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Risk Advisory
School Personnel Act Compliance

The Office of the State Auditor (OSA) has issued this Risk Advisory to alert school districts, schools and regional educational cooperatives of risks pertaining to non-compliance with the School Personnel Act. The OSA strongly advises management and administrators of these agencies to review their internal controls over implementation of the School Personnel Act to ensure compliance and to prevent fraud, waste and abuse.

The School Personnel Act, NMSA 1978, §§ 22-10A-1 et seq. (the "Act"), applies to teachers, school administrators, people who provide instructional support or supervision services, contractors, a contractor's employee with unsupervised access to students at a public school and school medical personnel. We refer to these groups collectively as "professionals." The Act applies to school districts, charter schools and regional educational cooperatives. We refer to these collectively as "agencies."

The Act covers two key safeguards: licensure and background checks. Every professional covered by the Act must hold a valid professional license or certificate. In addition, the professional must be fingerprinted and must undergo a background check in accordance with agency policies. The Act also stipulates reporting requirements of administrators of allegations of ethical misconduct and certain convictions and how this information should be maintained and disclosed. The Public Education Department has promulgated rules further detailing the requirements for fingerprinting and background checks. NMAC 6.60.8.1 et seq. The Act requires agencies to develop policies to implement these requirements.

School Personnel Act
in a nutshell

The School Personnel Act, NMSA 1978, §§ 22-10A-1 et seq., was enacted to protect the public and to ensure that those charged with educating our children possess the proper qualifications, personal fitness and a high level of qualifications. See *N.M State Bd. of Educ. V. Stoudt, 1977-NMSC-099*. The Act covers licensure and background check requirements for various personnel in the education system.

Risks

The most obvious risk arising from failures in the licensure and background check processes is the potential danger to students and fellow school personnel. However, inadequate vetting can also increase the risk of public funds being misused. In addition, a lack of qualifications poses the risk of incompetence. Furthermore, falsified qualifications or a prior record of fraud, embezzlement or similar crimes may suggest an increased likelihood that the individual will commit other acts of fraud. Prompt reporting by school administrators of criminal history and ethical misconduct is also key to enabling the Public Education Department to perform appropriate licensure oversight. Finally, the failure to properly confirm background and licensure can expose an agency and the state to the risk of litigation risk based on theories such as negligent hiring or supervision.

"Financial reporting plays a major role in fulfilling government's duty to be publicly accountable in a democratic society." – Governmental Accounting Standards Board, Concept Statement No. 1.

Internal Controls

A good system of background checks and licensure requires strong internal controls. A number of legal considerations limit the type of information that an employer may obtain or use in a hiring decision, including the Criminal Offender Employment Act, NMSA 1978, §§ 28-2-1 et seq. Employers may only use some information about an applicant after obtaining the candidate's consent. Accordingly, agencies should work closely with experienced legal counsel to develop licensure confirmation and background check policies and procedures that appropriately address these complex issues. The U.S. Equal Opportunity Commission also offers guidance to help employers.

The OSA has identified several questions that an agency may want to consider, in addition to existing procedures, when developing strong internal controls to prevent gaps in the School Personnel Act implementation process:

- Are multiple administrators confirming that background checks are occurring?
- Are administrators vetting applicants with the goal of ensuring public funds are safeguarded in addition to ensuring the safety and wellbeing of students and staff?
- Are licensure records subject to periodic, random internal review, in which the reviewer confirms the supporting documentation in addition to the licensure itself?
- In addition to official background checks, does the agency have a policy for conducting procedures to verify an applicant's background using public records, such as social media, internet searches and New Mexico court record searches?
- Has the agency provided copies of all licensure and background check policies and procedures to all personnel involved in the hiring process, and offered regular training on these matters?
- Does the agency offer technical assistance to personnel involved in the hiring process to help with questions or concerns as they arise?
- Are licensure and background check records maintained in personnel files in accordance with applicable policies and procedures and document retention schedules?
- Are there clear policies and procedures for reporting allegations of ethical misconduct and relevant criminal convictions to the Public Education Department's licensure bureau?