request to the local  
2 superintendent or state agency administrator within five  
3 working days from the date written notice of termination is  
4 served upon the employee or assistant. The employee or  
5 assistant may also request in writing the reasons for the  
6 termination action. The local superintendent or state agency  
7 administrator shall provide written reasons for the notice of  
8 termination to the employee or assistant within five working  
9 days from the date the written request for a meeting and the  
10 written request for the reasons were received by the local  
11 superintendent or state agency administrator. ~~[Neither the~~  
12 ~~local superintendent or state agency administrator nor the~~  
13 ~~local school board or governing authority shall publicly~~  
14 ~~disclose its reasons for termination.]~~

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

21 E. The employee's request pursuant to Subsection C  
22 of this section shall be granted if the employee responds to  
23 the local superintendent's or state agency administrator's  
24 written reasons as provided in Subsection C of this section by  
25 submitting in writing to the local superintendent or state

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1 agency administrator a contention that the decision to  
2 terminate was made without just cause. The written contention  
3 shall specify the grounds on which it is contended that the  
4 decision was without just cause and shall include a statement  
5 of the facts that the employee believes support the employee's  
6 contention. This written statement shall be submitted within  
7 ten working days from the date the employee receives the  
8 written reasons from the local superintendent or state agency  
9 administrator. The submission of this statement constitutes a  
10 representation on the part of the employee that the employee  
11 can support the employee's contentions and an acknowledgment  
12 that the local school board or governing authority may offer  
13 the causes for its decision and any relevant data in its  
14 possession in rebuttal of the employee's contentions.

15 F. A local school board or governing authority  
16 shall meet to hear the employee's statement in no less than  
17 five or more than fifteen working days after the local school  
18 board or governing authority receives the statement. The  
19 hearing shall be conducted informally in accordance with the  
20 provisions of the Open Meetings Act. The employee and the  
21 local superintendent or state agency administrator may each be  
22 accompanied by a person of the employee's and the local  
23 superintendent's or state agency administrator's choice.  
24 First, the local superintendent shall present the factual basis  
25 for the determination that just cause exists for the

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1 termination of the employee, limited to those reasons provided  
2 to the employee pursuant to Subsection C of this section.  
3 Then, the employee shall present the employee's contentions,  
4 limited to those grounds specified in Subsection E of this  
5 section. The local school board or governing authority may  
6 offer such rebuttal testimony as it deems relevant. All  
7 witnesses may be questioned by the local school board or  
8 governing authority, the employee or the employee's  
9 representative and the local superintendent or state agency  
10 administrator or the local superintendent's or state agency  
11 administrator's representative. The local school board or  
12 governing authority may consider only such evidence as is  
13 presented at the hearing and need consider only such evidence  
14 as it considers reliable. [~~No record shall be made of the~~  
15 ~~proceeding~~] The local school board or governing authority shall  
16 notify the employee and the local superintendent or state  
17 agency administrator of its decision in writing within five  
18 working days from the conclusion of the meeting."

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

21 "22-10A-25. APPEALS--INDEPENDENT ARBITRATOR--  
22 QUALIFICATIONS--PROCEDURE--BINDING DECISION.--

23 A. An employee who is still aggrieved by a decision  
24 of a local school board or governing authority rendered  
25 pursuant to Section [~~22-10-14~~] 22-10A-24 NMSA 1978 may appeal

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1 the decision to an arbitrator. A written appeal shall be  
2 submitted to the local superintendent or administrator within  
3 five working days from the receipt of the local school board's  
4 or governing authority's written decision or the refusal of the  
5 board or authority to grant a hearing. The appeal shall be  
6 accompanied by a statement of particulars specifying the  
7 grounds on which it is contended that the decision was  
8 impermissible pursuant to Subsection E of Section [~~22-10-14~~]  
9 22-10A-24 NMSA 1978 and including a statement of facts  
10 supporting the contentions. Failure of the employee to submit  
11 a timely appeal or a statement of particulars with the appeal  
12 shall disqualify [~~him~~] the employee for any appeal and render  
13 the local school board's or governing authority's decision  
14 final.

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

24 C. A qualified independent arbitrator shall be  
25 appointed who is versed in employment practices and school

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1 procedures and who preferably has experience in the practice of  
2 law. No person shall be appointed to serve as the independent  
3 arbitrator who has any direct or indirect financial interest in  
4 the outcome of the proceeding, has any relationship to any  
5 party in the proceeding, is employed by the local school board  
6 or governing authority or is a member of or employed by any  
7 professional or labor organization of which the employee is a  
8 member.

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

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

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

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

25 H. The independent arbitrator may issue subpoenas

1 for the attendance of witnesses and for the production of  
2 books, records, documents and other evidence and shall have the  
3 power to administer oaths. Subpoenas so issued shall be served  
4 and enforced in the manner provided by law for the service and  
5 enforcement of subpoenas in a civil action.

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

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

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

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

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

25           N. The sole remedies available under this section

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1 shall be reinstatement or payment of compensation reinstated in  
2 full but subject to any additional compensation allowed other  
3 employees of like qualifications and experience employed by the  
4 school district or state agency and including reimbursement for  
5 compensation during the entire period for which compensation  
6 was terminated, or both, less an offset for any compensation  
7 received by the employee during the period the compensation was  
8 terminated.

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

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

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

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

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

3 "22-10A-32. [~~LICENSED~~] SCHOOL EMPLOYEES, SCHOOL  
4 VOLUNTEERS, CONTRACTORS AND CONTRACTOR'S EMPLOYEES--REQUIRED  
5 TRAINING PROGRAM.--

6 A. All [~~licensed~~] school employees, school  
7 volunteers, contractors and contractor's employees shall be  
8 required to complete training in the detection and reporting of  
9 child abuse and neglect, including ethical misconduct,  
10 professional responsibilities, sexual abuse and assault, and  
11 substance abuse. Except as otherwise provided in this  
12 subsection, this requirement shall be completed within the  
13 [~~licensed~~] school employee's, school volunteer's, contractor's  
14 or contractor's employee's first year of employment [~~by a~~  
15 ~~school district. Licensed school employees hired prior to the~~  
16 ~~2014-2015 school year shall complete the sexual abuse and~~  
17 ~~assault component of the required training during the 2014-2015~~  
18 ~~school year].~~

19 B. The department shall develop [~~a~~] or adopt  
20 training [~~program~~] programs, including training materials and  
21 necessary training staff, to meet the [~~requirement~~]  
22 requirements of Subsection A of this section to make the  
23 training available in every [~~school district~~] public school.  
24 The department shall promulgate rules for the administration of  
25 the training programs. The department shall coordinate the

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

11 (1) reporting requirements, including minimal  
12 standards triggering reporting;

13 (2) trauma-informed instruction;

14 (3) identification of circumstances and  
15 factors that are indicators of likely abuse or inappropriate  
16 behaviors;

17 (4) ethical misconduct;

18 (5) professional responsibilities;

19 (6) investigations and procedures; and

20 (7) relevant legal and regulatory definitions.

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

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

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

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

- 18                           (1) a local law enforcement agency; and
- 19                           (2) the department; or
- 20                           (3) a tribal law enforcement or social
- 21 services agency for any Indian child residing in Indian
- 22 country.

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

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

20           ~~[C.]~~ D. The recipient of a report under Subsection  
21 A of this section shall take immediate steps to ensure prompt  
22 investigation of the report. The investigation shall ensure  
23 that immediate steps are taken to protect the health or welfare  
24 of the alleged abused or neglected child, as well as that of  
25 any other child under the same care who may be in danger of

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1 abuse or neglect. A local law enforcement officer trained in  
2 the investigation of child abuse and neglect is responsible for  
3 investigating reports of alleged child abuse or neglect at  
4 schools, daycare facilities or child care facilities.

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

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

21 ~~[E-]~~ G. A law enforcement agency or the department  
22 shall have access to any of the records pertaining to a child  
23 abuse or neglect case maintained by any of the persons  
24 enumerated in Subsection A of this section, except as otherwise  
25 provided in the Abuse and Neglect Act.

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1           [F.] H. A person who violates the provisions of  
2 Subsection A of this section is guilty of a misdemeanor and  
3 shall be sentenced pursuant to the provisions of Section  
4 31-19-1 NMSA 1978.

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

23           [G.] J. A finding that a pregnant woman is using or  
24 abusing drugs made pursuant to an interview, self-report,  
25 clinical observation or routine toxicology screen shall not

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1 alone form a sufficient basis to report child abuse or neglect  
2 to the department pursuant to Subsection A of this section. A  
3 volunteer, contractor or staff of a hospital or freestanding  
4 birthing center shall not make a report based solely on that  
5 finding and shall make a notification pursuant to Subsection  
6 [H] K of this section. Nothing in this subsection shall be  
7 construed to prevent a person from reporting to the department  
8 a reasonable suspicion that a child is an abused or neglected  
9 child based on other criteria as defined by Section 32A-4-2  
10 NMSA 1978, or a combination of criteria that includes a finding  
11 pursuant to this subsection.

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

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

17 (2) provide notification to the department.  
18 Notification by a health care provider pursuant to this  
19 paragraph shall not be construed as a report of child abuse or  
20 neglect.

21 [~~H.~~] L. As used in this section, "notification"  
22 means informing the department that a substance-exposed newborn  
23 was born and providing a copy of the plan of care that was  
24 created for the child; provided that notification shall comply  
25 with federal guidelines and shall not constitute a report of

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1 child abuse or neglect.

2 M. As used in this section:

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

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

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

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