

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 315

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY
Howie Morales

AN ACT

RELATING TO SCHOOL PERSONNEL; CREATING A COUNCIL TO MAKE
RECOMMENDATIONS FOR A STATE TEACHER EVALUATION FRAMEWORK;
REQUIRING THE PUBLIC EDUCATION DEPARTMENT TO USE THE STATE
TEACHER EVALUATION FRAMEWORK TO DEVELOP A STATE TEACHER
EVALUATION PROGRAM; REQUIRING SCHOOL DISTRICTS AND CHARTER
SCHOOLS TO USE THE STATE TEACHER EVALUATION PROGRAM TO EVALUATE
EFFECTIVENESS IN TEACHING AND TO GIVE TEACHERS A PERFORMANCE
RATING; REQUIRING TEACHERS EARNING THE LOWEST PERFORMANCE
RATING AFTER PARTICIPATING IN A PEER INTERVENTION PROGRAM TO BE
TERMINATED.

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

SECTION 1. A new section of the School Personnel Act is
enacted to read:

"[NEW MATERIAL] STATE TEACHER EVALUATION FRAMEWORK AND

underscoring material = new
~~[bracketed material] = delete~~

1 PROGRAM.--

2 A. By June 1, 2012, the department shall convene a
3 council to develop recommendations for a state teacher
4 evaluation framework for the department to consider in adopting
5 a state teacher evaluation program. The council shall work in
6 accordance with this section from June 1, 2012 through December
7 31, 2015. The department shall provide staff to assist the
8 council as needed.

9 B. Council members shall include:

10 (1) the secretary or the secretary's designee;
11 and

12 (2) geographically diverse members appointed
13 by the secretary as follows:

14 (a) two teachers, nominated by public
15 school teacher organizations to serve on the council, who have
16 a level II license and currently teach an elementary school
17 class on a full-time basis;

18 (b) two teachers, nominated by public
19 school teacher organizations to serve on the council, who have
20 a level II license and currently teach a middle school class on
21 a full-time basis;

22 (c) two teachers, nominated by public
23 school teacher organizations to serve on the council, who have
24 a level II license and currently teach a high school class on a
25 full-time basis;

.189242.1

underscoring material = new
~~[bracketed material] = delete~~

1 (d) two teachers, nominated by public
2 school teacher organizations to serve on the council, who have
3 a level III license and currently teach an elementary school
4 class on a full-time basis;

5 (e) two teachers, nominated by public
6 school teacher organizations to serve on the council, who have
7 a level III license and currently teach a middle school class
8 on a full-time basis;

9 (f) two teachers, nominated by public
10 school teacher organizations to serve on the council, who have
11 a level III license and currently teach a high school class on
12 a full-time basis;

13 (g) two representatives of a public
14 school parent organization who are nominated by that
15 organization;

16 (h) four representatives of an
17 organization of school administrators who are nominated by that
18 organization; and

19 (i) one representative of the New Mexico
20 business community.

21 C. If the department has sufficient funds in its
22 budget, the members of the council and any work groups of the
23 council may be reimbursed for travel expenses pursuant to the
24 Per Diem and Mileage Act and shall receive no other
25 compensation, perquisite or allowance.

.189242.1

1 D. The council may:

2 (1) convene temporary work groups, which may
3 include non-council members with appropriate expertise, to
4 study and make recommendations on the evaluation framework; and

5 (2) consult with state, regional and national
6 experts.

7 E. By December 31, 2012, the council shall make
8 specific and comprehensive recommendations for a state teacher
9 evaluation framework appropriate for evaluating each licensure
10 level of licensed teachers and determining effectiveness in
11 teaching, including:

12 (1) a research-based evaluation protocol;

13 (2) criteria for selecting, certifying and
14 training a team of certified evaluators;

15 (3) the sequence and schedule for teacher
16 evaluations by a team of certified evaluators and the school
17 principal or head administrator;

18 (4) criteria for assessing school progress on
19 the educational plan for student success;

20 (5) criteria and guidelines for student
21 learning objectives;

22 (6) criteria for publishing, collecting and
23 using surveys from students;

24 (7) criteria and training for establishing and
25 implementing peer assistance, review and intervention programs

1 for teachers; and

2 (8) four or more performance ratings to
3 indicate a teacher's level of effectiveness in teaching, which
4 shall include at least:

5 (a) distinguished;

6 (b) proficient;

7 (c) basic; and

8 (d) unsatisfactory.

9 F. By December 31, 2012, the council shall make
10 additional specific and comprehensive recommendations for:

11 (1) training materials and guidelines for
12 performing teacher evaluations;

13 (2) the sequence and schedule of measures to
14 be taken in response to teacher evaluations;

15 (3) aligning the department's state teacher
16 evaluation program with the three-tiered licensure and
17 compensation system;

18 (4) any changes to department rules or laws,
19 if necessary, for teacher evaluation results to be used for
20 personnel decisions in areas such as compensation, promotion,
21 retention, termination and professional development; and

22 (5) developing a state principal evaluation
23 framework upon which the department shall adopt a state
24 principal evaluation program that aligns with the state teacher
25 evaluation program.

underscoring material = new
~~[bracketed material] = delete~~

1 G. By April 30, 2013, the department shall adopt a
2 state teacher evaluation program that:

3 (1) shall be used to evaluate each licensed
4 teacher according to standards appropriate for the teacher's
5 level of licensure;

6 (2) is based on the council's state teacher
7 evaluation framework and recommendations;

8 (3) is based on a set of standards of practice
9 that takes into account the complexities of teaching;

10 (4) includes formative and summative
11 evaluation criteria;

12 (5) includes evidence of teaching ability and
13 student learning from multiple sources;

14 (6) includes and is subject to continuous
15 updating of instruments and processes as research on practices
16 leading to valued student outcomes becomes available;

17 (7) provides continuous opportunities for
18 professional development and growth for teachers by addressing
19 their professional needs according to the teachers' experience,
20 knowledge and skills;

21 (8) provides clear and objective standards for
22 determining effectiveness in teaching and assigning a
23 performance rating in one of four or more performance levels
24 recommended by the council, based on the competencies specific
25 to each teacher licensure level and judged by multiple

.189242.1

1 appropriate measures;

2 (9) provides evaluation instruments, rubrics
3 or other tools recommended by the council as fair, transparent,
4 rigorous and valid and specific to each teacher licensure
5 level;

6 (10) provides evaluation procedures for each
7 teacher licensure level that are conducted with sufficient time
8 and specified frequency to gather adequate data to justify the
9 performance ratings contained in the evaluation;

10 (11) provides a connection between the
11 professional development plan required in Section 22-10A-19
12 NMSA 1978 and the teacher evaluations;

13 (12) establishes the frequency of teacher
14 evaluations to be performed by a team of certified evaluators,
15 the school principal or the head administrator for each teacher
16 based on the teacher's licensure level;

17 (13) establishes the sequence and schedule of
18 measures to be taken, if any, in response to teacher
19 evaluations, including a professional improvement plan that
20 includes peer assistance, review and intervention if sufficient
21 improvement does not occur within the prescribed time and
22 possible termination of a teacher who receives an
23 unsatisfactory performance rating on one or more occasions
24 resulting from a teacher evaluation;

25 (14) establishes the process by which a

1 teacher may appeal adverse performance ratings;

2 (15) establishes procedures for maintaining
3 the confidentiality of personally identifiable student
4 information in performing evaluations;

5 (16) establishes whether individual teacher
6 performance ratings resulting from a teacher evaluation are a
7 confidential personnel matter or a matter of public record; and

8 (17) provides support to school districts and
9 charter schools for implementing the state teacher evaluation
10 program, including:

11 (a) ongoing training and collaboration
12 time to ensure that teachers understand student data and have
13 the resources to provide instruction that responds
14 appropriately to student data;

15 (b) ongoing training in the
16 implementation and use of the state teacher evaluation program
17 sufficient for all teachers; and

18 (c) ongoing training in the
19 implementation and use of the state teacher evaluation program
20 for the certified evaluators and regular calibration of an
21 evaluation tool agreed upon by the certified evaluators.

22 H. By May 1, 2013, the department shall make
23 available to school districts and charter schools:

24 (1) the state teacher evaluation program;

25 (2) its rules on the state teacher evaluation

1 program; and

2 (3) related materials from evidence-based
3 sources that may assist school principals, head administrators
4 and certified evaluators in implementing and using the state
5 teacher evaluation program.

6 I. Starting with the 2013-2014 school year, each
7 licensed teacher shall be evaluated by a team of certified
8 evaluators and the teacher's school principal or head
9 administrator using the state teacher evaluation program and
10 the following methods and criteria to evaluate teachers in a
11 rigorous, fair and transparent way in the following
12 percentages:

13 (1) formative classroom observations of
14 teachers by a team of certified evaluators using a
15 research-based protocol, performed twice during each school
16 year, and comprising twenty percent of the total evaluation;

17 (2) summative classroom observations of
18 teachers by a school principal or head administrator using a
19 research-based protocol, performed twice during the school year
20 every three years, comprising twenty percent of the total
21 evaluation;

22 (3) student learning measured by student
23 learning objectives, comprising thirty percent of the total
24 evaluation;

25 (4) school progress as measured by meeting the

underscored material = new
~~[bracketed material] = delete~~

1 educational plan for student success goals, comprising ten
2 percent of the total observation; and

3 (5) student feedback compiled from student
4 surveys, comprising twenty percent of the total evaluation.

5 J. The results of each teacher evaluation shall be
6 provided to the teacher in a timely manner. School districts
7 and charter schools shall document and use the results of
8 teacher evaluations to tailor individual teacher professional
9 development plans as needed. The department shall monitor each
10 school district's and charter school's administration of the
11 teacher evaluation program.

12 K. By March 1 of 2014 and 2015, the council and the
13 department shall prepare a draft status report on the
14 effectiveness of the implemented state teacher evaluation
15 program and distribute the draft status report to all school
16 districts, charter schools and public post-secondary
17 educational institutions for comments. By June 1 of 2014 and
18 2015, the council and the department shall provide to the
19 governor and the legislative education study committee a final
20 status report that references submitted comments. Each draft
21 and final status report shall include:

22 (1) data that show the aggregate number of
23 teachers at each level of performance rating across the state
24 and for each school district and charter school;

25 (2) results of surveys of teachers and parents

.189242.1

1 regarding confidence in and satisfaction with the effectiveness
2 of the state teacher evaluation framework in the purposes of
3 the state teacher evaluation program; and

4 (3) recommendations of the council, based on
5 the outcomes of the state teacher evaluation program, surveys
6 and any other information the council or department deems
7 relevant, for changes or improvements to the system through
8 amendments to the law or changes to department rule.

9 L. As used in this section:

10 (1) "certified evaluator" means a licensed
11 level 3 educator selected, trained and certified by the
12 department to accurately assess teacher practice and conduct
13 formative evaluations of licensed teachers based on the
14 teachers' licensure level;

15 (2) "educational plan for student success"
16 means a student-centered tool developed to define the role of
17 the academic improvement plan within the school district and
18 charter school that addresses methods to improve a student's
19 learning and success in school and that identifies specific
20 measures of a student's progress;

21 (3) "formative evaluation" means an evaluation
22 during the school year by a team of certified evaluators that
23 creates ongoing opportunities for feedback to enable a
24 teacher's instruction to be fine-tuned to:

25 (a) achieve good performance that meets

underscoring material = new
~~[bracketed material] = delete~~

1 or exceeds goals, criteria and expected standards;

2 (b) address and develop teaching
3 practices in areas of weakness; and

4 (c) improve teaching skills during the
5 formative evaluation process;

6 (4) "head administrator" means the
7 administrative and instructional leader of a charter school;

8 (5) "student learning objectives" means
9 teacher-designed and -created clear and specific goals that are
10 aligned to the standards; and

11 (6) "summative evaluation" means a teacher
12 evaluation conducted by a school principal or head
13 administrator that uses identical criteria for each level of
14 licensure and includes the results of formative evaluations to
15 uniformly measure teacher performance within each licensure
16 level."

17 SECTION 2. Section 22-8B-5 NMSA 1978 (being Laws 1999,
18 Chapter 281, Section 5, as amended) is amended to read:

19 "22-8B-5. CHARTER SCHOOLS--STATUS--LOCAL SCHOOL BOARD
20 AUTHORITY.--

21 A. The local school board may waive only locally
22 imposed school district requirements for locally chartered
23 charter schools.

24 B. A state-chartered charter school is exempt from
25 school district requirements. A state-chartered charter school

underscored material = new
[bracketed material] = delete

1 is responsible for developing its own written policies and
2 procedures in accordance with this section.

3 C. The department shall waive requirements or rules
4 and provisions of the Public School Code pertaining to
5 individual class load, teaching load, length of the school day,
6 staffing patterns, subject areas, purchase of instructional
7 material, evaluation standards for school personnel, school
8 principal duties and driver education; provided, however, that
9 each charter school shall implement the state teacher
10 evaluation program as provided in the School Personnel Act.

11 The department may waive requirements or rules and provisions
12 of the Public School Code pertaining to graduation
13 requirements. Any waivers granted pursuant to this section
14 shall be for the term of the charter granted but may be
15 suspended or revoked earlier by the department.

16 D. A charter school shall be a public school
17 accredited by the department and shall be accountable to the
18 chartering authority for purposes of ensuring compliance with
19 applicable laws, rules and charter provisions.

20 E. A local school board shall not require any
21 employee of the school district to be employed in a charter
22 school.

23 F. A local school board shall not require any
24 student residing within the geographic boundary of its district
25 to enroll in a charter school.

.189242.1

underscored material = new
[bracketed material] = delete

1 G. A student who is suspended or expelled from a
2 charter school shall be deemed to be suspended or expelled from
3 the school district in which the student resides."

4 SECTION 3. Section 22-10A-7 NMSA 1978 (being Laws 2003,
5 Chapter 153, Section 38, as amended) is amended to read:

6 "22-10A-7. LEVEL ONE LICENSURE.--

7 A. A level one license is a provisional five-year
8 license for beginning teachers that requires as a condition of
9 licensure that the licensee undergo a formal mentorship program
10 for at least one full school year and [~~an annual intensive~~
11 ~~performance evaluation by a school administrator~~] teacher
12 evaluations pursuant to the state teacher evaluation program
13 for at least three full school years before applying for a
14 level two license.

15 B. Each school district, in accordance with
16 department rules, shall provide for the mentorship and
17 evaluation of level one teachers. At the end of each year and
18 at the end of the license period, the level one teacher shall
19 be evaluated for [~~competency~~] effectiveness in teaching
20 pursuant to the state teacher evaluation program. If the
21 teacher fails to demonstrate satisfactory progress [~~and~~
22 ~~competence annually~~] toward effectiveness in teaching, the
23 teacher may be terminated as provided in Section 22-10A-24 NMSA
24 1978. If the teacher has not demonstrated satisfactory
25 progress and [~~competence~~] effectiveness in teaching pursuant to

.189242.1

underscored material = new
[bracketed material] = delete

1 the state teacher evaluation program by the end of the five-
2 year period, the teacher shall not be granted a level two
3 license.

4 C. Except in exigent circumstances defined by
5 department rule, a level one license shall not be extended
6 beyond the initial period.

7 D. The department shall issue a standard level one
8 license to an applicant who is at least eighteen years of age
9 who:

10 (1) holds a baccalaureate degree from an
11 accredited educational institution;

12 (2) has successfully completed a department-
13 approved teacher preparation program from a [~~nationally~~]
14 regionally accredited or state-approved educational
15 institution;

16 (3) has passed the New Mexico teacher
17 assessments examination, including for elementary licensure
18 beginning January 1, 2013, a rigorous assessment of the
19 candidate's knowledge of the science of teaching reading; and

20 (4) meets other qualifications for level one
21 licensure, including clearance of the required background
22 check.

23 E. The department shall issue an alternative level
24 one license to an applicant who meets the requirements of
25 Section 22-10A-8 NMSA 1978.

.189242.1

underscored material = new
[bracketed material] = delete

1 F. The department shall establish competencies and
2 qualifications for specific grade levels, types and subject
3 areas of level one licensure, including early childhood,
4 elementary, middle school, secondary, special ~~[education]~~ and
5 vocational education.

6 G. Beginning with the 2003-2004 school year, ~~[with~~
7 ~~the adoption by the department of a highly objective uniform~~
8 ~~statewide standard of evaluation for level one teachers]~~ the
9 minimum salary for a level one teacher shall be thirty thousand
10 dollars (\$30,000) for a standard nine and one-half month
11 contract.

12 H. Teachers who hold level one licenses on the
13 effective date of the 2003 act must be evaluated by the end of
14 the 2006-2007 school year."

15 SECTION 4. Section 22-10A-10 NMSA 1978 (being Laws 2003,
16 Chapter 153, Section 41, as amended by Laws 2005, Chapter 315,
17 Section 7 and by Laws 2005, Chapter 316, Section 4) is amended
18 to read:

19 "22-10A-10. LEVEL TWO LICENSURE.--

20 A. A level two license is a nine-year license
21 granted to a teacher who meets the qualifications for that
22 level and who annually demonstrates ~~[essential competency to~~
23 ~~teach]~~ effectiveness in teaching pursuant to the state teacher
24 evaluation program. If a level two teacher does not
25 demonstrate ~~[essential competency]~~ effectiveness in teaching in

.189242.1

underscored material = new
[bracketed material] = delete

1 a given school year, the school district shall provide the
2 teacher with additional professional development and peer
3 intervention during the following school year. [~~If by the end~~
4 ~~of that school year the teacher fails to demonstrate essential~~
5 ~~competency, a school district may choose not to contract with~~
6 ~~the teacher to teach in the classroom.~~]

7 B. The department shall issue a level two license
8 to an applicant who successfully completes the level one
9 license or is granted reciprocity as provided by department
10 rules; demonstrates [~~essential competency required by the~~
11 ~~department as verified by the local superintendent through the~~
12 ~~highly objective uniform statewide standard of evaluation]~~
13 effectiveness in teaching pursuant to the state teacher
14 evaluation program; and meets other qualifications as required
15 by the department.

16 C. The department shall provide for qualifications
17 for specific grade levels, types and subject areas of level two
18 licensure, including early childhood, elementary, middle,
19 secondary, special education and vocational education.

20 D. [~~With the adoption by the department of the~~
21 ~~statewide objective performance evaluation for level two~~
22 ~~teachers]~~ The minimum salary for a level two teacher for a
23 standard nine and one-half month contract shall be as follows:

24 (1) for the 2003-2004 school year,
25 thirty thousand dollars (\$30,000);

.189242.1

1 (2) for the 2004-2005 school year,
2 thirty-five thousand dollars (\$35,000); and

3 (3) for the 2005-2006 school year and
4 subsequent school years, forty thousand dollars (\$40,000)."

5 SECTION 5. Section 22-10A-11 NMSA 1978 (being Laws 2003,
6 Chapter 153, Section 42, as amended) is amended to read:

7 "22-10A-11. LEVEL THREE LICENSURE--TRACKS FOR TEACHERS,
8 COUNSELORS AND SCHOOL ADMINISTRATORS.--

9 A. A level three-A license is a nine-year license
10 granted to a teacher who meets the qualifications for that
11 level and who annually demonstrates [~~instructional leader~~
12 ~~competencies~~] effectiveness in teaching pursuant to the state
13 teacher evaluation program. If a level three-A teacher does
14 not demonstrate [~~essential competency~~] effectiveness in
15 teaching in a given school year, the school district shall
16 provide the teacher with additional professional development
17 and peer intervention during the following school year. [~~If by~~
18 ~~the end of that school year the teacher fails to demonstrate~~
19 ~~essential competency, a school district may choose not to~~
20 ~~contract with the teacher to teach in the classroom.~~]

21 B. The department shall grant a level three-A
22 license to an applicant who has been a level two teacher for at
23 least three years and holds a post-baccalaureate degree or
24 national board for professional teaching standards
25 certification; demonstrates instructional leader competence as

.189242.1

underscored material = new
[bracketed material] = delete

1 required by the department and ~~[verified by the local~~
2 ~~superintendent through the highly objective uniform statewide~~
3 ~~standard of]~~ effectiveness in teaching pursuant to the state
4 teacher evaluation program; and meets other qualifications for
5 the license.

6 C. ~~[With the adoption by the department of a highly~~
7 ~~objective uniform statewide standard of evaluation for level~~
8 ~~three-A teachers]~~ The minimum salary for a level three-A
9 teacher for a standard nine and one-half month contract shall
10 be as follows:

11 (1) for the 2003-2004 school year, thirty
12 thousand dollars (\$30,000);

13 (2) for the 2004-2005 school year,
14 thirty-five thousand dollars (\$35,000);

15 (3) for the 2005-2006 school year, forty
16 thousand dollars (\$40,000);

17 (4) for the 2006-2007 school year,
18 forty-five thousand dollars (\$45,000); and

19 (5) for the 2007-2008 school year and
20 subsequent school years, fifty thousand dollars (\$50,000).

21 D. A level three-B license is a nine-year license
22 granted to a school administrator who meets the qualifications
23 for that level. Licenses may be renewed upon satisfactory
24 annual demonstration of instructional leader and administrative
25 competency.

.189242.1

underscored material = new
[bracketed material] = delete

1 E. The department shall grant a level three-B
2 license to an applicant who:

3 (1) holds a level two license and meets the
4 requirements for a level three-A license or who holds a current
5 level two teacher's license and for at least four years, has
6 held the highest-ranked counselor license as provided in
7 Chapter 22, Article 10A NMSA 1978 and rules promulgated by the
8 department;

9 (2) holds a post-baccalaureate degree or
10 national board for professional teaching standards
11 certification;

12 (3) has satisfactorily completed department-
13 approved courses in administration and a department-approved
14 administration apprenticeship program; and

15 (4) demonstrates instructional leader
16 competence as required by the department [~~and verified by the~~
17 ~~local superintendent through the highly objective uniform~~
18 ~~statewide standard of evaluation~~].

19 F. Beginning with the 2007-2008 school year, the
20 minimum annual salary for a level three-B school principal or
21 assistant school principal shall be fifty thousand dollars
22 (\$50,000) multiplied by the applicable responsibility factor.

23 G. By the beginning of the 2008-2009 school year,
24 the department shall adopt a highly objective uniform statewide
25 standard of evaluation, which includes data sources linked to

underscored material = new
[bracketed material] = delete

1 student achievement and educational plan for student success
2 progress, for level three-B school principals and assistant
3 school principals and rules for the implementation of that
4 evaluation system linked to the level of responsibility at each
5 school level."

6 SECTION 6. Section 22-10A-19 NMSA 1978 (being Laws 2003,
7 Chapter 153, Section 50, as amended) is amended to read:

8 "22-10A-19. TEACHERS AND SCHOOL PRINCIPALS--
9 ACCOUNTABILITY--EVALUATIONS--PROFESSIONAL DEVELOPMENT--PEER
10 INTERVENTION [~~MENTORING~~].--

11 A. The department shall adopt criteria and minimum
12 highly objective uniform statewide standards of evaluation for
13 the annual performance evaluation of licensed school employees
14 except licensed teachers. A licensed teacher shall be
15 evaluated through each school district's or charter school's
16 implementation of the state teacher evaluation program as
17 provided in Section 1 of this 2012 act. The professional
18 development plan for teachers shall include documentation on
19 how a teacher who receives professional development that has
20 been required or offered by the state or a school district or
21 charter school incorporates the results of that professional
22 development in the classroom.

23 B. The local superintendent shall adopt policies,
24 guidelines and procedures for the performance evaluation
25 process. Evaluation by other school employees shall be one

.189242.1

underscored material = new
[bracketed material] = delete

1 component of the evaluation tool for school administrators.

2 ~~[G. As part of the highly objective uniform~~
3 ~~statewide standard of evaluation for teachers, the school~~
4 ~~principal shall observe each teacher's classroom practice to~~
5 ~~determine the teacher's ability to demonstrate state-adopted~~
6 ~~competencies.~~

7 ~~D.]~~ C. At the beginning of each school year,
8 teachers and school principals shall devise professional
9 development plans for the coming year, and performance
10 evaluations shall be based in part on how well the professional
11 development plan was carried out.

12 ~~[E.]~~ D. If a level two or three-A teacher's
13 performance evaluation [~~indicates less than satisfactory~~]
14 results in the lowest performance [and competency] rating for
15 effectiveness in teaching, the school principal or head
16 administrator may require the teacher to [~~undergo~~] participate
17 in a peer intervention [including] program and receive
18 mentoring for a period the school principal deems necessary.
19 If the teacher is unable to demonstrate [~~satisfactory~~]
20 effectiveness in teaching by earning a higher performance [and
21 competency] rating by the end of the peer intervention period,
22 [~~the peer interveners may recommend~~] termination of the teacher
23 may result.

24 ~~[F.]~~ E. At least every two years, school principals
25 shall attend a training program [~~approved by the department~~] to

.189242.1

underscored material = new
[bracketed material] = delete

1 improve their evaluation, administrative and instructional
2 leadership skills."

3 SECTION 7. Section 22-10A-21 NMSA 1978 (being Laws 1967,
4 Chapter 16, Section 113, as amended) is amended to read:

5 "22-10A-21. EMPLOYMENT CONTRACTS--DURATION.--

6 A. All employment contracts between [~~local~~] a
7 school [~~boards~~] district and [~~certified~~] licensed school
8 [~~personnel and between governing authorities of state agencies~~
9 ~~and certified school instructors~~] employees shall be in writing
10 on forms approved by the [~~state board~~] department. These forms
11 shall contain and specify the term of service, the salary to be
12 paid, the method of payment, the causes for termination of the
13 contract and other provisions required by the [~~regulations of~~
14 ~~the state board~~] rules of the department.

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

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

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

.189242.1

underscored material = new
[bracketed material] = delete

1 of the school year;

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

7 (4) contracts not to exceed three years are
8 permitted for [~~certified~~] school administrators in public
9 schools who are engaged in administrative functions for more
10 than one-half of their employment time [~~and~~

11 ~~(5) contracts not to exceed three years are~~
12 ~~permitted at the discretion of the local school board for~~
13 ~~certified school instructors in public schools who have been~~
14 ~~employed in the school district for three consecutive school~~
15 ~~years].~~

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

21 D. In determination of eligibility for unemployment
22 compensation rights and benefits for [~~certified~~] licensed
23 school [~~instructors~~] employees where those rights and benefits
24 are claimed to arise from the employment relationship between
25 [~~governing authorities of state agencies or local school boards~~

.189242.1

underscored material = new
[bracketed material] = delete

1 ~~and certified school instructors]~~ school districts and the
2 licensed school employees, that period of a year not covered by
3 a school year shall not be considered an unemployment period.

4 E. ~~[Except as provided in Section 22-10-12 NMSA~~
5 ~~1978]~~ A person employed by contract pursuant to this section
6 has no legitimate objective expectancy of reemployment, and no
7 contract entered into pursuant to this section shall be
8 construed as an implied promise of continued employment
9 pursuant to a subsequent contract."

10 SECTION 8. Section 22-10A-22 NMSA 1978 (being Laws 1967,
11 Chapter 16, Section 114, as amended) is amended to read:

12 "22-10A-22. NOTICE OF REEMPLOYMENT--TERMINATION OF OF
13 LICENSED SCHOOL EMPLOYEES.--

14 A. On or before the last day of the school year of
15 the existing employment contract, the local ~~[school board or~~
16 ~~the governing authority of the state agency]~~ superintendent
17 shall serve written notice of reemployment or termination on
18 each ~~[certified]~~ licensed school ~~[instructor]~~ employee employed
19 by the school district ~~[or state agency]~~. A notice of
20 reemployment shall be an offer of employment for the ensuing
21 school year. A notice of termination shall be a notice of
22 intention not to reemploy for the ensuing school year. Failure
23 of the local ~~[school board or the governing authority of the~~
24 ~~state agency]~~ superintendent to serve a written notice of
25 reemployment or termination on a certified school instructor

.189242.1

underscored material = new
[bracketed material] = delete

1 shall be construed to mean that notice of reemployment has been
2 served upon the person for the ensuing school year according to
3 the terms of the existing employment contract but subject to
4 any additional compensation allowed other certified school
5 instructors of like qualifications and experience employed by
6 the school district or state agency.

7 B. Nothing in this section shall be construed to
8 mean that failure of a local [~~school board or the governing~~
9 ~~authority of the state agency~~] superintendent to serve a
10 written notice of reemployment or termination shall
11 automatically extend a [~~certified~~] licensed school
12 [~~instructor's~~] employee's employment contract for a period in
13 excess of one school year.

14 C. Beginning with the 2013-2014 school year and the
15 implementation of the state teacher evaluation program, a
16 teacher who earns the lowest performance rating for
17 effectiveness in teaching after participating in a peer
18 intervention program shall be terminated."

19 **SECTION 9.** Section 22-10A-23 NMSA 1978 (being Laws 1967,
20 Chapter 16, Section 115, as amended) is amended to read:

21 "22-10A-23. REEMPLOYMENT--ACCEPTANCE--REJECTION--BINDING
22 CONTRACT.--

23 A. Each [~~certified~~] licensed school [~~instructor~~]
24 employee shall deliver to the local [~~school board of the school~~
25 ~~district or to the governing authority of the state agency in~~

.189242.1

underscored material = new
[bracketed material] = delete

1 ~~which~~ superintendent by whom the person is employed a written
2 acceptance or rejection of reemployment for the ensuing school
3 year within fifteen days from the following:

4 (1) the date written notice of reemployment is
5 served upon the person; or

6 (2) the last day of the school year when no
7 written notice of reemployment or termination is served upon
8 the person on or before the last day of the school year.

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

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

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

25 A. A local [~~school board or governing authority of~~

.189242.1

underscored material = new
[bracketed material] = delete

1 ~~a state agency~~ superintendent may terminate an employee with
2 fewer than three years of consecutive service for any reason
3 ~~[it]~~ the local superintendent deems sufficient. Upon request
4 of the school employee, the local superintendent ~~[or~~
5 ~~administrator]~~ shall provide written reasons for the decision
6 to terminate. The reasons shall be provided within ten working
7 days of the request. The reasons shall not be publicly
8 disclosed by the local superintendent ~~[administrator, local~~
9 ~~school board or governing authority]~~. The reasons shall not
10 provide a basis for contesting the decision under the School
11 Personnel Act.

12 B. Before terminating ~~[a noncertified]~~ an
13 unlicensed school employee, the local ~~[school board or~~
14 ~~governing authority]~~ superintendent shall serve the unlicensed
15 school employee with a written notice of termination.

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

.189242.1

underscored material = new
[bracketed material] = delete

1 writing the reasons for the termination action [~~to terminate~~
2 ~~him~~]. The local superintendent [~~or administrator~~] shall
3 provide written reasons for the notice of termination to the
4 school employee within five working days from the date the
5 written request for a meeting and the written request for the
6 reasons were received by the local superintendent [~~or~~
7 ~~administrator~~]. Neither the local superintendent [~~or~~
8 ~~administrator~~] nor the local school board [~~or governing~~
9 ~~authority~~] shall publicly disclose [~~its~~] the reasons for
10 termination.

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

15 E. The school employee's request pursuant to
16 Subsection C of this section shall be granted if [~~he~~] the
17 school employee responds to the local superintendent's [~~or~~
18 ~~administrator's~~] written reasons as provided in Subsection C of
19 this section by submitting in writing to the local
20 superintendent [~~or administrator~~] a contention that the
21 decision to terminate [~~him~~] was made without just cause. The
22 written contention shall specify the grounds on which it is
23 contended that the decision was without just cause and shall
24 include a statement of the facts that the school employee
25 believes support [~~his~~] the school employee's contention. This

.189242.1

underscored material = new
[bracketed material] = delete

1 written statement shall be submitted within ten working days
2 from the date the school employee receives the written reasons
3 from the local superintendent [~~or administrator~~]. The
4 submission of this statement constitutes:

5 (1) a representation on the part of the school
6 employee that [~~he~~] the school employee can support [~~his~~] the
7 school employee's contentions; and

8 (2) an acknowledgment that the local [~~school~~
9 ~~board or governing authority~~] superintendent may offer the
10 causes for [~~its~~] the decision to terminate and any relevant
11 data in [~~its~~] the local superintendent's possession in rebuttal
12 of [~~his~~] the school employee's contentions.

13 F. A local school board [~~or governing authority~~]
14 shall meet to hear the school employee's statement in no less
15 than five or more than fifteen working days after the local
16 school board [~~or governing authority~~] receives the statement.
17 The hearing shall be conducted informally in accordance with
18 the provisions of the Open Meetings Act. The school employee
19 [~~and the local superintendent or administrator~~] may [~~each~~] be
20 accompanied by a person of [~~his~~] the school employee's choice,
21 and the local superintendent may be accompanied by a person of
22 the local superintendent's choice. First, the local
23 superintendent shall present the factual basis for [~~his~~] the
24 determination that just cause exists for the termination of the
25 school employee, limited to those reasons provided to the

.189242.1

underscored material = new
[bracketed material] = delete

1 school employee pursuant to Subsection C of this section.
2 [~~Then~~] Second, the school employee shall present [~~his~~] the
3 school employee's contentions, limited to those grounds
4 specified in Subsection E of this section. The local [~~school~~
5 ~~board or governing authority~~] superintendent may offer such
6 rebuttal testimony as [~~it~~] the local superintendent deems
7 relevant. All witnesses may be questioned by the local school
8 board [~~or governing authority~~], the school employee or [~~his~~]
9 the school employee's representative and the local
10 superintendent [~~or administrator~~] or [~~his~~] the local
11 superintendent's representative. The local school board [~~or~~
12 ~~governing authority~~] may consider only such evidence as is
13 presented at the hearing and need consider only such evidence
14 as it considers reliable. No record shall be made of the
15 proceeding. The local school board [~~or governing authority~~]
16 shall notify the school employee and the local superintendent
17 [~~or administrator~~] of its decision in writing within five
18 working days from the conclusion of the meeting."

19 **SECTION 11.** Section 22-10A-25 NMSA 1978 (being Laws 1986,
20 Chapter 33, Section 23, as amended) is amended to read:

21 "22-10A-25. APPEALS--INDEPENDENT ARBITRATOR--
22 QUALIFICATIONS--PROCEDURE--BINDING DECISION.--

23 A. [~~An~~] A school employee who is still aggrieved by
24 a decision of a local school board [~~or governing authority~~]
25 rendered pursuant to Section [~~22-10-14~~] 22-10A-24 NMSA 1978 may

.189242.1

underscored material = new
[bracketed material] = delete

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

15 B. The local school board [~~or governing authority~~]
16 and the school employee shall meet within ten working days from
17 the receipt of the request for an appeal and select an
18 independent arbitrator to conduct the appeal. If the parties
19 fail to agree on an independent arbitrator, they shall request
20 the presiding judge in the judicial district in which the
21 school employee's public school is located to select one. The
22 presiding judge shall select the independent arbitrator within
23 five working days from the date of the parties' request.

24 C. A qualified independent arbitrator shall be
25 appointed who is versed in employment practices and school

.189242.1

underscored material = new
[bracketed material] = delete

1 procedures and who preferably has experience in the practice of
2 law. No person shall be appointed to serve as the independent
3 arbitrator who has any direct or indirect financial interest in
4 the outcome of the proceeding, has any relationship to any
5 party in the proceeding, is employed by the local school board
6 [~~or governing authority~~] or is a member of or employed by any
7 professional or labor organization of which the school employee
8 is a member.

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

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

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

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

.189242.1

underscored material = new
[bracketed material] = delete

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

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

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

.189242.1

underscored material = new
[bracketed material] = delete

1 school board [~~or governing authority~~].

2 K. The independent arbitrator shall uphold the
3 local school board's [~~or governing authority's~~] decision only
4 if it proves by a preponderance of the evidence that, at the
5 time the notice of termination was served on the school
6 employee, the local school board [~~or governing authority~~] had
7 just cause to terminate the school employee. If the local
8 school board [~~or governing authority~~] fails to meet [~~its~~] the
9 burden of proof or if the school employee rebuts the proof
10 offered by the local school board [~~or governing authority~~], the
11 arbitrator shall reverse the decision of the local school board
12 [~~or governing authority~~].

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

20 M. The independent arbitrator shall render a
21 written decision affirming or reversing the action of the local
22 school board [~~or governing authority~~]. The decision shall
23 contain findings of fact and conclusions of law. The parties
24 shall receive actual written notice of the decision of the
25 independent arbitrator within ten working days from the

.189242.1

underscored material = new
[bracketed material] = delete

1 conclusion of the de novo hearing.

2 N. The sole remedies available under this section
3 shall be reinstatement or payment of compensation reinstated in
4 full but subject to any additional compensation allowed other
5 school employees of like qualifications and experience employed
6 by the school district or state agency and including
7 reimbursement for compensation during the entire period for
8 which compensation was terminated, or both, less an offset for
9 any compensation received by the school employee during the
10 period the compensation was terminated.

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

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

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

25 R. [~~Local~~] School districts shall file a record

.189242.1

underscored material = new
[bracketed material] = delete

1 with the department [~~of education~~] of all terminations and all
2 actions arising from terminations annually."

3 SECTION 12. Section 22-10A-26 NMSA 1978 (being Laws 1967,
4 Chapter 16, Section 118, as amended) is amended to read:

5 "22-10A-26. EXCEPTED FROM PROVISIONS.--Sections [~~22-10-12~~
6 ~~through 22-10-14.1~~] 22-10A-22 through 22-10A-25 NMSA 1978 do
7 not apply to the following:

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

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

14 C. [~~a non-certified~~] an unlicensed school employee
15 employed to perform primarily district-wide management
16 functions."

17 SECTION 13. Section 22-10A-27 NMSA 1978 (being Laws 1986,
18 Chapter 33, Section 24, as amended) is amended to read:

19 "22-10A-27. DISCHARGE HEARING--PROCEDURES.--

20 A. A local [~~school board or the governing authority~~
21 ~~of a state agency~~] superintendent may discharge a [~~certified~~]
22 licensed school employee only for just cause according to the
23 following procedure:

24 (1) the [~~superintendent~~] school principal
25 shall serve a written notice of [~~his~~] intent to recommend

.189242.1

underscored material = new
[bracketed material] = delete

1 discharge on the [~~certified~~] licensed school employee in
2 accordance with the law for service of process in civil
3 actions; [~~and~~]

4 (2) the [~~superintendent~~] school principal
5 shall state in the notice of [~~his~~] intent to recommend
6 discharge the cause for [~~his~~] the recommendation; and

7 (3) the superintendent shall issue a notice of
8 discharge to the licensed school employee and shall advise the
9 [~~certified~~] licensed school employee of [~~his~~] the licensed
10 school employee's right to a discharge hearing before the local
11 school board [~~or governing authority~~] as provided in this
12 section.

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

22 C. The local school board [~~or governing authority~~]
23 shall hold a discharge hearing no less than twenty and no more
24 than forty working days after the local superintendent [~~or~~
25 ~~administrator~~] receives the written election from the

.189242.1

underscored material = new
[bracketed material] = delete

1 [certified] licensed school employee and shall give the
2 [certified] licensed school employee at least ten days written
3 notice of the date, time and place of the discharge hearing.

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

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

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

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

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

.189242.1

underscored material = new
[bracketed material] = delete

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

5 J. The local school board shall render [~~its~~] a
6 written decision within twenty days of the conclusion of the
7 discharge hearing."

8 SECTION 14. Section 22-10A-28 NMSA 1978 (being Laws 1986,
9 Chapter 33, Section 25, as amended) is amended to read:

10 "22-10A-28. APPEALS--INDEPENDENT ARBITRATOR--
11 QUALIFICATIONS--PROCEDURE--BINDING DECISION.--

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

21 B. The local [~~school board or governing authority~~]
22 superintendent and the [~~certified~~] licensed school employee
23 shall meet within ten calendar days from the receipt of the
24 notice of appeal and select an independent arbitrator to
25 conduct the appeal, or, in the event the parties fail to agree

.189242.1

underscored material = new
[bracketed material] = delete

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 within five working days
5 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]~~ district or is a member
13 of or employed by any professional organization of which the
14 ~~[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]~~ shall have the burden of proving
19 by a preponderance of the evidence that, at the time of the
20 notice of ~~[intent to recommend]~~ discharge, the local
21 superintendent ~~[or administrator]~~ had just cause to discharge
22 the ~~[certified]~~ licensed school employee. The local school
23 board ~~[or governing authority]~~ shall present ~~[its]~~ evidence
24 first, with the ~~[certified]~~ licensed school employee presenting
25 ~~[his]~~ evidence thereafter.

.189242.1

underscored material = new
[bracketed material] = delete

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

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

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

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

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

.189242.1

underscored material = new
[bracketed material] = delete

1 but, in ruling on the admissibility of evidence, the
2 independent arbitrator may require reasonable substantiation of
3 statements or records tendered, the accuracy or truth of which
4 is in reasonable doubt.

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

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

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

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

25 N. Each party shall bear its own costs and

.189242.1

underscored material = new
[bracketed material] = delete

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

4 SECTION 15. Section 22-10A-29 NMSA 1978 (being Laws 1967,
5 Chapter 16, Section 120, as amended) is amended to read:

6 "22-10A-29. COMPENSATION PAYMENTS TO DISCHARGED
7 PERSONNEL.--

8 A. Payment of compensation to any [certified]
9 licensed school [instructor] employee employed by a [local
10 school board or by the governing authority of a state agency]
11 school district and payment of compensation to any [certified]
12 school administrator employed by a [local] school [board]
13 district shall terminate as of the date, after a hearing, that
14 a written copy of the decision of the local [school board or
15 the governing authority of the state agency] superintendent to
16 discharge the [person] licensed school employee is served on
17 the person. If the compensation of the person discharged
18 during the term of a written employment contract is to be paid
19 monthly during a twelve-month period for services to be
20 performed during a period less than twelve months, the person
21 shall be entitled to a pro rata share of the compensation
22 payments due for the period during the twelve months in which
23 no services were to be performed.

24 B. In the event the action of the local [school
25 board] superintendent in discharging a [certified] licensed

.189242.1

underscored material = new
[bracketed material] = delete

1 school [~~instructor or administrator or the action of the~~
2 ~~governing authority of a state agency in discharging a~~
3 ~~certified school instructor~~] employee is reversed on appeal,
4 payment of compensation to the person shall be reinstated in
5 full but subject to any additional compensation allowed other
6 [~~certified~~] licensed school [~~instructor~~] employees or
7 [~~administrator~~] administrators of like qualifications and
8 experience employed by the school district or state agency and
9 including reimbursement for compensation during the entire
10 period the compensation was terminated less an offset for any
11 compensation received by the person from a school district or
12 state agency during the period the compensation was
13 terminated."

14 SECTION 16. Section 22-10A-30 NMSA 1978 (being Laws 1967,
15 Chapter 16, Section 123, as amended) is amended to read:

16 "22-10A-30. SUPERVISION AND CORRECTION PROCEDURES.--

17 A. The [~~state board~~] department shall prescribe by
18 [~~regulations~~] rule procedures to be followed by a [~~local school~~
19 ~~board or the governing authority of a state agency~~] school
20 district or state agency in supervising and correcting
21 unsatisfactory work performance of [~~certified~~] licensed school
22 [~~personnel~~] employees before notice of [~~intent to~~] discharge is
23 served upon them [~~and by the governing authority of a state~~
24 ~~agency in supervising and correcting unsatisfactory work~~
25 ~~performance of certified school instructors before notice of~~

.189242.1

underscoring material = new
[bracketed material] = delete

1 ~~intent to discharge is served upon them. These regulations].~~

2 B. The department's rules shall provide that
3 written records shall be kept on all action taken by a ~~[local]~~
4 school ~~[board or the governing authority of a state agency]~~
5 district to improve ~~[any person's]~~ a school employee's
6 unsatisfactory work performance and all improvements made in
7 the ~~[person's]~~ school employee's work performance. These
8 written records shall be introduced as evidence at any hearing
9 for termination or discharge of the ~~[person]~~ school employee
10 conducted by the local school board ~~[or the governing authority~~
11 ~~of the state agency]."~~

12 SECTION 17. Section 22-10A-31 NMSA 1978 (being Laws 1967,
13 Chapter 16, Section 124, as amended) is amended to read:

14 "22-10A-31. DENIAL, SUSPENSION AND REVOCATION OF
15 LICENSES.--In accordance with the procedures provided in the
16 Uniform Licensing Act, the ~~[state board]~~ department may deny,
17 suspend or revoke a department-issued license for incompetency,
18 moral turpitude or any other good and just cause."

19 - 46 -
20
21
22
23
24
25