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AN ACT

RELATING TO PUBLIC SCHOOL PERSONNEL; CLARIFYING TERMS AND PROVISIONS OF THE SCHOOL PERSONNEL ACT CONCERNING DISCHARGE OF LICENSED AND UNLICENSED SCHOOL EMPLOYEES IN PUBLIC SCHOOLS, SPECIAL SCHOOLS, REGIONAL EDUCATION COOPERATIVES AND OTHER STATE AGENCIES THAT EDUCATE RESIDENT SCHOOL-AGE CHILDREN.

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

SECTION 1. Section 22-10A-2 NMSA 1978 (being Laws 1975, Chapter 306, Section 2, as amended) is repealed and a new Section 22-10A-2 NMSA 1978 is enacted to read:

"22-10A-2. DEFINITIONS.--As used in the School Personnel Act:

A. "constitutional special school" means the New Mexico military institute, New Mexico school for the deaf and New Mexico school for the blind and visually impaired;

B. "discharge" means the act of severing the employment relationship with a licensed school employee prior to the expiration of the current employment contract;

C. "employed for three consecutive school years" means a licensed school employee has been offered and accepted in writing a notice of reemployment for the third consecutive school year;

D. "governing authority" means the policy setting

1 body of a school district, charter school, constitutional
2 special school or regional education cooperative, or the
3 final decision maker of another state agency;

4 E. "instructional support provider" means a person
5 who is employed to support the instructional program of a
6 public school, including educational assistant, school
7 counselor, social worker, school nurse, speech-language
8 pathologist, psychologist, physical therapist, occupational
9 therapist, recreational therapist, marriage and family
10 therapist, interpreter for the deaf and diagnostician;

11 F. "just cause" means a reason that is rationally
12 related to a school employee's competence or turpitude or the
13 proper performance of the school employee's duties and that
14 is not in violation of the school employee's civil or
15 constitutional rights;

16 G. "public school" means a school district,
17 charter school, constitutional special school, regional
18 education cooperative or the educational program of another
19 state agency;

20 H. "responsibility factor" means a value of 1.20
21 for an elementary school principal, 1.40 for a middle school
22 or junior high school principal, 1.60 for a high school
23 principal, 1.10 for an assistant elementary school principal,
24 1.15 for an assistant middle school or assistant junior high
25 school principal and 1.25 for an assistant high school

1 principal;

2 I. "sabbatical leave" means leave of absence with
3 pay as approved by the governing authority during all or part
4 of a regular school term for purposes of study or travel
5 related to a licensed school employee's duties and of direct
6 benefit to the instructional program;

7 J. "school administrator" means a person licensed
8 to administer in a school district, charter school,
9 constitutional special school or regional education
10 cooperative or a person employed with another state agency
11 who administers an educational program and includes local
12 superintendents, school principals, central district
13 administrators, business managers, charter school head
14 administrators and state agency education supervisors;

15 K. "school employee" includes licensed and
16 unlicensed employees of a public school;

17 L. "school premises" means:

18 (1) the buildings and grounds, including
19 playgrounds, playing fields and parking areas and a school
20 bus of a public school, in or on which school or school-
21 related activities are being operated under the supervision
22 of a local school board, charter school or state agency; or

23 (2) any other public buildings or grounds,
24 including playing fields and parking areas that are not
25 public school property, in or on which public school-related

1 and -sanctioned activities are being performed;

2 M. "state agency" means a regional education
3 cooperative or state institution;

4 N. "state institution" means the New Mexico boys'
5 school, girls' welfare home, New Mexico youth diagnostic and
6 development center, Sequoyah adolescent treatment center,
7 Carrie Tingley crippled children's hospital, New Mexico
8 behavioral health institute at Las Vegas and any other state
9 agency responsible for educating resident children;

10 O. "substitute teacher" means a person who holds a
11 certificate to substitute for a teacher in the classroom;

12 P. "superintendent" means a local superintendent,
13 head administrator of a charter school or regional education
14 cooperative, superintendent or commandant of a special school
15 or head administrator of the educational program of a state
16 agency;

17 Q. "teacher" means a person who holds a level one,
18 level two or level three-A license and whose primary job is
19 classroom instruction or the supervision, below the school
20 principal level, of an instructional program or whose duties
21 include curriculum development, peer intervention, peer
22 coaching or mentoring or serving as a resource teacher for
23 other teachers;

24 R. "terminate" means the act of severing the
25 employment relationship with a school employee; and

1 S. "working day" means every school calendar day,
2 excluding Saturdays, Sundays and legal holidays."

3 **SECTION 2.** Section 22-10A-3 NMSA 1978 (being Laws 2003,
4 Chapter 153, Section 34) is amended to read:

5 "22-10A-3. LICENSE OR CERTIFICATE REQUIRED--APPLICATION
6 FEE--GENERAL DUTIES.--

7 A. Except as otherwise provided in this
8 subsection, any person teaching, supervising an instructional
9 program or providing instructional support services in a
10 public school; any person administering in a public school;
11 and any person providing health care and administering
12 medications or performing medical procedures in a public
13 school shall hold a valid license or certificate from the
14 department authorizing the person to perform that function.
15 This subsection does not apply to a person performing the
16 functions of a practice teacher or teaching intern as defined
17 by the department.

18 B. The department shall charge a reasonable fee
19 for each application for or the renewal of a license or
20 certificate. The application fee may be waived if the
21 applicant meets a standard of indigency established by the
22 department.

23 C. A person performing the duties of a licensed
24 school employee who does not hold a valid license or
25 certificate or has not submitted a complete application for

1 licensure or certification within the first three months from
2 beginning employment duties shall not be compensated
3 thereafter for services rendered until the person
4 demonstrates that the person holds a valid license or
5 certificate. This section does not apply to practice
6 teachers or teaching interns as defined by rules of the
7 department.

8 D. Each licensed school employee shall:

9 (1) enforce all laws and rules applicable to
10 the employee's public school;

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

13 (3) exercise supervision over students on
14 public school premises and while the students are under the
15 control of the public school; and

16 (4) furnish reports as required."

17 SECTION 3. Section 22-10A-5 NMSA 1978 (being Laws 1997,
18 Chapter 238, Section 1, as amended) is amended to read:

19 "22-10A-5. BACKGROUND CHECKS--KNOWN
20 CONVICTIONS--ALLEGED ETHICAL MISCONDUCT--REPORTING
21 REQUIRED--LIMITED IMMUNITY--PENALTY FOR FAILURE TO REPORT.--

22 A. As used in this section, "ethical misconduct"
23 means unacceptable behavior or conduct engaged in by a school
24 employee, school volunteer, contractor or contractor's
25 employee and includes unlawful discriminatory practice;

1 sexual harassment, sexual assault or sexual abuse involving
2 an adult or child, regardless of a child's enrollment status;
3 and behavior intended to induce a child into engaging in
4 illegal, immoral or other prohibited behavior.

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

21 C. Governing authorities shall develop policies
22 and procedures to require background checks on an applicant
23 who has been offered employment or who applies to be a
24 volunteer or works for the public school as a contractor or a
25 contractor's employee and who may have unsupervised access to

1 students on school premises.

2 D. An applicant who has been offered employment or
3 a school volunteer, contractor or contractor's employee shall
4 provide two fingerprint cards or the equivalent electronic
5 fingerprints to the superintendent to obtain the applicant's,
6 school volunteer's, contractor's or contractor's employee's
7 federal bureau of investigation record. The public school
8 shall pay for an applicant's background check. A school
9 volunteer, contractor or contractor's employee may be
10 required to pay for the cost of obtaining a background check.

11 E. Convictions of felonies or misdemeanors
12 contained in the federal bureau of investigation record shall
13 be used in accordance with the Criminal Offender Employment
14 Act; provided that other information contained in the federal
15 bureau of investigation record, if supported by independent
16 evidence, may form the basis for the employment decisions for
17 just cause.

18 F. Records and related information shall be
19 privileged and shall not be disclosed to a person not
20 directly involved in the employment, volunteering or
21 contracting decision affecting the specific applicant,
22 volunteer, contractor or contractor's employee who has been
23 offered employment, a volunteer position or a contract and
24 will have unsupervised access to students on school premises.

25 G. A superintendent shall report to the department

1 any known conviction of a felony or misdemeanor involving
2 moral turpitude of a licensed school employee that results in
3 any type of action against the licensed school employee.

4 H. A superintendent or the superintendent's
5 designated representative shall investigate all allegations
6 of ethical misconduct about any school employee who resigns,
7 is being discharged or terminated or otherwise leaves
8 employment after an allegation has been made. If the
9 investigation results in a finding of ethical misconduct by a
10 licensed school employee, the superintendent shall report the
11 identity of the licensed school employee and attendant
12 circumstances of the ethical misconduct on a standardized
13 form to the department and the licensed school employee
14 within thirty days following the separation from employment
15 or immediately if knowledge of the ethical misconduct is
16 sexual harassment or sexual abuse of an adult or child.
17 Copies of that form shall not be maintained in the school
18 employee's personnel file. The superintendent shall also
19 report allegations of sexual assault or sexual abuse
20 involving any school employee, volunteer, contractor or a
21 contractor's employee to the appropriate law enforcement
22 agency. No agreement between a departing school employee and
23 the governing authority or superintendent shall diminish or
24 eliminate the responsibility of investigating and reporting
25 the alleged ethical misconduct to the department or, if

1 legally mandated, to law enforcement, and any such agreement
2 to the contrary is void.

3 I. Unless the department has commenced its own
4 investigation of a licensed school employee prior to receipt
5 of the form, the department shall serve the licensed school
6 employee with a notice of investigation and a notice of
7 contemplated action pursuant to the Uniform Licensing Act
8 within sixty days of receipt of the form. If a notice of
9 contemplated action is not served on the licensed school
10 employee within ninety days of receipt of the form, the form,
11 together with any documents related to the alleged ethical
12 misconduct, shall be expunged from the licensed school
13 employee's records.

14 J. The secretary may initiate action to suspend,
15 revoke or refuse to renew the license of a superintendent who
16 fails to report as required by Subsections G and H of this
17 section.

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

25 **SECTION 4.** Section 22-10A-21 NMSA 1978 (being Laws

1 1967, Chapter 16, Section 113, as amended) is amended to
2 read:

3 "22-10A-21. LICENSED SCHOOL EMPLOYEES--EMPLOYMENT
4 CONTRACTS--DURATION.--

5 A. All employment contracts between
6 superintendents and licensed school employees shall be in
7 writing on forms approved by the department. These forms
8 shall contain and specify the term of service, the salary to
9 be paid, the method of payment, the causes for discharge
10 during the term of the contract and other provisions required
11 by the rules of the department.

12 B. All employment contracts between
13 superintendents and licensed school employees shall be for a
14 period of one school year except:

15 (1) contracts for less than one school year
16 are permitted to fill personnel vacancies that occur during
17 the school year;

18 (2) contracts for the remainder of a school
19 year are permitted to staff programs when the availability of
20 funds for the programs is not known until after the beginning
21 of the school year;

22 (3) contracts for less than one school year
23 are permitted to staff summer school programs and to staff
24 federally funded programs in which the federally approved
25 programs are specified to be conducted for less than one

1 school year;

2 (4) contracts not to exceed three years are
3 allowed at the discretion of the governing authority for
4 superintendents; and

5 (5) contracts not to exceed three years are
6 allowed at the discretion of the governing authority for
7 licensed school employees in public schools who have been
8 employed for three consecutive school years.

9 C. Persons employed under contracts for periods of
10 less than one school year as provided in Paragraphs (1) and
11 (2) of Subsection B of this section shall be accorded all the
12 duties, rights and privileges of the School Personnel Act.

13 D. In determination of eligibility for
14 unemployment compensation rights and benefits for licensed
15 school employees where those rights and benefits are claimed
16 to arise from the employment relationship between governing
17 authorities and licensed school employees, that period of a
18 year not covered by a school year shall not be considered an
19 unemployment period.

20 E. Except as provided in Section 22-10A-22 NMSA
21 1978, a licensed school employee employed by contract
22 pursuant to this section has no legitimate objective
23 expectancy of reemployment, and no contract entered into
24 pursuant to this section shall be construed as an implied
25 promise of continued employment pursuant to a subsequent

1 contract."

2 SECTION 5. Section 22-10A-22 NMSA 1978 (being Laws
3 1967, Chapter 16, Section 114, as amended) is amended to
4 read:

5 "22-10A-22. LICENSED SCHOOL EMPLOYEES--NOTICE OF
6 REEMPLOYMENT--TERMINATION.--On or before fifteen working days
7 prior to the last day of the school year, the superintendent
8 shall serve written notice of reemployment or termination on
9 each licensed school employee employed by the public school.
10 A notice of reemployment shall be an offer of employment for
11 the ensuing school year. A notice of termination shall be a
12 notice of intention not to reemploy for the ensuing school
13 year. Failure of the superintendent to serve a written
14 notice of reemployment or termination on a licensed school
15 employee shall be construed to mean that notice of
16 reemployment has been served upon the licensed school
17 employee for the ensuing school year according to the terms
18 of the existing employment contract but subject to any
19 additional compensation allowed other licensed school
20 employees of like qualifications and experience. Nothing in
21 this section shall be construed to mean that failure of a
22 superintendent to serve a written notice of reemployment or
23 termination shall automatically extend a licensed school
24 employee's employment contract for a period in excess of one
25 school year."

1 **SECTION 6.** Section 22-10A-23 NMSA 1978 (being Laws
2 1967, Chapter 16, Section 115, as amended) is amended to
3 read:

4 "22-10A-23. LICENSED SCHOOL EMPLOYEES--REEMPLOYMENT--
5 ACCEPTANCE--REJECTION--BINDING CONTRACT.--

6 A. Each licensed school employee shall deliver to
7 the superintendent a written acceptance or rejection of
8 reemployment for the ensuing school year within fifteen days
9 from the following:

10 (1) the date written notice of reemployment
11 is served upon the licensed school employee; or

12 (2) the last day of the school year when no
13 written notice of reemployment or termination is served upon
14 the licensed school employee on or before fifteen working
15 days prior to the last day of the school year.

16 B. Delivery of the written acceptance of
17 reemployment by a licensed school employee creates a binding
18 employment contract between the licensed school employee and
19 the superintendent until the parties enter into a formal
20 written employment contract. Written employment contracts
21 between the superintendent and licensed school employees
22 shall be executed by the parties not later than ten days
23 before the first day of a school year."

24 **SECTION 7.** Section 22-10A-26 NMSA 1978 (being Laws
25 1967, Chapter 16, Section 118, as amended) is amended to

1 read:

2 "22-10A-26. EXCEPTED FROM PROVISIONS.--Sections
3 22-10A-22 through 22-10A-25 NMSA 1978 do not apply to the
4 following:

5 A. a licensed school employee employed to fill the
6 position of a licensed school employee entering military
7 service;

8 B. a licensed school administrator who is employed
9 as a licensed school administrator;

10 C. an unlicensed school employee employed to
11 perform primarily district-wide management functions; or

12 D. a person who does not hold a valid license or
13 has not submitted a complete application for licensure within
14 the first three months from beginning employment duties
15 pursuant to Subsection C of Section 22-10A-3 NMSA 1978."

16 **SECTION 8.** Section 22-10A-27 NMSA 1978 (being Laws
17 1986, Chapter 33, Section 24, as amended) is amended to read:

18 "22-10A-27. DISCHARGE HEARING--LICENSED SCHOOL
19 EMPLOYEES--PROCEDURES.--

20 A. A superintendent may recommend to the governing
21 authority the discharge of a licensed school employee during
22 the term of a contract authorized pursuant to Section
23 22-10A-21 NMSA 1978 only for just cause according to the
24 following procedure:

25 (1) the superintendent shall serve a written

1 notice of intent to recommend discharge on the licensed
2 school employee in accordance with the law for service of
3 process in civil actions; and

4 (2) the superintendent shall state in the
5 notice of intent to recommend discharge the cause for the
6 recommendation and shall advise the licensed school employee
7 of the licensed school employee's right to a discharge
8 hearing before the governing authority as provided in this
9 section. If the licensed school employee does not exercise
10 that right to hearing, the superintendent shall discharge the
11 licensed school employee.

12 B. A licensed school employee who receives a
13 notice of intent to recommend discharge pursuant to
14 Subsection A of this section may exercise the licensed school
15 employee's right to a hearing before the governing authority
16 by giving the superintendent written notice of that election
17 within ten working days of the licensed school employee's
18 receipt of the notice of intent to recommend discharge.

19 C. The governing authority shall hold a discharge
20 hearing no less than twenty and no more than forty working
21 days after the superintendent receives the written election
22 from the licensed school employee and shall give the licensed
23 school employee at least ten days written notice of the date,
24 time and place of the discharge hearing.

25 D. Each party, the superintendent and the licensed

1 school employee, may each be accompanied by a person of the
2 party's choice.

3 E. The parties shall complete and respond to
4 discovery by deposition and production of documents prior to
5 the discharge hearing.

6 F. The governing authority shall have the
7 authority to issue subpoenas for the attendance of witnesses
8 and to produce books, records, documents and other evidence
9 at the request of either party and shall have the power to
10 administer oaths.

11 G. The superintendent shall have the burden of
12 proving by a preponderance of the evidence that, at the time
13 of the notice of intent to recommend discharge, the
14 superintendent had just cause to recommend discharge of the
15 licensed school employee.

16 H. The superintendent shall present evidence
17 first, with the licensed school employee presenting evidence
18 thereafter. The governing authority shall permit either
19 party to call, examine and cross-examine witnesses and to
20 introduce documentary evidence.

21 I. An official record shall be made of the
22 hearing. Either party may have one copy of the record at the
23 expense of the governing authority.

24 J. The governing authority shall render its
25 written decision within twenty days of the conclusion of the

1 discharge hearing."

2 **SECTION 9.** Section 22-10A-28 NMSA 1978 (being Laws
3 1986, Chapter 33, Section 25, as amended) is amended to read:

4 "22-10A-28. DISCHARGE APPEALS--LICENSED SCHOOL
5 EMPLOYEES--INDEPENDENT ARBITRATOR--QUALIFICATIONS--
6 PROCEDURE--BINDING DECISION.--

7 A. A licensed school employee aggrieved by a
8 decision of the governing authority to discharge the licensed
9 school employee after a discharge hearing held pursuant to
10 Section 22-10A-27 NMSA 1978 may appeal the decision to an
11 independent arbitrator. A written notice of appeal shall be
12 submitted to the governing authority within ten working days
13 from the receipt of the copy of the written decision of the
14 governing authority.

15 B. The governing authority may delegate
16 responsibility for the arbitration to the superintendent.
17 The superintendent as delegate of the governing authority and
18 the licensed school employee shall meet within ten calendar
19 days from the receipt of the notice of appeal and select an
20 independent arbitrator to conduct the appeal, or, in the
21 event the parties fail to agree on an independent arbitrator,
22 they shall request the presiding judge in the judicial
23 district in which the public school is located to select the
24 independent arbitrator. The presiding judge shall select the
25 independent arbitrator within five working days from the date

1 of the parties' request.

2 C. A qualified independent arbitrator shall be
3 appointed who is versed in employment practices and school
4 procedures. No person shall be appointed to serve as the
5 independent arbitrator who has any direct or indirect
6 financial interest in the outcome of the proceeding, has any
7 relationship to any party in the proceeding, is employed by
8 the superintendent or is a member of or employed by any
9 professional organization of which the licensed school
10 employee is a member.

11 D. Appeals from the decision of the governing
12 authority shall be decided after a de novo hearing before the
13 independent arbitrator. The superintendent, as delegate of
14 the governing authority, shall have the burden of proving by
15 a preponderance of the evidence that, at the time of the
16 notice of intent to recommend discharge, the superintendent
17 had just cause to discharge the licensed school employee.
18 The superintendent shall present evidence first, with the
19 licensed school employee presenting evidence thereafter.

20 E. The hearing shall be held within thirty working
21 days from the selection of the independent arbitrator. The
22 independent arbitrator shall give written notice of the date,
23 time and place of the hearing, and such notice shall be sent
24 to the licensed school employee and the governing authority.

25 F. Each party has the right to be represented by

1 counsel at the hearing before the independent arbitrator.

2 G. Discovery shall be limited to depositions and
3 requests for production of documents on a time schedule to be
4 established by the independent arbitrator.

5 H. The independent arbitrator may issue subpoenas
6 for the attendance of witnesses and for the production of
7 books, records, documents and other evidence and shall have
8 the power to administer oaths. Subpoenas so issued shall be
9 served and enforced in the manner provided by law for the
10 service and enforcement of subpoenas in a civil action or in
11 the manner provided by the American arbitration association's
12 voluntary labor arbitration rules if that entity is used by
13 the parties.

14 I. The rules of civil procedure shall not apply to
15 the hearing, but it shall be conducted so that both
16 contentions and responses are amply and fairly presented. To
17 this end, the independent arbitrator shall permit either
18 party to call and examine witnesses, cross-examine witnesses
19 and introduce exhibits. The technical rules of evidence
20 shall not apply, but, in ruling on the admissibility of
21 evidence, the independent arbitrator may require reasonable
22 substantiation of statements or records tendered, the
23 accuracy or truth of which is in reasonable doubt.

24 J. An official record shall be made of the
25 hearing. Either party may order a transcript of the record

1 at the party's own expense.

2 K. The independent arbitrator shall render a
3 written decision affirming or reversing the action of the
4 governing authority. The decision shall contain findings of
5 fact and conclusions of law. The parties shall receive the
6 written decision of the independent arbitrator within thirty
7 working days from the conclusion of the hearing.

8 L. Unless a party can demonstrate prejudice
9 arising from a departure from the procedures established in
10 this section and in Section 22-10A-27 NMSA 1978, such
11 departure shall be presumed to be harmless error.

12 M. The decision of the independent arbitrator
13 shall be final and binding on both parties and shall be
14 nonappealable except where the decision was procured by
15 corruption, fraud, deception or collusion, in which case it
16 may be appealed to the court of appeals by filing a notice of
17 appeal as provided by the New Mexico rules of appellate
18 procedure.

19 N. Each party shall bear its own costs and
20 expenses. The independent arbitrator's fees and other
21 expenses incurred in the conduct of the arbitration shall be
22 assigned at the discretion of the independent arbitrator."

23 **SECTION 10.** Section 22-10A-29 NMSA 1978 (being Laws
24 1967, Chapter 16, Section 120, as amended) is amended to
25 read:

1 "22-10A-29. COMPENSATION PAYMENTS TO DISCHARGED
2 PERSONNEL.--

3 A. Payment of compensation to a licensed school
4 employee employed by a public school and payment of
5 compensation to a superintendent employed by a governing
6 authority shall terminate as of the date, after a hearing,
7 that a written copy of the decision of the governing
8 authority to discharge the licensed school employee or
9 superintendent is served on the licensed school employee or
10 superintendent. If the compensation of the licensed school
11 employee or superintendent discharged during the term of a
12 written employment contract is to be paid monthly during a
13 twelve-month period for services to be performed during a
14 period less than twelve months, the licensed school employee
15 or superintendent shall be entitled to a pro rata share of
16 the compensation payments due for the period during the
17 twelve months in which no services were to be performed.

18 B. In the event the action of the governing
19 authority in discharging a licensed school employee or
20 superintendent is reversed on appeal, payment of compensation
21 to the licensed school employee or superintendent shall be
22 reinstated in full but subject to any additional compensation
23 allowed other licensed school employees or superintendents of
24 like qualifications and experience employed by the public
25 school and including reimbursement for compensation during the

1 entire period the compensation was terminated less an offset
2 for any compensation received by the licensed school employee
3 or superintendent from the public school during the period the
4 compensation was terminated." _____

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