

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 570

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO PUBLIC SCHOOLS; REQUIRING REPORTS OF SCHOOL
EMPLOYEE MISCONDUCT; PROVIDING THAT SETTLEMENT AGREEMENT
CONFIDENTIALITY PROVISIONS DO NOT RELIEVE RESPONSIBILITY FOR
REPORTING.

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

Section 1. Section 22-10A-5 NMSA 1978 (being Laws 1997,
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 and includes inappropriate touching, sexual
harassment, discrimination and behavior intended to induce a

.168823.2

underscored material = new
[bracketed material] = delete

1 child into engaging in illegal, immoral or other prohibited
2 behavior.

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

19 ~~[B.]~~ C. Local school boards and regional education
20 cooperatives shall develop policies and procedures to require
21 background checks on an applicant who has been offered
22 employment, a contractor or a contractor's employee with
23 unsupervised access to students at a public school.

24 ~~[C.]~~ D. An applicant for employment who has been
25 initially licensed within twenty-four months of applying for

.168823.2

1 employment with a local school board, regional education
2 cooperative or a charter school shall not be required to submit
3 to another background check if the department has copies of
4 ~~[his]~~ the applicant's federal bureau of investigation records
5 on file. An applicant who has been offered employment, a
6 contractor or a contractor's employee with unsupervised access
7 to students at a public school shall provide two fingerprint
8 cards or the equivalent electronic fingerprints to the local
9 school board, regional education cooperative or charter school
10 to obtain ~~[his]~~ the applicant's federal bureau of investigation
11 record. The applicant, contractor or contractor's employee who
12 has been offered employment by a regional education cooperative
13 or at a public school may be required to pay for the cost of
14 obtaining a background check. At the request of a local school
15 board, regional education cooperative or charter school, the
16 department is authorized to release copies of federal bureau of
17 investigation records that are on file with the department and
18 that are not more than twenty-four months old. Convictions of
19 felonies or misdemeanors contained in the federal bureau of
20 investigation record shall be used in accordance with the
21 Criminal Offender Employment Act; provided that other
22 information contained in the federal bureau of investigation
23 record, if supported by independent evidence, may form the
24 basis for the employment decisions for good and just cause.
25 Records and related information shall be privileged and shall

.168823.2

1 not be disclosed to a person not directly involved in the
2 employment decision affecting the specific applicant who has
3 been offered employment, contractor or contractor's employee
4 with unsupervised access to students at a public school.

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

11 ~~[E. The state board may suspend or revoke the~~
12 ~~license of a local superintendent who fails to report a~~
13 ~~criminal conviction involving moral turpitude of a licensed~~
14 ~~school employee.]~~

15 F. A local superintendent, charter school
16 administrator or director of a regional education cooperative
17 or their respective designees shall investigate all allegations
18 of ethical misconduct about any licensed school employee who
19 resigns, is being discharged or terminated or otherwise leaves
20 employment after an allegation has been made. If the
21 investigation results in a finding of wrongdoing, the local
22 superintendent, charter school administrator or director of a
23 regional education cooperative shall report the identity of the
24 licensed school employee and attendant circumstances of the
25 ethical misconduct on a standardized form to the department and

.168823.2

1 the licensed school employee within thirty days following the
2 separation from employment. Copies of that form shall not be
3 maintained in public school, school district or regional
4 education cooperative records. No agreement between a
5 departing licensed school employee and the local school board,
6 school district, charter school or regional education
7 cooperative shall diminish or eliminate the responsibility of
8 investigating and reporting the alleged ethical misconduct, and
9 any such agreement to the contrary is void. Unless the
10 department has commenced its own investigation of the licensed
11 school employee prior to receipt of the form, the department
12 shall serve the licensed school employee with a notice of
13 contemplated action involving that employee's license within
14 ninety days of receipt of the form. If that notice of
15 contemplated action is not served on the licensed school
16 employee within ninety days of receipt of the form, the form,
17 together with any documents related to the alleged ethical
18 misconduct, shall be expunged from the licensed school
19 employee's records with the department and shall not be subject
20 to public inspection.

21 G. The secretary may suspend, revoke or refuse to
22 renew the license of a local superintendent, charter school
23 administrator or regional education cooperative director who
24 fails to report as required by Subsections E and F of this
25 section.

.168823.2

1 [F-] H. A person who in good faith reports [~~any~~
2 ~~known conviction of a felony or misdemeanor involving moral~~
3 ~~turpitude of a licensed school employee~~] as provided in
4 Subsections E and F of this section shall not be held liable
5 for civil damages as a result of the report [~~provided that~~].
6 The person being accused shall have the right to sue for any
7 damages sustained as a result of negligent or intentional
8 reporting of inaccurate information or the disclosure of any
9 information to an unauthorized person."

underscoring material = new
[bracketed material] = delete