

SENATE BILL 234

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

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Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO SCHOOL PERSONNEL; REQUIRING THAT ALL SCHOOL DISTRICT, CHARTER SCHOOL OR REGIONAL EDUCATION COOPERATIVE APPLICANTS FOR EMPLOYMENT AND OTHER PERSONS ALLOWED UNSUPERVISED ACCESS TO STUDENTS BE SUBJECT TO A FINGERPRINT-BASED BACKGROUND CHECK SEC→; **MAKING AN APPROPRIATION**←SEC.

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

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

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

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

(1) shall not be hired without first having completed a background check prior to entering the system; and

(2) within the first three months from beginning employment duties shall not be compensated thereafter for services rendered until [he] the person demonstrates that

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[he] the person holds a valid license or certificate. This section does not apply to practice teachers as defined by rules of the [~~state board~~] department.

D. Each licensed school employee shall:

(1) enforce all laws and rules applicable to [his] the school employee's public school and school district or to the educational program of the state agency;

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

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

(4) furnish reports as required."

SECTION 2. 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:

(1) "ethical misconduct" means 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 behavior; and

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

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

C. Local school boards, governing bodies of charter

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schools and regional education cooperatives shall develop policies and procedures to require background checks on an applicant who has been offered employment or a contractor or a contractor's employee with unsupervised access to students at a public school. All school employees or other persons allowed unsupervised access to public school students shall have a completed fingerprint-based background check on file with the school district, charter school or regional education cooperative before commencing or continuing employment.

D. An applicant for employment who has been initially licensed within twenty-four months of applying for employment with a [~~local~~] school [~~board~~] district, charter school or regional education cooperative [~~or a charter school~~] shall not be required to submit to another background check if the department has copies of the applicant's federal bureau of investigation records on file. An applicant who has been offered employment or a contractor or a contractor's employee with unsupervised access to public school students [~~at a public school~~] shall provide two fingerprint cards or the equivalent electronic fingerprints to the [~~local~~] school [~~board~~] district, charter school or regional education cooperative [~~or charter school~~] to obtain the applicant's federal bureau of investigation record. The applicant or a contractor or contractor's employee who has been offered employment by a [~~regional education cooperative or at a~~] public school or a

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regional education cooperative may be required to pay for the cost of obtaining a background check. At the request of a [~~local~~] school [~~board~~] district, charter school or regional education cooperative [~~or charter school~~], the department is authorized to release copies of federal bureau of investigation records that are on file with the department and that are not more than twenty-four months old. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act; provided that other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the employment decisions for good and just cause. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the employment decision affecting the specific applicant who has been offered employment or a contractor or contractor's employee with unsupervised access to students at a public school.

E. A local superintendent, charter school administrator or director of a regional education cooperative shall report to the department any known conviction of a felony or misdemeanor involving moral turpitude of a licensed school employee that results in any type of action against the licensed school employee. A licensed school employee who has been convicted of a felony or a misdemeanor involving moral

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turpitude shall report the conviction to a designated administrator of a school district, a school, a regional education cooperative or a charter school.

F. A local superintendent, charter school administrator or director of a regional education cooperative or their respective designees shall investigate all allegations of ethical misconduct about any licensed school employee who resigns, is being discharged or terminated or otherwise leaves employment after an allegation has been made. If the investigation results in a finding of wrongdoing, the local superintendent, charter school administrator or director of a regional education cooperative shall report the identity of the licensed school employee and attendant circumstances of the ethical misconduct on a standardized form to the department and the licensed school employee within thirty days following the separation from employment. Copies of that form shall not be maintained in public school, school district or regional education cooperative records. No agreement between a departing licensed school employee and the [~~local school board~~] school district, charter school or regional education cooperative shall diminish or eliminate the responsibility of investigating and reporting the alleged ethical misconduct, and any such agreement to the contrary is void. Unless the department has commenced its own investigation of the licensed school employee prior to receipt of the form, the department

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shall serve the licensed school employee with a notice of contemplated action involving that employee's license within ninety days of receipt of the form. If that notice of contemplated action is not served on the licensed school employee within ninety days of receipt of the form, the form, together with any documents related to the alleged ethical misconduct, shall be expunged from the licensed school employee's records with the department and shall not be subject to public inspection.

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

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

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

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

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

(1) has completed a baccalaureate degree at an accredited institution of higher education and has received a passing score on a state-approved subject-area examination in the subject area of instruction for which the person is applying for a license; or

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

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

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

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

[~~(5)~~] (6) within two years of beginning

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teaching, completes a minimum of twelve semester hours of instruction in teaching principles in a program approved by the department; or

[~~(6) demonstrated~~] (7) demonstrates to the department, in conjunction with the school district or state agency, that the person has met the department-approved competencies for level one teachers that correspond to the grade level that will be taught.

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

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

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

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

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

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

A. A person who has a degree from an accredited teacher education program, and who is deaf or hard of hearing may elect to demonstrate competency for a level one, two or three license through a portfolio assessment in lieu of all or part of the New Mexico teacher assessment. A person who is deaf or hard of hearing may apply for a lower level of licensure if the person's portfolio assessment does not qualify the person for a higher level. The department shall promulgate rules on the requirements for the portfolio assessment and for who is eligible for licensure pursuant to this section. The department shall provide a process for portfolio review that includes the designation of a review committee consisting of:

- (1) a teacher of deaf and hard-of-hearing students;
- (2) a sign language interpreter;
- (3) a school administrator from the New Mexico school for the deaf;
- (4) the parent of a deaf or hard-of-hearing student;
- (5) a deaf or hard-of-hearing teacher, if one is available; and

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(6) other appropriate persons as determined by the department.

B. Until the rules have been effective for a period deemed sufficient by the department for a deaf or hard-of-hearing person to submit a portfolio, any eligible deaf or hard-of-hearing person who has a degree from an accredited teacher education program shall be granted a temporary teaching license for the level of licensure for which the person will likely qualify when the person's portfolio is submitted to the department. The temporary teaching license shall be effective for no longer than two school years. The temporary teaching license shall be issued in conformance with Section 22-10A-5 NMSA 1978."

SEC→SECTION 5. APPROPRIATION.--Fifty thousand dollars (\$50,000) is appropriated from the general fund to the public education department for expenditure in fiscal year 2019 to administer fingerprint-based background checks for employees of school districts, charter schools and regional education cooperatives who were employed by and who have been continuously employed in a school district, charter school or regional education cooperative since 1997. Any unexpended or unencumbered balance remaining at the end of fiscal year 2019 shall revert to the general fund.←SEC