

1 HOUSE BILL 193

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

3 INTRODUCED BY

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5 and Joy Garratt and Marian Matthews  
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10 AN ACT

11 RELATING TO PUBLIC EDUCATION; AMENDING THE PROCESS FOR REQUIRED  
12 CRIMINAL HISTORY RECORD CHECKS; REQUIRING CONFIDENTIALITY.  
13

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

15 SECTION 1. Section 22-10A-2 NMSA 1978 (being Laws 2019,  
16 Chapter 238, Section 1, as amended by Laws 2021, Chapter 92,  
17 Section 1 and by Laws 2021, Chapter 94, Section 4) is amended  
18 to read:

19 "22-10A-2. DEFINITIONS.--As used in the School Personnel  
20 Act:

21 A. "child abuse" means a child:

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

25 (2) who has suffered physical abuse, emotional

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1 abuse or psychological abuse inflicted or caused by the child's  
2 parent, guardian, custodian or other adult;

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

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

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

13 B. "constitutional special school" means the New  
14 Mexico military institute, New Mexico school for the deaf and  
15 New Mexico school for the blind and visually impaired;

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

21 D. "discharge" means the act of severing the  
22 employment relationship with a licensed school employee prior  
23 to the expiration of the current employment contract;

24 E. "employed for three consecutive school years"  
25 means a licensed school employee has been offered and accepted

1 in writing a notice of reemployment for the third consecutive  
2 school year;

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

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

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

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

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

23 G. "governing authority" means the policy-setting  
24 body of a school district, charter school, constitutional  
25 special school or regional education cooperative, or the final

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1 decision maker of ~~[another]~~ a state agency that provides  
2 educational services to a school-aged person;

3 H. "instructional support provider" means a person  
4 who is employed to support the instructional program of a  
5 public school, including educational assistant, school  
6 counselor, social worker, school nurse, speech-language  
7 pathologist, psychologist, physical therapist, occupational  
8 therapist, recreational therapist, marriage and family  
9 therapist, interpreter for the deaf and diagnostician;

10 I. "just cause" means a reason that is rationally  
11 related to a school employee's competence or turpitude or the  
12 proper performance of the school employee's duties and that is  
13 not in violation of the school employee's civil or  
14 constitutional rights;

15 J. "military service member" means a person who is:

16 (1) serving in the armed forces of the United  
17 States as an active duty member or in an active reserve  
18 component of the armed forces of the United States, including  
19 the national guard;

20 (2) the spouse of a person who is serving in  
21 the armed forces of the United States as an active duty member  
22 or in an active reserve component of the armed forces of the  
23 United States, including the national guard; or a surviving  
24 spouse of a member who at the time of death was serving on  
25 active duty; or

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1                   (3) the child of a person who is serving in  
2 the armed forces of the United States as an active duty member  
3 or in an active reserve component of the armed forces of the  
4 United States, including the national guard; provided that  
5 child is also a dependent of that person for federal income tax  
6 purposes;

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

10                  L. "public school" means a school district, charter  
11 school, constitutional special school, regional education  
12 cooperative or the educational program of another state agency;

13                  M. "responsibility factor" means a value of 1.20  
14 for an elementary school principal, 1.40 for a middle school or  
15 junior high school principal, 1.60 for a high school principal,  
16 1.10 for an assistant elementary school principal, 1.15 for an  
17 assistant middle school or assistant junior high school  
18 principal and 1.25 for an assistant high school principal;

19                  N. "sabbatical leave" means leave of absence with  
20 pay as approved by the governing authority during all or part  
21 of a regular school term for purposes of study or travel  
22 related to a licensed school employee's duties and of direct  
23 benefit to the instructional program;

24                  O. "school administrator" means a person licensed  
25 to administer in a school district, charter school,

1 constitutional special school or regional education cooperative  
2 or a person employed with another state agency who administers  
3 an educational program and includes local superintendents,  
4 school principals, central district administrators, business  
5 managers, charter school head administrators and state agency  
6 education supervisors;

7 P. "school employee" includes licensed and  
8 unlicensed employees of a public school;

9 Q. "school premises" means:

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

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

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

23 S. "state agency" means a regional education  
24 cooperative or state institution;

25 T. "state institution" means the New Mexico boys'

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1 school, girls' welfare home, New Mexico youth diagnostic and  
2 development center, Sequoyah adolescent treatment center,  
3 Carrie Tingley crippled children's hospital, New Mexico  
4 behavioral health institute at Las Vegas and any other state  
5 agency responsible for educating resident children;

6 U. "substitute teacher" means a person who holds a  
7 certificate to substitute for a teacher in the classroom;

8 V. "superintendent" means a local superintendent,  
9 head administrator of a charter school or regional education  
10 cooperative, superintendent or commandant of a special school  
11 or head administrator of the educational program of a state  
12 agency;

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

20 X. "terminate" means the act of severing the  
21 employment relationship with a school employee;

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

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

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

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

7 Z. "veteran" means a person who has received an  
8 honorable discharge or separation from military service in the  
9 armed forces of the United States or in an active reserve  
10 component of the armed forces of the United States, including  
11 the national guard; and

12 AA. "working day" means every school calendar day,  
13 excluding Saturdays, Sundays and legal holidays."

14 SECTION 2. Section 22-10A-3 NMSA 1978 (being Laws 2003,  
15 Chapter 153, Section 34, as amended) is amended to read:

16 "22-10A-3. LICENSE OR CERTIFICATE REQUIRED--APPLICATION  
17 FEE--GENERAL DUTIES.--

18 A. Except as otherwise provided in this subsection,  
19 any person teaching, supervising an instructional program or  
20 providing instructional support services in a public school;  
21 any person administering in a public school; and any person  
22 providing health care and administering medications or  
23 performing medical procedures in a public school shall hold a  
24 valid license or certificate from the department authorizing  
25 the person to perform that function. This subsection does not

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1 apply to a person performing the functions of a practice  
2 teacher or teaching intern as defined by the department. A  
3 person applying for a license or certificate from the  
4 department shall undergo a criminal history record check  
5 pursuant to Section 22-10A-5 NMSA 1978. The criminal history  
6 record check requirement shall apply to the following  
7 applicants:

8 (1) applicants for level one licensure  
9 pursuant to Section 22-10A-7 NMSA 1978;

10 (2) applicants for an alternative level one  
11 license pursuant to Section 22-10A-8 NMSA 1978;

12 (3) applicants for level two licensure  
13 pursuant to Section 22-10A-10 NMSA 1978;

14 (4) applicants for level three licensure  
15 pursuant to Section 22-10A-11 NMSA 1978;

16 (5) applicants for an alternative level two or  
17 level three license pursuant to Section 22-10A-11.1 NMSA 1978;

18 (6) applicants for alternative licensure  
19 pursuant to Section 22-10A-11.2 NMSA 1978;

20 (7) applicants for level three-B provisional  
21 licensure pursuant to Section 22-10A-11.3 NMSA 1978;

22 (8) applicants for level three-B  
23 administrator's licensure pursuant to Section 22-10A-11.4 NMSA  
24 1978;

25 (9) applicants for licenses granted on the

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1 basis of reciprocity pursuant to Section 22-10A-12 NMSA 1978;

2 (10) applicants for expedited licensure  
3 pursuant to Section 22-10A-12.1 NMSA 1978;

4 (11) applicants for Native American and  
5 culture certificates pursuant to Section 22-10A-13 NMSA 1978;

6 (12) applicants for substitute teacher  
7 certificates pursuant to Section 22-10A-15 NMSA 1978;

8 (13) applicants for instructional support  
9 provider certificates pursuant to Section 22-10A-17 NMSA 1978;

10 (14) applicants for educational assistant  
11 licensure pursuant to Section 22-10A-17.1 NMSA 1978; and

12 (15) applicants for alternative level three-B  
13 licensure pursuant to Section 22-10A-17.2 NMSA 1978.

14 B. In the event that the statutory section numbers  
15 referring to the licenses and certificates in Subsection A of  
16 this section are amended, the licensure and criminal history  
17 record check requirement shall remain in effect for the  
18 applicants. If the department determines that it is necessary  
19 to protect student safety, the department may require a federal  
20 bureau of investigation criminal history record check of a  
21 current licensee to analyze whether the department has good and  
22 just cause for suspension or revocation of a department-issued  
23 license. Applicants or current licensees shall pay the cost of  
24 obtaining a federal bureau of investigation criminal history  
25 record check.

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1           ~~[B.]~~ C. Except as provided in Subsection ~~[G]~~ D of  
2 this section, the department shall charge a reasonable fee for  
3 each application for or the renewal of a license or  
4 certificate. The application fee may be waived if the  
5 applicant meets a standard of indigency established by the  
6 department.

7           ~~[G.]~~ D. No licensing or certificate fee shall be  
8 charged for the first three years a license or certificate  
9 required by this section is valid if the licensee or  
10 certificate holder is a military service member or a veteran.

11           ~~[D.]~~ E. A person performing the duties of a  
12 licensed school employee who does not hold a valid license or  
13 certificate or has not submitted a complete application for  
14 licensure or certification within the first three months from  
15 beginning employment duties shall not be compensated thereafter  
16 for services rendered until the person demonstrates that the  
17 person holds a valid license or certificate. This section does  
18 not apply to practice teachers or teaching interns as defined  
19 by rules of the department.

20           ~~[E.]~~ F. Each licensed school employee shall:  
21                   (1) enforce all laws and rules applicable to  
22 the employee's public school;  
23                   (2) if teaching, teach the prescribed courses  
24 of instruction;  
25                   (3) exercise supervision over students on

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1 public school premises and while the students are under the  
2 control of the public school; and

3 (4) furnish reports as required."

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

6 "22-10A-5. [~~BACKGROUND CHECKS~~] CRIMINAL HISTORY RECORD  
7 CHECK--KNOWN CONVICTIONS--CONFIDENTIALITY--ALLEGED ETHICAL  
8 MISCONDUCT--REPORTING REQUIRED--PENALTY FOR FAILURE TO  
9 REPORT.--

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

24 A. To investigate the suitability of an applicant  
25 for licensure from the department, the department shall have

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1 access to criminal history record information furnished by the  
2 department of public safety and the federal bureau of  
3 investigation, subject to any restrictions imposed by federal  
4 law.

5 B. An applicant for licensure from the department  
6 shall undergo a state and federal criminal history record  
7 check, and the applicant shall submit two fingerprint cards or  
8 the equivalent electronic set of fingerprints to the department  
9 of public safety for that purpose. The department of public  
10 safety shall conduct a check of state records and forward the  
11 fingerprints to the federal bureau of investigation for a  
12 national criminal history record check to determine the  
13 existence and content of a record of convictions in this state  
14 or other law enforcement jurisdictions and to generate a  
15 criminal history record check in accordance with rules of the  
16 department of public safety and regulations of the federal  
17 bureau of investigation. The department of public safety shall  
18 review the information obtained from the criminal history  
19 record check and shall compile and provide that information to  
20 the department. The department shall use the information  
21 resulting from the fingerprint-based criminal history record  
22 check to inform department decisions relating to the issuance  
23 or continuation of licensure. The applicant for initial  
24 licensure shall pay for the cost of obtaining the [federal  
25 bureau of investigation record] criminal history record check.

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

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

20           ~~[D.]~~ E. Convictions of felonies or misdemeanors  
21 contained in the ~~[federal bureau of investigation record]~~  
22 criminal history record check shall be used in accordance with  
23 the Criminal Offender Employment Act; provided that other  
24 information contained in the ~~[federal bureau of investigation~~  
25 ~~record]~~ criminal history record check, if supported by

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1 independent evidence, may form the basis for the employment  
2 decisions for just cause. The department shall not exclude an  
3 otherwise qualified person from licensure on the sole basis  
4 that the person has been previously arrested or convicted of a  
5 crime, unless that person has a qualifying criminal conviction,  
6 pursuant to Section 61-1-36 NMSA 1978.

7 ~~[E.]~~ F. Records and related information shall be  
8 privileged and shall not be disclosed to a person not directly  
9 involved in the employment, volunteering or contracting  
10 decision affecting the specific applicant, school volunteer,  
11 contractor or contractor's employee who has been offered  
12 employment, a school volunteer position or a contract and will  
13 have unsupervised contact with children or students on school  
14 premises. Criminal history information received from the  
15 department of public safety or the federal bureau of  
16 investigation shall be confidential and shall not be considered  
17 a public record pursuant to the Inspection of Public Records  
18 Act. The department shall not authorize the receipt of  
19 criminal history information by a private entity pursuant to  
20 this section.

21 ~~[F.]~~ G. A superintendent shall report immediately  
22 to the department any known conviction of any felony or  
23 misdemeanor involving moral turpitude of school district  
24 personnel, a school employee, a school volunteer, a contractor  
25 or a contractor's employee.

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1           [~~G-~~] H. A superintendent may appoint a designated  
2 representative to act on the superintendent's behalf. The  
3 superintendent or the designated representative shall  
4 investigate all allegations of ethical misconduct about any  
5 school district personnel, school employee, school volunteer,  
6 contractor or contractor's employee who resigns, is being  
7 discharged or terminated or otherwise leaves employment after  
8 an allegation has been made. If the investigation results in a  
9 finding of ethical misconduct by a licensed school employee,  
10 the superintendent or the superintendent's designated  
11 representative shall report the identity of the licensed school  
12 employee and attendant circumstances of the ethical misconduct  
13 on a standardized form to the department and the licensed  
14 school employee within thirty days following the separation  
15 from employment or immediately if the finding of ethical  
16 misconduct is sexual misconduct with an adult or child. The  
17 superintendent or the superintendent's designated  
18 representative shall also report allegations of sexual assault  
19 or sexual abuse involving any school district personnel, school  
20 employee, school volunteer, contractor or a contractor's  
21 employee to the appropriate law enforcement agency. No  
22 agreement between a departing school employee and the governing  
23 authority or superintendent shall diminish or eliminate the  
24 responsibility of investigating and reporting the alleged  
25 ethical misconduct to the department or, if legally mandated,

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1 to law enforcement, and any such agreement to the contrary is  
2 void.

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

9 ~~[I.]~~ J. The department shall maintain a list of the  
10 names of persons reported to the department, as required by  
11 Subsection ~~[F]~~ G of this section, who have been convicted of a  
12 felony or misdemeanor involving moral turpitude and, as  
13 required by Subsection ~~[G]~~ H of this section and Section ~~[I of~~  
14 ~~this 2021 act]~~ 22-10A-5.1 NMSA 1978, who have been found to  
15 have committed ethical misconduct. The department shall update  
16 that list each month. The department shall provide that list  
17 to a governing authority upon request.

18 ~~[J.]~~ K. The secretary may initiate action to  
19 suspend, revoke or refuse to renew the license of:

20 (1) a superintendent who fails to report as  
21 required by Subsections ~~[F]~~ G and ~~[G]~~ H of this section or  
22 Section ~~[I of this 2021 act]~~ 22-10A-5.1 NMSA 1978;

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

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(3) any licensed school district personnel or school employee who fails to report ethical misconduct pursuant to Subsection [G] H of this section or Section [~~1 of this 2021 act~~] 22-10A-5.1 NMSA 1978.

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

**SECTION 4. EFFECTIVE DATE.**--The effective date of the provisions of this act is July 1, 2022.