

HOUSE LABOR, VETERANS' AND MILITARY AFFAIRS  
COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 431

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO PUBLIC SCHOOL PERSONNEL; CLARIFYING TERMS AND PROVISIONS OF THE SCHOOL PERSONNEL ACT CONCERNING Hf1→~~TERMINATION AND~~←Hf1 DISCHARGE OF LICENSED AND UNLICENSED SCHOOL EMPLOYEES IN PUBLIC SCHOOLS, SPECIAL SCHOOLS, REGIONAL EDUCATION COOPERATIVES AND OTHER STATE AGENCIES THAT EDUCATE RESIDENT SCHOOL-AGE CHILDREN.

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

SECTION 1. Section 22-10A-2 NMSA 1978 (being Laws 1975,

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Chapter 306, Section 2, as amended) is repealed and a new Section 22-10A-2 NMSA 1978 is enacted to read:

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

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

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

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

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

E. "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;

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F. "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;

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

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

I. "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;

J. "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;

K. "school employee" includes licensed and

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unlicensed employees of a public school;

L. "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

(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;

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

N. "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;

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

P. "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

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agency;

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

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

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

SECTION 2. Section 22-10A-3 NMSA 1978 (being Laws 2003, Chapter 153, Section 34) 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 [~~or state agency~~]; 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 [~~state board~~] department.

B. The [~~state board~~] department shall charge a

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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.

C. 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 licensure or certification within the first three months from beginning employment duties shall not be compensated thereafter for services rendered until ~~[he]~~ the person demonstrates that ~~[he]~~ 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 ~~[state board]~~ department.

D. Each licensed school employee shall:

(1) enforce all laws and rules applicable to ~~[his]~~ the employee's public school ~~[and school district or to the educational program of the state agency];~~

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

(3) exercise supervision over students on ~~[property belonging to the]~~ public school ~~[or state agency]~~ premises and while the students are under the control of the public school ~~[or state agency];~~ and

(4) furnish reports as required."

SECTION 3. Section 22-10A-5 NMSA 1978 (being Laws 1997,

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Chapter 238, Section 1, as amended) is amended to read:

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

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

B. An applicant for initial licensure shall be fingerprinted and shall provide two fingerprint cards or the equivalent electronic fingerprints to the department or superintendent to obtain the applicant's 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 [~~good and~~] 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. The applicant for initial licensure shall pay for the cost of obtaining the

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federal bureau of investigation record.

C. ~~[Local school boards and regional education cooperatives]~~ Governing authorities shall develop policies and procedures to require background checks on an applicant who has been offered employment or who applies to be a volunteer or works for the public school as a contractor or a contractor's employee ~~[with]~~ and who may have unsupervised access to students ~~[at a public school]~~ on school premises.

D. ~~[An applicant for employment who has been initially licensed within twenty-four months of applying for employment with a local school board, regional education cooperative or a charter school shall not be required to submit to another background check if the department has copies of the applicant's federal bureau of investigation records on file.]~~

An applicant who has been offered employment ~~[a]~~ or a school volunteer, contractor or ~~[a]~~ contractor's employee ~~[with unsupervised access to students at a public school]~~ shall provide two fingerprint cards or the equivalent electronic fingerprints to the ~~[local school board regional education cooperative or charter school]~~ superintendent to obtain the applicant's, school volunteer's, contractor's or contractor's employee's federal bureau of investigation record. The ~~[applicant]~~ public school shall pay for an applicant's background check. A school volunteer, contractor or contractor's employee ~~[who has been offered employment by a~~

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~~regional education cooperative or at a public school]~~ may be required to pay for the cost of obtaining a background check. ~~[At the request of a local school board, regional education cooperative or charter school the department is authorized to release copies of federal bureau of investigation records that are on file with the department and that are not more than twenty-four months old.]~~

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

F. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the employment, volunteering or contracting decision affecting the specific applicant, volunteer, contractor or contractor's employee who has been offered employment, ~~[contractor or contractor's employee with]~~ a volunteer position or a contract and will have unsupervised access to students ~~[at a public school]~~ on school premises.

~~[E.]~~ G. A ~~[local]~~ superintendent ~~[charter school administrator or regional education cooperative]~~ shall report to the department any known conviction of a felony or misdemeanor involving moral turpitude of a licensed school employee that results in any type of action against the licensed school employee.

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[F.] H. A [~~local~~] superintendent [~~charter school administrator or director of a regional education cooperative or their respective designees~~] or the superintendent's designated representative shall investigate all allegations of ethical misconduct about any [~~licensed~~] school 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 [~~wrongdoing~~] ethical misconduct by a licensed school employee, the [~~local~~] superintendent [~~charter school administrator or director of a regional education cooperative~~] 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 knowledge of the ethical misconduct is sexual harassment SEC→, sexual assault←SEC or sexual abuse of an adult or child. Copies of that form shall not be maintained in [~~public school, school district or regional education cooperative records~~] the school employee's personnel file. The superintendent shall also report allegations of sexual assault or sexual abuse involving any school employee Hf1→HEC→~~a comma volunteer, contractor or contractor's employees~~←HEC←Hf1 Hf1→, volunteer, contractor or a contractor's employee←Hf1 to the appropriate law enforcement agency. No agreement between a departing [~~licensed~~] school

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employee and the [~~local school board school district, charter school or regional education cooperative~~] 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.

I. Unless the department has commenced its own investigation of [~~the~~] a licensed school employee prior to receipt of the form, the department shall serve the licensed school employee with a notice of [~~contemplated action involving that employee's license~~] investigation and a notice of contemplated action pursuant to the Uniform Licensing Act within [~~ninety~~] sixty days of receipt of the form. If [~~that~~] a notice of contemplated action is not served on the licensed school employee within ninety days of receipt of the form, the form, together with any documents related to the alleged ethical misconduct, shall be expunged from the licensed school employee's records. [~~with the department and shall not be subject to public inspection.~~

G.] J. The secretary may initiate action to suspend, revoke or refuse to renew the license of a [~~local~~] superintendent [~~charter school administrator or regional education cooperative director~~] who fails to report as required by Subsections [E] G and [F] H of this section.

[H.] K. A person who in good faith reports as provided in Subsections [E] G and [F] H of this section shall not be held liable for civil damages as a result of the report.

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The person being accused shall have the right to sue for any damages sustained as a result of negligent or intentional reporting of inaccurate information or the disclosure of any information to an unauthorized person."

SECTION 4. Section 22-10A-21 NMSA 1978 (being Laws 1967, Chapter 16, Section 113, as amended) is amended to read:

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

A. All employment contracts between [~~local school boards~~] superintendents and [~~certified~~] licensed school [~~personnel and between governing authorities of state agencies and certified school instructors~~] employees shall be in writing on forms approved by the [~~state board~~] department. These forms shall contain and specify the term of service, the salary to be paid, the method of payment, the causes for [~~termination of~~] discharge during the term of the contract and other provisions required by the [~~regulations of the state board~~] rules of the department.

B. All employment contracts between [~~local school boards and certified~~] superintendents and licensed school [~~personnel and between governing authorities of state agencies and certified school instructors~~] employees shall be for a period of one school year except:

(1) contracts for less than one school year are permitted to fill personnel vacancies [~~which~~] that occur

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during the school year;

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

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

(4) contracts not to exceed three years are ~~[permitted for certified school administrators in public schools who are engaged in administrative functions for more than one-half of their employment time]~~ allowed at the discretion of the governing authority for superintendents; and

(5) contracts not to exceed three years are ~~[permitted]~~ allowed at the discretion of the ~~[local school board]~~ governing authority for ~~[certified]~~ licensed school ~~[instructors]~~ employees in public schools who have been employed ~~[in the school district]~~ for three consecutive school years.

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

D. In determination of eligibility for unemployment compensation rights and benefits for ~~[certified]~~ licensed

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school [~~instructors~~] employees where those rights and benefits are claimed to arise from the employment relationship between governing authorities [~~of state agencies or local school boards and certified~~] and licensed school [~~instructors~~] employees, that period of a year not covered by a school year shall not be considered an unemployment period.

E. Except as provided in Section [~~22-10-12~~] 22-10A-22 NMSA 1978, a [~~person~~] licensed school employee employed by contract pursuant to this section has no legitimate objective expectancy of reemployment, and no contract entered into pursuant to this section shall be construed as an implied promise of continued employment pursuant to a subsequent contract."

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

"22-10A-22. LICENSED SCHOOL EMPLOYEES--NOTICE OF REEMPLOYMENT--TERMINATION.--On or before fifteen working days prior to the last day of the school year, [~~of the existing employment contract, the local school board or the governing authority of the state agency~~] the superintendent shall serve written notice of reemployment or termination on each [~~certified~~] licensed school [~~instructor~~] employee employed by the [~~school district or state agency~~] public school. A notice of reemployment shall be an offer of employment for the ensuing school year. A notice of termination shall be a notice of

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intention not to reemploy for the ensuing school year. Failure of the ~~[local school board or the governing authority of the state agency]~~ superintendent to serve a written notice of reemployment or termination on a ~~[certified]~~ licensed school ~~[instructor]~~ employee shall be construed to mean that notice of reemployment has been served upon the ~~[person]~~ licensed school employee for the ensuing school year according to the terms of the existing employment contract but subject to any additional compensation allowed other ~~[certified]~~ licensed school ~~[instructors]~~ employees of like qualifications and experience ~~[employed by the school district or state agency]~~. Nothing in this section shall be construed to mean that failure of a ~~[local school board or the governing authority of the state agency]~~ superintendent to serve a written notice of reemployment or termination shall automatically extend a ~~[certified]~~ licensed school ~~[instructor's]~~ employee's employment contract for a period in excess of one school year."

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

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

A. Each ~~[certified]~~ licensed school ~~[instructor]~~ employee shall deliver to the ~~[local school board of the school district or to the governing authority of the state agency in which the person is employed]~~ superintendent a written acceptance or rejection of reemployment for the ensuing school year within fifteen days from the following:

- (1) the date written notice of reemployment is

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served upon the ~~[person]~~ licensed school employee; or

(2) the last day of the school year when no written notice of reemployment or termination is served upon the ~~[person]~~ licensed school employee on or before fifteen working days prior to the last day of the school year.

B. Delivery of the written acceptance of reemployment by a ~~[certified]~~ licensed school [instructor] employee creates a binding employment contract between the ~~[certified] licensed school [instructor] employee~~ and the ~~[local school board or the governing authority of the state agency] superintendent~~ until the parties enter into a formal written employment contract. Written employment contracts between ~~[local school boards or governing authorities of state agencies and certified school instructors]~~ the superintendent and licensed school employees shall be executed by the parties not later than ten days before the first day of a school year."

Hf1 → ~~SECTION 7. Section 22-10A-24 NMSA 1978 (being Laws 1986, Chapter 33, Section 22, as amended) is amended to read:~~

~~"22-10A-24. LICENSED SCHOOL EMPLOYEES--TERMINATION DECISIONS-- [LOCAL SCHOOL BOARD--GOVERNING AUTHORITY OF A STATE AGENCY] PROCEDURES.--"~~

~~A. Except as provided in Section 22-10A-24.1 NMSA 1978, a [local school board or governing authority of a state agency] superintendent may terminate [an] a licensed school employee [with] employed for fewer than three consecutive~~

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~~school years [of consecutive service] for any reason [it] the superintendent deems sufficient. Upon request of the licensed school employee, the superintendent [or administrator] shall provide written reasons for the decision to terminate. The request shall be in writing and submitted to the superintendent within five working days from the date written notice of termination is served on the licensed school employee. The reasons shall be provided within ten working days of the request. The reasons shall not be publicly disclosed by the superintendent [administrator, local school board] or governing authority unless required by law. The reasons shall not provide a basis for contesting the decision under the School Personnel Act.~~

~~[B. Before terminating a noncertified school employee, the local school board or governing authority shall serve the employee with a written notice of termination.~~

~~C. An] B. A licensed school employee who has been employed by a public school [district or state agency] for three consecutive years and who receives a notice of termination pursuant to [either Section 22-10-12 NMSA 1978 or] this section may request [an opportunity to make a statement to the local school board or governing authority on the decision to terminate him by submitting a written request to the local superintendent or administrator within five working days from the date written notice of termination is served upon him. The employee may also request in writing the reasons for the action to terminate him] in writing the reasons for the decision to terminate. The request shall be in writing and~~

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~~submitted to the superintendent within ten working days from the date written notice of termination is served on the licensed school employee. The [local superintendent or administrator] superintendent shall provide written reasons for the notice of termination to the licensed school employee within [five] ten working days from the date the written request for [a meeting and the written request for] the reasons [were] was received by the [local] superintendent [or administrator]. Neither the [local] superintendent [or administrator] nor the [local school board or] governing authority shall publicly disclose [its] the reasons for termination unless required by law.~~

~~[D.] C. A [local school board or governing authority may] superintendent shall not terminate [an] a licensed school employee who has been employed by a [school district or state agency] public school for three consecutive years without just cause.~~

~~[E. The employee's request pursuant to Subsection C of this section shall be granted if he responds to the local superintendent's or administrator's written reasons as provided in Subsection C of this section by submitting in writing to the local superintendent or administrator a contention that the decision to terminate him was made without just cause.]~~

~~D. A licensed school employee terminated pursuant to Subsection B of this section may request an opportunity to~~

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~~make a statement to the governing authority on the decision to terminate by submitting a written contention and request for hearing to the superintendent. The written contention shall specify the grounds on which it is contended that the decision was without just cause and shall include a statement of the facts that the licensed school employee believes support [his] the licensed school employee's contention. This written statement and request to make a statement before the governing authority shall be submitted within ten working days from the date the licensed school employee receives the written reasons from the [local] superintendent [or administrator]. The submission of this statement constitutes a representation on the part of the licensed school employee that [he] the licensed school employee can support [his] the licensed school employee's contentions and an acknowledgment that the [local school board or governing authority] superintendent may offer the causes for [its] the decision and any relevant data in [its] the superintendent's possession in rebuttal of [his] the licensed school employee's contentions.~~

~~E. The parties shall complete and respond to discovery by deposition and production of documents prior to the termination hearing.~~

~~F. [A local school board or] The governing authority shall meet to hear the licensed school employee's statement in no less than five or more than fifteen working days after the [local school board or governing authority] superintendent receives the statement and request. The hearing shall be conducted informally in accordance with the provisions~~

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~~of the Open Meetings Act. The licensed school employee and the [local] superintendent [or administrator] may each be accompanied by a person of [his] each one's choice. First, the superintendent shall present the factual basis for [his] the determination that just cause exists for the termination of the licensed school employee, limited to those reasons provided to the licensed school employee pursuant to Subsection [C] B of this section. Then, the licensed school employee shall present [his] the licensed school employee's contentions, limited to those grounds specified in Subsection [E] D of this section. The [local school board or governing authority] superintendent may offer such rebuttal testimony as [it] the superintendent deems relevant. All witnesses may be questioned by the [local school board or] governing authority, the licensed school employee or [his] the licensed school employee's representative and the [local superintendent or administrator] superintendent or [his] the superintendent's representative. The [local school board or] governing authority may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable. [No record shall be made of the proceeding. The local school board or] An official record shall be made of the hearing. Either party may have one copy of the record at the expense of the governing authority. The governing authority shall notify the licensed school employee and the [local superintendent or administrator]~~

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~~superintendent of its decision affirming or reversing the superintendent's determination to terminate in writing within five working days from the conclusion of the meeting."~~

~~SECTION 8. A new section of the School Personnel Act, Section 22-10A-24.1 NMSA 1978, is enacted to read:~~

~~"22-10A-24.1. [NEW MATERIAL] EDUCATIONAL ASSISTANTS-- TERMINATION DECISIONS--PROCEDURES.--"~~

~~A. A superintendent may terminate an educational assistant who has not been offered and accepted in writing a notice of reemployment for the second consecutive school year for any reason the superintendent deems sufficient. Upon request of the educational assistant, the superintendent shall provide written reasons for the decision to terminate. The request shall be in writing and submitted to the superintendent within ten working days from the date written notice of termination is served on the educational assistant. The reasons shall be provided within ten working days of the request. The reasons shall not be publicly disclosed by the superintendent or governing authority unless required by law. The reasons shall not provide a basis for contesting the decision under the School Personnel Act.~~

~~B. An educational assistant who has been employed by a public school for two consecutive years and who receives a notice of termination pursuant to this section may request in writing the reasons for the decision to terminate. The request shall be in writing and submitted to the superintendent within ten working days from the date written notice of termination is served on the educational assistant. The superintendent shall~~

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~~provide written reasons for the notice of termination to the educational assistant within ten working days from the date the written request for the reasons was received by the superintendent. Neither the superintendent nor the governing authority shall publicly disclose the reasons for termination unless required by law.~~

~~C. A superintendent shall not terminate an educational assistant who has been employed by a public school for two consecutive years without just cause.~~

~~D. An educational assistant terminated pursuant to Subsection B of this section may request an opportunity to make a statement to the governing authority on the decision to terminate by submitting a written contention and request for hearing to the superintendent. The written contention shall specify the grounds on which it is contended that the decision was without just cause and shall include a statement of the facts that the educational assistant believes support the educational assistant's contention. This written statement and request to make a statement before the governing authority shall be submitted within ten working days from the date the educational assistant receives the written reasons from the superintendent. The submission of this statement constitutes a representation on the part of the educational assistant that the educational assistant can support the educational assistant's contentions and an acknowledgment that the~~

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~~superintendent may offer the causes for the decision and any relevant data in the superintendent's possession in rebuttal of the educational assistant's contentions.~~

~~E. The parties shall complete and respond to discovery by deposition and production of documents prior to the termination hearing.~~

~~F. The governing authority shall meet to hear the educational assistant's statement in no less than five or more than fifteen working days after the superintendent receives the statement and request. The hearing shall be conducted informally in accordance with the provisions of the Open Meetings Act. The educational assistant and the superintendent may each be accompanied by a person of each one's choice. First, the superintendent shall present the factual basis for the determination that just cause exists for the termination of the educational assistant, limited to those reasons provided to the educational assistant pursuant to Subsection B of this section. Then, the educational assistant shall present the educational assistant's contentions, limited to those grounds specified in Subsection D of this section. The superintendent may offer such rebuttal testimony as the superintendent deems relevant. All witnesses may be questioned by the governing authority, the educational assistant, the educational assistant's representative and the superintendent or the superintendent's representative. The governing authority may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable. An official record shall be made of the hearing. Either party may~~

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~~have one copy of the record at the expense of the governing authority. The governing authority shall notify the educational assistant and the superintendent of its decision affirming or reversing the superintendent's decision to terminate in writing within five working days from the conclusion of the meeting."~~

~~SECTION 9. A new section of the School Personnel Act, Section 22-10A-24.2 NMSA 1978, is enacted to read:~~

~~"22-10A-24.2. [NEW MATERIAL] UNLICENSED SCHOOL EMPLOYEES--TERMINATION DECISIONS--PROCEDURES.--"~~

~~A. When hired, unlicensed school employees shall serve their first year as probationary school employees, and the superintendent may terminate the school employee for any reason the superintendent deems sufficient. Upon request of the probationary unlicensed school employee, the superintendent shall provide written reasons for the decision to terminate. The request must be in writing and submitted to the superintendent within ten working days from the date written notice of termination is served on the probationary unlicensed school employee. The reasons shall be provided within ten working days of the request. The reasons shall not be publicly disclosed by the superintendent or governing authority unless required by law. The reasons shall not provide a basis for contesting the decision under the School Personnel Act.~~

~~B. An unlicensed school employee who has been~~

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~~employed by a public school for more than one year and who receives a notice of termination pursuant to this section may request in writing the reasons for the decision to terminate. The request must be in writing and submitted to the superintendent within ten working days from the date written notice of termination is served on the unlicensed school employee. The superintendent shall provide written reasons for the notice of termination to the unlicensed school employee within ten working days from the date the written request for the reasons was received by the superintendent. Neither the superintendent nor the governing authority shall publicly disclose the reasons for termination unless required by law.~~

~~C. A superintendent shall not terminate an unlicensed school employee who has been employed by a public school for more than one year without just cause.~~

~~D. An unlicensed school employee terminated pursuant to Subsection B of this section may request an opportunity to make a statement to the governing authority on the decision to terminate by submitting a written contention and request for hearing to the superintendent. The written contention shall specify the grounds on which it is contended that the decision was without just cause and shall include a statement of the facts that the unlicensed school employee believes support the unlicensed school employee's contention. This written contention and request to make a statement before the governing authority shall be submitted within ten working days from the date the unlicensed school employee receives the written reasons from the superintendent. The submission of~~

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~~this statement constitutes a representation on the part of the unlicensed school employee that the unlicensed school employee can support the unlicensed school employee's contentions and an acknowledgment that the superintendent may offer the causes for the decision and any relevant data in the superintendent's possession in rebuttal of the unlicensed school employee's contentions.~~

~~E. The parties shall complete and respond to discovery by deposition and production of documents prior to the termination hearing.~~

~~F. The governing authority shall meet to hear the unlicensed school employee's statement in no less than five or more than fifteen working days after the superintendent receives the statement and request. The hearing shall be conducted informally in accordance with the provisions of the Open Meetings Act. The unlicensed school employee and the superintendent may each be accompanied by a person of each one's choice. First, the superintendent shall present the factual basis for the determination that just cause exists for the termination of the unlicensed school employee, limited to those reasons provided to the unlicensed school employee pursuant to Subsection B of this section. Then, the unlicensed school employee shall present the unlicensed school employee's contentions, limited to those grounds specified in Subsection D of this section. The superintendent may offer such rebuttal~~

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~~testimony as the superintendent deems relevant. All witnesses may be questioned by the governing authority, the unlicensed school employee or the unlicensed school employee's representative and the superintendent or the superintendent's representative. The governing authority may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable. An official record shall be made of the hearing. Either party may have one copy of the record at the expense of the governing authority. The governing authority shall notify the unlicensed school employee and the superintendent of its decision affirming or reversing the superintendent's determination to terminate in writing within five working days from the conclusion of the meeting."~~

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

~~"22-10A-25. APPEALS--LICENSED AND UNLICENSED SCHOOL EMPLOYEES--INDEPENDENT ARBITRATOR--QUALIFICATIONS--PROCEDURE--BINDING DECISION.--~~

~~A. [An] A school employee who is still aggrieved by a decision of [a local school board or] the governing authority rendered pursuant to Section [~~22-10-14~~] 22-10A-24, 22-10A-24.1 or 22-10A-24.2 NMSA 1978 may appeal the decision to an arbitrator. A written appeal shall be submitted to the [local] superintendent [or administrator] within five working days from the receipt of the [local school board's or] governing authority's written decision or the refusal of the [board or] governing authority to grant a hearing. The appeal shall be accompanied by a statement of particulars specifying the~~

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~~grounds on which it is contended that the [decision was] superintendent's reasons to terminate were impermissible pursuant to [Subsection E of] Section [22-10-14] 22-10A-24, 22-10A-24.1 or 22-10A-24.2 NMSA 1978 and [including] include a statement of facts supporting the contentions. Failure of the school employee to submit a timely appeal or a statement of particulars with the appeal shall disqualify [him] the school employee for any appeal and render the [local school board's or] governing authority's decision final.~~

~~B. The governing authority may delegate responsibility for arbitration to the superintendent. The [local school board or governing authority] superintendent and the school employee shall meet within ten working days from the receipt of the request for an appeal and select an independent arbitrator to conduct the appeal. If the parties fail to agree on an independent arbitrator, they shall request the presiding judge in the judicial district in which the school employee's public school is located to select one. The presiding judge shall select the independent arbitrator within five working days from the date of the parties' request.~~

~~G. A qualified independent arbitrator shall be appointed who is versed in employment practices and school procedures and who preferably has experience in the practice of law. No person shall be appointed to serve as the independent arbitrator who has any direct or indirect financial interest in~~

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~~the outcome of the proceeding, has any relationship to any party in the proceeding, is employed by the [local school board or governing authority] superintendent or is a member of or employed by any professional or labor organization of which the school employee is a member.~~

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

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

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

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

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

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

~~J. The [local school board or] superintendent, as delegate for the governing authority, has the burden of proof and shall prove by a preponderance of the evidence that, at the time the notice of termination was served on the school employee, the [local school board or governing authority] superintendent had just cause to terminate the school employee. If the [local school board or governing authority] superintendent proves by a preponderance of the evidence that there was just cause for [its] the action, then the burden shifts to the school employee to rebut the evidence presented by the [local school board or governing authority] superintendent.~~

~~K. The independent arbitrator shall uphold the [local school board's or] governing authority's decision only if it [proves] is proven by a preponderance of the evidence~~

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~~that, at the time the notice of termination was served on the school employee, the [local school board or governing authority] superintendent had just cause to terminate the school employee. If the [local school board or superintendent, as delegate for the governing authority, fails to meet [its] the burden of proof or if the school employee rebuts the proof offered by the [local school board or governing authority] superintendent, the arbitrator shall reverse the decision of the [local school board or] governing authority.~~

~~L. No official record shall be made of the hearing. Either party desiring a record of the arbitration proceedings may, at [his] the party's own expense, record or otherwise provide for a transcript of the proceedings; provided, however, that the record so provided shall not be deemed an official transcript of the proceedings nor shall it imply any right of automatic appeal or review.~~

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

~~N. The sole remedies available [under] pursuant to this section shall be reinstatement or payment of compensation reinstated in full but subject to any additional compensation allowed other school employees of like qualifications and~~

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~~experience employed by the public school [district or state agency] and including reimbursement for compensation during the entire period for which compensation was terminated, or both, less an offset for any compensation received by the school employee during the period the compensation was terminated.~~

~~O. Unless a party can demonstrate prejudice arising from a departure from the procedures established in this section and in [Section 22-10-14] Sections 22-10A-24 through 22-10A-24.2 NMSA 1978, such departure shall be presumed to be harmless error.~~

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

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

~~R. [Local school districts] Superintendents shall file a record with the department [of education] of all terminations of licensed school employees and all actions arising from terminations of licensed school employees annually."~~ ←Hf1

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SECTION Hf1→11. 7.←Hf1 Section 22-10A-26 NMSA 1978

(being Laws 1967, Chapter 16, Section 118, as amended) is amended to read:

"22-10A-26. EXCEPTED FROM PROVISIONS.--Sections [~~22-10-12 through 22-10-14.1~~] 22-10A-22 through 22-10A-25 NMSA 1978 do not apply to the following:

A. a [~~certified~~] licensed school [~~instructor~~] employee employed to fill the position of a [~~certified~~] licensed school [~~instructor~~] employee entering military service;

B. a [~~person~~] licensed school administrator who is employed as a [~~certified~~] licensed school administrator; [~~or~~]

C. [~~a non-certified~~] an unlicensed school employee employed to perform primarily district-wide management functions; or

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

SECTION Hf1→12. 8.←Hf1 Section 22-10A-27 NMSA 1978

(being Laws 1986, Chapter 33, Section 24, as amended) is amended to read:

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

A. A [~~local school board or the governing authority of a state agency~~] superintendent may recommend to the governing authority the discharge of a [~~certified~~] licensed school employee during the term of a contract authorized

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pursuant to Section 22-10A-21 NMSA 1978 only for just cause according to the following procedure:

(1) the superintendent shall serve a written notice of [~~his~~] intent to recommend discharge on the [~~certified~~] licensed school employee in accordance with the law for service of process in civil actions; and

(2) the superintendent shall state in the notice of [~~his~~] intent to recommend discharge the cause for [~~his~~] the recommendation and shall advise the [~~certified~~] licensed school employee of [~~his~~] the licensed school employee's right to a discharge hearing before the [~~local school board or~~] governing authority as provided in this section. If the licensed school employee does not exercise that right to hearing, the superintendent shall discharge the licensed school employee.

B. A [~~certified~~] licensed school employee who receives a notice of intent to recommend discharge pursuant to Subsection A of this section may exercise [~~his~~] the licensed school employee's right to a hearing before the [~~local school board or~~] governing authority by giving the [~~local~~] superintendent [~~or administrator~~] written notice of that election within [~~five~~] ten working days of [~~his~~] the licensed school employee's receipt of the notice of intent to recommend discharge.

C. The [~~local school board or~~] governing authority

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shall hold a discharge hearing no less than twenty and no more than forty working days after the [~~local~~] superintendent [~~or administrator~~] receives the written election from the [~~certified~~] licensed school employee and shall give the [~~certified~~] licensed school employee at least ten days written notice of the date, time and place of the discharge hearing.

D. Each party, the [~~local~~] superintendent [~~or administrator~~] and the [~~certified~~] licensed school employee, may each be accompanied by a person of [~~his~~] the party's choice.

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

F. The [~~local school board or~~] governing authority shall have the authority to issue subpoenas for the attendance of witnesses and to produce books, records, documents and other evidence at the request of either party and shall have the power to administer oaths.

G. The [~~local~~] superintendent [~~or administrator~~] shall have the burden of proving by a preponderance of the evidence that, at the time of the notice of intent to recommend discharge, [~~he~~] the superintendent had just cause to recommend discharge of the [~~certified~~] licensed school employee.

H. The [~~local~~] superintendent [~~or administrator~~] shall present [~~his~~] evidence first, with the [~~certified~~] licensed school employee presenting [~~his~~] evidence thereafter. The [~~local school board or~~] governing authority shall permit either party to call, examine and cross-examine witnesses and

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to introduce documentary evidence.

I. An official record shall be made of the hearing. Either party may have one copy of the record at the expense of the ~~[local school board or]~~ governing authority.

J. The ~~[local school board]~~ governing authority shall render its written decision within twenty days of the conclusion of the discharge hearing."

SECTION Hf1→13. 9.←Hf1 Section 22-10A-28 NMSA 1978 (being Laws 1986, Chapter 33, Section 25, as amended) is amended to read:

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

A. A ~~[certified]~~ licensed school employee aggrieved by a decision of ~~[a local school board or]~~ the governing authority to discharge ~~[him]~~ the licensed school employee after a discharge hearing held pursuant to Section ~~[22-10-17]~~ 22-10A-27 NMSA 1978 may appeal the decision to an independent arbitrator. A written notice of appeal shall be submitted to the ~~[local superintendent or administrator]~~ governing authority within ~~[five]~~ ten working days from the receipt of the copy of the written decision of the ~~[local school board or]~~ governing authority.

B. The ~~[local school board or]~~ governing authority may delegate responsibility for the arbitration to the

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superintendent. The superintendent as delegate of the governing authority and the [~~certified~~] licensed school employee shall meet within ten calendar days from the receipt of the notice of appeal and select an independent arbitrator to conduct the appeal, or, in the event the parties fail to agree on an independent arbitrator, they shall request the presiding judge in the judicial district in which the public school is located to select the independent arbitrator. The presiding judge shall select the independent arbitrator within five working days from the date of the parties' request.

C. A qualified independent arbitrator shall be appointed who is versed in employment practices and school procedures. No person shall be appointed to serve as the independent arbitrator who has any direct or indirect financial interest in the outcome of the proceeding, has any relationship to any party in the proceeding, is employed by the [~~local school board or governing authority~~] superintendent or is a member of or employed by any professional organization of which the [~~certified~~] licensed school employee is a member.

D. Appeals from the decision of the [~~local school board or~~] governing authority shall be decided after a de novo hearing before the independent arbitrator. The [~~local school board or governing authority~~] superintendent, as delegate of the governing authority, shall have the burden of proving by a preponderance of the evidence that, at the time of the notice of intent to recommend discharge, the [~~local~~] superintendent [~~or administrator~~] had just cause to discharge the [~~certified~~] licensed school employee. The [~~local school board or governing~~

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~~authority~~] superintendent shall present [~~its~~] evidence first, with the [~~certified~~] licensed school employee presenting [~~his~~] evidence thereafter.

E. The hearing shall be held within thirty working days from the selection of the independent arbitrator. The independent arbitrator shall give written notice of the date, time and place of the hearing, and such notice shall be sent to the [~~certified~~] licensed school employee and the [~~local school board or~~] governing authority.

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

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

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

I. The rules of civil procedure shall not apply to the hearing, but it shall be conducted so that both contentions and responses are amply and fairly presented. To this end, the

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independent arbitrator shall permit either party to call and examine witnesses, cross-examine witnesses and introduce exhibits. The technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

J. An official record shall be made of the hearing. Either party may order a transcript of the record at ~~his~~ the party's own expense.

K. The independent arbitrator shall render a written decision affirming or reversing the action of the ~~[local school board or]~~ governing authority. The decision shall contain findings of fact and conclusions of law. The parties shall receive the written decision of the independent arbitrator within thirty working days from the conclusion of the hearing.

L. Unless a party can demonstrate prejudice arising from a departure from the procedures established in this section and in Section ~~[22-10-17]~~ 22-10A-27 NMSA 1978, such departure shall be presumed to be harmless error.

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

N. Each party shall bear its own costs and

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expenses. The independent arbitrator's fees and other expenses incurred in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator."

SECTION Hf1→14. 10.←Hf1 Section 22-10A-29 NMSA 1978 (being Laws 1967, Chapter 16, Section 120, as amended) is amended to read:

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

A. Payment of compensation to [~~any certified~~] a licensed school [~~instructor~~] employee employed by a [~~local school board or by the governing authority of a state agency~~] public school and payment of compensation to [~~any certified school administrator~~] a superintendent employed by a [~~local school board~~] governing authority shall terminate as of the date, after a hearing, that a written copy of the decision of the [~~local school board or the~~] governing authority [~~of the state agency~~] to discharge the [~~person~~] licensed school employee or superintendent is served on the [~~person~~] licensed school employee or superintendent. If the compensation of the [~~person~~] licensed school employee or superintendent discharged during the term of a written employment contract is to be paid monthly during a twelve-month period for services to be performed during a period less than twelve months, the [~~person~~] licensed school employee or superintendent shall be entitled to a pro rata share of the compensation payments due for the

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period during the twelve months in which no services were to be performed.

B. In the event the action of the [~~local school board~~] governing authority in discharging a [~~certified~~] licensed school [~~instructor~~] employee or [~~administrator or the action of the governing authority of a state agency in discharging a certified school instructor~~] superintendent is reversed on appeal, payment of compensation to the [~~person~~] licensed school employee or superintendent shall be reinstated in full but subject to any additional compensation allowed other [~~certified~~] licensed school [~~instructor~~] employees or [~~administrator~~] superintendents of like qualifications and experience employed by the [~~school district or state agency~~] public school and including reimbursement for compensation during the entire period the compensation was terminated less an offset for any compensation received by the [~~person from a school district or state agency~~] licensed school employee or superintendent from the public school during the period the compensation was terminated."