

HOUSE BILL 127

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

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AN ACT

RELATING TO PUBLIC EDUCATION; AMENDING THE PUBLIC SCHOOL CODE TO REQUIRE THAT ALL PUBLIC SCHOOL DISTRICT EMPLOYEES PROVIDE PROOF OF SATISFACTORY CLEARANCE OF A FINGERPRINT-BASED BACKGROUND CHECK.

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

SECTION 1. Section 22-10A-3 NMSA 1978 (being Laws 2003, Chapter 153, Section 34) is amended to read:

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

A. Except as otherwise provided in this subsection, any person teaching, supervising an instructional program or providing instructional support services in a public school or state agency; any person administering in a public school; and any person providing health care and administering medications

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1 or performing medical procedures in a public school shall hold
2 a valid license or certificate from the department authorizing
3 the person to perform that function. This subsection does not
4 apply to a person performing the functions of a practice
5 teacher as defined by the ~~[state board]~~ department.

6 B. The ~~[state board]~~ department shall charge a
7 reasonable fee for each application for or the renewal of a
8 license or certificate. The application fee may be waived if
9 the applicant meets a standard of indigency established by the
10 department.

11 C. A person performing the duties of a licensed
12 school employee who does not hold a valid license or
13 certificate or has not submitted a complete application for
14 licensure or certification shall not be hired without first
15 having satisfactorily cleared a fingerprint-based background
16 check and within the first three months from beginning
17 employment duties shall not be compensated thereafter for
18 services rendered until ~~[he]~~ the person demonstrates that ~~[he]~~
19 the person holds a valid license or certificate. This section
20 does not apply to practice teachers as defined by rules of the
21 ~~[state board]~~ department.

22 D. Each licensed school employee shall:

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

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

3 (3) exercise supervision over students on
4 property belonging to the public school or state agency and
5 while the students are under the control of the public school
6 or state agency; and

7 (4) furnish reports as required."

8 SECTION 2. Section 22-10A-5 NMSA 1978 (being Laws 1997,
9 Chapter 238, Section 1, as amended) is amended to read:

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

13 A. As used in this section, "ethical misconduct"
14 means unacceptable behavior or conduct engaged in by a licensed
15 school employee and includes inappropriate touching, sexual
16 harassment, discrimination and behavior intended to induce a
17 child into engaging in illegal, immoral or other prohibited
18 behavior.

19 B. An applicant for initial licensure shall be
20 fingerprinted and shall provide two fingerprint cards or the
21 equivalent electronic fingerprints to the department to obtain
22 the applicant's federal bureau of investigation record.
23 Convictions of felonies or misdemeanors contained in the
24 federal bureau of investigation record shall be used in
25 accordance with the Criminal Offender Employment Act. Other

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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 for
4 good and just cause. Records and related information shall be
5 privileged and shall not be disclosed to a person not directly
6 involved in the licensure or employment decisions affecting the
7 specific applicant. The applicant for initial licensure shall
8 pay for the cost of obtaining the federal bureau of
9 investigation record.

10 C. Local school boards, ~~[and]~~ regional education
11 cooperatives and governing bodies of charter schools shall
12 develop policies and procedures to require background checks on
13 an applicant who has been offered employment, a contractor or a
14 contractor's employee with unsupervised access to students at a
15 public school. All employees of public schools, regional
16 education cooperatives and charter schools, regardless of the
17 employee's date of hire, shall have satisfactorily cleared a
18 fingerprint-based background check before commencing or
19 continuing employment at a public school, regional education
20 cooperative or charter school.

21 D. An applicant for employment who has been
22 initially licensed within twenty-four months of applying for
23 employment with a local school board, regional education
24 cooperative or the governing body of a charter school shall not
25 be required to submit to another background check if the

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

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1 been offered employment, contractor or contractor's employee
2 with unsupervised access to students at a public school.

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

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

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

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

25 H. A person who in good faith reports as provided

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1 in Subsections E and F of this section shall not be held liable
2 for civil damages as a result of the report. The person being
3 accused shall have the right to sue for any damages sustained
4 as a result of negligent or intentional reporting of inaccurate
5 information or the disclosure of any information to an
6 unauthorized person."

7 SECTION 3. Section 22-10A-8 NMSA 1978 (being Laws 2003,
8 Chapter 153, Section 39, as amended by Laws 2011, Chapter 36,
9 Section 1 and by Laws 2011, Chapter 95, Section 2) is amended
10 to read:

11 "22-10A-8. ALTERNATIVE LEVEL ONE LICENSE.--

12 A. The department shall issue an alternative level
13 one license to a person who is at least eighteen years of age
14 and who:

15 (1) has completed a baccalaureate degree at an
16 accredited institution of higher education and has received a
17 passing score on a state-approved subject-area examination in
18 the subject area of instruction for which the person is
19 applying for a license; or

20 (2) has completed a master's degree at an
21 accredited institution of higher education, including
22 completion of a minimum of twelve graduate credit hours in the
23 subject area of instruction for which the person is applying
24 for a license; or

25 (3) has completed a doctoral or law degree at

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1 an accredited institution of higher education; and

2 (4) has passed the New Mexico teacher
3 assessments examination, including for elementary licensure
4 [~~beginning January 1, 2013~~], a rigorous assessment of the
5 candidate's knowledge of the science of teaching reading; [~~and~~]

6 (5) meets other requirements for an
7 alternative level one license, including satisfactory clearance
8 of a fingerprint-based background check pursuant to the
9 provisions of Section 22-10A-5 NMSA 1978; and

10 [~~(5)~~] (6) within two years of beginning
11 teaching, completes a minimum of twelve semester hours of
12 instruction in teaching principles in a program approved by the
13 department; or

14 [~~(6) demonstrated~~] (7) demonstrates to the
15 department, in conjunction with the school district or state
16 agency, that the person has met the department-approved
17 competencies for level one teachers that correspond to the
18 grade level that will be taught.

19 B. A degree or examination referred to in
20 Subsection A of this section shall correspond to the subject
21 area of instruction and the particular grade level that will
22 enable the applicant to teach in a competent manner as
23 determined by the department.

24 C. An alternative level one teacher shall
25 participate in the same mentorship, evaluation and other

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1 professional development requirements as other level one
2 teachers.

3 D. A school district or state agency shall not
4 discriminate against a teacher on the basis that the teacher
5 holds an alternative level one license.

6 E. The department shall provide by rule for
7 training and other requirements to support the use of
8 unlicensed content area experts as resources in classrooms,
9 team teaching, [~~on-line~~] online instruction, curriculum
10 development and other purposes."

11 SECTION 4. Section 22-10A-11.2 NMSA 1978 (being Laws
12 2009, Chapter 10, Section 1) is amended to read:

13 "22-10A-11.2. DEAF AND HARD-OF-HEARING TEACHERS--
14 ALTERNATIVE LICENSURE ASSESSMENT--SAVING PROVISION.--

15 A. A person who has a degree from an accredited
16 teacher education program, [~~and~~] who is deaf or hard of hearing
17 and who has satisfactorily cleared a fingerprint-based
18 background check pursuant to the provisions of Section 22-10A-5
19 NMSA 1978 may elect to demonstrate competency for a level one,
20 two or three license through a portfolio assessment in lieu of
21 all or part of the New Mexico teacher assessment. A person who
22 is deaf or hard of hearing may apply for a lower level of
23 licensure if the person's portfolio assessment does not qualify
24 the person for a higher level. The department shall promulgate
25 rules on the requirements for the portfolio assessment and for

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1 who is eligible for licensure pursuant to this section. The
2 department shall provide a process for portfolio review that
3 includes the designation of a review committee consisting of:

- 4 (1) a teacher of deaf and hard-of-hearing
5 students;
- 6 (2) a sign language interpreter;
- 7 (3) a school administrator from the New Mexico
8 school for the deaf;
- 9 (4) the parent of a deaf or hard-of-hearing
10 student;
- 11 (5) a deaf or hard-of-hearing teacher, if one
12 is available; and
- 13 (6) other appropriate persons as determined by
14 the department.

15 B. Until the rules have been effective for a period
16 deemed sufficient by the department for a deaf or hard-of-
17 hearing person to submit a portfolio, any eligible deaf or
18 hard-of-hearing person who has a degree from an accredited
19 teacher education program shall be granted a temporary teaching
20 license for the level of licensure for which the person will
21 likely qualify when the person's portfolio is submitted to the
22 department. The temporary teaching license shall be effective
23 for no longer than two school years."