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SENATE BILL 210

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

INTRODUCED BY

Cynthia Nava

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO PUBLIC SCHOOLS; REQUIRING BACKGROUND CHECKS FOR CERTAIN VOLUNTEERS, CONTRACTORS AND CONTRACTOR EMPLOYEES; 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:

(1) "contractor or contractor's employee" means a person who, in the course of performing duties under

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1 contract with a public school, school district or regional
2 education cooperative, has unsupervised access to public school
3 students; and

4 (2) "volunteer" means a person who donates
5 time or services to a public school, school district or
6 regional education cooperative and who has unsupervised access
7 to public school students.

8 ~~[A.]~~ B. An applicant for initial licensure shall be
9 fingerprinted and shall provide two fingerprint cards or the
10 equivalent electronic fingerprints to the department to obtain
11 the applicant's federal bureau of investigation record.

12 Convictions of felonies or misdemeanors contained in the
13 federal bureau of investigation record shall be used in
14 accordance with the Criminal Offender Employment Act. Other
15 information contained in the federal bureau of investigation
16 record, if supported by independent evidence, may form the
17 basis for the denial, suspension or revocation of a license for
18 good and just cause. Except as otherwise provided in this
19 section, records and related information shall be privileged
20 and shall not be disclosed to a person not directly involved in
21 the licensure ~~[or employment decisions]~~ decision affecting the
22 specific applicant. The applicant for initial licensure shall
23 pay ~~[for]~~ the cost of obtaining the federal bureau of
24 investigation record.

25 ~~[B. Local school boards and regional education~~

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1 ~~cooperatives shall develop policies and procedures to require~~
2 ~~background checks on an applicant who has been offered~~
3 ~~employment, a contractor or a contractor's employee with~~
4 ~~unsupervised access to students at a public school.~~

5 ~~G. An applicant for employment who has been~~
6 ~~initially licensed within twenty-four months of applying for~~
7 ~~employment with a local school board, regional education~~
8 ~~cooperative or a charter school shall not be required to submit~~
9 ~~to another background check if the department has copies of his~~
10 ~~federal bureau of investigation records on file. An applicant~~
11 ~~who has been offered employment, a contractor or a contractor's~~
12 ~~employee with unsupervised access to students at a public~~
13 ~~school shall provide two fingerprint cards or the equivalent~~
14 ~~electronic fingerprints to the local school board, regional~~
15 ~~education cooperative or charter school to obtain his federal~~
16 ~~bureau of investigation record. The applicant, contractor or~~
17 ~~contractor's employee who has been offered employment by a~~
18 ~~regional education cooperative or at a public school may be~~
19 ~~required to pay for the cost of obtaining a background check.~~
20 ~~At the request of a local school board, regional education~~
21 ~~cooperative or charter school, the department is authorized to~~
22 ~~release copies of federal bureau of investigation records that~~
23 ~~are on file with the department and that are not more than~~
24 ~~twenty-four months old. Convictions of felonies or~~
25 ~~misdemeanors contained in the federal bureau of investigation~~

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

6 C. An applicant for employment with a school
7 district, charter school or regional education cooperative who
8 has been initially licensed within twenty-four months of
9 applying for employment with a school district, charter school
10 or regional education cooperative shall not be required to
11 submit to another background check if the department has copies
12 of the applicant's federal bureau of investigation record on
13 file. An applicant who has been offered employment shall
14 provide two fingerprint cards or the equivalent electronic
15 fingerprints to the school district, charter school or regional
16 education cooperative. At the request of a school district,
17 charter school or regional education cooperative, the
18 department is authorized to release copies of federal bureau of
19 investigation records that are on file with the department and
20 that are not more than twenty-four months old. Convictions of
21 felonies or misdemeanors contained in the federal bureau of
22 investigation records shall be used in accordance with the
23 Criminal Offender Employment Act; provided that other
24 information contained in the federal bureau of investigation
25 record, if supported by independent evidence, may form the

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1 basis for the employment decisions.

2 D. Local school boards, governing bodies of charter
3 schools and regional education cooperatives shall develop
4 policies to require background checks on applicants for
5 unlicensed positions and unlicensed volunteers, contractors and
6 contractors' employees. Applicants, volunteers, contractors
7 and contractors' employees may be required to pay the cost of
8 obtaining the background checks. Procedures for obtaining the
9 background check shall be as provided in Subsection B of this
10 section. Convictions of felonies or misdemeanors contained in
11 the federal bureau of investigation record shall be used in
12 accordance with the Criminal Offender Employment Act; provided
13 that other information contained in the federal bureau of
14 investigation record, if supported by independent evidence, may
15 form the basis for decisions whether to employ or contract with
16 a person or allow a person to volunteer.

17 E. Records and related information [~~shall be~~] are
18 privileged and shall not be disclosed to a person not directly
19 involved in the [~~employment~~] public school's, school district's
20 or regional education cooperative's decision [~~affecting the~~
21 specific applicant who has been offered employment, contractor
22 or contractor's employee with unsupervised access to students
23 at a public school] to:

24 (1) employ or continue to employ a school
25 employee or an employee of a regional education cooperative;

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1 (2) contract with a contractor or allow a
2 contractor's employee to work or continue to work under a
3 public school, school district or regional education
4 cooperative contract; or

5 (3) allow a person to volunteer or continue to
6 volunteer in a public school, school district or regional
7 education cooperative.

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

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

18 G. A local superintendent, charter school
19 administrator or director of a regional education cooperative
20 shall investigate all allegations of ethical misconduct about
21 any licensed school employee who resigns, is being discharged
22 or terminated or otherwise leaves employment after an
23 allegation has been made. If the investigation results in a
24 finding of wrongdoing, the local superintendent, charter school
25 administrator or director of a regional education cooperative

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

23 H. The secretary may suspend, revoke or refuse to
24 renew the license of a local superintendent, charter school
25 administrator or regional education cooperative director who

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1 fails to report as required by Subsections F and G of this
2 section.

3 [F-] I. A person who in good faith reports [~~any~~
4 ~~known conviction of a felony or misdemeanor involving moral~~
5 ~~turpitude of a licensed school employee]~~ as provided in
6 Subsections F and G of this section shall not be held liable
7 for civil damages as a result of the report [~~provided that~~].
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."