

SENATE BILL 383

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Mimi Stewart and Debra M. Sariñana

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO PUBLIC EDUCATION; AMENDING THE PROCESS FOR REQUIRED CRIMINAL HISTORY RECORD CHECKS; REQUIRING CONFIDENTIALITY.

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

**SECTION 1.** Section 22-10A-2 NMSA 1978 (being Laws 2019, Chapter 238, Section 1, as amended by Laws 2021, Chapter 92, Section 1 and by Laws 2021, Chapter 94, Section 4) is amended to read:

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

Act:

A. "child abuse" means a child:

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

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

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

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

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

B. "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;

C. "contractor" means an individual who is under contract with a public school and is hired to provide services to the public school, but does not include a general contractor

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

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

E. "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;

F. "ethical misconduct" means the following behavior or conduct by school district personnel, school employees, school volunteers, contractors or contractors' employees:

(1) discriminatory practice based on race, age, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, mental or physical disability, marital status, religion, citizenship, domestic abuse reporting status or serious medical condition;

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

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

(4) any other behavior, including licentious,

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enticing or solicitous behavior, that is reasonably apparent to result in inappropriate sexual contact with a child or student or to induce a child or student into engaging in illegal, immoral or other prohibited behavior;

G. "governing authority" means the policy-setting body of a school district, charter school, constitutional special school or regional education cooperative, or the final decision maker of ~~[another]~~ a state agency that provides educational services to a school-aged person;

H. "instructional support provider" means a person who is employed to support the instructional program of a public school, including educational assistant, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, marriage and family therapist, interpreter for the deaf, ~~[and]~~ diagnostician, attendance coach, practical nurse, school health assistant, school business official, rehabilitation counselor, athletic coach, educational alcohol and drug abuse counselor and substance abuse associate;

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

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J. "military service member" means a person who is:

(1) serving in the armed forces of the United States as an active duty member or in an active reserve component of the armed forces of the United States, including the national guard;

(2) the spouse of a person who is serving in the armed forces of the United States as an active duty member or in an active reserve component of the armed forces of the United States, including the national guard; or a surviving spouse of a member who at the time of death was serving on active duty; or

(3) the child of a person who is serving in the armed forces of the United States as an active duty member or in an active reserve component of the armed forces of the United States, including the national guard; provided that child is also a dependent of that person for federal income tax purposes;

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

L. "public school" means a school district, charter school, constitutional special school, regional education cooperative or the educational program of another state agency;

M. "responsibility factor" means a value of 1.20 for an elementary school principal, 1.40 for a middle school or

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junior high school principal, 1.60 for a high school principal, 1.10 for an assistant elementary school principal, 1.15 for an assistant middle school or assistant junior high school principal and 1.25 for an assistant high school principal;

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

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

P. "school employee" includes licensed and unlicensed employees of a public school;

Q. "school premises" means:

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

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

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

S. "state agency" means a regional education cooperative or state institution;

T. "state institution" means the New Mexico boys' school, girls' welfare home, New Mexico youth diagnostic and development center, Sequoyah adolescent treatment center, Carrie Tingley crippled children's hospital, New Mexico behavioral health institute at Las Vegas and any other state agency responsible for educating resident children;

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

V. "superintendent" means a local superintendent, head administrator of a charter school or regional education cooperative, superintendent or commandant of a special school or head administrator of the educational program of a state agency;

W. "teacher" means a person who holds a level one, level two or level three-A license and whose primary job is

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classroom instruction or the supervision, below the school principal level, of an instructional program or whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers;

X. "terminate" means the act of severing the employment relationship with a school employee;

Y. "unsupervised contact with children or students" means access to or contact with, or the opportunity to have access to or contact with, a child or student for any length of time in the absence of:

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

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

(3) any adult relative or guardian of the child or student; [~~and~~]

Z. "veteran" means a person who has received an honorable discharge or separation from military service in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard; and

AA. "working day" means every school calendar day, excluding Saturdays, Sundays and legal holidays."

SECTION 2. Section 22-10A-3 NMSA 1978 (being Laws 2003,

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Chapter 153, Section 34, as amended) is amended to read:

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

A. Except as otherwise provided in this subsection, any person teaching, supervising an instructional program or providing instructional support services in a public school; any person administering in a public school; and any person providing health care and administering medications or performing medical procedures in a public school shall hold a valid license or certificate from the department authorizing the person to perform that function. This subsection does not apply to a person performing the functions of a practice teacher or teaching intern as defined by the department. A person applying for a license or certificate from the department shall undergo a criminal history record check pursuant to Section 22-10A-5 NMSA 1978. The criminal history record check requirement shall apply to the following applicants:

(1) applicants for level one licensure pursuant to Section 22-10A-7 NMSA 1978;

(2) applicants for an alternative level one license pursuant to Section 22-10A-8 NMSA 1978;

(3) applicants for level two licensure pursuant to Section 22-10A-10 NMSA 1978;

(4) applicants for level three licensure

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pursuant to Section 22-10A-11 NMSA 1978;

(5) applicants for an alternative level two or level three license pursuant to Section 22-10A-11.1 NMSA 1978;

(6) applicants for alternative licensure pursuant to Section 22-10A-11.2 NMSA 1978;

(7) applicants for level three-B provisional licensure pursuant to Section 22-10A-11.3 NMSA 1978;

(8) applicants for level three-B administrator's licensure pursuant to Section 22-10A-11.4 NMSA 1978;

(9) applicants for licenses granted on the basis of reciprocity pursuant to Section 22-10A-12 NMSA 1978;

(10) applicants for expedited licensure pursuant to Section 22-10A-12.1 NMSA 1978;

(11) applicants for Native American and culture certificates pursuant to Section 22-10A-13 NMSA 1978;

(12) applicants for substitute teacher certificates pursuant to Section 22-10A-15 NMSA 1978;

(13) applicants for instructional support provider certificates pursuant to Section 22-10A-17 NMSA 1978;

(14) applicants for educational assistant licensure pursuant to Section 22-10A-17.1 NMSA 1978; and

(15) applicants for alternative level three-B licensure pursuant to Section 22-10A-17.2 NMSA 1978.

B. In the event that the statutory section numbers

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referring to the licenses and certificates in Subsection A of this section are amended, the licensure and criminal history record check requirement shall remain in effect for the applicants. The department may require a federal bureau of investigation criminal history record check of a current licensee to analyze whether the department has good and just cause for suspension or revocation of a department-issued license. Applicants and current licensees shall pay the cost of obtaining a federal bureau of investigation criminal history record check. The department shall not share criminal history record check information with another entity unless expressly permitted by applicable federal law or federal regulation.

[B-] C. Except as provided in Subsection [G] D of this section, the department shall charge a reasonable fee for each application for or the renewal of a license or certificate. The application fee may be waived if the applicant meets a standard of indigency established by the department.

[G-] D. No licensing or certificate fee shall be charged for the first three years a license or certificate required by this section is valid if the licensee or certificate holder is a military service member or a veteran.

[D-] E. A person performing the duties of a licensed school employee who does not hold a valid license or certificate or has not submitted a complete application for

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

[E.] F. Each licensed school employee shall:

- (1) enforce all laws and rules applicable to the employee's public school;
- (2) if teaching, teach the prescribed courses of instruction;
- (3) exercise supervision over students on public school premises and while the students are under the control of the public school; and
- (4) furnish reports as required."

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

"22-10A-5. [~~BACKGROUND CHECKS~~] CRIMINAL HISTORY RECORD CHECK--KNOWN CONVICTIONS--CONFIDENTIALITY--ALLEGED ETHICAL MISCONDUCT--REPORTING REQUIRED--PENALTY FOR FAILURE TO REPORT.--

~~[A. An applicant for initial licensure shall be fingerprinted only upon initial licensure and shall provide two fingerprint cards or the equivalent electronic fingerprints to the department or superintendent to obtain the applicant's~~

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~~federal bureau of investigation record. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act. Other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the denial, suspension or revocation of a license for just cause. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the licensure or employment decisions affecting the specific applicant.]~~

A. To investigate the suitability of an applicant for licensure from the department, the department shall have access to criminal history record information furnished by the department of public safety and the federal bureau of investigation, subject to any restrictions imposed by federal law.

B. An applicant for licensure from the department shall undergo a state and federal criminal history record check, and the applicant shall submit two fingerprint cards or the equivalent electronic set of fingerprints to the department of public safety for that purpose. The department of public safety shall conduct a check of state records and forward the fingerprints to the federal bureau of investigation for a national criminal history record check to determine the existence and content of a record of convictions in this state

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or other law enforcement jurisdictions and to generate a criminal history record check in accordance with rules of the department of public safety and regulations of the federal bureau of investigation. The department of public safety shall review the information obtained from the criminal history record check and shall compile and provide that information to the department. The department shall use the information resulting from the fingerprint-based criminal history record check to inform department decisions relating to the issuance or continuation of licensure. The applicant for initial licensure shall pay for the cost of obtaining the [federal bureau of investigation record] criminal history record check.

[B-] C. Governing authorities shall develop policies and procedures to require [background] criminal history record checks on an applicant who has been offered employment or who applies to be a school volunteer or works for the public school as a contractor or a contractor's employee and who may have unsupervised contact with children or students on school premises. Nothing in this section shall preclude governing authorities from developing and implementing policies or procedures requiring or affecting other or additional background or criminal history record checks of personnel or applicants for employment.

[G-] D. An applicant who has been offered employment or a school volunteer, contractor or contractor's

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employee shall provide two fingerprint cards or the equivalent electronic fingerprints to the ~~[superintendent]~~ department of public safety to obtain the applicant's, school volunteer's, contractor's or contractor's employee's ~~[federal bureau of investigation record]~~ criminal history record check pursuant to Subsection B of this section. The public school shall pay for the criminal history record check for an applicant who has been offered employment. A school volunteer, contractor or contractor's employee may be required to pay for the cost of obtaining a ~~[background]~~ criminal history record check.

~~[D.]~~ E. Convictions of felonies or misdemeanors contained in the ~~[federal bureau of investigation record]~~ criminal history record check shall be used in accordance with the Criminal Offender Employment Act; provided that other information contained in the ~~[federal bureau of investigation record]~~ criminal history record check, if supported by independent evidence, may form the basis for the employment decisions for just cause. The department shall not exclude an otherwise qualified person from licensure on the sole basis that the person has been previously arrested or convicted of a crime, unless that person has a disqualifying criminal conviction, pursuant to Section 61-1-36 NMSA 1978.

~~[E.]~~ F. Records and related information shall be

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privileged and shall not be disclosed to a person not directly involved in the employment, volunteering or contracting decision affecting the specific applicant, school volunteer, contractor or contractor's employee who has been offered employment, a school volunteer position or a contract and will have unsupervised contact with children or students on school premises. Criminal history information received from the department of public safety or the federal bureau of investigation shall be confidential and shall not be considered a public record pursuant to the Inspection of Public Records Act. The department shall not authorize the receipt of criminal history information by a private entity pursuant to this section. SJC→Nothing in this subsection shall apply to compliance with discovery requests or subpoenas that are issued by a court of competent jurisdiction.←SJC

[F-] G. A superintendent shall report immediately to the department any known conviction of any felony or misdemeanor involving moral turpitude of school district personnel, a school employee, a school volunteer, a contractor or a contractor's employee.

[G-] H. A superintendent may appoint a designated representative to act on the superintendent's behalf. The superintendent or the designated representative shall investigate all allegations of ethical misconduct about any school district personnel, school employee, school volunteer,



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contractor or contractor's employee who resigns, is being discharged or terminated or otherwise leaves employment after an allegation has been made. If the investigation results in a finding of ethical misconduct by a licensed school employee, the superintendent or the superintendent's designated representative shall report the identity of the licensed school employee and attendant circumstances of the ethical misconduct on a standardized form to the department and the licensed school employee within thirty days following the separation from employment or immediately if the finding of ethical misconduct is sexual misconduct with an adult or child. The superintendent or the superintendent's designated representative shall also report allegations of sexual assault or sexual abuse involving any school district personnel, school employee, school volunteer, contractor or a contractor's employee to the appropriate law enforcement agency. No agreement between a departing school employee and the governing authority or superintendent shall diminish or eliminate the responsibility of investigating and reporting the alleged ethical misconduct to the department or, if legally mandated, to law enforcement, and any such agreement to the contrary is void.

[H.] I. Unless the department has commenced its own investigation of a licensed school employee prior to receipt of the form, the department shall serve the licensed school

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employee with a notice of investigation and a notice of contemplated action pursuant to the Uniform Licensing Act within sixty days of receipt of the form.

[~~F.~~] J. The department shall maintain a list of the names of persons reported to the department, as required by Subsection [~~F~~] G of this section, who have been convicted of a felony or misdemeanor involving moral turpitude and, as required by Subsection [~~G~~] H of this section and Section [~~1 of this 2021 act~~] 22-10A-5.1 NMSA 1978, who have been found to have committed ethical misconduct. The department shall update that list each month. The department shall provide that list to a governing authority upon request.

[~~J.~~] K. The secretary may initiate action to suspend, revoke or refuse to renew the license of:

(1) a superintendent who fails to report as required by Subsections [~~F~~] G and [~~G~~] H of this section or Section [~~1 of this 2021 act~~] 22-10A-5.1 NMSA 1978;

(2) any licensed school district personnel or licensed school employee who fails to report child abuse or neglect pursuant to Section 32A-4-3 NMSA 1978; or

(3) any licensed school district personnel or school employee who fails to report ethical misconduct pursuant to Subsection [~~G~~] H of this section or Section [~~1 of this 2021 act~~] 22-10A-5.1 NMSA 1978.

[~~K.~~] L. As used in this section, "designated

representative" means a representative chosen by a superintendent and may include the staff of a regional education cooperative."

SECTION 4. Section 22-10A-17 NMSA 1978 (being Laws 2003, Chapter 153, Section 48, as amended) is amended to read:

"22-10A-17. INSTRUCTIONAL SUPPORT PROVIDER LICENSES.--

A. ~~[The department shall license instructional support providers including]~~ The following instructional support providers shall obtain appropriate licensure from the department: educational assistants, school counselors, school social workers, school nurses, speech-language pathologists, psychologists, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, recreational therapists, marriage and family therapists, interpreters for the deaf, diagnosticians, ~~[and other service providers]~~ attendance coaches, practical nurses, school health assistants, school business officials, rehabilitation counselors, athletic coaches, educational alcohol and drug abuse counselors and substance abuse associates. The department may provide a professional licensing framework in which licensees can advance in their careers through the demonstration of increased competencies and the undertaking of increased duties.

B. The department shall provide by rule for the ~~[requirements for licensure of types of]~~ licensure requirements

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for any instructional support providers. If an instructional support provider practices a licensed profession, the provider shall provide evidence satisfactory to the department that the provider holds a current, unsuspended license in the profession for which the provider is applying to provide instructional support services. [The instructional support provider shall notify the school district and department immediately if the provider's professional license is suspended, revoked or denied. Suspension, revocation or denial of a professional license shall be just cause for discharge or termination and suspension, revocation or denial of the instructional support provider license.]

C. An instructional support provider licensed by the department shall also hold a valid professional license or certificate issued by the instructional support provider's respective licensing or certifying authority, if applicable, and shall continuously hold such underlying professional licensure or certification for as long as the instructional support provider holds licensure issued by the department.

D. If the underlying professional license or certificate for any reason expires, is suspended, is revoked or is denied, a person seeking or holding an instructional support provider license shall notify the department in writing within fourteen calendar days of such suspension, revocation, denial or expiration.

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E. Suspension, revocation, denial or expiration of an underlying professional license or certificate, or failure to notify the department of such, shall constitute just cause for discharge or termination from employment and for suspension, revocation or denial of an instructional support provider license."

SECTION 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.

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