

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR
HOUSE BILL 127

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

AN ACT

RELATING TO PUBLIC EDUCATION; AMENDING THE PUBLIC SCHOOL CODE
TO REQUIRE THAT ALL PUBLIC SCHOOL DISTRICT APPLICANTS FOR
EMPLOYMENT AND EMPLOYEES BE SUBJECT TO A FINGERPRINT-BASED
BACKGROUND CHECK.

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

SECTION 1. Section 22-10A-3 NMSA 1978 (being Laws 2003,
Chapter 153, Section 34) is amended to read:

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

A. Except as otherwise provided in this subsection,
any person teaching, supervising an instructional program or
providing instructional support services in a public school or
state agency; any person administering in a public school; and
any person providing health care and administering medications

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1 or performing medical procedures in a public school shall hold
2 a valid license or certificate from the department authorizing
3 the person to perform that function. This subsection does not
4 apply to a person performing the functions of a practice
5 teacher as defined by the ~~[state board]~~ department.

6 B. The ~~[state board]~~ department shall charge a
7 reasonable fee for each application for or the renewal of a
8 license or certificate. The application fee may be waived if
9 the applicant meets a standard of indigency established by the
10 department.

11 C. Pursuant to Section 22-10A-5 NMSA 1978, a person
12 performing the duties of a licensed school employee who does
13 not hold a valid license or certificate or has not submitted a
14 complete application for licensure or certification:

15 (1) shall not be hired without first having
16 completed a background check; and

17 (2) within the first three months from
18 beginning employment duties shall not be compensated thereafter
19 for services rendered until ~~[he]~~ the person demonstrates that
20 ~~[he]~~ the person holds a valid license or certificate. This
21 section does not apply to practice teachers as defined by rules
22 of the ~~[state board]~~ department.

23 D. Each licensed school employee shall:

24 (1) enforce all laws and rules applicable to
25 ~~[his]~~ the employee's public school and school district or to

1 the educational program of the state agency;

2 (2) if teaching, teach the prescribed courses
3 of instruction;

4 (3) exercise supervision over students on
5 property belonging to the public school or state agency and
6 while the students are under the control of the public school
7 or state agency; and

8 (4) furnish reports as required."

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

11 "22-10A-5. BACKGROUND CHECKS--KNOWN CONVICTIONS--ALLEGED
12 ETHICAL MISCONDUCT--REPORTING REQUIRED--LIMITED IMMUNITY--
13 PENALTY FOR FAILURE TO REPORT.--

14 A. As used in this section:

15 (1) "ethical misconduct" means unacceptable
16 behavior or conduct engaged in by a licensed school employee
17 and includes inappropriate touching, sexual harassment,
18 discrimination and behavior intended to induce a child into
19 engaging in illegal, immoral or other prohibited behavior; and

20 (2) "background check" means a department-
21 approved process that requires applicants and school district
22 employees to submit a complete set of fingerprints so that a
23 state and national criminal history background check may be
24 obtained. In all cases, the applicant's fingerprints shall be
25 submitted to the federal bureau of investigation to obtain the

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1 applicant's national criminal history background check.
2 Background checks shall be used in accordance with the Criminal
3 Offender Employment Act.

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

20 C. Local school boards, ~~and~~ regional education
21 cooperatives and governing bodies of charter schools shall
22 develop policies and procedures to require background checks on
23 an applicant who has been offered employment, a contractor or a
24 contractor's employee with unsupervised access to students at a
25 public school. All employees of public schools, regional

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1 education cooperatives and charter schools, regardless of the
2 employee's date of hire, shall have completed a fingerprint-
3 based background check before commencing or continuing
4 employment at a public school, regional education cooperative
5 or charter school.

6 D. An applicant for employment who has been
7 initially licensed within twenty-four months of applying for
8 employment with a local school board, regional education
9 cooperative or the governing body of a charter school shall not
10 be required to submit to another background check if the
11 department has copies of the applicant's federal bureau of
12 investigation records on file. An applicant who has been
13 offered employment, a contractor or a contractor's employee
14 with unsupervised access to students at a public school shall
15 provide two fingerprint cards or the equivalent electronic
16 fingerprints to the local school board, regional education
17 cooperative or governing body of a charter school to obtain the
18 applicant's federal bureau of investigation record. The
19 applicant, contractor or contractor's employee who has been
20 offered employment by a regional education cooperative or at a
21 public school may be required to pay for the cost of obtaining
22 a background check. At the request of a local school board,
23 regional education cooperative or governing body of a charter
24 school, the department is authorized to release copies of
25 federal bureau of investigation records that are on file with

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1 the department and that are not more than twenty-four months
2 old. Convictions of felonies or misdemeanors contained in the
3 federal bureau of investigation record shall be used in
4 accordance with the Criminal Offender Employment Act; provided
5 that other information contained in the federal bureau of
6 investigation record, if supported by independent evidence, may
7 form the basis for the employment decisions for good and just
8 cause. Records and related information shall be privileged and
9 shall not be disclosed to a person not directly involved in the
10 employment decision affecting the specific applicant who has
11 been offered employment, contractor or contractor's employee
12 with unsupervised access to students at a public school.

13 E. A local superintendent, charter school
14 administrator or director of a regional education cooperative
15 shall report to the department any known conviction of a felony
16 or misdemeanor involving moral turpitude of a licensed [~~school~~]
17 employee that results in any type of action against the
18 licensed [~~school~~] employee. All employees shall report to a
19 designated administrator of a school district or school, a
20 regional education cooperative or a charter school any known
21 conviction of a felony or misdemeanor involving moral turpitude
22 of a licensed employee that results in any type of action
23 against the licensed employee.

24 F. A local superintendent, charter school
25 administrator or director of a regional education cooperative

1 or their respective designees shall investigate all allegations
2 of ethical misconduct about any licensed [~~school~~] employee who
3 resigns, is being discharged or terminated or otherwise leaves
4 employment after an allegation has been made. If the
5 investigation results in a finding of wrongdoing, the local
6 superintendent, charter school administrator or director of a
7 regional education cooperative shall report the identity of the
8 licensed [~~school~~] employee and attendant circumstances of the
9 ethical misconduct on a standardized form to the department and
10 the licensed [~~school~~] employee within thirty days following the
11 separation from employment. Copies of that form shall not be
12 maintained in public school, school district or regional
13 education cooperative records. No agreement between a
14 departing licensed [~~school~~] employee and the local school
15 board, school district, charter school or regional education
16 cooperative shall diminish or eliminate the responsibility of
17 investigating and reporting the alleged ethical misconduct, and
18 any such agreement to the contrary is void. Unless the
19 department has commenced its own investigation of the licensed
20 [~~school~~] employee prior to receipt of the form, the department
21 shall serve the licensed [~~school~~] employee with a notice of
22 contemplated action involving that employee's license within
23 ninety days of receipt of the form. If that notice of
24 contemplated action is not served on the licensed [~~school~~]
25 employee within ninety days of receipt of the form, the form,

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1 together with any documents related to the alleged ethical
2 misconduct, shall be expunged from the licensed [~~school~~]
3 employee's records with the department and shall not be subject
4 to public inspection.

5 G. The secretary may suspend, revoke or refuse to
6 renew the license of a local superintendent, charter school
7 administrator or regional education cooperative director who
8 fails to report as required by Subsections E and F of this
9 section.

10 H. A person who in good faith reports as provided
11 in Subsections E and F of this section shall not be held liable
12 for civil damages as a result of the report. The person being
13 accused shall have the right to sue for any damages sustained
14 as a result of negligent or intentional reporting of inaccurate
15 information or the disclosure of any information to an
16 unauthorized person."

17 SECTION 3. Section 22-10A-8 NMSA 1978 (being Laws 2003,
18 Chapter 153, Section 39, as amended by Laws 2011, Chapter 36,
19 Section 1 and by Laws 2011, Chapter 95, Section 2) is amended
20 to read:

21 "22-10A-8. ALTERNATIVE LEVEL ONE LICENSE.--

22 A. The department shall issue an alternative level
23 one license to a person who is at least eighteen years of age
24 and who:

25 (1) has completed a baccalaureate degree at an

1 accredited institution of higher education and has received a
 2 passing score on a state-approved subject-area examination in
 3 the subject area of instruction for which the person is
 4 applying for a license; or

5 (2) has completed a master's degree at an
 6 accredited institution of higher education, including
 7 completion of a minimum of twelve graduate credit hours in the
 8 subject area of instruction for which the person is applying
 9 for a license; or

10 (3) has completed a doctoral or law degree at
 11 an accredited institution of higher education; and

12 (4) has passed the New Mexico teacher
 13 assessments examination, including for elementary licensure
 14 [~~beginning January 1, 2013~~], a rigorous assessment of the
 15 candidate's knowledge of the science of teaching reading; [~~and~~]

16 (5) meets other requirements for an
 17 alternative level one license, including a fingerprint-based
 18 background check pursuant to the provisions of Section 22-10A-5
 19 NMSA 1978; and

20 [~~(5)~~] (6) within two years of beginning
 21 teaching, completes a minimum of twelve semester hours of
 22 instruction in teaching principles in a program approved by the
 23 department; or

24 [~~(6) demonstrated~~] (7) demonstrates to the
 25 department, in conjunction with the school district or state

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1 agency, that the person has met the department-approved
2 competencies for level one teachers that correspond to the
3 grade level that will be taught.

4 B. A degree or examination referred to in
5 Subsection A of this section shall correspond to the subject
6 area of instruction and the particular grade level that will
7 enable the applicant to teach in a competent manner as
8 determined by the department.

9 C. An alternative level one teacher shall
10 participate in the same mentorship, evaluation and other
11 professional development requirements as other level one
12 teachers.

13 D. A school district or state agency shall not
14 discriminate against a teacher on the basis that the teacher
15 holds an alternative level one license.

16 E. The department shall provide by rule for
17 training and other requirements to support the use of
18 unlicensed content area experts as resources in classrooms,
19 team teaching, [~~on-line~~] online instruction, curriculum
20 development and other purposes."

21 SECTION 4. Section 22-10A-11.2 NMSA 1978 (being Laws
22 2009, Chapter 10, Section 1) is amended to read:

23 "22-10A-11.2. DEAF AND HARD-OF-HEARING TEACHERS--
24 ALTERNATIVE LICENSURE ASSESSMENT--SAVING PROVISION.--

25 A. A person who has a degree from an accredited

1 teacher education program, ~~and~~ who is deaf or hard of hearing
2 and who has submitted to a fingerprint-based background check
3 pursuant to the provisions of Section 22-10A-5 NMSA 1978 may
4 elect to demonstrate competency for a level one, two or three
5 license through a portfolio assessment in lieu of all or part
6 of the New Mexico teacher assessment. A person who is deaf or
7 hard of hearing may apply for a lower level of licensure if the
8 person's portfolio assessment does not qualify the person for a
9 higher level. The department shall promulgate rules on the
10 requirements for the portfolio assessment and for who is
11 eligible for licensure pursuant to this section. The
12 department shall provide a process for portfolio review that
13 includes the designation of a review committee consisting of:

- 14 (1) a teacher of deaf and hard-of-hearing
15 students;
- 16 (2) a sign language interpreter;
- 17 (3) a school administrator from the New Mexico
18 school for the deaf;
- 19 (4) the parent of a deaf or hard-of-hearing
20 student;
- 21 (5) a deaf or hard-of-hearing teacher, if one
22 is available; and
- 23 (6) other appropriate persons as determined by
24 the department.

25 B. Until the rules have been effective for a period

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1 deemed sufficient by the department for a deaf or hard-of-
2 hearing person to submit a portfolio, any eligible deaf or
3 hard-of-hearing person who has a degree from an accredited
4 teacher education program shall be granted a temporary teaching
5 license for the level of licensure for which the person will
6 likely qualify when the person's portfolio is submitted to the
7 department. The temporary teaching license shall be effective
8 for no longer than two school years."

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