

HOUSE LABOR, VETERANS' AND MILITARY AFFAIRS
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 431

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO PUBLIC SCHOOL PERSONNEL; CLARIFYING TERMS AND PROVISIONS OF THE SCHOOL PERSONNEL ACT CONCERNING TERMINATION AND DISCHARGE OF LICENSED AND UNLICENSED SCHOOL EMPLOYEES IN PUBLIC SCHOOLS, SPECIAL SCHOOLS, REGIONAL EDUCATION COOPERATIVES AND OTHER STATE AGENCIES THAT EDUCATE RESIDENT SCHOOL-AGE CHILDREN.

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

SECTION 1. Section 22-10A-2 NMSA 1978 (being Laws 1975, Chapter 306, Section 2, as amended) is repealed and a new Section 22-10A-2 NMSA 1978 is enacted to read:

"22-10A-2. [NEW MATERIAL] DEFINITIONS.--As used in the School Personnel Act:

A. "constitutional special school" means the New Mexico military institute, New Mexico school for the deaf and

1 New Mexico school for the blind and visually impaired;

2 B. "discharge" means the act of severing the
3 employment relationship with a licensed school employee prior
4 to the expiration of the current employment contract;

5 C. "employed for three consecutive school years"
6 means a licensed school employee has been offered and accepted
7 in writing a notice of reemployment for the third consecutive
8 school year;

9 D. "governing authority" means the policy setting
10 body of a school district, charter school, constitutional
11 special school or regional education cooperative, or the final
12 decision maker of another state agency;

13 E. "instructional support provider" means a person
14 who is employed to support the instructional program of a
15 public school, including educational assistant, school
16 counselor, social worker, school nurse, speech-language
17 pathologist, psychologist, physical therapist, occupational
18 therapist, recreational therapist, marriage and family
19 therapist, interpreter for the deaf and diagnostician;

20 F. "just cause" means a reason that is rationally
21 related to a school employee's competence or turpitude or the
22 proper performance of the school employee's duties and that is
23 not in violation of the school employee's civil or
24 constitutional rights;

25 G. "public school" means a school district, charter

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1 school, constitutional special school, regional education
2 cooperative or the educational program of another state agency;

3 H. "responsibility factor" means a value of 1.20
4 for an elementary school principal, 1.40 for a middle school or
5 junior high school principal, 1.60 for a high school principal,
6 1.10 for an assistant elementary school principal, 1.15 for an
7 assistant middle school or assistant junior high school
8 principal and 1.25 for an assistant high school principal;

9 I. "sabbatical leave" means leave of absence with
10 pay as approved by the governing authority during all or part
11 of a regular school term for purposes of study or travel
12 related to a licensed school employee's duties and of direct
13 benefit to the instructional program;

14 J. "school administrator" means a person licensed
15 to administer in a school district, charter school,
16 constitutional special school or regional education cooperative
17 or a person employed with another state agency who administers
18 an educational program and includes local superintendents,
19 school principals, central district administrators, business
20 managers, charter school head administrators and state agency
21 education supervisors;

22 K. "school employee" includes licensed and
23 unlicensed employees of a public school;

24 L. "school premises" means:

25 (1) the buildings and grounds, including

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1 playgrounds, playing fields and parking areas and a school bus
2 of a public school, in or on which school or school-related
3 activities are being operated under the supervision of a local
4 school board, charter school or state agency; or

5 (2) any other public buildings or grounds,
6 including playing fields and parking areas that are not public
7 school property, in or on which public school-related and
8 -sanctioned activities are being performed;

9 M. "state agency" means a regional education
10 cooperative or state institution;

11 N. "state institution" means the New Mexico boys'
12 school, girls' welfare home, New Mexico youth diagnostic and
13 development center, Sequoyah adolescent treatment center,
14 Carrie Tingley crippled children's hospital, New Mexico
15 behavioral health institute at Las Vegas and any other state
16 agency responsible for educating resident children;

17 O. "substitute teacher" means a person who holds a
18 certificate to substitute for a teacher in the classroom;

19 P. "superintendent" means a local superintendent,
20 head administrator of a charter school or regional education
21 cooperative, superintendent or commandant of a special school
22 or head administrator of the educational program of a state
23 agency;

24 Q. "teacher" means a person who holds a level one,
25 level two or level three-A license and whose primary job is

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1 classroom instruction or the supervision, below the school
 2 principal level, of an instructional program or whose duties
 3 include curriculum development, peer intervention, peer
 4 coaching or mentoring or serving as a resource teacher for
 5 other teachers;

6 R. "terminate" means the act of severing the
 7 employment relationship with a school employee; and

8 S. "working day" means every school calendar day,
 9 excluding Saturdays, Sundays and legal holidays."

10 SECTION 2. Section 22-10A-3 NMSA 1978 (being Laws 2003,
 11 Chapter 153, Section 34) is amended to read:

12 "22-10A-3. LICENSE OR CERTIFICATE REQUIRED--APPLICATION
 13 FEE--GENERAL DUTIES.--

14 A. Except as otherwise provided in this subsection,
 15 any person teaching, supervising an instructional program or
 16 providing instructional support services in a public school [~~or~~
 17 ~~state agency~~]; any person administering in a public school; and
 18 any person providing health care and administering medications
 19 or performing medical procedures in a public school shall hold
 20 a valid license or certificate from the department authorizing
 21 the person to perform that function. This subsection does not
 22 apply to a person performing the functions of a practice
 23 teacher or teaching intern as defined by the [~~state board~~]
 24 department.

25 B. The [~~state board~~] department shall charge a

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1 reasonable fee for each application for or the renewal of a
2 license or certificate. The application fee may be waived if
3 the applicant meets a standard of indigency established by the
4 department.

5 C. A person performing the duties of a licensed
6 school employee who does not hold a valid license or
7 certificate or has not submitted a complete application for
8 licensure or certification within the first three months from
9 beginning employment duties shall not be compensated thereafter
10 for services rendered until [~~he~~] the person demonstrates that
11 [~~he~~] the person holds a valid license or certificate. This
12 section does not apply to practice teachers or teaching interns
13 as defined by rules of the [~~state board~~] department.

14 D. Each licensed school employee shall:

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

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

20 (3) exercise supervision over students on
21 [~~property belonging to the~~] public school [~~or state agency~~]
22 premises and while the students are under the control of the
23 public school [~~or state agency~~]; and

24 (4) furnish reports as required."

25 SECTION 3. Section 22-10A-5 NMSA 1978 (being Laws 1997,

1 Chapter 238, Section 1, as amended) is amended to read:

2 "22-10A-5. BACKGROUND CHECKS--KNOWN CONVICTIONS--ALLEGED
3 ETHICAL MISCONDUCT--REPORTING REQUIRED--LIMITED IMMUNITY--
4 PENALTY FOR FAILURE TO REPORT.--

5 A. As used in this section, "ethical misconduct"
6 means unacceptable behavior or conduct engaged in by a
7 [~~licensed~~] school employee, school volunteer, contractor or
8 contractor's employee and includes [~~inappropriate touching,~~
9 ~~sexual harassment, discrimination~~] unlawful discriminatory
10 practice; sexual harassment, sexual assault or sexual abuse
11 involving an adult or child, regardless of a child's enrollment
12 status; and behavior intended to induce a child into engaging
13 in illegal, immoral or other prohibited behavior.

14 B. An applicant for initial licensure shall be
15 fingerprinted and shall provide two fingerprint cards or the
16 equivalent electronic fingerprints to the department or
17 superintendent to obtain the applicant's federal bureau of
18 investigation record. Convictions of felonies or misdemeanors
19 contained in the federal bureau of investigation record shall
20 be used in accordance with the Criminal Offender Employment
21 Act. Other information contained in the federal bureau of
22 investigation record, if supported by independent evidence, may
23 form the basis for the denial, suspension or revocation of a
24 license for [~~good and~~] just cause. Records and related
25 information shall be privileged and shall not be disclosed to a

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1 person not directly involved in the licensure or employment
2 decisions affecting the specific applicant. The applicant for
3 initial licensure shall pay for the cost of obtaining the
4 federal bureau of investigation record.

5 C. ~~[Local school boards and regional education~~
6 ~~cooperatives]~~ Governing authorities shall develop policies and
7 procedures to require background checks on an applicant who has
8 been offered employment or who applies to be a volunteer or
9 works for the public school as a contractor or a contractor's
10 employee ~~[with]~~ and who may have unsupervised access to
11 students ~~[at a public school]~~ on school premises.

12 D. ~~[An applicant for employment who has been~~
13 ~~initially licensed within twenty-four months of applying for~~
14 ~~employment with a local school board, regional education~~
15 ~~cooperative or a charter school shall not be required to submit~~
16 ~~to another background check if the department has copies of the~~
17 ~~applicant's federal bureau of investigation records on file.]~~

18 An applicant who has been offered employment [~~a~~] or a school
19 volunteer, contractor or [~~a~~] contractor's employee ~~[with~~
20 ~~unsupervised access to students at a public school]~~ shall
21 provide two fingerprint cards or the equivalent electronic
22 fingerprints to the [~~local school board regional education~~
23 ~~cooperative or charter school]~~ superintendent to obtain the
24 applicant's, school volunteer's, contractor's or contractor's
25 employee's federal bureau of investigation record. The

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

11 E. Convictions of felonies or misdemeanors
12 contained in the federal bureau of investigation record shall
13 be used in accordance with the Criminal Offender Employment
14 Act; 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.

18 F. Records and related information shall be
19 privileged and shall not be disclosed to a person not directly
20 involved in the employment, volunteering or contracting
21 decision affecting the specific applicant, volunteer,
22 contractor or contractor's employee who has been offered
23 employment, ~~[contractor or contractor's employee with]~~ a
24 volunteer position or a contract and will have unsupervised
25 access to students ~~[at a public school]~~ on school premises.

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1 [E-] G. A [~~local~~] superintendent [~~charter school~~
2 ~~administrator or regional education cooperative~~] shall report
3 to the department any known conviction of a felony or
4 misdemeanor involving moral turpitude of a licensed school
5 employee that results in any type of action against the
6 licensed school employee.

7 [F-] H. A [~~local~~] superintendent [~~charter school~~
8 ~~administrator or director of a regional education cooperative~~
9 ~~or their respective designees~~] or the superintendent's
10 designated representative shall investigate all allegations of
11 ethical misconduct about any [~~licensed~~] school employee who
12 resigns, is being discharged or terminated or otherwise leaves
13 employment after an allegation has been made. If the
14 investigation results in a finding of [~~wrongdoing~~] ethical
15 misconduct by a licensed school employee, the [~~local~~]
16 superintendent [~~charter school administrator or director of a~~
17 ~~regional education cooperative~~] shall report the identity of
18 the licensed school employee and attendant circumstances of the
19 ethical misconduct on a standardized form to the department and
20 the licensed school employee within thirty days following the
21 separation from employment or immediately if knowledge of the
22 ethical misconduct is sexual harassment, sexual assault or
23 sexual abuse of an adult or child. Copies of that form shall
24 not be maintained in [~~public school, school district or~~
25 ~~regional education cooperative records~~] the school employee's

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1 personnel file. The superintendent shall also report
 2 allegations of sexual assault or sexual abuse involving any
 3 school employee to the appropriate law enforcement agency. No
 4 agreement between a departing [~~licensed~~] school employee and
 5 the [~~local school board school district, charter school or~~
 6 regional education cooperative] governing authority or
 7 superintendent shall diminish or eliminate the responsibility
 8 of investigating and reporting the alleged ethical misconduct
 9 to the department or, if legally mandated, to law enforcement,
 10 and any such agreement to the contrary is void.

11 I. Unless the department has commenced its own
 12 investigation of [~~the~~] a licensed school employee prior to
 13 receipt of the form, the department shall serve the licensed
 14 school employee with a notice of [~~contemplated action involving~~
 15 ~~that employee's license~~] investigation and a notice of
 16 contemplated action pursuant to the Uniform Licensing Act
 17 within [~~ninety~~] sixty days of receipt of the form. If [~~that~~] a
 18 notice of contemplated action is not served on the licensed
 19 school employee within ninety days of receipt of the form, the
 20 form, together with any documents related to the alleged
 21 ethical misconduct, shall be expunged from the licensed school
 22 employee's records. [~~with the department and shall not be~~
 23 subject to public inspection.

24 G.] J. The secretary may initiate action to
 25 suspend, revoke or refuse to renew the license of a [~~local~~]

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1 superintendent [~~charter school administrator or regional~~
2 ~~education cooperative director~~] who fails to report as required
3 by Subsections [E] G and [F] H of this section.

4 [H.] K. A person who in good faith reports as
5 provided in Subsections [E] G and [F] H of this section shall
6 not be held liable for civil damages as a result of the report.
7 The person being accused shall have the right to sue for any
8 damages sustained as a result of negligent or intentional
9 reporting of inaccurate information or the disclosure of any
10 information to an unauthorized person."

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

13 "22-10A-21. LICENSED SCHOOL EMPLOYEES--EMPLOYMENT
14 CONTRACTS--DURATION.--

15 A. All employment contracts between [~~local school~~
16 ~~boards~~] superintendents and [~~certified~~] licensed school
17 [~~personnel and between governing authorities of state agencies~~
18 ~~and certified school instructors~~] employees shall be in writing
19 on forms approved by the [~~state board~~] department. These forms
20 shall contain and specify the term of service, the salary to be
21 paid, the method of payment, the causes for [~~termination of~~]
22 discharge during the term of the contract and other provisions
23 required by the [~~regulations of the state board~~] rules of the
24 department.

25 B. All employment contracts between [~~local school~~

1 ~~boards and certified]~~ superintendents and licensed school
 2 ~~[personnel and between governing authorities of state agencies~~
 3 ~~and certified school instructors]~~ employees shall be for a
 4 period of one school year except:

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

8 (2) contracts for the remainder of a school
 9 year are permitted to staff programs when the availability of
 10 funds for the programs is not known until after the beginning
 11 of the school year;

12 (3) contracts for less than one school year
 13 are permitted to staff summer school programs and to staff
 14 federally funded programs in which the federally approved
 15 programs are specified to be conducted for less than one school
 16 year;

17 (4) contracts not to exceed three years are
 18 ~~[permitted for certified school administrators in public~~
 19 ~~schools who are engaged in administrative functions for more~~
 20 ~~than one-half of their employment time]~~ allowed at the
 21 discretion of the governing authority for superintendents; and

22 (5) contracts not to exceed three years are
 23 ~~[permitted]~~ allowed at the discretion of the ~~[local school~~
 24 ~~board]~~ governing authority for ~~[certified]~~ licensed school
 25 ~~[instructors]~~ employees in public schools who have been

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1 employed [~~in the school district~~] for three consecutive school
2 years.

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

8 D. In determination of eligibility for unemployment
9 compensation rights and benefits for [~~certified~~] licensed
10 school [~~instructors~~] employees where those rights and benefits
11 are claimed to arise from the employment relationship between
12 governing authorities [~~of state agencies or local school boards~~
13 ~~and certified~~] and licensed school [~~instructors~~] employees,
14 that period of a year not covered by a school year shall not be
15 considered an unemployment period.

16 E. Except as provided in Section [~~22-10-12~~]
17 22-10A-22 NMSA 1978, a [~~person~~] licensed school employee
18 employed by contract pursuant to this section has no legitimate
19 objective expectancy of reemployment, and no contract entered
20 into pursuant to this section shall be construed as an implied
21 promise of continued employment pursuant to a subsequent
22 contract."

23 SECTION 5. Section 22-10A-22 NMSA 1978 (being Laws 1967,
24 Chapter 16, Section 114, as amended) is amended to read:

25 "22-10A-22. LICENSED SCHOOL EMPLOYEES--NOTICE OF

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1 REEMPLOYMENT--TERMINATION.--On or before fifteen working days
2 prior to the last day of the school year, [~~of the existing~~
3 ~~employment contract, the local school board or the governing~~
4 ~~authority of the state agency]~~ the superintendent shall serve
5 written notice of reemployment or termination on each
6 [~~certified]~~ licensed school [~~instructor]~~ employee employed by
7 the [~~school district or state agency]~~ public school. A notice
8 of reemployment shall be an offer of employment for the ensuing
9 school year. A notice of termination shall be a notice of
10 intention not to reemploy for the ensuing school year. Failure
11 of the [~~local school board or the governing authority of the~~
12 ~~state agency]~~ superintendent to serve a written notice of
13 reemployment or termination on a [~~certified]~~ licensed school
14 [~~instructor]~~ employee shall be construed to mean that notice of
15 reemployment has been served upon the [~~person]~~ licensed school
16 employee for the ensuing school year according to the terms of
17 the existing employment contract but subject to any additional
18 compensation allowed other [~~certified]~~ licensed school
19 [~~instructors]~~ employees of like qualifications and experience
20 [~~employed by the school district or state agency]~~. Nothing in
21 this section shall be construed to mean that failure of a
22 [~~local school board or the governing authority of the state~~
23 ~~agency]~~ superintendent to serve a written notice of
24 reemployment or termination shall automatically extend a
25 [~~certified]~~ licensed school [~~instructor's]~~ employee's

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1 employment contract for a period in excess of one school year."

2 SECTION 6. Section 22-10A-23 NMSA 1978 (being Laws 1967,
3 Chapter 16, Section 115, as amended) is amended to read:

4 "22-10A-23. LICENSED SCHOOL EMPLOYEES--REEMPLOYMENT--
5 ACCEPTANCE--REJECTION--BINDING CONTRACT.--

6 A. Each [~~certified~~] licensed school [~~instructor~~]
7 employee shall deliver to the [~~local school board of the school~~
8 ~~district or to the governing authority of the state agency in~~
9 ~~which the person is employed~~] superintendent a written
10 acceptance or rejection of reemployment for the ensuing school
11 year within fifteen days from the following:

12 (1) the date written notice of reemployment is
13 served upon the [~~person~~] licensed school employee; or

14 (2) the last day of the school year when no
15 written notice of reemployment or termination is served upon
16 the [~~person~~] licensed school employee on or before fifteen
17 working days prior to the last day of the school year.

18 B. Delivery of the written acceptance of
19 reemployment by a [~~certified~~] licensed school [~~instructor~~]
20 employee creates a binding employment contract between the
21 [~~certified~~] licensed school [~~instructor~~] employee and the
22 [~~local school board or the governing authority of the state~~
23 ~~agency~~] superintendent until the parties enter into a formal
24 written employment contract. Written employment contracts
25 between [~~local school boards or governing authorities of state~~

1 ~~agencies and certified school instructors]~~ the superintendent
 2 and licensed school employees shall be executed by the parties
 3 not later than ten days before the first day of a school year."

4 SECTION 7. Section 22-10A-24 NMSA 1978 (being Laws 1986,
 5 Chapter 33, Section 22, as amended) is amended to read:

6 "22-10A-24. LICENSED SCHOOL EMPLOYEES--TERMINATION
 7 DECISIONS--~~[LOCAL SCHOOL BOARD--GOVERNING AUTHORITY OF A STATE~~
 8 ~~AGENCY]~~ PROCEDURES.--

9 A. Except as provided in Section 22-10A-24.1 NMSA
 10 1978, a ~~[local school board or governing authority of a state~~
 11 ~~agency]~~ superintendent may terminate ~~[an]~~ a licensed school
 12 employee ~~[with]~~ employed for fewer than three consecutive
 13 school years ~~[of consecutive service]~~ for any reason ~~[it]~~ the
 14 superintendent deems sufficient. Upon request of the licensed
 15 school employee, the superintendent ~~[or administrator]~~ shall
 16 provide written reasons for the decision to terminate. The
 17 request shall be in writing and submitted to the superintendent
 18 within five working days from the date written notice of
 19 termination is served on the licensed school employee. The
 20 reasons shall be provided within ten working days of the
 21 request. The reasons shall not be publicly disclosed by the
 22 superintendent ~~[administrator, local school board]~~ or governing
 23 authority unless required by law. The reasons shall not
 24 provide a basis for contesting the decision under the School
 25 Personnel Act.

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1 ~~[B. Before terminating a noncertified school~~
2 ~~employee, the local school board or governing authority shall~~
3 ~~serve the employee with a written notice of termination.~~

4 ~~G. An] B.~~ A licensed school employee who has been
5 employed by a public school ~~[district or state agency]~~ for
6 three consecutive years and who receives a notice of
7 termination pursuant to ~~[either Section 22-10-12 NMSA 1978 or]~~
8 this section may request ~~[an opportunity to make a statement to~~
9 ~~the local school board or governing authority on the decision~~
10 ~~to terminate him by submitting a written request to the local~~
11 ~~superintendent or administrator within five working days from~~
12 ~~the date written notice of termination is served upon him. The~~
13 ~~employee may also request in writing the reasons for the~~
14 ~~action to terminate him]~~ in writing the reasons for the
15 decision to terminate. The request shall be in writing and
16 submitted to the superintendent within ten working days from
17 the date written notice of termination is served on the
18 licensed school employee. The ~~[local superintendent or~~
19 ~~administrator]~~ superintendent shall provide written reasons for
20 the notice of termination to the licensed school employee
21 within ~~[five]~~ ten working days from the date the written
22 request for ~~[a meeting and the written request for]~~ the reasons
23 ~~[were]~~ was received by the ~~[local]~~ superintendent ~~[or~~
24 ~~administrator]~~. Neither the ~~[local]~~ superintendent ~~[or~~
25 ~~administrator]~~ nor the ~~[local school board or]~~ governing

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1 authority shall publicly disclose [~~its~~] the reasons for
 2 termination unless required by law.

3 [~~D.~~] C. A [~~local school board or governing~~
 4 ~~authority may~~] superintendent shall not terminate [~~an~~] a
 5 licensed school employee who has been employed by a [~~school~~
 6 ~~district or state agency~~] public school for three consecutive
 7 years without just cause.

8 [~~E. The employee's request pursuant to Subsection C~~
 9 ~~of this section shall be granted if he responds to the local~~
 10 ~~superintendent's or administrator's written reasons as provided~~
 11 ~~in Subsection C of this section by submitting in writing to the~~
 12 ~~local superintendent or administrator a contention that the~~
 13 ~~decision to terminate him was made without just cause.]~~

14 D. A licensed school employee terminated pursuant
 15 to Subsection B of this section may request an opportunity to
 16 make a statement to the governing authority on the decision to
 17 terminate by submitting a written contention and request for
 18 hearing to the superintendent. The written contention shall
 19 specify the grounds on which it is contended that the decision
 20 was without just cause and shall include a statement of the
 21 facts that the licensed school employee believes support [~~his~~]
 22 the licensed school employee's contention. This written
 23 statement and request to make a statement before the governing
 24 authority shall be submitted within ten working days from the
 25 date the licensed school employee receives the written reasons

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1 from the [~~local~~] superintendent [~~or administrator~~]. The
2 submission of this statement constitutes a representation on
3 the part of the licensed school employee that [~~he~~] the licensed
4 school employee can support [~~his~~] the licensed school
5 employee's contentions and an acknowledgment that the [~~local~~
6 ~~school board or governing authority~~] superintendent may offer
7 the causes for [~~its~~] the decision and any relevant data in
8 [~~its~~] the superintendent's possession in rebuttal of [~~his~~] the
9 licensed school employee's contentions.

10 E. The parties shall complete and respond to
11 discovery by deposition and production of documents prior to
12 the termination hearing.

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

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

22 **SECTION 8.** A new section of the School Personnel Act,
 23 Section 22-10A-24.1 NMSA 1978, is enacted to read:

24 "22-10A-24.1. [NEW MATERIAL] EDUCATIONAL ASSISTANTS--
 25 TERMINATION DECISIONS--PROCEDURES.--

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1 A. A superintendent may terminate an educational
2 assistant who has not been offered and accepted in writing a
3 notice of reemployment for the second consecutive school year
4 for any reason the superintendent deems sufficient. Upon
5 request of the educational assistant, the superintendent shall
6 provide written reasons for the decision to terminate. The
7 request shall be in writing and submitted to the superintendent
8 within ten working days from the date written notice of
9 termination is served on the educational assistant. The
10 reasons shall be provided within ten working days of the
11 request. The reasons shall not be publicly disclosed by the
12 superintendent or governing authority unless required by law.
13 The reasons shall not provide a basis for contesting the
14 decision under the School Personnel Act.

15 B. An educational assistant who has been employed
16 by a public school for two consecutive years and who receives a
17 notice of termination pursuant to this section may request in
18 writing the reasons for the decision to terminate. The request
19 shall be in writing and submitted to the superintendent within
20 ten working days from the date written notice of termination is
21 served on the educational assistant. The superintendent shall
22 provide written reasons for the notice of termination to the
23 educational assistant within ten working days from the date the
24 written request for the reasons was received by the
25 superintendent. Neither the superintendent nor the governing

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1 authority shall publicly disclose the reasons for termination
2 unless required by law.

3 C. A superintendent shall not terminate an
4 educational assistant who has been employed by a public school
5 for two consecutive years without just cause.

6 D. An educational assistant terminated pursuant to
7 Subsection B of this section may request an opportunity to make
8 a statement to the governing authority on the decision to
9 terminate by submitting a written contention and request for
10 hearing to the superintendent. The written contention shall
11 specify the grounds on which it is contended that the decision
12 was without just cause and shall include a statement of the
13 facts that the educational assistant believes support the
14 educational assistant's contention. This written statement and
15 request to make a statement before the governing authority
16 shall be submitted within ten working days from the date the
17 educational assistant receives the written reasons from the
18 superintendent. The submission of this statement constitutes a
19 representation on the part of the educational assistant that
20 the educational assistant can support the educational
21 assistant's contentions and an acknowledgment that the
22 superintendent may offer the causes for the decision and any
23 relevant data in the superintendent's possession in rebuttal of
24 the educational assistant's contentions.

25 E. The parties shall complete and respond to

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1 discovery by deposition and production of documents prior to
2 the termination hearing.

3 F. The governing authority shall meet to hear the
4 educational assistant's statement in no less than five or more
5 than fifteen working days after the superintendent receives the
6 statement and request. The hearing shall be conducted
7 informally in accordance with the provisions of the Open
8 Meetings Act. The educational assistant and the superintendent
9 may each be accompanied by a person of each one's choice.

10 First, the superintendent shall present the factual basis for
11 the determination that just cause exists for the termination of
12 the educational assistant, limited to those reasons provided to
13 the educational assistant pursuant to Subsection B of this
14 section. Then, the educational assistant shall present the
15 educational assistant's contentions, limited to those grounds
16 specified in Subsection D of this section. The superintendent
17 may offer such rebuttal testimony as the superintendent deems
18 relevant. All witnesses may be questioned by the governing
19 authority, the educational assistant, the educational
20 assistant's representative and the superintendent or the
21 superintendent's representative. The governing authority may
22 consider only such evidence as is presented at the hearing and
23 need consider only such evidence as it considers reliable. An
24 official record shall be made of the hearing. Either party may
25 have one copy of the record at the expense of the governing

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1 authority. The governing authority shall notify the
2 educational assistant and the superintendent of its decision
3 affirming or reversing the superintendent's decision to
4 terminate in writing within five working days from the
5 conclusion of the meeting."

6 SECTION 9. A new section of the School Personnel Act,
7 Section 22-10A-24.2 NMSA 1978, is enacted to read:

8 "22-10A-24.2. [NEW MATERIAL] UNLICENSED SCHOOL
9 EMPLOYEES--TERMINATION DECISIONS--PROCEDURES.--

10 A. When hired, unlicensed school employees shall
11 serve their first year as probationary school employees, and
12 the superintendent may terminate the school employee for any
13 reason the superintendent deems sufficient. Upon request of
14 the probationary unlicensed school employee, the superintendent
15 shall provide written reasons for the decision to terminate.
16 The request must be in writing and submitted to the
17 superintendent within ten working days from the date written
18 notice of termination is served on the probationary unlicensed
19 school employee. The reasons shall be provided within ten
20 working days of the request. The reasons shall not be publicly
21 disclosed by the superintendent or governing authority unless
22 required by law. The reasons shall not provide a basis for
23 contesting the decision under the School Personnel Act.

24 B. An unlicensed school employee who has been
25 employed by a public school for more than one year and who

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1 receives a notice of termination pursuant to this section may
2 request in writing the reasons for the decision to terminate.
3 The request must be in writing and submitted to the
4 superintendent within ten working days from the date written
5 notice of termination is served on the unlicensed school
6 employee. The superintendent shall provide written reasons for
7 the notice of termination to the unlicensed school employee
8 within ten working days from the date the written request for
9 the reasons was received by the superintendent. Neither the
10 superintendent nor the governing authority shall publicly
11 disclose the reasons for termination unless required by law.

12 C. A superintendent shall not terminate an
13 unlicensed school employee who has been employed by a public
14 school for more than one year without just cause.

15 D. An unlicensed school employee terminated
16 pursuant to Subsection B of this section may request an
17 opportunity to make a statement to the governing authority on
18 the decision to terminate by submitting a written contention
19 and request for hearing to the superintendent. The written
20 contention shall specify the grounds on which it is contended
21 that the decision was without just cause and shall include a
22 statement of the facts that the unlicensed school employee
23 believes support the unlicensed school employee's contention.
24 This written contention and request to make a statement before
25 the governing authority shall be submitted within ten working

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1 days from the date the unlicensed school employee receives the
2 written reasons from the superintendent. The submission of
3 this statement constitutes a representation on the part of the
4 unlicensed school employee that the unlicensed school employee
5 can support the unlicensed school employee's contentions and an
6 acknowledgment that the superintendent may offer the causes for
7 the decision and any relevant data in the superintendent's
8 possession in rebuttal of the unlicensed school employee's
9 contentions.

10 E. The parties shall complete and respond to
11 discovery by deposition and production of documents prior to
12 the termination hearing.

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

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1 contentions, limited to those grounds specified in Subsection D
 2 of this section. The superintendent may offer such rebuttal
 3 testimony as the superintendent deems relevant. All witnesses
 4 may be questioned by the governing authority, the unlicensed
 5 school employee or the unlicensed school employee's
 6 representative and the superintendent or the superintendent's
 7 representative. The governing authority may consider only such
 8 evidence as is presented at the hearing and need consider only
 9 such evidence as it considers reliable. An official record
 10 shall be made of the hearing. Either party may have one copy
 11 of the record at the expense of the governing authority. The
 12 governing authority shall notify the unlicensed school employee
 13 and the superintendent of its decision affirming or reversing
 14 the superintendent's determination to terminate in writing
 15 within five working days from the conclusion of the meeting."

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

18 "22-10A-25. APPEALS--LICENSED AND UNLICENSED SCHOOL
 19 EMPLOYEES--INDEPENDENT ARBITRATOR--QUALIFICATIONS--PROCEDURE--
 20 BINDING DECISION.--

21 A. [~~An~~] A school employee who is still aggrieved by
 22 a decision of [~~a local school board or~~] the governing authority
 23 rendered pursuant to Section [~~22-10-14~~] 22-10A-24, 22-10A-24.1
 24 or 22-10A-24.2 NMSA 1978 may appeal the decision to an
 25 arbitrator. A written appeal shall be submitted to the [~~local~~]

underscored material = new
 [bracketed material] = delete

1 superintendent [~~or administrator~~] within five working days from
 2 the receipt of the [~~local school board's or~~] governing
 3 authority's written decision or the refusal of the [~~board or~~]
 4 governing authority to grant a hearing. The appeal shall be
 5 accompanied by a statement of particulars specifying the
 6 grounds on which it is contended that the [~~decision was~~]
 7 superintendent's reasons to terminate were impermissible
 8 pursuant to [~~Subsection E of~~] Section [~~22-10-14~~] 22-10A-24,
 9 22-10A-24.1 or 22-10A-24.2 NMSA 1978 and [~~including~~] include 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~~
 14 ~~or~~] governing authority's decision final.

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

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

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

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

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

25 G. Discovery shall be limited to depositions and

1 requests for production of documents on a time schedule to be
2 established by the independent arbitrator.

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

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

19 J. The [~~local school board or~~] superintendent, as
20 delegate for the governing authority, has the burden of proof
21 and shall prove by a preponderance of the evidence that, at the
22 time the notice of termination was served on the school
23 employee, the [~~local school board or governing authority~~]
24 superintendent had just cause to terminate the school employee.
25 If the [~~local school board or governing authority~~]

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1 superintendent proves by a preponderance of the evidence that
2 there was just cause for [~~its~~] the action, then the burden
3 shifts to the school employee to rebut the evidence presented
4 by the [~~local school board or governing authority~~]
5 superintendent.

6 K. The independent arbitrator shall uphold the
7 [~~local school board's or~~] governing authority's decision only
8 if it [~~proves~~] is proven by a preponderance of the evidence
9 that, at the time the notice of termination was served on the
10 school employee, the [~~local school board or governing~~
11 ~~authority~~] superintendent had just cause to terminate the
12 school employee. If the [~~local school board or~~
13 superintendent, as delegate for the governing authority, fails
14 to meet [~~its~~] the burden of proof or if the school employee
15 rebuts the proof offered by the [~~local school board or~~
16 ~~governing authority~~] superintendent, the arbitrator shall
17 reverse the decision of the [~~local school board or~~] governing
18 authority.

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

1 M. The independent arbitrator shall render a
2 written decision affirming or reversing the action of the
3 [~~local school board or~~] governing authority. The decision
4 shall contain findings of fact and conclusions of law. The
5 parties shall receive [~~actual~~] written notice of the decision
6 of the independent arbitrator within ten working days from the
7 conclusion of the de novo hearing.

8 N. The sole remedies available [~~under~~] pursuant to
9 this section shall be reinstatement or payment of compensation
10 reinstated in full but subject to any additional compensation
11 allowed other school employees of like qualifications and
12 experience employed by the public school [~~district or state~~
13 ~~agency~~] and including reimbursement for compensation during the
14 entire period for which compensation was terminated, or both,
15 less an offset for any compensation received by the school
16 employee during the period the compensation was terminated.

17 O. Unless a party can demonstrate prejudice arising
18 from a departure from the procedures established in this
19 section and in [~~Section 22-10-14~~] Sections 22-10A-24 through
20 22-10A-24.2 NMSA 1978, such departure shall be presumed to be
21 harmless error.

22 P. The decision of the independent arbitrator shall
23 be binding on both parties and shall be final and nonappealable
24 except where the decision was procured by corruption, fraud,
25 deception or collusion, in which case it shall be appealed to

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1 the district court in the judicial district in which the public
2 school [~~or state agency~~] is located.

3 Q. Each party shall bear its own costs and
4 expenses. The independent arbitrator's fees and other expenses
5 incurred in the conduct of the arbitration shall be assigned at
6 the discretion of the independent arbitrator.

7 R. [~~Local school districts~~] Superintendents shall
8 file a record with the department [~~of education~~] of all
9 terminations of licensed school employees and all actions
10 arising from terminations of licensed school employees
11 annually."

12 SECTION 11. Section 22-10A-26 NMSA 1978 (being Laws 1967,
13 Chapter 16, Section 118, as amended) is amended to read:

14 "22-10A-26. EXCEPTED FROM PROVISIONS.--Sections [~~22-10-12~~
15 ~~through 22-10-14.1~~] 22-10A-22 through 22-10A-25 NMSA 1978 do
16 not apply to the following:

17 A. a [~~certified~~] licensed school [~~instructor~~]
18 employee employed to fill the position of a [~~certified~~]
19 licensed school [~~instructor~~] employee entering military
20 service;

21 B. a [~~person~~] licensed school administrator who is
22 employed as a [~~certified~~] licensed school administrator; [~~or~~]

23 C. [~~a non-certified~~] an unlicensed school employee
24 employed to perform primarily district-wide management
25 functions; or

1 D. a person who does not hold a valid license or
 2 has not submitted a complete application for licensure within
 3 the first three months from beginning employment duties
 4 pursuant to Subsection C of Section 22-10A-3 NMSA 1978."

5 SECTION 12. Section 22-10A-27 NMSA 1978 (being Laws 1986,
 6 Chapter 33, Section 24, as amended) is amended to read:

7 "22-10A-27. DISCHARGE HEARING--LICENSED SCHOOL
 8 EMPLOYEES--PROCEDURES.--

9 A. A [~~local school board or the governing authority~~
 10 ~~of a state agency~~] superintendent may recommend to the
 11 governing authority the discharge of a [certified] licensed
 12 school employee during the term of a contract authorized
 13 pursuant to Section 22-10A-21 NMSA 1978 only for just cause
 14 according to the following procedure:

15 (1) the superintendent shall serve a written
 16 notice of [~~his~~] intent to recommend discharge on the
 17 [~~certified~~] licensed school employee in accordance with the law
 18 for service of process in civil actions; and

19 (2) the superintendent shall state in the
 20 notice of [~~his~~] intent to recommend discharge the cause for
 21 [~~his~~] the recommendation and shall advise the [~~certified~~]
 22 licensed school employee of [~~his~~] the licensed school
 23 employee's right to a discharge hearing before the [~~local~~
 24 ~~school board or~~] governing authority as provided in this
 25 section. If the licensed school employee does not exercise

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1 that right to hearing, the superintendent shall discharge the
2 licensed school employee.

3 B. A [~~certified~~] licensed school employee who
4 receives a notice of intent to recommend discharge pursuant to
5 Subsection A of this section may exercise [~~his~~] the licensed
6 school employee's right to a hearing before the [~~local school~~
7 ~~board or~~] governing authority by giving the [~~local~~]
8 superintendent [~~or administrator~~] written notice of that
9 election within [~~five~~] ten working days of [~~his~~] the licensed
10 school employee's receipt of the notice of intent to recommend
11 discharge.

12 C. The [~~local school board or~~] governing authority
13 shall hold a discharge hearing no less than twenty and no more
14 than forty working days after the [~~local~~] superintendent [~~or~~
15 ~~administrator~~] receives the written election from the
16 [~~certified~~] licensed school employee and shall give the
17 [~~certified~~] licensed school employee at least ten days written
18 notice of the date, time and place of the discharge hearing.

19 D. Each party, the [~~local~~] superintendent [~~or~~
20 ~~administrator~~] and the [~~certified~~] licensed school employee,
21 may each be accompanied by a person of [~~his~~] the party's
22 choice.

23 E. The parties shall complete and respond to
24 discovery by deposition and production of documents prior to
25 the discharge hearing.

1 F. The [~~local school board or~~] governing authority
 2 shall have the authority to issue subpoenas for the attendance
 3 of witnesses and to produce books, records, documents and other
 4 evidence at the request of either party and shall have the
 5 power to administer oaths.

6 G. The [~~local~~] superintendent [~~or administrator~~]
 7 shall have the burden of proving by a preponderance of the
 8 evidence that, at the time of the notice of intent to recommend
 9 discharge, [~~he~~] the superintendent had just cause to recommend
 10 discharge of the [~~certified~~] licensed school employee.

11 H. The [~~local~~] superintendent [~~or administrator~~]
 12 shall present [~~his~~] evidence first, with the [~~certified~~]
 13 licensed school employee presenting [~~his~~] evidence thereafter.
 14 The [~~local school board or~~] governing authority shall permit
 15 either party to call, examine and cross-examine witnesses and
 16 to introduce documentary evidence.

17 I. An official record shall be made of the hearing.
 18 Either party may have one copy of the record at the expense of
 19 the [~~local school board or~~] governing authority.

20 J. The [~~local school board~~] governing authority
 21 shall render its written decision within twenty days of the
 22 conclusion of the discharge hearing."

23 SECTION 13. Section 22-10A-28 NMSA 1978 (being Laws 1986,
 24 Chapter 33, Section 25, as amended) is amended to read:

25 "22-10A-28. DISCHARGE APPEALS--LICENSED SCHOOL

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1 EMPLOYEES--INDEPENDENT ARBITRATOR--QUALIFICATIONS--PROCEDURE--
2 BINDING DECISION.--

3 A. A [~~certified~~] licensed school employee aggrieved
4 by a decision of [~~a local school board or~~] the governing
5 authority to discharge [~~him~~] the licensed school employee after
6 a discharge hearing held pursuant to Section [~~22-10-17~~]
7 22-10A-27 NMSA 1978 may appeal the decision to an independent
8 arbitrator. A written notice of appeal shall be submitted to
9 the [~~local superintendent or administrator~~] governing authority
10 within [~~five~~] ten working days from the receipt of the copy of
11 the written decision of the [~~local school board or~~] governing
12 authority.

13 B. The [~~local school board or~~] governing authority
14 may delegate responsibility for the arbitration to the
15 superintendent. The superintendent as delegate of the
16 governing authority and the [~~certified~~] licensed school
17 employee shall meet within ten calendar days from the receipt
18 of the notice of appeal and select an independent arbitrator to
19 conduct the appeal, or, in the event the parties fail to agree
20 on an independent arbitrator, they shall request the presiding
21 judge in the judicial district in which the public school is
22 located to select the independent arbitrator. The presiding
23 judge shall select the independent arbitrator within five
24 working days from the date of the parties' request.

25 C. A qualified independent arbitrator shall be

1 appointed who is versed in employment practices and school
 2 procedures. No person shall be appointed to serve as the
 3 independent arbitrator who has any direct or indirect financial
 4 interest in the outcome of the proceeding, has any relationship
 5 to any party in the proceeding, is employed by the [~~local~~
 6 ~~school board or governing authority~~] superintendent or is a
 7 member of or employed by any professional organization of which
 8 the [~~certified~~] licensed school employee 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 [~~local school~~
 12 ~~board or governing authority~~] superintendent, as delegate of
 13 the governing authority, shall have the burden of proving by a
 14 preponderance of the evidence that, at the time of the notice
 15 of intent to recommend discharge, the [~~local~~] superintendent
 16 [~~or administrator~~] had just cause to discharge the [~~certified~~]
 17 licensed school employee. The [~~local school board or governing~~
 18 ~~authority~~] superintendent shall present [~~its~~] evidence first,
 19 with the [~~certified~~] licensed school employee presenting [~~his~~]
 20 evidence thereafter.

21 E. The hearing shall be held within thirty working
 22 days from the selection of the independent arbitrator. The
 23 independent arbitrator shall give written notice of the date,
 24 time and place of the hearing, and such notice shall be sent to
 25 the [~~certified~~] licensed school employee and the [~~local school~~

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1 ~~board or~~] governing authority.

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

4 G. Discovery shall be limited to depositions and
5 requests for production of documents on a time schedule to be
6 established by the independent arbitrator.

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

15 I. The rules of civil procedure shall not apply to
16 the hearing, but it shall be conducted so that both contentions
17 and responses are amply and fairly presented. To this end, the
18 independent arbitrator shall permit either party to call and
19 examine witnesses, cross-examine witnesses and introduce
20 exhibits. The technical rules of evidence shall not apply,
21 but, in ruling on the admissibility of evidence, the
22 independent arbitrator may require reasonable substantiation of
23 statements or records tendered, the accuracy or truth of which
24 is in reasonable doubt.

25 J. An official record shall be made of the hearing.

1 Either party may order a transcript of the record at [~~his~~] the
2 party's own expense.

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

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

14 M. The decision of the independent arbitrator shall
15 be final and binding on both parties and shall be nonappealable
16 except where the decision was procured by corruption, fraud,
17 deception or collusion, in which case it may be appealed to the
18 court of appeals by filing a notice of appeal as provided by
19 the New Mexico rules of appellate procedure.

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

24 SECTION 14. Section 22-10A-29 NMSA 1978 (being Laws 1967,
25 Chapter 16, Section 120, as amended) is amended to read:

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1 "22-10A-29. COMPENSATION PAYMENTS TO DISCHARGED

2 PERSONNEL.--

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

22 B. In the event the action of the [~~local school~~
23 ~~board~~] governing authority in discharging a [~~certified~~]
24 licensed school [instructor] employee or [~~administrator or the~~
25 ~~action of the governing authority of a state agency in~~

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

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