

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 128

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO SCHOOL PERSONNEL; REQUIRING APPLICANTS FOR SCHOOL
EMPLOYMENT OR SCHOOL VOLUNTEER POSITIONS TO DISCLOSE PAST
ETHICAL MISCONDUCT; REQUIRING LOCAL SCHOOL BOARDS TO ADOPT
POLICIES TRACKING CHILD ABUSE ALLEGATIONS; PROVIDING
DEFINITIONS; REQUIRING THE PUBLIC EDUCATION DEPARTMENT TO
MAINTAIN A LIST OF REPORTS INVOLVING CHILD ABUSE OR ETHICAL
MISCONDUCT; ALLOWING TERMINATION OF SCHOOL EMPLOYMENT OR SCHOOL
VOLUNTEER POSITION DECISIONS TO BE PUBLIC; ADDING ETHICAL
MISCONDUCT TO SCHOOL TRAINING PROGRAMS; REQUIRING SCHOOL
VOLUNTEERS TO COMPLETE SCHOOL TRAINING PROGRAMS; REQUIRING
REPORTS OF CHILD ABUSE BY SCHOOL PERSONNEL, SCHOOL VOLUNTEERS,
CONTRACTORS OR CONTRACTOR'S EMPLOYEES TO BE REPORTED TO THE
PUBLIC EDUCATION DEPARTMENT; REQUIRING CHILD ABUSE BY OTHER
ADULTS, IN ADDITION TO CHILD ABUSE BY A PARENT, CUSTODIAN OR
GUARDIAN, TO BE REPORTED.

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

SECTION 1. A new section of the School Personnel Act is enacted to read:

"~~[NEW MATERIAL]~~ APPLICANTS FOR SCHOOL EMPLOYMENT--
REQUIREMENTS FOR WORK HISTORY AND OTHER INFORMATION.--

A. A public school shall require any applicant for employment, including a school volunteer, a contractor or a contractor's employee, to provide:

(1) a list of the applicant's current and former employers that were schools or that employed the applicant in a position involving unsupervised contact with children or students. The list shall include the name, address, telephone number and other relevant contact information for each of the applicant's listed employers;

(2) a written statement describing whether the applicant:

(a) has ever been under investigation for, or has been found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses prohibited in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated;

(b) has ever been under investigation for, or found to have violated, any ethical rule or policy

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1 approved by a former employer that previously employed the
2 applicant, unless the allegations were false or
3 unsubstantiated; or

4 (c) has ever had a professional license
5 or certificate denied, suspended, surrendered or revoked due to
6 a finding of child abuse or ethical misconduct or while
7 allegations of child abuse or ethical misconduct were pending
8 or under investigation; and

9 (3) a written authorization that authorizes
10 disclosure of information requested under Subsection B or D of
11 this section and the release of related records by the
12 applicant's previous employers, releasing the applicant's
13 previous employers from any liability related to the disclosure
14 or release of records.

15 B. A public school shall conduct a review of the
16 applicant's employment history and contact the applicant's
17 current and former employers listed under Subsection A of this
18 section and request:

19 (1) the applicant's dates of employment; and
20 (2) a written a statement describing whether
21 the applicant:

22 (a) has ever been under investigation
23 for, or has been found to have violated, any state or federal
24 statute relating to child abuse or neglect, sexual misconduct
25 or any sexual offense, including those offenses prohibited in

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1 Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA
2 1978, unless the allegations were false or unsubstantiated;

3 (b) has ever been under investigation
4 for, or found to have violated, any ethical rule or policy
5 approved by a former employer that previously employed the
6 applicant, unless the allegations were false or
7 unsubstantiated; or

8 (c) has ever had a professional license
9 or certificate denied, suspended, surrendered or revoked due to
10 a finding of child abuse or ethical misconduct or while
11 allegations of child abuse or ethical misconduct were pending
12 or under investigation.

13 C. An applicant's current or former employer shall
14 disclose the information requested under Subsection B of this
15 section within thirty days of receiving the request.

16 D. During the course of a public school's review of
17 the applicant's employment history, an applicant's current or
18 former employer may disclose any other information the
19 applicant's current or former employer deems pertinent and
20 substantive to the prospective employee's suitability for
21 employment in a position that includes unsupervised contact
22 with children or students.

23 E. A public school shall make and document efforts
24 to:

25 (1) verify the information provided under

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1 Subsections A and B of this section; and

2 (2) obtain from an applicant's current or
3 former out-of-state employer the information required under
4 Subsection B of this section.

5 F. A public school may terminate an individual's
6 employment or rescind an applicant's offer of employment if the
7 applicant is offered or commences employment with a public
8 school after the effective date of this 2021 act and
9 information regarding the applicant's history of child abuse or
10 ethical misconduct that is determined to disqualify the
11 applicant from employment is subsequently obtained by the
12 public school.

13 G. When a reference on a former or current employee
14 is requested, the employer shall respond and provide the
15 requested information pursuant to Subsection B of this section.

16 H. An applicant who provides false information or
17 willfully neglects to disclose information required under this
18 section shall be subject to discipline including termination or
19 denial of employment or action to deny, suspend or revoke a
20 license."

21 **SECTION 2.** Section 22-5-4.2 NMSA 1978 (being Laws 1985,
22 Chapter 94, Section 1) is amended to read:

23 "22-5-4.2. CHILD ABUSE--REPORT COORDINATION--
24 CONFIRMATION.--

25 A. A local school board [~~may~~] shall adopt policies
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1 providing for the coordination and internal tracking of reports
2 made by school district personnel, school volunteers,
3 contractors and contractor's employees pursuant to Section
4 ~~[32-1-15]~~ 32A-4-3 NMSA 1978. Such policies, however, shall not
5 require any notification to school district personnel, school
6 volunteers, contractors or contractor's employees before the
7 report is made to ~~[one of]~~ the offices listed in Subsection A
8 of ~~[that]~~ Section 32A-4-3 NMSA 1978. Such policies shall
9 include measures to protect the identity of victims of abuse.
10 No policy shall purport to relieve any person having a duty to
11 report under ~~[that]~~ Section 32A-4-3 NMSA 1978 from that duty.

12 B. After a report is made to ~~[a county social~~
13 ~~services office of the human services department]~~ the children,
14 youth and families department or a law enforcement agency
15 pursuant to Section ~~[32-1-15]~~ 32A-4-3 NMSA 1978 by any school
16 district personnel, school volunteer, contractor or
17 contractor's employee, that office shall notify the person
18 making the report within five days after the report was made
19 that the office is investigating the matter. Mailing a notice
20 within five days shall constitute compliance with this
21 subsection.

22 C. As used in this section:

23 (1) "contractor" means an individual who is
24 under contract with a public school and is hired to provide
25 services to the public school, but does not include a general

1 contractor or a building or maintenance contractor who is
2 supervised and has no access to students at the public school;
3 and

4 (2) "school volunteer" means a person,
5 including a relative of a student, who commits to serve on a
6 regular basis at a school district, charter school or other
7 educational entity without compensation."

8 SECTION 3. Section 22-10A-2 NMSA 1978 (being Laws 2019,
9 Chapter 238, Section 1) is amended to read:

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

12 A. "child abuse" means a child:

13 (1) who has suffered or who is at risk of
14 suffering serious harm because of the action or inaction of the
15 child's parent, guardian, custodian or other adult;

16 (2) who has suffered physical abuse, emotional
17 abuse or psychological abuse inflicted or caused by the child's
18 parent, guardian, custodian or other adult;

19 (3) who has suffered sexual abuse or sexual
20 exploitation inflicted by the child's parent, guardian,
21 custodian or other adult;

22 (4) whose parent, guardian, custodian or other
23 adult has knowingly, intentionally or negligently placed the
24 child in a situation that may endanger the child's life or
25 health; or

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1 (5) whose parent, guardian, custodian or other
2 adult has knowingly or intentionally tortured, cruelly confined
3 or cruelly punished the child;

4 ~~[A.]~~ B. "constitutional special school" means the
5 New Mexico military institute, New Mexico school for the deaf
6 and New Mexico school for the blind and visually impaired;

7 C. "contractor" means an individual who is under
8 contract with a public school and is hired to provide services
9 to the public school, but does not include a general contractor
10 or a building or maintenance contractor who is supervised and
11 has no access to students at the public school;

12 ~~[B.]~~ D. "discharge" means the act of severing the
13 employment relationship with a licensed school employee prior
14 to the expiration of the current employment contract;

15 ~~[C.]~~ E. "employed for three consecutive school
16 years" means a licensed school employee has been offered and
17 accepted in writing a notice of reemployment for the third
18 consecutive school year;

19 F. "ethical misconduct" means the following
20 behavior or conduct by a school employee, school volunteer,
21 contractor or contractor's employee:

22 (1) discriminatory practice based on race,
23 age, color, national origin, ethnicity, sex, pregnancy, sexual
24 orientation, gender identity, mental or physical disability,
25 marital status, religion, citizenship, domestic abuse reporting

1 status or serious medical condition;

2 (2) sexual misconduct or any sexual offense
3 prohibited by Chapter 30, Article 9 or Chapter 30, Article 6A
4 NMSA 1978 involving an adult or child, regardless of a child's
5 enrollment status;

6 (3) fondling a child or student, including
7 touching private body parts, such as breasts, buttocks,
8 genitals, inner thighs, groin or anus; or

9 (4) any other behavior, including licentious,
10 enticing or solicitous behavior, that is reasonably apparent to
11 result in inappropriate sexual contact with a child or student
12 or to induce a child or student into engaging in illegal,
13 immoral or other prohibited behavior;

14 ~~[D.]~~ G. "governing authority" means the policy
15 setting body of a school district, charter school,
16 constitutional special school or regional education
17 cooperative, or the final decision maker of another state
18 agency;

19 ~~[E.]~~ H. "instructional support provider" means a
20 person who is employed to support the instructional program of
21 a public school, including educational assistant, school
22 counselor, social worker, school nurse, speech-language
23 pathologist, psychologist, physical therapist, occupational
24 therapist, recreational therapist, marriage and family
25 therapist, interpreter for the deaf and diagnostician;

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1 ~~[F.]~~ I. "just cause" means a reason that is
2 rationally related to a school employee's competence or
3 turpitude or the proper performance of the school employee's
4 duties and that is not in violation of the school employee's
5 civil or constitutional rights;

6 J. "moral turpitude" means an act or behavior that
7 gravely violates the accepted standards of moral conduct,
8 justice or honesty and may include ethical misconduct;

9 ~~[G.]~~ K. "public school" means a school district,
10 charter school, constitutional special school, regional
11 education cooperative or the educational program of another
12 state agency;

13 ~~[H.]~~ L. "responsibility factor" means a value of
14 1.20 for an elementary school principal, 1.40 for a middle
15 school or junior high school principal, 1.60 for a high school
16 principal, 1.10 for an assistant elementary school principal,
17 1.15 for an assistant middle school or assistant junior high
18 school principal and 1.25 for an assistant high school
19 principal;

20 ~~[I.]~~ M. "sabbatical leave" means leave of absence
21 with pay as approved by the governing authority during all or
22 part of a regular school term for purposes of study or travel
23 related to a licensed school employee's duties and of direct
24 benefit to the instructional program;

25 ~~[J.]~~ N. "school administrator" means a person

1 licensed to administer in a school district, charter school,
2 constitutional special school or regional education cooperative
3 or a person employed with another state agency who administers
4 an educational program and includes local superintendents,
5 school principals, central district administrators, business
6 managers, charter school head administrators and state agency
7 education supervisors;

8 ~~[K.]~~ O. "school employee" includes licensed and
9 unlicensed employees of a public school;

10 ~~[L.]~~ P. "school premises" means:

11 (1) the buildings and grounds, including
12 playgrounds, playing fields and parking areas and a school bus
13 of a public school, in or on which school or school-related
14 activities are being operated under the supervision of a local
15 school board, charter school or state agency; or

16 (2) any other public buildings or grounds,
17 including playing fields and parking areas that are not public
18 school property, in or on which public school-related and
19 -sanctioned activities are being performed;

20 Q. "school volunteer" means a person, including a
21 relative of a student, who commits to serve on a regular basis
22 at a school district, charter school or other educational
23 entity without compensation;

24 ~~[M.]~~ R. "state agency" means a regional education
25 cooperative or state institution;

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

7 [Θ-] T. "substitute teacher" means a person who
8 holds a certificate to substitute for a teacher in the
9 classroom;

10 [P-] U. "superintendent" means a local
11 superintendent, head administrator of a charter school or
12 regional education cooperative, superintendent or commandant of
13 a special school or head administrator of the educational
14 program of a state agency;

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

22 [R-] W. "terminate" means the act of severing the
23 employment relationship with a school employee; [~~and~~]

24 X. "unsupervised contact with children or students"
25 means access to or contact with, or the opportunity to have

1 access to or contact with, a child or student for any length of
2 time in the absence of:

3 (1) a licensed staff person from the same
4 school or institution;

5 (2) a school volunteer who has undergone a
6 background check pursuant to Section 22-10A-5 NMSA 1978; or

7 (3) any adult relative or guardian of the
8 child or student; and

9 ~~[S.]~~ Y. "working day" means every school calendar
10 day, excluding Saturdays, Sundays and legal holidays."

11 SECTION 4. Section 22-10A-5 NMSA 1978 (being Laws 1997,
12 Chapter 238, Section 1, as amended by Laws 2019, Chapter 209,
13 Section 2 and by Laws 2019, Chapter 238, Section 3) is amended
14 to read:

15 "22-10A-5. BACKGROUND CHECKS--KNOWN CONVICTIONS--ALLEGED
16 ETHICAL MISCONDUCT--REPORTING REQUIRED--PENALTY FOR FAILURE TO
17 REPORT.--

18 ~~[A. As used in this section, "ethical misconduct"~~
19 ~~means unacceptable behavior or conduct engaged in by a school~~
20 ~~employee, school volunteer, contractor or contractor's employee~~
21 ~~and includes unlawful discriminatory practice; sexual~~
22 ~~harassment, sexual assault or sexual abuse involving an adult~~
23 ~~or child, regardless of a child's enrollment status; and~~
24 ~~behavior intended to induce a child into engaging in illegal,~~
25 ~~immoral or other prohibited behavior.~~

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

17 ~~[G.]~~ B. Governing authorities shall develop
18 policies and procedures to require background checks on an
19 applicant who has been offered employment or who applies to be
20 a school volunteer or works for the public school as a
21 contractor or a contractor's employee and who may have
22 unsupervised ~~[access to students]~~ contact with children or
23 students on school premises.

24 ~~[D.]~~ C. An applicant who has been offered
25 employment or a school volunteer, contractor or contractor's

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

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

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

23 ~~[G.]~~ F. A superintendent shall report immediately
 24 to the department any known conviction of ~~[a]~~ any felony or
 25 misdemeanor involving moral turpitude of a ~~[licensed]~~ school

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1 employee ~~[that results in any type of action against the~~
2 ~~licensed school employee]~~ or school volunteer.

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

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1 authority or superintendent shall diminish or eliminate the
 2 responsibility of investigating and reporting the alleged
 3 ethical misconduct to the department or, if legally mandated,
 4 to law enforcement, and any such agreement to the contrary is
 5 void.

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

17 I. The department shall maintain a list of the
 18 names of persons reported to the department as required by
 19 Subsections F and G of this section and update that list each
 20 month. The department shall provide that list to a governing
 21 authority upon request.

22 J. The secretary may initiate action to suspend,
 23 revoke or refuse to renew the license of:

24 (1) a superintendent who fails to report as
 25 required by Subsections F and G ~~[and H]~~ of this section; or

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1 (2) any licensed school employee who fails to
2 report child abuse, neglect or ethical misconduct pursuant to
3 Section 32A-4-3 NMSA 1978.

4 K. As used in this section, "designated
5 representative" means a representative chosen by a
6 superintendent and may include a regional education
7 cooperative."

8 SECTION 5. Section 22-10A-24 NMSA 1978 (being Laws 1986,
9 Chapter 33, Section 22, as amended) is amended to read:

10 "22-10A-24. TERMINATION DECISIONS--LOCAL SCHOOL BOARD--
11 GOVERNING AUTHORITY OF A STATE AGENCY--PROCEDURES.--

12 A. A local school board or governing authority of a
13 state agency may terminate a licensed school employee,
14 excluding licensed educational assistants who have not been
15 offered and accepted the third consecutive contract, for any
16 reason it deems sufficient. A local school board or governing
17 authority of a state agency may terminate a nonlicensed school
18 employee or a licensed educational assistant with less than one
19 year of employment for any reason it deems sufficient. Upon
20 request of the employee, the local superintendent or state
21 agency administrator shall provide written reasons for the
22 decision to terminate. The reasons shall be provided within
23 ten working days of the request. ~~[The reasons shall not be~~
24 ~~publicly disclosed by the local superintendent, state agency~~
25 ~~administrator, local school board or governing authority]~~ The

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1 reasons shall not provide a basis for contesting the decision
2 under the School Personnel Act.

3 B. Before terminating a nonlicensed school employee
4 or a licensed educational assistant, the local school board or
5 governing authority shall serve the employee or assistant with
6 a written notice of termination.

7 C. A licensed school employee who has been employed
8 by a school district or state agency for more than two
9 consecutive years or a nonlicensed school employee or licensed
10 educational assistant who has been employed for more than one
11 year and who receives a notice of termination pursuant to
12 either Section 22-10A-22 NMSA 1978 or this section may request
13 an opportunity to make a statement to the local school board or
14 governing authority on the decision to terminate the employee
15 or assistant by submitting a written request to the local
16 superintendent or state agency administrator within five
17 working days from the date written notice of termination is
18 served upon the employee or assistant. The employee or
19 assistant may also request in writing the reasons for the
20 termination action. The local superintendent or state agency
21 administrator shall provide written reasons for the notice of
22 termination to the employee or assistant within five working
23 days from the date the written request for a meeting and the
24 written request for the reasons were received by the local
25 superintendent or state agency administrator. ~~Neither the~~

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1 ~~local superintendent or state agency administrator nor the~~
2 ~~local school board or governing authority shall publicly~~
3 ~~disclose its reasons for termination.]~~

4 D. A local school board or governing authority may
5 not terminate a licensed school employee who has been offered
6 and accepted a third-year contract or a nonlicensed school
7 employee or licensed educational assistant who has been
8 employed by a school district or state agency for more than one
9 year without just cause.

10 E. The employee's request pursuant to Subsection C
11 of this section shall be granted if the employee responds to
12 the local superintendent's or state agency administrator's
13 written reasons as provided in Subsection C of this section by
14 submitting in writing to the local superintendent or state
15 agency administrator a contention that the decision to
16 terminate was made without just cause. The written contention
17 shall specify the grounds on which it is contended that the
18 decision was without just cause and shall include a statement
19 of the facts that the employee believes support the employee's
20 contention. This written statement shall be submitted within
21 ten working days from the date the employee receives the
22 written reasons from the local superintendent or state agency
23 administrator. The submission of this statement constitutes a
24 representation on the part of the employee that the employee
25 can support the employee's contentions and an acknowledgment

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1 that the local school board or governing authority may offer
2 the causes for its decision and any relevant data in its
3 possession in rebuttal of the employee's contentions.

4 F. A local school board or governing authority
5 shall meet to hear the employee's statement in no less than
6 five or more than fifteen working days after the local school
7 board or governing authority receives the statement. The
8 hearing shall be conducted informally in accordance with the
9 provisions of the Open Meetings Act. The employee and the
10 local superintendent or state agency administrator may each be
11 accompanied by a person of the employee's and the local
12 superintendent's or state agency administrator's choice.
13 First, the local superintendent shall present the factual basis
14 for the determination that just cause exists for the
15 termination of the employee, limited to those reasons provided
16 to the employee pursuant to Subsection C of this section.
17 Then, the employee shall present the employee's contentions,
18 limited to those grounds specified in Subsection E of this
19 section. The local school board or governing authority may
20 offer such rebuttal testimony as it deems relevant. All
21 witnesses may be questioned by the local school board or
22 governing authority, the employee or the employee's
23 representative and the local superintendent or state agency
24 administrator or the local superintendent's or state agency
25 administrator's representative. The local school board or

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1 governing authority may consider only such evidence as is
2 presented at the hearing and need consider only such evidence
3 as it considers reliable. [~~No record shall be made of the~~
4 ~~proceeding~~] The local school board or governing authority shall
5 notify the employee and the local superintendent or state
6 agency administrator of its decision in writing within five
7 working days from the conclusion of the meeting."

8 SECTION 6. Section 22-10A-25 NMSA 1978 (being Laws 1986,
9 Chapter 33, Section 23, as amended) is amended to read:

10 "22-10A-25. APPEALS--INDEPENDENT ARBITRATOR--
11 QUALIFICATIONS--PROCEDURE--BINDING DECISION.--

12 A. An employee who is still aggrieved by a decision
13 of a local school board or governing authority rendered
14 pursuant to Section [~~22-10-14~~] 22-10A-24 NMSA 1978 may appeal
15 the decision to an arbitrator. A written appeal shall be
16 submitted to the local superintendent or administrator within
17 five working days from the receipt of the local school board's
18 or governing authority's written decision or the refusal of the
19 board or authority to grant a hearing. The appeal shall be
20 accompanied by a statement of particulars specifying the
21 grounds on which it is contended that the decision was
22 impermissible pursuant to Subsection E of Section [~~22-10-14~~]
23 22-10A-24 NMSA 1978 and including a statement of facts
24 supporting the contentions. Failure of the employee to submit
25 a timely appeal or a statement of particulars with the appeal

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1 shall disqualify ~~[him]~~ the employee for any appeal and render
2 the local school board's or governing authority's decision
3 final.

4 B. The local school board or governing authority
5 and the employee shall meet within ten working days from the
6 receipt of the request for an appeal and select an independent
7 arbitrator to conduct the appeal. If the parties fail to agree
8 on an independent arbitrator, they shall request the presiding
9 judge in the judicial district in which the employee's public
10 school is located to select one. The presiding judge shall
11 select the independent arbitrator within five working days from
12 the date of the parties' request.

13 C. A qualified independent arbitrator shall be
14 appointed who is versed in employment practices and school
15 procedures and who preferably has experience in the practice of
16 law. No person shall be appointed to serve as the independent
17 arbitrator who has any direct or indirect financial interest in
18 the outcome of the proceeding, has any relationship to any
19 party in the proceeding, is employed by the local school board
20 or governing authority or is a member of or employed by any
21 professional or labor organization of which the employee is a
22 member.

23 D. Appeals from the decision of the local school
24 board or governing authority shall be decided after a de novo
25 hearing before the independent arbitrator. The issue to be

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1 decided by the independent arbitrator is whether there was just
2 cause for the decision of the local school board or governing
3 authority to terminate the employee.

4 E. The de novo hearing shall be held within thirty
5 working days from the selection of the independent arbitrator.
6 The arbitrator shall give written notice of the date, time and
7 place of the hearing, and such notice shall be sent to the
8 employee and the local school board or governing authority.

9 F. Each party has the right to be represented by
10 counsel at the hearing before the independent arbitrator.

11 G. Discovery shall be limited to depositions and
12 requests for production of documents on a time schedule to be
13 established by the independent arbitrator.

14 H. The independent arbitrator may issue subpoenas
15 for the attendance of witnesses and for the production of
16 books, records, documents and other evidence and shall have the
17 power to administer oaths. Subpoenas so issued shall be served
18 and enforced in the manner provided by law for the service and
19 enforcement of subpoenas in a civil action.

20 I. The rules of civil procedure shall not apply to
21 the de novo hearing, but it shall be conducted so that both
22 contentions and responses are amply and fairly presented. To
23 this end, the independent arbitrator shall permit either party
24 to call and examine witnesses, cross-examine witnesses and
25 introduce exhibits. The technical rules of evidence shall not

1 apply, but, in ruling on the admissibility of evidence, the
2 independent arbitrator shall require reasonable substantiation
3 of statements or records tendered, the accuracy or truth of
4 which is in reasonable doubt.

5 J. The local school board or governing authority
6 has the burden of proof and shall prove by a preponderance of
7 the evidence that, at the time the notice of termination was
8 served on the employee, the local school board or governing
9 authority had just cause to terminate the employee. If the
10 local school board or governing authority proves by a
11 preponderance of the evidence that there was just cause for its
12 action, then the burden shifts to the employee to rebut the
13 evidence presented by the local school board or governing
14 authority.

15 K. The independent arbitrator shall uphold the
16 local school board's or governing authority's decision only if
17 it proves by a preponderance of the evidence that, at the time
18 the notice of termination was served on the employee, the local
19 school board or governing authority had just cause to terminate
20 the employee. If the local school board or governing authority
21 fails to meet its burden of proof or if the employee rebuts the
22 proof offered by the local school board or governing authority,
23 the arbitrator shall reverse the decision of the local school
24 board or governing authority.

25 L. ~~[No official record shall be made of the~~

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1 ~~hearing]~~ Either party desiring a record of the arbitration
2 proceedings may, at ~~[his]~~ the party's own expense, record or
3 otherwise provide for a transcript of the proceedings;
4 provided, however, that the record so provided shall not ~~[be~~
5 ~~deemed an official transcript of the proceedings nor shall it]~~
6 imply any right of automatic appeal or review.

7 M. The independent arbitrator shall render a
8 written decision affirming or reversing the action of the local
9 school board or governing authority. The decision shall
10 contain findings of fact and conclusions of law. The parties
11 shall receive actual written notice of the decision of the
12 independent arbitrator within ten working days from the
13 conclusion of the de novo hearing.

14 N. The sole remedies available under this section
15 shall be reinstatement or payment of compensation reinstated in
16 full but subject to any additional compensation allowed other
17 employees of like qualifications and experience employed by the
18 school district or state agency and including reimbursement for
19 compensation during the entire period for which compensation
20 was terminated, or both, less an offset for any compensation
21 received by the employee during the period the compensation was
22 terminated.

23 O. Unless a party can demonstrate prejudice arising
24 from a departure from the procedures established in this
25 section and in Section ~~[22-10-14]~~ 22-10A-24 NMSA 1978, such

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1 departure shall be presumed to be harmless error.

2 P. The decision of the independent arbitrator shall
3 be binding on both parties and shall be final and nonappealable
4 except where the decision was procured by corruption, fraud,
5 deception or collusion, in which case it shall be appealed to
6 the district court in the judicial district in which the public
7 school or state agency is located.

8 Q. Each party shall bear its own costs and
9 expenses. The independent arbitrator's fees and other expenses
10 incurred in the conduct of the arbitration shall be assigned at
11 the discretion of the independent arbitrator.

12 R. [~~Local~~] School districts shall file a record
13 with the department [~~of education~~] of all terminations and all
14 actions arising from terminations annually."

15 SECTION 7. Section 22-10A-32 NMSA 1978 (being Laws 1988,
16 Chapter 48, Section 1, as amended) is amended to read:

17 "22-10A-32. [~~LICENSED~~] SCHOOL EMPLOYEES, SCHOOL
18 VOLUNTEERS, CONTRACTORS AND CONTRACTOR'S EMPLOYEES--REQUIRED
19 TRAINING PROGRAM.--

20 A. All [~~licensed~~] school employees, school
21 volunteers, contractors and contractor's employees shall be
22 required to complete training in the detection and reporting of
23 child abuse and neglect, including ethical misconduct,
24 professional responsibilities, sexual abuse and assault, and
25 substance abuse. Except as otherwise provided in this

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1 subsection, this requirement shall be completed within the
2 [~~licensed~~] school employee's, school volunteer's, contractor's
3 or contractor's employee's first year of employment [~~by a~~
4 ~~school district. Licensed school employees hired prior to the~~
5 ~~2014-2015 school year shall complete the sexual abuse and~~
6 ~~assault component of the required training during the 2014-2015~~
7 ~~school year~~].

8 B. The department shall develop [~~a~~] or adopt
9 training [~~program~~] programs, including training materials and
10 necessary training staff, to meet the [~~requirement~~]
11 requirements of Subsection A of this section to make the
12 training available in every [~~school district~~] public school.
13 The department shall promulgate rules for the administration of
14 the training programs. The department shall coordinate the
15 development of the [~~program~~] programs with appropriate staff in
16 [~~school districts and at~~] public schools, the human services
17 department, the department of health, the early childhood
18 education and care department and the children, youth and
19 families department. The department shall consult with the
20 federal centers for disease control and prevention when
21 developing or adopting the evidence-based training component on
22 child sexual abuse and assault to include methods and materials
23 that have proven to be effective. At a minimum, training
24 required under this section shall include:

- 25 (1) reporting requirements, including minimal

1 standards triggering reporting;

2 (2) trauma-informed instruction;

3 (3) identification of circumstances and
4 factors that are indicators of likely abuse or inappropriate
5 behaviors;

6 (4) ethical misconduct;

7 (5) professional responsibilities;

8 (6) investigations and procedures; and

9 (7) relevant legal and regulatory definitions.

10 C. The training [~~program~~] programs developed or
11 adopted pursuant to this section shall be made available by the
12 department to the deans of every college of education in New
13 Mexico for use in providing such training to students seeking
14 elementary and secondary education licensure."

15 **SECTION 8.** Section 32A-4-3 NMSA 1978 (being Laws 1993,
16 Chapter 77, Section 97, as amended) is amended to read:

17 "32A-4-3. DUTY TO REPORT CHILD ABUSE AND CHILD NEGLECT--
18 RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR NEGLECT--PENALTY--
19 NOTIFICATION OF PLAN OF CARE.--

20 A. Every person, including a licensed physician; a
21 resident or an intern examining, attending or treating a child;
22 a law enforcement officer; a judge presiding during a
23 proceeding; a registered nurse; a visiting nurse; a
24 [~~schoolteacher; a school official~~] school employee; a social
25 worker acting in an official capacity; or a member of the

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1 clergy who has information that is not privileged as a matter
2 of law, who knows or has a reasonable suspicion that a child is
3 an abused or a neglected child or has been subject to physical,
4 emotional, psychological or sexual abuse or sexual exploitation
5 by an adult other than a parent, guardian or custodian shall
6 report the matter immediately to:

- 7 (1) a local law enforcement agency; and
8 (2) the department; or
9 (3) a tribal law enforcement or social
10 services agency for any Indian child residing in Indian
11 country.

12 B. If the alleged perpetrator is school personnel,
13 a school volunteer, a contractor or contractor's employee, a
14 report shall be made to the public education department.

15 [~~B.~~] C. A law enforcement agency receiving the
16 report pursuant to Subsection A of this section shall
17 immediately transmit the facts of the report and the name,
18 address and phone number of the reporter by telephone to the
19 department and shall transmit the same information in writing
20 within forty-eight hours. The department shall immediately
21 transmit the facts of the report and the name, address and
22 phone number of the reporter by telephone to a local law
23 enforcement agency and shall transmit the same information in
24 writing within forty-eight hours. The written report shall
25 contain the names and addresses of the child and the child's

1 parents, guardian or custodian, the child's age, the nature and
2 extent of the child's injuries, including any evidence of
3 previous injuries, and other information that the maker of the
4 report believes might be helpful in establishing the cause of
5 the injuries and the identity of the person responsible for the
6 injuries. The written report shall be submitted upon a
7 standardized form agreed to by the law enforcement agency and
8 the department.

9 ~~[G.]~~ D. The recipient of a report under Subsection
10 A of this section shall take immediate steps to ensure prompt
11 investigation of the report. The investigation shall ensure
12 that immediate steps are taken to protect the health or welfare
13 of the alleged abused or neglected child, as well as that of
14 any other child under the same care who may be in danger of
15 abuse or neglect. A local law enforcement officer trained in
16 the investigation of child abuse and neglect is responsible for
17 investigating reports of alleged child abuse or neglect at
18 schools, daycare facilities or child care facilities.

19 E. After a report of suspected child abuse is made
20 to the public education department or the department and a law
21 enforcement agency pursuant to this section, that office shall
22 notify the person making the report within five days after the
23 report was made that the office is investigating the matter.
24 Mailing a notice within five days shall constitute compliance
25 with this subsection.

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1 ~~[D-]~~ F. If the child alleged to be abused or
2 neglected is in the care or control of or in a facility
3 administratively connected to the department, the report shall
4 be investigated by a local law enforcement officer trained in
5 the investigation of child abuse and neglect. The
6 investigation shall ensure that immediate steps are taken to
7 protect the health or welfare of the alleged abused or
8 neglected child, as well as that of any other child under the
9 same care who may be in danger of abuse or neglect.

10 ~~[E-]~~ G. A law enforcement agency or the department
11 shall have access to any of the records pertaining to a child
12 abuse or neglect case maintained by any of the persons
13 enumerated in Subsection A of this section, except as otherwise
14 provided in the Abuse and Neglect Act.

15 ~~[F-]~~ H. A person who violates the provisions of
16 Subsection A of this section is guilty of a misdemeanor and
17 shall be sentenced pursuant to the provisions of Section
18 31-19-1 NMSA 1978.

19 I. A law enforcement agency receiving a report
20 under Subsection A of this section shall immediately transmit
21 the facts of the report and the name, address and phone number
22 of the reporter by telephone to the department and shall
23 transmit the same information in writing within forty-eight
24 hours. If the alleged perpetrator is school personnel, a
25 school volunteer, a contractor or contractor's employee, the

1 law enforcement agency shall also transmit a report to the
2 public education department in writing within forty-eight
3 hours. The written report shall contain the names and
4 addresses of the child and the child's parents, guardian or
5 custodian, the child's age, the nature and extent of the
6 child's injuries, including any evidence of previous injuries,
7 and other information that the maker of the report believes
8 might be helpful in establishing the cause of the injuries and
9 the identity of the person responsible for the injuries. The
10 written report shall be submitted upon a standardized form
11 agreed to by the law enforcement agency and the department.

12 ~~[G-]~~ J. A finding that a pregnant woman is using or
13 abusing drugs made pursuant to an interview, self-report,
14 clinical observation or routine toxicology screen shall not
15 alone form a sufficient basis to report child abuse or neglect
16 to the department pursuant to Subsection A of this section. A
17 volunteer, contractor or staff of a hospital or freestanding
18 birthing center shall not make a report based solely on that
19 finding and shall make a notification pursuant to Subsection
20 ~~[H]~~ K of this section. Nothing in this subsection shall be
21 construed to prevent a person from reporting to the department
22 a reasonable suspicion that a child is an abused or neglected
23 child based on other criteria as defined by Section 32A-4-2
24 NMSA 1978, or a combination of criteria that includes a finding
25 pursuant to this subsection.

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1 ~~[H.]~~ K. A volunteer, contractor or staff of a
2 hospital or freestanding birthing center shall:

3 (1) complete a written plan of care for a
4 substance-exposed newborn as provided for by department rule
5 and the Children's Code; and

6 (2) provide notification to the department.
7 Notification by a health care provider pursuant to this
8 paragraph shall not be construed as a report of child abuse or
9 neglect.

10 ~~[I.]~~ L. As used in this section, "notification"
11 means informing the department that a substance-exposed newborn
12 was born and providing a copy of the plan of care that was
13 created for the child; provided that notification shall comply
14 with federal guidelines and shall not constitute a report of
15 child abuse or neglect.

16 M. As used in this section:

17 (1) "contractor" means an individual who is
18 under contract with a public school and is hired to provide
19 services to the public school, but does not include a general
20 contractor or a building or maintenance contractor who is
21 supervised and has no access to students at the public school;

22 (2) "school employee" includes licensed and
23 unlicensed employees of a public school; and

24 (3) "school volunteer" means a person,
25 including a relative of a student, who commits to serve on a

1 regular basis at a school district, charter school or other
2 educational entity without compensation."

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underscored material = new
[bracketed material] = delete