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HOUSE BILL 431

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

INTRODUCED BY

Linda M. Trujillo

AN ACT

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

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

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 Section 22-10A-2 NMSA 1978 (being Laws 1975, Chapter 306, Section 2, as amended) is repealed and a new Section 22-10A-2 NMSA 1978 is enacted to read:

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

A. "chief executive officer" means a local superintendent, head administrator of a charter school or

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1 regional education cooperative, superintendent or commandant of
2 a special school or head administrator of the educational
3 program of a state agency;

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

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

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

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

25 G. "just cause" means a reason that is rationally

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1 related to a school employee's competence or turpitude or the
2 proper performance of the school employee's duties and that is
3 not in violation of the school employee's civil or
4 constitutional rights;

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

8 I. "responsibility factor" means a value of 1.20
9 for an elementary school principal, 1.40 for a middle school or
10 junior high school principal, 1.60 for a high school principal,
11 1.10 for an assistant elementary school principal, 1.15 for an
12 assistant middle school or assistant junior high school
13 principal and 1.25 for an assistant high school principal;

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

19 K. "school administrator" means a person licensed
20 to administer in a school district, charter school,
21 constitutional special school or regional education cooperative
22 or a person employed with another state agency who administers
23 an educational program and includes local superintendents,
24 school principals, central district administrators, business
25 managers, charter school head administrators and state agency

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1 education supervisors;

2 L. "school employee" includes licensed and
3 unlicensed employees of a public school;

4 M. "school premises" means:

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

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

14 N. "state agency" means a regional education
15 cooperative or state institution;

16 O. "state institution" means the New Mexico boys'
17 school, girls' welfare home, New Mexico youth diagnostic and
18 development center, Sequoyah adolescent treatment center,
19 Carrie Tingley crippled children's hospital, New Mexico
20 behavioral health institute at Las Vegas and any other state
21 agency responsible for educating resident children;

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

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

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

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

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

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

12 "22-10A-3. LICENSE OR CERTIFICATE REQUIRED--APPLICATION
13 FEE--GENERAL DUTIES.--

14 A. Except as otherwise provided in this subsection,
15 any person teaching, supervising an instructional program or
16 providing instructional support services in a public school [~~or~~
17 ~~state agency~~]; any person administering in a public school; and
18 any person providing health care and administering medications
19 or performing medical procedures in a public school shall hold
20 a valid license or certificate from the department authorizing
21 the person to perform that function. This subsection does not
22 apply to a person performing the functions of a practice
23 teacher or teaching intern as defined by the [~~state board~~]
24 department.

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

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1 reasonable fee for each application for or the renewal of a
2 license or certificate. The application fee may be waived if
3 the applicant meets a standard of indigency established by the
4 department.

5 C. A person performing the duties of a licensed
6 school employee who does not hold a valid license or
7 certificate or has not submitted a complete application for
8 licensure or certification within the first three months from
9 beginning employment duties shall not be compensated thereafter
10 for services rendered until [~~he~~] the person demonstrates that
11 [~~he~~] the person holds a valid license or certificate. This
12 section does not apply to practice teachers or teaching interns
13 as defined by rules of the [~~state board~~] department.

14 D. Each licensed school employee shall:

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

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

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

24 (4) furnish reports as required."

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

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

2 "22-10A-5. BACKGROUND CHECKS--KNOWN CONVICTIONS--ALLEGED
3 ETHICAL MISCONDUCT--REPORTING REQUIRED--LIMITED IMMUNITY--
4 PENALTY FOR FAILURE TO REPORT.--

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

14 B. An applicant for initial licensure shall be
15 fingerprinted and shall provide two fingerprint cards or the
16 equivalent electronic fingerprints to the department or chief
17 executive officer to obtain the applicant's federal bureau of
18 investigation record. Convictions of felonies or misdemeanors
19 contained in the federal bureau of investigation record shall
20 be used in accordance with the Criminal Offender Employment
21 Act. Other information contained in the federal bureau of
22 investigation record, if supported by independent evidence, may
23 form the basis for the denial, suspension or revocation of a
24 license for [~~good and~~] just cause. Records and related
25 information shall be privileged and shall not be disclosed to a

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1 person not directly involved in the licensure or employment
2 decisions affecting the specific applicant. The applicant for
3 initial licensure shall pay for the cost of obtaining the
4 federal bureau of investigation record.

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

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

18 An applicant who has been offered employment [~~a~~] or a school
19 volunteer, contractor or [~~a~~] contractor's employee ~~[with~~
20 ~~unsupervised access to students at a public school]~~ shall
21 provide two fingerprint cards or the equivalent electronic
22 fingerprints to the ~~[local school board regional education~~
23 ~~cooperative or charter school]~~ chief executive officer to
24 obtain the applicant's, school volunteer's, contractor's or
25 contractor's employee's federal bureau of investigation record.

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1 ~~[The]~~ An applicant, school volunteer, contractor or
2 contractor's employee ~~[who has been offered employment by a~~
3 ~~regional education cooperative or at a public school]~~ may be
4 required to pay for the cost of obtaining a background check.
5 ~~[At the request of a local school board, regional education~~
6 ~~cooperative or charter school the department is authorized to~~
7 ~~release copies of federal bureau of investigation records that~~
8 ~~are on file with the department and that are not more than~~
9 ~~twenty-four months old.]~~

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

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

25 ~~[E.]~~ G. A ~~[local superintendent, charter school~~

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1 ~~administrator or regional education cooperative~~ chief
2 executive officer shall report to the department any known
3 conviction of a felony or misdemeanor involving moral turpitude
4 of a licensed school employee that results in any type of
5 action against the licensed school employee.

6 [F.] H. A [~~local superintendent, charter school~~
7 ~~administrator or director of a regional education cooperative~~
8 ~~or their respective designees~~] chief executive officer or the
9 officer's designated representative shall investigate all
10 allegations of ethical misconduct about any [~~licensed~~] school
11 employee who resigns, is being discharged or terminated or
12 otherwise leaves employment after an allegation has been made.
13 If the investigation results in a finding of [~~wrongdoing~~]
14 ethical misconduct by a licensed school employee, the [~~local~~
15 ~~superintendent, charter school administrator or director of a~~
16 ~~regional education cooperative~~] chief executive officer shall
17 report the identity of the licensed school employee and
18 attendant circumstances of the ethical misconduct on a
19 standardized form to the department [~~and the licensed school~~
20 ~~employee~~] within thirty days following the separation from
21 employment or immediately if knowledge of the ethical
22 misconduct is sexual harassment, sexual assault or sexual abuse
23 of an adult or child. Copies of that form shall not be
24 maintained in [~~public school, school district or regional~~
25 ~~education cooperative records~~] the school employee's personnel

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1 file. The chief executive officer shall also report
2 allegations of sexual harassment, sexual assault or sexual
3 abuse involving any school employee to the appropriate law
4 enforcement agency. No agreement between a departing
5 [~~licensed~~] school employee and the [~~local school board school~~
6 ~~district, charter school or regional education cooperative~~]
7 governing authority or chief executive officer shall diminish
8 or eliminate the responsibility of investigating and reporting
9 the alleged ethical misconduct to the department or, if legally
10 mandated, to law enforcement, and any such agreement to the
11 contrary is void.

12 I. Unless the department has commenced its own
13 investigation of [~~the~~] a licensed school employee prior to
14 receipt of the form, the department shall serve the licensed
15 school employee with a notice of [~~contemplated action involving~~
16 ~~that employee's license~~] investigation within [~~ninety~~] sixty
17 days of receipt of the form. If that notice of [~~contemplated~~
18 ~~action~~] investigation is not served on the licensed school
19 employee within [~~ninety~~] sixty days of receipt of the form, the
20 form, together with any documents related to the alleged
21 ethical misconduct, shall be expunged from the licensed school
22 employee's records. [~~with the department and shall not be~~
23 ~~subject to public inspection.~~

24 G.] J. The secretary may initiate action to
25 suspend, revoke or refuse to renew the license of a [~~local~~

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1 ~~superintendent, charter school administrator or regional~~
2 ~~education cooperative director]~~ chief executive officer who
3 fails to report as required by Subsections [E] G and [F] H of
4 this section.

5 [H.] K. A person who in good faith reports as
6 provided in Subsections [E] G and [F] H of this section shall
7 not be held liable for civil damages as a result of the report.
8 The person being accused shall have the right to sue for any
9 damages sustained as a result of negligent or intentional
10 reporting of inaccurate information or the disclosure of any
11 information to an unauthorized person."

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

14 "22-10A-21. LICENSED SCHOOL EMPLOYEES--EMPLOYMENT
15 CONTRACTS--DURATION.--

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

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1 B. All employment contracts between [~~local school~~
2 ~~boards and certified~~] chief executive officers and licensed
3 school [~~personnel and between governing authorities of state~~
4 ~~agencies and certified school instructors~~] employees shall be
5 for a period of one school year except:

6 (1) contracts for less than one school year
7 are permitted to fill personnel vacancies [~~which~~] that occur
8 during the school year;

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

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

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

24 (5) contracts not to exceed three years are
25 [~~permitted~~] allowed at the discretion of the [~~local school~~

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1 ~~board~~ governing authority for [~~certified~~] licensed school
2 [~~instructors~~] employees in public schools who have been
3 employed [~~in the school district~~] for three consecutive school
4 years.

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

10 D. In determination of eligibility for unemployment
11 compensation rights and benefits for [~~certified~~] licensed
12 school [~~instructors~~] employees where those rights and benefits
13 are claimed to arise from the employment relationship between
14 governing authorities [~~of state agencies or local school boards~~
15 ~~and certified~~] and licensed school [~~instructors~~] employees,
16 that period of a year not covered by a school year shall not be
17 considered an unemployment period.

18 E. Except as provided in Section [~~22-10-12~~]
19 22-10A-22 NMSA 1978, a [~~person~~] licensed school employee
20 employed by contract pursuant to this section has no legitimate
21 objective expectancy of reemployment, and no contract entered
22 into pursuant to this section shall be construed as an implied
23 promise of continued employment pursuant to a subsequent
24 contract."

25 SECTION 5. Section 22-10A-22 NMSA 1978 (being Laws 1967,

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1 Chapter 16, Section 114, as amended) is amended to read:

2 "22-10A-22. LICENSED SCHOOL EMPLOYEES--NOTICE OF
3 REEMPLOYMENT--TERMINATION.--On or before ~~[the last day of the~~
4 ~~school year of]~~ May 5 during the existing employment contract,
5 the ~~[local school board or the governing authority of the state~~
6 ~~agency]~~ chief executive officer shall serve written notice of
7 reemployment or termination on each ~~[certified]~~ licensed school
8 ~~[instructor]~~ employee employed by the ~~[school district or state~~
9 ~~agency]~~ public school. A notice of reemployment shall be an
10 offer of employment for the ensuing school year. A notice of
11 termination shall be a notice of intention not to reemploy for
12 the ensuing school year. Failure of the ~~[local school board or~~
13 ~~the governing authority of the state agency]~~ chief executive
14 officer to serve a written notice of reemployment or
15 termination on a ~~[certified]~~ licensed school ~~[instructor]~~
16 employee shall be construed to mean that notice of reemployment
17 has been served upon the ~~[person]~~ licensed school employee for
18 the ensuing school year according to the terms of the existing
19 employment contract but subject to any additional compensation
20 allowed other ~~[certified]~~ licensed school ~~[instructors]~~
21 employees of like qualifications and experience ~~[employed by~~
22 ~~the school district or state agency]~~. Nothing in this section
23 shall be construed to mean that failure of a ~~[local school~~
24 ~~board or the governing authority of the state agency]~~ chief
25 executive officer to serve a written notice of reemployment or

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1 termination shall automatically extend a [~~certified~~] licensed
2 school [~~instructor's~~] employee's employment contract for a
3 period in excess of one school year."

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

6 "22-10A-23. LICENSED SCHOOL EMPLOYEES--REEMPLOYMENT--
7 ACCEPTANCE--REJECTION--BINDING CONTRACT.--

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

14 (1) the date written notice of reemployment is
15 served upon the [~~person~~] licensed school employee; or

16 (2) the last day of the school year when no
17 written notice of reemployment or termination is served upon
18 the [~~person~~] licensed school employee on or before [~~the last~~
19 ~~day~~] May 5 of the school year.

20 B. Delivery of the written acceptance of
21 reemployment by a [~~certified~~] licensed school [~~instructor~~]
22 employee creates a binding employment contract between the
23 [~~certified~~] licensed school [~~instructor~~] employee and the
24 [~~local school board or the governing authority of the state~~
25 ~~agency~~] public school until the parties enter into a formal

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1 written employment contract. Written employment contracts
2 between [~~local school boards or governing authorities of state~~
3 ~~agencies and certified school instructors~~] the chief executive
4 officer and licensed school employees shall be executed by the
5 parties not later than [~~ten days before the first day of a~~
6 ~~school year~~] August 1 before the ensuing school year."

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

9 "22-10A-24. LICENSED SCHOOL EMPLOYEES--TERMINATION
10 DECISIONS-- [~~LOCAL SCHOOL BOARD--GOVERNING AUTHORITY OF A STATE~~
11 ~~AGENCY~~] PROCEDURES.--

12 A. Except as provided in Section 22-10A-24.1 NMSA
13 1978, a [~~local school board or governing authority of a state~~
14 ~~agency~~] chief executive officer may terminate [~~an~~] a licensed
15 school employee [~~with~~] employed for fewer than three
16 consecutive school years [~~of consecutive service~~] for any
17 reason [~~it~~] the chief executive officer deems sufficient. Upon
18 request of the licensed school employee, the [~~superintendent or~~
19 ~~administrator~~] chief executive officer shall provide written
20 reasons for the decision to terminate. The request shall be in
21 writing and submitted to the chief executive officer within
22 five working days from the date written notice of termination
23 is served on the licensed school employee. The reasons shall
24 be provided within ten working days of the request. The
25 reasons shall not be publicly disclosed by the [~~superintendent,~~

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1 ~~administrator, local school board]~~ chief executive officer or
2 governing authority unless required by law. The reasons shall
3 not provide a basis for contesting the decision under the
4 School Personnel Act.

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

8 ~~G. An]~~ B. A licensed school employee who has been
9 employed by a public school [~~district or state agency~~] for
10 three consecutive years and who receives a notice of
11 termination pursuant to [~~either Section 22-10-12 NMSA 1978 or~~]
12 this section may request [~~an opportunity to make a statement to~~
13 ~~the local school board or governing authority on the decision~~
14 ~~to terminate him by submitting a written request to the local~~
15 ~~superintendent or administrator within five working days from~~
16 ~~the date written notice of termination is served upon him. The~~
17 ~~employee may also request in writing the reasons for the~~
18 ~~action to terminate him]~~ in writing the reasons for the
19 decision to terminate. The request shall be in writing and
20 submitted to the chief executive officer within five working
21 days from the date written notice of termination is served on
22 the licensed school employee. The [~~local superintendent or~~
23 ~~administrator]~~ chief executive officer shall provide written
24 reasons for the notice of termination to the licensed school
25 employee within five working days from the date the written

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1 request for ~~[a meeting and the written request for]~~ the reasons
2 ~~[were]~~ was received by the ~~[local superintendent or~~
3 ~~administrator]~~ chief executive officer. Neither the ~~[local~~
4 ~~superintendent or administrator]~~ chief executive officer nor
5 the ~~[local school board or]~~ governing authority shall publicly
6 disclose ~~[its]~~ the reasons for termination unless required by
7 law.

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

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

19 D. A licensed school employee terminated pursuant
20 to Subsection B of this section may request an opportunity to
21 make a statement to the governing authority on the decision to
22 terminate by submitting a written contention and request for
23 hearing to the chief executive officer. The written contention
24 shall specify the grounds on which it is contended that the
25 decision was without just cause and shall include a statement

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1 of the facts that the licensed school employee believes support
2 [~~his~~] the licensed school employee's contention. This written
3 statement and request to make a statement before the governing
4 authority shall be submitted within ten working days from the
5 date the licensed school employee receives the written reasons
6 from the [~~local superintendent or administrator~~] chief
7 executive officer. The submission of this statement
8 constitutes a representation on the part of the licensed school
9 employee that [~~he~~] the licensed school employee can support
10 [~~his~~] the licensed school employee's contentions and an
11 acknowledgment that the [~~local school board or governing~~
12 ~~authority~~] chief executive officer may offer the causes for
13 [~~its~~] the decision and any relevant data in [~~its~~] the chief
14 executive officer's possession in rebuttal of [~~his~~] the
15 licensed school employee's contentions.

16 [~~F. A local school board or~~] E. The governing
17 authority shall meet to hear the licensed school employee's
18 statement in no less than five or more than fifteen working
19 days after the [~~local school board or governing authority~~]
20 chief executive officer receives the statement and request.
21 The hearing shall be conducted informally in accordance with
22 the provisions of the Open Meetings Act. The licensed school
23 employee and the [~~local superintendent or administrator~~] chief
24 executive officer may each be accompanied by a person of [~~his~~]
25 each one's choice. First, the [~~superintendent~~] chief executive

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1 officer shall present the factual basis for [~~his~~] the
2 determination that just cause exists for the termination of the
3 licensed school employee, limited to those reasons provided to
4 the licensed school employee pursuant to Subsection [~~G~~] B of
5 this section. Then, the licensed school employee shall present
6 [~~his~~] the licensed school employee's contentions, limited to
7 those grounds specified in Subsection [~~E~~] D of this section.
8 The [~~local school board or governing authority~~] chief executive
9 officer may offer such rebuttal testimony as [~~it~~] the chief
10 executive officer deems relevant. All witnesses may be
11 questioned by the [~~local school board or~~] governing authority,
12 the licensed school employee or [~~his~~] the licensed school
13 employee's representative and the [~~local superintendent or~~
14 ~~administrator~~] chief executive officer or [~~his~~] the chief
15 executive officer's representative. The [~~local school board~~
16 ~~or~~] governing authority may consider only such evidence as is
17 presented at the hearing and need consider only such evidence
18 as it considers reliable. No record shall be made of the
19 proceeding. The [~~local school board or~~] governing authority
20 shall notify the licensed school employee and the [~~local~~
21 ~~superintendent or administrator~~] chief executive officer of its
22 decision affirming or reversing the chief executive officer's
23 determination to terminate in writing within five working days
24 from the conclusion of the meeting."

25 SECTION 8. A new section of the School Personnel Act,

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1 Section 22-10A-24.1 NMSA 1978, is enacted to read:

2 "22-10A-24.1. [NEW MATERIAL] EDUCATIONAL ASSISTANTS--
3 TERMINATION DECISIONS--PROCEDURES.--

4 A. A chief executive officer may terminate an
5 educational assistant who has not been offered and accepted in
6 writing a notice of reemployment for the second consecutive
7 school year for any reason the chief executive officer deems
8 sufficient. Upon request of the educational assistant, the
9 chief executive officer shall provide written reasons for the
10 decision to terminate. The request shall be in writing and
11 submitted to the chief executive officer within five working
12 days from the date written notice of termination is served on
13 the educational assistant. The reasons shall be provided
14 within ten working days of the request. The reasons shall not
15 be publicly disclosed by the chief executive officer or
16 governing authority unless required by law. The reasons shall
17 not provide a basis for contesting the decision under the
18 School Personnel Act.

19 B. An educational assistant who has been employed
20 by a public school district or state agency for two consecutive
21 years and who receives a notice of termination pursuant to this
22 section may request in writing the reasons for the decision to
23 terminate. The request shall be in writing and submitted to
24 the chief executive officer within five working days from the
25 date written notice of termination is served on the educational

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1 assistant. The chief executive officer shall provide written
2 reasons for the notice of termination to the educational
3 assistant within five working days from the date the written
4 request for the reasons was received by the chief executive
5 officer. Neither the chief executive officer nor the governing
6 authority shall publicly disclose the reasons for termination
7 unless required by law.

8 C. A chief executive officer shall not terminate an
9 educational assistant who has been employed by a public school
10 for two consecutive years without just cause.

11 D. An educational assistant terminated pursuant to
12 Subsection B of this section may request an opportunity to make
13 a statement to the governing authority on the decision to
14 terminate by submitting a written contention and request for
15 hearing to the chief executive officer. The written contention
16 shall specify the grounds on which it is contended that the
17 decision was without just cause and shall include a statement
18 of the facts that the educational assistant believes support
19 the educational assistant's contention. This written statement
20 and request to make a statement before the governing authority
21 shall be submitted within ten working days from the date the
22 educational assistant receives the written reasons from the
23 chief executive officer. The submission of this statement
24 constitutes a representation on the part of the educational
25 assistant that the educational assistant can support the

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1 educational assistant's contentions and an acknowledgment that
2 the chief executive officer may offer the causes for the
3 decision and any relevant data in the chief executive officer's
4 possession in rebuttal of the educational assistant's
5 contentions.

6 E. The governing authority shall meet to hear the
7 educational assistant's statement in no less than five or more
8 than fifteen working days after the chief executive officer
9 receives the statement and request. The hearing shall be
10 conducted informally in accordance with the provisions of the
11 Open Meetings Act. The educational assistant and the chief
12 executive officer may each be accompanied by a person of each
13 one's choice. First, the chief executive officer shall present
14 the factual basis for the determination that just cause exists
15 for the termination of the educational assistant, limited to
16 those reasons provided to the educational assistant pursuant to
17 Subsection B of this section. Then, the educational assistant
18 shall present the educational assistant's contentions, limited
19 to those grounds specified in Subsection D of this section.
20 The chief executive officer may offer such rebuttal testimony
21 as the chief executive officer deems relevant. All witnesses
22 may be questioned by the governing authority, the educational
23 assistant, the educational assistant's representative and the
24 chief executive officer or the chief executive officer's
25 representative. The governing authority may consider only such

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1 evidence as is presented at the hearing and need consider only
2 such evidence as it considers reliable. No record shall be
3 made of the proceeding. The governing authority shall notify
4 the educational assistant and the chief executive officer of
5 its decision affirming or reversing the chief executive
6 officer's decision to terminate in writing within five working
7 days from the conclusion of the meeting."

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

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

12 A. When hired, unlicensed school employees shall
13 serve their first year as probationary school employees, and
14 the chief executive officer may terminate the school employee
15 for any reason. The chief executive officer may terminate an
16 unlicensed school employee after the probationary period for
17 just cause. Upon request of the unlicensed school employee,
18 the chief executive officer shall provide written reasons for
19 the decision to terminate. The request must be in writing and
20 submitted to the chief executive officer within five working
21 days from the date written notice of termination is served on
22 the unlicensed school employee. The reasons shall be provided
23 within ten working days of the request. The reasons shall not
24 be publicly disclosed by the chief executive officer or
25 governing authority. The reasons shall not provide a basis for

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1 contesting the decision under the School Personnel Act.

2 B. An unlicensed school employee who has been
3 employed by a public school for more than one year and who
4 receives a notice of termination pursuant to this section may
5 request in writing the reasons for the decision to terminate.
6 The request must be in writing and submitted to the chief
7 executive officer within five working days from the date
8 written notice of termination is served on the unlicensed
9 school employee. The chief executive officer shall provide
10 written reasons for the notice of termination to the unlicensed
11 school employee within five working days from the date the
12 written request for the reasons was received by the chief
13 executive officer. Neither the chief executive officer nor the
14 governing authority shall publicly disclose the reasons for
15 termination.

16 C. A chief executive officer shall not terminate an
17 unlicensed school employee who has been employed by a public
18 school for more than one year without just cause.

19 D. An unlicensed school employee terminated
20 pursuant to Subsection B of this section may request an
21 opportunity to make a statement to the governing authority on
22 the decision to terminate by submitting a written contention
23 and request for hearing to the chief executive officer. The
24 written contention shall specify the grounds on which it is
25 contended that the decision was without just cause and shall

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1 include a statement of the facts that the unlicensed school
2 employee believes support the unlicensed school employee's
3 contention. This written contention and request to make a
4 statement before the governing authority shall be submitted
5 within ten working days from the date the unlicensed school
6 employee receives the written reasons from the chief executive
7 officer. The submission of this statement constitutes a
8 representation on the part of the unlicensed school employee
9 that the unlicensed school employee can support the unlicensed
10 school employee's contentions and an acknowledgment that the
11 chief executive officer may offer the causes for the decision
12 and any relevant data in the chief executive officer's
13 possession in rebuttal of the unlicensed school employee's
14 contentions.

15 E. The governing authority shall meet to hear the
16 unlicensed school employee's statement in no less than five or
17 more than fifteen working days after the chief executive
18 officer receives the statement and request. The hearing shall
19 be conducted informally in accordance with the provisions of
20 the Open Meetings Act. The unlicensed school employee and the
21 chief executive officer may each be accompanied by a person of
22 their choice. First, the chief executive officer shall present
23 the factual basis for the determination that just cause exists
24 for the termination of the unlicensed school employee, limited
25 to those reasons provided to the unlicensed school employee

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1 pursuant to Subsection B of this section. Then, the unlicensed
2 school employee shall present the unlicensed school employee's
3 contentions, limited to those grounds specified in Subsection D
4 of this section. The chief executive officer may offer such
5 rebuttal testimony as the chief executive officer deems
6 relevant. All witnesses may be questioned by the governing
7 authority, the unlicensed school employee or the unlicensed
8 school employee's representative and the chief executive
9 officer or the chief executive officer's representative. The
10 governing authority may consider only such evidence as is
11 presented at the hearing and need consider only such evidence
12 as it considers reliable. No record shall be made of the
13 proceeding. The governing authority shall notify the
14 unlicensed school employee and the chief executive officer of
15 its decision affirming or reversing the chief executive
16 officer's determination to terminate in writing within five
17 working days from the conclusion of the meeting."

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

20 "22-10A-25. APPEALS--LICENSED AND UNLICENSED SCHOOL
21 EMPLOYEES--INDEPENDENT ARBITRATOR--QUALIFICATIONS--PROCEDURE--
22 BINDING DECISION.--

23 A. ~~[An]~~ A school employee who is still aggrieved by
24 a decision of ~~[a local school board or]~~ the governing authority
25 rendered pursuant to Section ~~[22-10-14]~~ 22-10A-24, 22-10A-24.1

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1 or 22-10A-24.2 NMSA 1978 may appeal the decision to an
2 arbitrator. A written appeal shall be submitted to the [~~local~~
3 ~~superintendent or administrator~~] chief executive officer within
4 five working days from the receipt of the [~~local school board's~~
5 ~~or~~] governing authority's written decision or the refusal of
6 the [~~board or~~] governing authority to grant a hearing. The
7 appeal shall be accompanied by a statement of particulars
8 specifying the grounds on which it is contended that the
9 [~~decision was~~] chief executive officer's reasons to terminate
10 were impermissible pursuant to [~~Subsection E of~~] Section
11 [~~22-10-14~~] 22-10A-24, 22-10A-24.1 or 22-10A-24.2 NMSA 1978 and
12 [~~including~~] include a statement of facts supporting the
13 contentions. Failure of the school employee to submit a timely
14 appeal or a statement of particulars with the appeal shall
15 disqualify [~~him~~] the school employee for any appeal and render
16 the [~~local school board's or~~] governing authority's decision
17 final.

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

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

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

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

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

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

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

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

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

22 J. The [~~local school board or~~] chief executive
23 officer, as delegate for the governing authority, has the
24 burden of proof and shall prove by a preponderance of the
25 evidence that, at the time the notice of termination was served

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

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

22 L. No official record shall be made of the hearing.
23 Either party desiring a record of the arbitration proceedings
24 may, at [~~his~~] the party's own expense, record or otherwise
25 provide for a transcript of the proceedings; provided, however,

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1 that the record so provided shall not be deemed an official
2 transcript of the proceedings nor shall it imply any right of
3 automatic appeal or review.

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

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

20 O. Unless a party can demonstrate prejudice arising
21 from a departure from the procedures established in this
22 section and in [~~Section 22-10-14~~] Sections 22-10A-24 and
23 22-10A-24.1 NMSA 1978, such departure shall be presumed to be
24 harmless error.

25 P. The decision of the independent arbitrator shall

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

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

10 R. [~~Local school districts~~] Chief executive
11 officers shall file a record with the department [~~of education~~]
12 of all terminations of licensed school employees and all
13 actions arising from terminations of licensed school employees
14 annually."

15 SECTION 11. Section 22-10A-26 NMSA 1978 (being Laws 1967,
16 Chapter 16, Section 118, as amended) is amended to read:

17 "22-10A-26. EXCEPTED FROM PROVISIONS.--Sections [~~22-10-12~~
18 ~~through 22-10-14.1~~] 22-10A-22 through 22-10A-25 NMSA 1978 do
19 not apply to the following:

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

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

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

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

8 SECTION 12. Section 22-10A-27 NMSA 1978 (being Laws 1986,
9 Chapter 33, Section 24, as amended) is amended to read:

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

12 A. A ~~[local school board or the governing authority~~
13 ~~of a state agency]~~ chief executive officer may recommend to the
14 governing authority the discharge of a ~~[certified]~~ licensed
15 school employee during the term of a contract authorized
16 pursuant to Section 22-10A-21 NMSA 1978 only for just cause
17 according to the following procedure:

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

23 (2) the ~~[superintendent]~~ chief executive
24 officer shall state in the notice of ~~[his]~~ intent to recommend
25 discharge the cause for ~~[his]~~ the recommendation and shall

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1 advise the [~~certified~~] licensed school employee of [~~his~~] the
2 licensed school employee's right to a discharge hearing before
3 the [~~local school board or~~] governing authority as provided in
4 this section. If the licensed school employee does not
5 exercise that right to hearing, the chief executive officer
6 shall discharge the licensed school employee.

7 B. A [~~certified~~] licensed school employee who
8 receives a notice of intent to recommend discharge pursuant to
9 Subsection A of this section may exercise [~~his~~] the licensed
10 school employee's right to a hearing before the [~~local school~~
11 ~~board or~~] governing authority by giving the [~~local~~
12 ~~superintendent or administrator~~] chief executive officer
13 written notice of that election within five working days of
14 [~~his~~] the licensed school employee's receipt of the notice of
15 intent to recommend discharge.

16 C. The [~~local school board or~~] governing authority
17 shall hold a discharge hearing no less than twenty and no more
18 than forty working days after the [~~local superintendent or~~
19 ~~administrator~~] chief executive officer receives the written
20 election from the [~~certified~~] licensed school employee and
21 shall give the [~~certified~~] licensed school employee at least
22 ten days written notice of the date, time and place of the
23 discharge hearing.

24 D. Each party, the [~~local superintendent or~~
25 ~~administrator~~] chief executive officer and the [~~certified~~]

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1 licensed school employee, may be accompanied by a person of
2 [~~his~~] the party's choice.

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

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

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

17 H. The [~~local superintendent or administrator~~]
18 chief executive officer shall present [~~his~~] evidence first,
19 with the [~~certified~~] licensed school employee presenting [~~his~~]
20 evidence thereafter. The [~~local school board or~~] governing
21 authority shall permit either party to call, examine and cross-
22 examine witnesses and to introduce documentary evidence.

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

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

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

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

9 A. A [~~certified~~] licensed school employee aggrieved
10 by a decision of [~~a local school board or~~] the governing
11 authority to discharge [him] the licensed school employee after
12 a discharge hearing held pursuant to Section [~~22-10-17~~]
13 22-10A-27 NMSA 1978 may appeal the decision to an independent
14 arbitrator. A written notice of appeal shall be submitted to
15 the [~~local superintendent or administrator~~] governing authority
16 within five working days from the receipt of the copy of the
17 written decision of the [~~local school board or~~] governing
18 authority.

19 B. The [~~local school board or~~] governing authority
20 may delegate responsibility for the arbitration to the chief
21 executive officer. The chief executive officer as delegate of
22 the governing authority and the [~~certified~~] licensed school
23 employee shall meet within ten calendar days from the receipt
24 of the notice of appeal and select an independent arbitrator to
25 conduct the appeal, or, in the event the parties fail to agree

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1 on an independent arbitrator, they shall request the presiding
2 judge in the judicial district in which the public school is
3 located to select the independent arbitrator. The presiding
4 judge shall select the independent arbitrator within five
5 working days from the date of the parties' request.

6 C. A qualified independent arbitrator shall be
7 appointed who is versed in employment practices and school
8 procedures. No person shall be appointed to serve as the
9 independent arbitrator who has any direct or indirect financial
10 interest in the outcome of the proceeding, has any relationship
11 to any party in the proceeding, is employed by the [~~local~~
12 ~~school board or governing authority~~] chief executive officer or
13 is a member of or employed by any professional organization of
14 which the [~~certified~~] licensed school 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 [~~local school~~
18 ~~board or governing authority~~] chief executive officer, as
19 delegate of the governing authority, shall have the burden of
20 proving by a preponderance of the evidence that, at the time of
21 the notice of intent to recommend discharge, the [~~local~~
22 ~~superintendent or administrator~~] chief executive officer had
23 just cause to discharge the [~~certified~~] licensed school
24 employee. The [~~local school board or governing authority~~]
25 chief executive officer shall present [~~its~~] evidence first,

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1 with the [~~certified~~] licensed school employee presenting [~~his~~]
2 evidence thereafter.

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

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

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

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

22 I. The rules of civil procedure shall not apply to
23 the hearing, but it shall be conducted so that both contentions
24 and responses are amply and fairly presented. To this end, the
25 independent arbitrator shall permit either party to call and

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1 examine witnesses, cross-examine witnesses and introduce
2 exhibits. The technical rules of evidence shall not apply,
3 but, in ruling on the admissibility of evidence, the
4 independent arbitrator may require reasonable substantiation of
5 statements or records tendered, the accuracy or truth of which
6 is in reasonable doubt.

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

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

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

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

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1 the New Mexico rules of appellate procedure.

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

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

8 "22-10A-29. COMPENSATION PAYMENTS TO DISCHARGED
9 PERSONNEL.--

10 A. Payment of compensation to [~~any certified~~] a
11 licensed school [instructor] employee employed by a [~~local~~
12 ~~school board or by the governing authority of a state agency~~]
13 public school and payment of compensation to [~~any certified~~
14 ~~school administrator~~] a chief executive officer employed by a
15 [~~local school board~~] governing authority shall terminate as of
16 the date, after a hearing, that a written copy of the decision
17 of the [~~local school board or the~~] governing authority [~~of the~~
18 ~~state agency~~] to discharge the [~~person~~] licensed school
19 employee or chief executive officer is served on the [~~person~~]
20 licensed school employee or chief executive officer. If the
21 compensation of the [~~person~~] licensed school employee or chief
22 executive officer discharged during the term of a written
23 employment contract is to be paid monthly during a twelve-month
24 period for services to be performed during a period less than
25 twelve months, the [~~person~~] licensed school employee or chief

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1 executive officer shall be entitled to a pro rata share of the
2 compensation payments due for the period during the twelve
3 months in which no services were to be performed.

4 B. In the event the action of the [~~local school~~
5 ~~board~~] governing authority in discharging a [~~certified~~
6 licensed school [~~instructor~~] employee or [~~administrator or the~~
7 ~~action of the governing authority of a state agency in~~
8 ~~discharging a certified school instructor~~] chief executive
9 officer is reversed on appeal, payment of compensation to the
10 [~~person~~] licensed school employee or chief executive officer
11 shall be reinstated in full but subject to any additional
12 compensation allowed other [~~certified~~] licensed school
13 [~~instructor~~] employees or [~~administrator~~] chief executive
14 officers of like qualifications and experience employed by the
15 [~~school district or state agency~~] public school and including
16 reimbursement for compensation during the entire period the
17 compensation was terminated less an offset for any compensation
18 received by the [~~person from a school district or state agency~~]
19 licensed school employee or chief executive officer from the
20 public school during the period the compensation was
21 terminated."