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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 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 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

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

10 C. Local school boards and regional education
11 cooperatives shall develop policies and procedures to require
12 background checks on an applicant who has been offered
13 employment, a contractor or a contractor's employee with
14 unsupervised access to students at a public school.

15 D. An applicant for employment who has been
16 initially licensed within twenty-four months of applying for
17 employment with a local school board, regional education
18 cooperative or a charter school shall not be required to
19 submit to another background check if the department has
20 copies of the applicant's federal bureau of investigation
21 records on file. 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 shall
24 provide two fingerprint cards or the equivalent electronic
25 fingerprints to the local school board, regional education

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

11 Convictions of felonies or misdemeanors contained in the
12 federal bureau of investigation record shall be used in
13 accordance with the Criminal Offender Employment Act;
14 provided that other information contained in the federal
15 bureau of investigation record, if supported by independent
16 evidence, may form the basis for the employment decisions for
17 good and just cause. Records and related information shall
18 be privileged and shall not be disclosed to a person not
19 directly involved in the employment decision affecting the
20 specific applicant who has been offered employment,
21 contractor or contractor's employee with unsupervised access
22 to students at a public school.

23 E. A local superintendent, charter school
24 administrator or regional education cooperative shall report
25 to the department any known conviction of a felony or

1 misdemeanor involving moral turpitude of a licensed school
2 employee that results in any type of action against the
3 licensed school employee.

4 F. A local superintendent, charter school
5 administrator or director of a regional education cooperative
6 or their respective designees shall investigate all
7 allegations of ethical misconduct about any licensed school
8 employee who resigns, is being discharged or terminated or
9 otherwise leaves employment after an allegation has been
10 made. If the investigation results in a finding of
11 wrongdoing, the local superintendent, charter school
12 administrator or director of a regional education cooperative
13 shall report the identity of the licensed school employee and
14 attendant circumstances of the ethical misconduct on a
15 standardized form to the department and the licensed school
16 employee within thirty days following the separation from
17 employment. Copies of that form shall not be maintained in
18 public school, school district or regional education
19 cooperative records. No agreement between a departing
20 licensed school employee and the local school board, school
21 district, charter school or regional education cooperative
22 shall diminish or eliminate the responsibility of
23 investigating and reporting the alleged ethical misconduct,
24 and any such agreement to the contrary is void. Unless the
25 department has commenced its own investigation of the

1 licensed school employee prior to receipt of the form, the
2 department shall serve the licensed school employee with a
3 notice of contemplated action involving that employee's
4 license within ninety days of receipt of the form. If that
5 notice of contemplated action is not served on the licensed
6 school employee within ninety days of receipt of the form,
7 the form, together with any documents related to the alleged
8 ethical misconduct, shall be expunged from the licensed
9 school employee's records with the department and shall not
10 be subject to public inspection.

11 G. The secretary may suspend, revoke or refuse to
12 renew the license of a local superintendent, charter school
13 administrator or regional education cooperative director who
14 fails to report as required by Subsections E and F of this
15 section.

16 H. A person who in good faith reports as provided
17 in Subsections E and F of this section shall not be held
18 liable for civil damages as a result of the report. The
19 person being accused shall have the right to sue for any
20 damages sustained as a result of negligent or intentional
21 reporting of inaccurate information or the disclosure of any
22 information to an unauthorized person." _____

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