

1 AN ACT

2 RELATING TO SCHOOL PERSONNEL; REQUIRING REPORTS OF ETHICAL
3 MISCONDUCT BY SCHOOL DISTRICT PERSONNEL, SCHOOL EMPLOYEES,
4 SCHOOL VOLUNTEERS, CONTRACTORS OR CONTRACTORS' EMPLOYEES TO
5 BE REPORTED TO THE PUBLIC EDUCATION DEPARTMENT OR A
6 SUPERINTENDENT; REQUIRING APPLICANTS FOR SCHOOL EMPLOYMENT OR
7 SCHOOL VOLUNTEER POSITIONS TO DISCLOSE PAST ETHICAL
8 MISCONDUCT; REQUIRING LOCAL SCHOOL BOARDS TO ADOPT POLICIES
9 TRACKING CHILD ABUSE AND ETHICAL MISCONDUCT ALLEGATIONS;
10 PROVIDING DEFINITIONS; REQUIRING THE PUBLIC EDUCATION
11 DEPARTMENT TO MAINTAIN A LIST OF REPORTS INVOLVING CHILD
12 ABUSE OR ETHICAL MISCONDUCT; ALLOWING TERMINATION OF SCHOOL
13 EMPLOYMENT OR SCHOOL VOLUNTEER POSITION DECISIONS TO BE
14 PUBLIC; ADDING ETHICAL MISCONDUCT TO SCHOOL TRAINING
15 PROGRAMS; REQUIRING SCHOOL DISTRICT PERSONNEL AND SCHOOL
16 VOLUNTEERS TO COMPLETE SCHOOL TRAINING PROGRAMS; ADDING
17 ETHICAL MISCONDUCT TO THE REASONS FOR POTENTIAL DENIAL,
18 SUSPENSION OR REVOCATION OF A DEPARTMENT-ISSUED LICENSE.

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

23 "DUTY TO REPORT ETHICAL MISCONDUCT--RESPONSIBILITY TO
24 INVESTIGATE ETHICAL MISCONDUCT--ETHICAL MISCONDUCT REPORT
25 COORDINATION.--

1 A. School district personnel, a school employee, a
2 contractor or a contractor's employee who knows or has a
3 reasonable suspicion that a child or student has been subject
4 to ethical misconduct by school district personnel, a school
5 employee, a school volunteer, a contractor or a contractor's
6 employee shall report the matter immediately to:

7 (1) the superintendent; or

8 (2) the department.

9 B. If a superintendent receives a report pursuant
10 to Subsection A of this section, the superintendent shall
11 immediately transmit to the department by telephone the facts
12 of the report and the name, address and telephone number of
13 the reporter. The superintendent shall transmit the same
14 information in writing within forty-eight hours.

15 C. If department staff receives a report pursuant
16 to Subsection A of this section, department staff shall
17 immediately transmit to the superintendent by telephone the
18 facts of the report and the name, address and telephone
19 number of the reporter. Department staff shall transmit the
20 same information in writing within forty-eight hours.

21 D. A written report shall contain the name,
22 address and age of the child or student; the child's or
23 student's parents, guardians or custodians; the school
24 district personnel, school employee, school volunteer,
25 contractor or contractor's employee who is alleged to have

1 committed ethical misconduct; and any evidence of ethical
2 misconduct, including the nature and extent of any injuries
3 and other information that the maker of the report believes
4 might be helpful to investigate a report of ethical
5 misconduct. The written report shall be submitted upon a
6 standardized form developed by the department.

7 E. Upon receipt of a report of ethical misconduct
8 pursuant to Subsection A of this section, the department
9 shall immediately notify law enforcement if the allegation of
10 ethical misconduct is criminal in nature; provided that the
11 department shall notify a tribal law enforcement or social
12 services agency for any Indian child residing in Indian
13 country.

14 F. The recipient of a report pursuant to
15 Subsection A of this section shall take immediate steps to
16 ensure prompt investigation of the report. The investigation
17 shall ensure that immediate steps are taken to protect the
18 health or welfare of a student or child who is the subject of
19 a report under Subsection A of this section. A school shall
20 take immediate steps to ensure the safety of enrolled
21 students.

22 G. After a report of suspected ethical misconduct
23 against a student or child is made to a law enforcement
24 agency, the department or a superintendent pursuant to this
25 section, the office receiving the report shall notify the

1 person making the report within five days after the report
2 was made that the office receiving the report is
3 investigating the matter. Mailing a notice within five days
4 shall constitute compliance with this subsection.

5 H. A law enforcement agency, the department or a
6 superintendent shall have access to any of the records
7 pertaining to an ethical misconduct case maintained by any of
8 the persons enumerated in Subsection A of this section.

9 I. A local school board shall adopt policies
10 providing for the coordination and internal tracking of
11 reports made pursuant to this section. Such policies shall
12 include measures to protect the identity of any alleged
13 victims. No policy shall relieve any person having a duty to
14 report pursuant to this section from that duty."

15 SECTION 2. A new section of the School Personnel Act is
16 enacted to read:

17 "APPLICANTS FOR SCHOOL EMPLOYMENT, CONTRACTS OR
18 VOLUNTEER POSITIONS--REQUIREMENTS FOR WORK HISTORY AND OTHER
19 INFORMATION.--

20 A. A public school shall require an applicant for
21 employment to provide:

22 (1) a list of the applicant's current and
23 former employers that were schools or that employed the
24 applicant in a position involving unsupervised contact with
25 children or students. The list shall include the name,

1 address, telephone number and other relevant contact
2 information for each of the applicant's listed employers;

3 (2) a written statement describing whether
4 the applicant:

5 (a) has ever been under investigation
6 for, or has been found to have violated, any state or federal
7 statute relating to child abuse or neglect, sexual misconduct
8 or any sexual offense, including those offenses prohibited in
9 Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA
10 1978, unless the allegations were false or unsubstantiated;

11 (b) has ever been under investigation
12 for, or found to have violated, any ethical rule or policy
13 approved by a former employer that previously employed the
14 applicant, unless the allegations were false or
15 unsubstantiated; or

16 (c) has ever had a professional license
17 or certificate denied, suspended, surrendered or revoked due
18 to a finding of child abuse or ethical misconduct or while
19 allegations of child abuse or ethical misconduct were pending
20 or under investigation; and

21 (3) a written authorization that authorizes
22 disclosure of information requested under Subsection B or D
23 of this section and the release of related records by the
24 applicant's previous employers, releasing the applicant's
25 previous employers from any liability related to the

1 disclosure or release of records.

2 B. A public school shall conduct a review of the
3 applicant's employment history and contact the applicant's
4 current and former employers listed under Subsection A of
5 this section and request:

6 (1) the applicant's dates of employment; and

7 (2) a written statement describing whether
8 the applicant:

9 (a) has ever been under investigation
10 for, or has been found to have violated, any state or federal
11 statute relating to child abuse or neglect, sexual misconduct
12 or any sexual offense, including those offenses prohibited in
13 Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA
14 1978, unless the allegations were false or unsubstantiated;

15 (b) has ever been under investigation
16 for, or found to have violated, any ethical rule or policy
17 approved by a former employer that previously employed the
18 applicant, unless the allegations were false or
19 unsubstantiated; or

20 (c) has ever had a professional license
21 or certificate denied, suspended, surrendered or revoked due
22 to a finding of child abuse or ethical misconduct or while
23 allegations of child abuse or ethical misconduct were pending
24 or under investigation.

25 C. An applicant's current or former employer shall

1 disclose the information requested under Subsection B of this
2 section within thirty days of receiving the request.

3 D. During the course of a public school's review
4 of the applicant's employment history, an applicant's current
5 or former employer may disclose any other information the
6 applicant's current or former employer deems pertinent and
7 substantive to the prospective employee's suitability for
8 employment in a position that includes unsupervised contact
9 with children or students.

10 E. A public school shall make and document efforts
11 to:

12 (1) verify the information provided under
13 Subsections A and B of this section; and

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

17 F. A public school may terminate an individual's
18 employment or contract or rescind an applicant's offer of
19 employment or offer of a contract if the applicant is offered
20 or commences employment with a public school after the
21 effective date of this 2021 act and information regarding the
22 applicant's history of child abuse or ethical misconduct that
23 is determined to disqualify the applicant from employment or
24 a contract is subsequently obtained by the public school.

25 G. When a reference on a former or current

1 employee, contractor or volunteer is requested, the employer
2 shall respond and provide the requested information pursuant
3 to Subsection B of this section.

4 H. An applicant who provides false information or
5 willfully neglects to disclose information required under
6 this section shall be subject to discipline including
7 termination or denial of employment or action to deny,
8 suspend or revoke a license.

9 I. For the purposes of this section, "applicant"
10 means an applicant for employment, an individual who is being
11 considered as a contractor, a contractor's employee or an
12 individual who wants to be a school volunteer."

13 SECTION 3. Section 22-5-4.2 NMSA 1978 (being Laws 1985,
14 Chapter 94, Section 1) is amended to read:

15 "22-5-4.2. CHILD ABUSE--REPORT COORDINATION--
16 CONFIRMATION.--

17 A. A local school board shall adopt policies
18 providing for the coordination and internal tracking of
19 reports made pursuant to Section 32A-4-3 NMSA 1978. Such
20 policies, however, shall not require any notification to
21 school district personnel before the report is made to the
22 offices listed in Subsection A of Section 32A-4-3 NMSA 1978.
23 Such policies shall include measures to protect the identity
24 of any alleged victims. No policy shall purport to relieve
25 any person having a duty to report under Section 32A-4-3 NMSA

1 1978 from that duty.

2 B. After a report is made pursuant to Section
3 32A-4-3 NMSA 1978, the office receiving the notification
4 shall notify the person making the report within five days
5 after the report was made that the office is investigating
6 the matter. Mailing a notice within five days shall
7 constitute compliance with this subsection."

8 SECTION 4. 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
11 Personnel 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
15 the child's parent, guardian, custodian or other adult;

16 (2) who has suffered physical abuse,
17 emotional abuse or psychological abuse inflicted or caused by
18 the child's 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
23 other adult has knowingly, intentionally or negligently
24 placed the child in a situation that may endanger the child's
25 life or health; or

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

4 B. "constitutional special school" means the New
5 Mexico military institute, New Mexico school for the deaf and
6 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
9 services to the public school, but does not include a general
10 contractor or a building or maintenance contractor who is
11 supervised and has no access to students at the public
12 school;

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

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

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

24 (1) discriminatory practice based on race,
25 age, color, national origin, ethnicity, sex, pregnancy,

1 sexual orientation, gender identity, mental or physical
2 disability, marital status, religion, citizenship, domestic
3 abuse reporting status or serious medical condition;

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

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

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

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

19 H. "instructional support provider" means a person
20 who is employed to support the instructional program of a
21 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;

1 I. "just cause" means a reason that is rationally
2 related to a school employee's competence or turpitude or the
3 proper performance of the school employee's duties and that
4 is not in violation of the school employee's civil or
5 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 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 L. "responsibility factor" means a value of 1.20
14 for an elementary school principal, 1.40 for a middle school
15 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 M. "sabbatical leave" means leave of absence with
21 pay as approved by the governing authority during all or part
22 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 N. "school administrator" means a person licensed

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

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

10 P. "school premises" means:

11 (1) the buildings and grounds, including
12 playgrounds, playing fields and parking areas and a school
13 bus of a public school, in or on which school or school-
14 related activities are being operated under the supervision
15 of a local 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
18 public school property, in or on which public school-related
19 and -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
22 basis at a school district, charter school or other
23 educational entity without compensation;

24 R. "state agency" means a regional education
25 cooperative or state institution;

1 S. "state institution" means the New Mexico boys'
2 school, girls' welfare home, New Mexico youth diagnostic and
3 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 T. "substitute teacher" means a person who holds a
8 certificate to substitute for a teacher in the classroom;

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

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

21 W. "terminate" means the act of severing the
22 employment relationship with a school employee;

23 X. "unsupervised contact with children or
24 students" means access to or contact with, or the opportunity
25 to have access to or contact with, a child or student for any

1 length of time in the absence of:

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

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

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

8 Y. "working day" means every school calendar day,
9 excluding Saturdays, Sundays and legal holidays."

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

14 "22-10A-5. BACKGROUND CHECKS--KNOWN CONVICTIONS--
15 ALLEGED ETHICAL MISCONDUCT--REPORTING REQUIRED--PENALTY FOR
16 FAILURE TO REPORT.--

17 A. An applicant for initial licensure shall be
18 fingerprinted only upon initial licensure and shall provide
19 two fingerprint cards or the equivalent electronic
20 fingerprints to the department or superintendent to obtain
21 the applicant's federal bureau of investigation record.
22 Convictions of felonies or misdemeanors contained in the
23 federal bureau of investigation record shall be used in
24 accordance with the Criminal Offender Employment Act. Other
25 information contained in the federal bureau of investigation

1 record, if supported by independent evidence, may form the
2 basis for the denial, suspension or revocation of a license
3 for just cause. Records and related information shall be
4 privileged and shall not be disclosed to a person not
5 directly involved in the licensure or employment decisions
6 affecting the specific applicant. The applicant for initial
7 licensure shall pay for the cost of obtaining the federal
8 bureau of investigation record.

9 B. Governing authorities shall develop policies
10 and procedures to require background checks on an applicant
11 who has been offered employment or who applies to be a school
12 volunteer or works for the public school as a contractor or a
13 contractor's employee and who may have unsupervised contact
14 with children or students on school premises.

15 C. An applicant who has been offered employment or
16 a school volunteer, contractor or contractor's employee shall
17 provide two fingerprint cards or the equivalent electronic
18 fingerprints to the superintendent to obtain the applicant's,
19 school volunteer's, contractor's or contractor's employee's
20 federal bureau of investigation record. The public school
21 shall pay for an applicant's background check. A school
22 volunteer, contractor or contractor's employee may be
23 required to pay for the cost of obtaining a background check.

24 D. Convictions of felonies or misdemeanors
25 contained in the federal bureau of investigation record shall

1 be used in accordance with the Criminal Offender Employment
2 Act; provided that other information contained in the federal
3 bureau of investigation record, if supported by independent
4 evidence, may form the basis for the employment decisions for
5 just cause.

6 E. Records and related information shall be
7 privileged and shall not be disclosed to a person not
8 directly involved in the employment, volunteering or
9 contracting decision affecting the specific applicant, school
10 volunteer, contractor or contractor's employee who has been
11 offered employment, a school volunteer position or a contract
12 and will have unsupervised contact with children or students
13 on school premises.

14 F. A superintendent shall report immediately to
15 the department any known conviction of any felony or
16 misdemeanor involving moral turpitude of school district
17 personnel, a school employee, a school volunteer, a
18 contractor or a contractor's employee.

19 G. A superintendent may appoint a designated
20 representative to act on the superintendent's behalf. The
21 superintendent or the designated representative shall
22 investigate all allegations of ethical misconduct about any
23 school district personnel, school employee, school volunteer,
24 contractor or contractor's employee who resigns, is being
25 discharged or terminated or otherwise leaves employment after

1 an allegation has been made. If the investigation results in
2 a finding of ethical misconduct by a licensed school
3 employee, the superintendent or the superintendent's
4 designated representative shall report the identity of the
5 licensed school employee and attendant circumstances of the
6 ethical misconduct on a standardized form to the department
7 and the licensed school employee within thirty days following
8 the separation from employment or immediately if the finding
9 of ethical misconduct is sexual misconduct with an adult or
10 child. The superintendent or the superintendent's designated
11 representative shall also report allegations of sexual
12 assault or sexual abuse involving any school district
13 personnel, school employee, school volunteer, contractor or a
14 contractor's employee to the appropriate law enforcement
15 agency. No agreement between a departing school employee and
16 the governing authority or superintendent shall diminish or
17 eliminate the responsibility of investigating and reporting
18 the alleged ethical misconduct to the department or, if
19 legally mandated, to law enforcement, and any such agreement
20 to the contrary is void.

21 H. Unless the department has commenced its own
22 investigation of a licensed school employee prior to receipt
23 of the form, the department shall serve the licensed school
24 employee with a notice of investigation and a notice of
25 contemplated action pursuant to the Uniform Licensing Act

1 within sixty days of receipt of the form.

2 I. The department shall maintain a list of the
3 names of persons reported to the department, as required by
4 Subsection F of this section, who have been convicted of a
5 felony or misdemeanor involving moral turpitude and, as
6 required by Subsection G of this section and Section 1 of
7 this 2021 act, who have been found to have committed ethical
8 misconduct. The department shall update that list each
9 month. The department shall provide that list to a governing
10 authority upon request.

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

13 (1) a superintendent who fails to report as
14 required by Subsections F and G of this section or Section 1
15 of this 2021 act;

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

19 (3) any licensed school district personnel
20 or school employee who fails to report ethical misconduct
21 pursuant to Subsection G of this section or Section 1 of this
22 2021 act.

23 K. As used in this section, "designated
24 representative" means a representative chosen by a
25 superintendent and may include the staff of a regional

1 education cooperative."

2 SECTION 6. Section 22-10A-24 NMSA 1978 (being Laws
3 1986, Chapter 33, Section 22, as amended) is amended to read:

4 "22-10A-24. TERMINATION DECISIONS--LOCAL SCHOOL BOARD--
5 GOVERNING AUTHORITY OF A STATE AGENCY--PROCEDURES.--

6 A. A local school board or governing authority of
7 a state agency may terminate a licensed school employee,
8 excluding licensed educational assistants who have not been
9 offered and accepted the third consecutive contract, for any
10 reason it deems sufficient. A local school board or
11 governing authority of a state agency may terminate a
12 nonlicensed school employee or a licensed educational
13 assistant with less than one year of employment for any
14 reason it deems sufficient. Upon request of the employee,
15 the local superintendent or state agency administrator shall
16 provide written reasons for the decision to terminate. The
17 reasons shall be provided within ten working days of the
18 request. The reasons shall not provide a basis for
19 contesting the decision under the School Personnel Act.

20 B. Before terminating a nonlicensed school
21 employee or a licensed educational assistant, the local
22 school board or governing authority shall serve the employee
23 or assistant with a written notice of termination.

24 C. A licensed school employee who has been
25 employed by a school district or state agency for more than

1 two consecutive years or a nonlicensed school employee or
2 licensed educational assistant who has been employed for more
3 than one year and who receives a notice of termination
4 pursuant to either Section 22-10A-22 NMSA 1978 or this
5 section may request an opportunity to make a statement to the
6 local school board or governing authority on the decision to
7 terminate the employee or assistant by submitting a written
8 request to the local superintendent or state agency
9 administrator within five working days from the date written
10 notice of termination is served upon the employee or
11 assistant. The employee or assistant may also request in
12 writing the reasons for the termination action. The local
13 superintendent or state agency administrator shall provide
14 written reasons for the notice of termination to the employee
15 or assistant within five working days from the date the
16 written request for a meeting and the written request for the
17 reasons were received by the local superintendent or state
18 agency administrator.

19 D. A local school board or governing authority may
20 not terminate a licensed school employee who has been offered
21 and accepted a third-year contract or a nonlicensed school
22 employee or licensed educational assistant who has been
23 employed by a school district or state agency for more than
24 one year without just cause.

25 E. The employee's request pursuant to Subsection C HJC/HB 128/a
Page 21

1 of this section shall be granted if the employee responds to
2 the local superintendent's or state agency administrator's
3 written reasons as provided in Subsection C of this section
4 by submitting in writing to the local superintendent or state
5 agency administrator a contention that the decision to
6 terminate was made without just cause. The written
7 contention shall specify the grounds on which it is contended
8 that the decision was without just cause and shall include a
9 statement of the facts that the employee believes support the
10 employee's contention. This written statement shall be
11 submitted within ten working days from the date the employee
12 receives the written reasons from the local superintendent or
13 state agency administrator. The submission of this statement
14 constitutes a representation on the part of the employee that
15 the employee can support the employee's contentions and an
16 acknowledgment that the local school board or governing
17 authority may offer the causes for its decision and any
18 relevant data in its possession in rebuttal of the employee's
19 contentions.

20 F. A local school board or governing authority
21 shall meet to hear the employee's statement in no less than
22 five or more than fifteen working days after the local school
23 board or governing authority receives the statement. The
24 hearing shall be conducted informally in accordance with the
25 provisions of the Open Meetings Act. The employee and the

1 local superintendent or state agency administrator may each
2 be accompanied by a person of the employee's and the local
3 superintendent's or state agency administrator's choice.
4 First, the local superintendent shall present the factual
5 basis for the determination that just cause exists for the
6 termination of the employee, limited to those reasons
7 provided to the employee pursuant to Subsection C of this
8 section. Then, the employee shall present the employee's
9 contentions, limited to those grounds specified in Subsection
10 E of this section. The local school board or governing
11 authority may offer such rebuttal testimony as it deems
12 relevant. All witnesses may be questioned by the local
13 school board or governing authority, the employee or the
14 employee's representative and the local superintendent or
15 state agency administrator or the local superintendent's or
16 state agency administrator's representative. The local
17 school board or governing authority may consider only such
18 evidence as is presented at the hearing and need consider
19 only such evidence as it considers reliable. The local
20 school board or governing authority shall notify the employee
21 and the local superintendent or state agency administrator of
22 its decision in writing within five working days from the
23 conclusion of the meeting."

24 SECTION 7. Section 22-10A-25 NMSA 1978 (being Laws
25 1986, Chapter 33, Section 23, as amended) is amended to read:

1 "22-10A-25. APPEALS--INDEPENDENT ARBITRATOR--
2 QUALIFICATIONS--PROCEDURE--BINDING DECISION.--

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

20 B. The local school board or governing authority
21 and the employee shall meet within ten working days from the
22 receipt of the request for an appeal and select an
23 independent arbitrator to conduct the appeal. If the parties
24 fail to agree on an independent arbitrator, they shall
25 request the presiding judge in the judicial district in which

1 the employee's public school is located to select one. The
2 presiding judge shall select the independent arbitrator
3 within five working days from the date of the parties'
4 request.

5 C. A qualified independent arbitrator shall be
6 appointed who is versed in employment practices and school
7 procedures and who preferably has experience in the practice
8 of law. No person shall be appointed to serve as the
9 independent arbitrator who has any direct or indirect
10 financial interest in the outcome of the proceeding, has any
11 relationship to any party in the proceeding, is employed by
12 the local school board or governing authority or is a member
13 of or employed by any professional or labor organization of
14 which the employee is a member.

15 D. Appeals from the decision of the local school
16 board or governing authority shall be decided after a de novo
17 hearing before the independent arbitrator. The issue to be
18 decided by the independent arbitrator is whether there was
19 just cause for the decision of the local school board or
20 governing authority to terminate the employee.

21 E. The de novo hearing shall be held within thirty
22 working days from the selection of the independent
23 arbitrator. The arbitrator shall give written notice of the
24 date, time and place of the hearing, and such notice shall be
25 sent to the employee and the local school board or governing

1 authority.

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

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

7 H. The independent arbitrator may issue subpoenas
8 for the attendance of witnesses and for the production of
9 books, records, documents and other evidence and shall have
10 the power to administer oaths. Subpoenas so issued shall be
11 served and enforced in the manner provided by law for the
12 service and enforcement of subpoenas in a civil action.

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

23 J. The local school board or governing authority
24 has the burden of proof and shall prove by a preponderance of
25 the evidence that, at the time the notice of termination was

1 served on the employee, the local school board or governing
2 authority had just cause to terminate the employee. If the
3 local school board or governing authority proves by a
4 preponderance of the evidence that there was just cause for
5 its action, then the burden shifts to the employee to rebut
6 the evidence presented by the local school board or governing
7 authority.

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

19 L. Either party desiring a record of the
20 arbitration proceedings may, at the party's own expense,
21 record or otherwise provide for a transcript of the
22 proceedings; provided, however, that the record so provided
23 shall not imply any right of automatic appeal or review.

24 M. The independent arbitrator shall render a
25 written decision affirming or reversing the action of the

1 local school board or governing authority. The decision
2 shall contain findings of fact and conclusions of law. The
3 parties shall receive actual written notice of the decision
4 of the independent arbitrator within ten working days from
5 the conclusion of the de novo hearing.

6 N. The sole remedies available under this section
7 shall be reinstatement or payment of compensation reinstated
8 in full but subject to any additional compensation allowed
9 other employees of like qualifications and experience
10 employed by the school district or state agency and including
11 reimbursement for compensation during the entire period for
12 which compensation was terminated, or both, less an offset
13 for any compensation received by the employee during the
14 period the compensation was terminated.

15 O. Unless a party can demonstrate prejudice
16 arising from a departure from the procedures established in
17 this section and in Section 22-10A-24 NMSA 1978, such
18 departure shall be presumed to be harmless error.

19 P. The decision of the independent arbitrator
20 shall be binding on both parties and shall be final and
21 nonappealable except where the decision was procured by
22 corruption, fraud, deception or collusion, in which case it
23 shall be appealed to the district court in the judicial
24 district in which the public school or state agency is
25 located.

1 Q. Each party shall bear its own costs and
2 expenses. The independent arbitrator's fees and other
3 expenses incurred in the conduct of the arbitration shall be
4 assigned at the discretion of the independent arbitrator.

5 R. School districts shall file a record with the
6 department of all terminations and all actions arising from
7 terminations annually."

8 SECTION 8. Section 22-10A-31 NMSA 1978 (being Laws
9 1967, Chapter 16, Section 124, as amended) is amended to
10 read:

11 "22-10A-31. DENIAL, SUSPENSION AND REVOCATION OF
12 LICENSES.--In accordance with the procedures provided in the
13 Uniform Licensing Act, the department may deny, suspend or
14 revoke a department-issued license for incompetency, moral
15 turpitude, ethical misconduct or any other good and just
16 cause."

17 SECTION 9. Section 22-10A-32 NMSA 1978 (being Laws
18 1988, Chapter 48, Section 1, as amended) is amended to read:

19 "22-10A-32. SCHOOL DISTRICT PERSONNEL, SCHOOL
20 EMPLOYEES, SCHOOL VOLUNTEERS, CONTRACTORS AND CONTRACTORS'
21 EMPLOYEES--REQUIRED TRAINING PROGRAM.--

22 A. All school district personnel, school
23 employees, school volunteers, contractors and contractors'
24 employees shall be required to complete training in the
25 detection and reporting of child abuse and neglect, ethical

1 misconduct, professional responsibilities, sexual abuse and
2 assault and substance abuse. Except as otherwise provided in
3 this subsection, this requirement shall be completed within
4 the school district employee's, school employee's, school
5 volunteer's, contractor's or contractor's employee's first
6 year of employment.

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

24 (1) reporting requirements, including
25 minimal standards triggering reporting;

1 (2) trauma-informed instruction;
2 (3) identification of circumstances and
3 factors that are indicators of likely abuse or inappropriate
4 behaviors;
5 (4) ethical misconduct;
6 (5) professional responsibilities;
7 (6) investigations and procedures; and
8 (7) relevant legal and regulatory
9 definitions.

10 C. The training programs developed or adopted
11 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 10.** 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
18 NEGLECT--RESPONSIBILITY TO INVESTIGATE CHILD ABUSE OR
19 NEGLECT--PENALTY--NOTIFICATION OF PLAN OF CARE.--

20 A. Every person, including a licensed physician; a
21 resident or an intern examining, attending or treating a
22 child; a law enforcement officer; a judge presiding during a
23 proceeding; a registered nurse; a visiting nurse; a school
24 employee; a social worker acting in an official capacity; or
25 a member of the clergy who has information that is not

1 privileged as a matter of law, who knows or has a reasonable
2 suspicion that a child is an abused or a neglected child
3 shall report the matter immediately to:

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

9 B. A law enforcement agency receiving the report
10 shall immediately transmit the facts of the report and the
11 name, address and phone number of the reporter by telephone
12 to the department and shall transmit the same information in
13 writing within forty-eight hours. The department shall
14 immediately transmit the facts of the report and the name,
15 address and phone number of the reporter by telephone to a
16 local law enforcement agency and shall transmit the same
17 information in writing within forty-eight hours. The written
18 report shall contain the names and addresses of the child and
19 the child's parents, guardian or custodian, the child's age,
20 the nature and extent of the child's injuries, including any
21 evidence of previous injuries, and other information that the
22 maker of the report believes might be helpful in establishing
23 the cause of the injuries and the identity of the person
24 responsible for the injuries. The written report shall be
25 submitted upon a standardized form agreed to by the law

1 enforcement agency and the department.

2 C. The recipient of a report under Subsection A of
3 this section shall take immediate steps to ensure prompt
4 investigation of the report. The investigation shall ensure
5 that immediate steps are taken to protect the health or
6 welfare of the alleged abused or neglected child, as well as
7 that of any other child under the same care who may be in
8 danger of abuse or neglect. A local law enforcement officer
9 trained in the investigation of child abuse and neglect is
10 responsible for investigating reports of alleged child abuse
11 or neglect at schools, daycare facilities or child care
12 facilities.

13 D. If the child alleged to be abused or neglected
14 is in the care or control of or in a facility
15 administratively connected to the department, the report
16 shall be investigated by a local law enforcement officer
17 trained in the investigation of child abuse and neglect. The
18 investigation shall ensure that immediate steps are taken to
19 protect the health or welfare of the alleged abused or
20 neglected child, as well as that of any other child under the
21 same care who may be in danger of abuse or neglect.

22 E. A law enforcement agency or the department
23 shall have access to any of the records pertaining to a child
24 abuse or neglect case maintained by any of the persons
25 enumerated in Subsection A of this section, except as

1 otherwise provided in the Abuse and Neglect Act.

2 F. A person who violates the provisions of
3 Subsection A of this section is guilty of a misdemeanor and
4 shall be sentenced pursuant to the provisions of Section
5 31-19-1 NMSA 1978.

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

20 H. A volunteer, contractor or staff of a hospital
21 or freestanding birthing center shall:

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

25 (2) provide notification to the department.

1 Notification by a health care provider pursuant to this
2 paragraph shall not be construed as a report of child abuse
3 or neglect.

4 I. As used in this section, "notification" means
5 informing the department that a substance-exposed newborn was
6 born and providing a copy of the plan of care that was
7 created for the child; provided that notification shall
8 comply with federal guidelines and shall not constitute a
9 report of child abuse or neglect.

10 J. As used in this section, "school employee"
11 includes employees of a school district or a public school."

12
13
14
15
16
17
18
19
20
21
22
23
24
25