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SENATE BILL 143

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Cynthia Nava and Jimmie C. Hall

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOL PERSONNEL; AMENDING THE DEFINITION OF
"ETHICAL MISCONDUCT".

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

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

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

A. As used in this section, "ethical misconduct"
means financial malfeasance or misfeasance or other
unacceptable behavior or conduct engaged in by a licensed
school employee and includes inappropriate touching, sexual
harassment, discrimination and behavior intended to induce a
child into engaging in illegal, immoral or other prohibited

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1 behavior.

2 B. An applicant for initial licensure shall be
3 fingerprinted and shall provide two fingerprint cards or the
4 equivalent electronic fingerprints to the department to obtain
5 the applicant's federal bureau of investigation record.
6 Convictions of felonies or misdemeanors contained in the
7 federal bureau of investigation record shall be used in
8 accordance with the Criminal Offender Employment Act. Other
9 information contained in the federal bureau of investigation
10 record, if supported by independent evidence, may form the
11 basis for the denial, suspension or revocation of a license for
12 good and just cause. Records and related information shall be
13 privileged and shall not be disclosed to a person not directly
14 involved in the licensure or employment decisions affecting the
15 specific applicant. The applicant for initial licensure shall
16 pay for the cost of obtaining the federal bureau of
17 investigation record.

18 C. Local school boards and regional education
19 cooperatives shall develop policies and procedures to require
20 background checks on an applicant who has been offered
21 employment, a contractor or a contractor's employee with
22 unsupervised access to students at a public school.

23 D. An applicant for employment who has been
24 initially licensed within twenty-four months of applying for
25 employment with a local school board, regional education

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1 cooperative or a charter school shall not be required to submit
2 to another background check if the department has copies of the
3 applicant's federal bureau of investigation records on file.

4 An applicant who has been offered employment, a contractor or a
5 contractor's employee with unsupervised access to students at a
6 public school shall provide two fingerprint cards or the
7 equivalent electronic fingerprints to the local school board,
8 regional education cooperative or charter school to obtain the
9 applicant's federal bureau of investigation record. The
10 applicant, contractor or contractor's employee who has been
11 offered employment by a regional education cooperative or at a
12 public school may be required to pay for the cost of obtaining
13 a background check. At the request of a local school board,
14 regional education cooperative or charter school, the
15 department is authorized to release copies of federal bureau of
16 investigation records that are on file with the department and
17 that are not more than twenty-four months old. 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; provided that other
21 information contained in the federal bureau of investigation
22 record, if supported by independent evidence, may form the
23 basis for the employment decisions for good and just cause.
24 Records and related information shall be privileged and shall
25 not be disclosed to a person not directly involved in the

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1 employment decision affecting the specific applicant who has
2 been offered employment, contractor or contractor's employee
3 with unsupervised access to students at a public school.

4 E. A local superintendent, charter school
5 administrator or regional education cooperative shall report to
6 the department any known conviction of a felony or misdemeanor
7 involving moral turpitude of a licensed school employee that
8 results in any type of action against the licensed school
9 employee.

10 F. A local superintendent, charter school
11 administrator or director of a regional education cooperative
12 or their respective designees shall investigate all allegations
13 of ethical misconduct about any licensed school employee who
14 resigns, is being discharged or terminated or otherwise leaves
15 employment after an allegation has been made. If the
16 investigation results in a finding of wrongdoing, the local
17 superintendent, charter school administrator or director of a
18 regional education cooperative shall report the identity of the
19 licensed school employee and attendant circumstances of the
20 ethical misconduct on a standardized form to the department and
21 the licensed school employee within thirty days following the
22 separation from employment. Copies of that form shall not be
23 maintained in public school, school district or regional
24 education cooperative records. No agreement between a
25 departing licensed school employee and the local school board,

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1 school district, charter school or regional education
2 cooperative shall diminish or eliminate the responsibility of
3 investigating and reporting the alleged ethical misconduct, and
4 any such agreement to the contrary is void. Unless the
5 department has commenced its own investigation of the licensed
6 school employee prior to receipt of the form, the department
7 shall serve the licensed school employee with a notice of
8 contemplated action involving that employee's license within
9 ninety days of receipt of the form. If that notice of
10 contemplated action is not served on the licensed school
11 employee within ninety days of receipt of the form, the form,
12 together with any documents related to the alleged ethical
13 misconduct, shall be expunged from the licensed school
14 employee's records with the department and shall not be subject
15 to public inspection.

16 G. The secretary may suspend, revoke or refuse to
17 renew the license of a local superintendent, charter school
18 administrator or regional education cooperative director who
19 fails to report as required by Subsections E and F of this
20 section.

21 H. A person who in good faith reports as provided
22 in Subsections E and F of this section shall not be held liable
23 for civil damages as a result of the report. The person being
24 accused shall have the right to sue for any damages sustained
25 as a result of negligent or intentional reporting of inaccurate

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1 information or the disclosure of any information to an
2 unauthorized person."

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