

1 SENATE BILL 234

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO SCHOOL PERSONNEL; REQUIRING THAT ALL SCHOOL
12 DISTRICT, CHARTER SCHOOL OR REGIONAL EDUCATION COOPERATIVE
13 APPLICANTS FOR EMPLOYMENT AND OTHER PERSONS ALLOWED
14 UNSUPERVISED ACCESS TO STUDENTS BE SUBJECT TO A FINGERPRINT-
15 BASED BACKGROUND CHECK.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

20 "22-10A-3. LICENSE OR CERTIFICATE REQUIRED--APPLICATION
21 FEE--GENERAL DUTIES.--

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

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

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

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

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

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

24 D. Each licensed school employee shall:

25 (1) enforce all laws and rules applicable to

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1 [his] the school employee's public school and school district
2 or to the educational program of the state agency;

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

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

9 (4) furnish reports as required."

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

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

15 A. As used in this section:

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

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

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1 shall be submitted to the federal bureau of investigation to
2 obtain the applicant's or school employee's national criminal
3 history background check.

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

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1 unsupervised access to public school students shall have a
2 completed fingerprint-based background check on file with the
3 school district, charter school or regional education
4 cooperative before commencing or continuing employment.

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

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

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

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

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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 board]~~
15 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

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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

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

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

23 B. Until the rules have been effective for a period
24 deemed sufficient by the department for a deaf or hard-of-
25 hearing person to submit a portfolio, any eligible deaf or

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1 hard-of-hearing person who has a degree from an accredited
2 teacher education program shall be granted a temporary teaching
3 license for the level of licensure for which the person will
4 likely qualify when the person's portfolio is submitted to the
5 department. The temporary teaching license shall be effective
6 for no longer than two school years. The temporary teaching
7 license shall be issued in conformance with Section 22-10A-5
8 NMSA 1978."

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