

1 SENATE BILL 383

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO PUBLIC EDUCATION; AMENDING THE PROCESS FOR REQUIRED
12 CRIMINAL HISTORY RECORD CHECKS; REQUIRING CONFIDENTIALITY.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 22-10A-2 NMSA 1978 (being Laws 2019,
16 Chapter 238, Section 1, as amended by Laws 2021, Chapter 92,
17 Section 1 and by Laws 2021, Chapter 94, Section 4) is amended
18 to read:

19 "22-10A-2. DEFINITIONS.--As used in the School Personnel
20 Act:

21 A. "child abuse" means a child:

22 (1) who has suffered or who is at risk of
23 suffering serious harm because of the action or inaction of the
24 child's parent, guardian, custodian or other adult;

25 (2) who has suffered physical abuse, emotional

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1 abuse or psychological abuse inflicted or caused by the child's
2 parent, guardian, custodian or other adult;

3 (3) who has suffered sexual abuse or sexual
4 exploitation inflicted by the child's parent, guardian,
5 custodian or other adult;

6 (4) whose parent, guardian, custodian or other
7 adult has knowingly, intentionally or negligently placed the
8 child in a situation that may endanger the child's life or
9 health; or

10 (5) whose parent, guardian, custodian or other
11 adult has knowingly or intentionally tortured, cruelly confined
12 or cruelly punished the child;

13 B. "constitutional special school" means the New
14 Mexico military institute, New Mexico school for the deaf and
15 New Mexico school for the blind and visually impaired;

16 C. "contractor" means an individual who is under
17 contract with a public school and is hired to provide services
18 to the public school, but does not include a general contractor
19 or a building or maintenance contractor who is supervised and
20 has no access to students at the public school;

21 D. "discharge" means the act of severing the
22 employment relationship with a licensed school employee prior
23 to the expiration of the current employment contract;

24 E. "employed for three consecutive school years"
25 means a licensed school employee has been offered and accepted

1 in writing a notice of reemployment for the third consecutive
2 school year;

3 F. "ethical misconduct" means the following
4 behavior or conduct by school district personnel, school
5 employees, school volunteers, contractors or contractors'
6 employees:

7 (1) discriminatory practice based on race,
8 age, color, national origin, ethnicity, sex, pregnancy, sexual
9 orientation, gender identity, mental or physical disability,
10 marital status, religion, citizenship, domestic abuse reporting
11 status or serious medical condition;

12 (2) sexual misconduct or any sexual offense
13 prohibited by Chapter 30, Article 6A or 9 NMSA 1978 involving
14 an adult or child, regardless of a child's enrollment status;

15 (3) fondling a child or student, including
16 touching private body parts, such as breasts, buttocks,
17 genitals, inner thighs, groin or anus; or

18 (4) any other behavior, including licentious,
19 enticing or solicitous behavior, that is reasonably apparent to
20 result in inappropriate sexual contact with a child or student
21 or to induce a child or student into engaging in illegal,
22 immoral or other prohibited behavior;

23 G. "governing authority" means the policy-setting
24 body of a school district, charter school, constitutional
25 special school or regional education cooperative, or the final

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1 decision maker of ~~[another]~~ a state agency that provides
2 educational services to a school-aged person;

3 H. "instructional support provider" means a person
4 who is employed to support the instructional program of a
5 public school, including educational assistant, school
6 counselor, social worker, school nurse, speech-language
7 pathologist, psychologist, physical therapist, occupational
8 therapist, recreational therapist, marriage and family
9 therapist, interpreter for the deaf, ~~[and]~~ diagnostician,
10 attendance coach, practical nurse, school health assistant,
11 school business official, rehabilitation counselor, athletic
12 coach, educational alcohol and drug abuse counselor and
13 substance abuse associate;

14 I. "just cause" means a reason that is rationally
15 related to a school employee's competence or turpitude or the
16 proper performance of the school employee's duties and that is
17 not in violation of the school employee's civil or
18 constitutional rights;

19 J. "military service member" means a person who is:

20 (1) serving in the armed forces of the United
21 States as an active duty member or in an active reserve
22 component of the armed forces of the United States, including
23 the national guard;

24 (2) the spouse of a person who is serving in
25 the armed forces of the United States as an active duty member

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1 or in an active reserve component of the armed forces of the
2 United States, including the national guard; or a surviving
3 spouse of a member who at the time of death was serving on
4 active duty; or

5 (3) the child of a person who is serving in
6 the armed forces of the United States as an active duty member
7 or in an active reserve component of the armed forces of the
8 United States, including the national guard; provided that
9 child is also a dependent of that person for federal income tax
10 purposes;

11 K. "moral turpitude" means an act or behavior that
12 gravely violates the accepted standards of moral conduct,
13 justice or honesty and may include ethical misconduct;

14 L. "public school" means a school district, charter
15 school, constitutional special school, regional education
16 cooperative or the educational program of another state agency;

17 M. "responsibility factor" means a value of 1.20
18 for an elementary school principal, 1.40 for a middle school or
19 junior high school principal, 1.60 for a high school principal,
20 1.10 for an assistant elementary school principal, 1.15 for an
21 assistant middle school or assistant junior high school
22 principal and 1.25 for an assistant high school principal;

23 N. "sabbatical leave" means leave of absence with
24 pay as approved by the governing authority during all or part
25 of a regular school term for purposes of study or travel

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1 related to a licensed school employee's duties and of direct
2 benefit to the instructional program;

3 O. "school administrator" means a person licensed
4 to administer in a school district, charter school,
5 constitutional special school or regional education cooperative
6 or a person employed with another state agency who administers
7 an educational program and includes local superintendents,
8 school principals, central district administrators, business
9 managers, charter school head administrators and state agency
10 education supervisors;

11 P. "school employee" includes licensed and
12 unlicensed employees of a public school;

13 Q. "school premises" means:

14 (1) the buildings and grounds, including
15 playgrounds, playing fields and parking areas and a school bus
16 of a public school, in or on which school or school-related
17 activities are being operated under the supervision of a local
18 school board, charter school or state agency; or

19 (2) any other public buildings or grounds,
20 including playing fields and parking areas that are not public
21 school property, in or on which public school-related and
22 -sanctioned activities are being performed;

23 R. "school volunteer" means a person, including a
24 relative of a student, who commits to serve on a regular basis
25 at a school district, charter school or other educational

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1 entity without compensation;

2 S. "state agency" means a regional education
3 cooperative or state institution;

4 T. "state institution" means the New Mexico boys'
5 school, girls' welfare home, New Mexico youth diagnostic and
6 development center, Sequoyah adolescent treatment center,
7 Carrie Tingley crippled children's hospital, New Mexico
8 behavioral health institute at Las Vegas and any other state
9 agency responsible for educating resident children;

10 U. "substitute teacher" means a person who holds a
11 certificate to substitute for a teacher in the classroom;

12 V. "superintendent" means a local superintendent,
13 head administrator of a charter school or regional education
14 cooperative, superintendent or commandant of a special school
15 or head administrator of the educational program of a state
16 agency;

17 W. "teacher" means a person who holds a level one,
18 level two or level three-A license and whose primary job is
19 classroom instruction or the supervision, below the school
20 principal level, of an instructional program or whose duties
21 include curriculum development, peer intervention, peer
22 coaching or mentoring or serving as a resource teacher for
23 other teachers;

24 X. "terminate" means the act of severing the
25 employment relationship with a school employee;

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1 Y. "unsupervised contact with children or students"
2 means access to or contact with, or the opportunity to have
3 access to or contact with, a child or student for any length of
4 time in the absence of:

5 (1) a licensed staff person from the same
6 school or institution;

7 (2) a school volunteer who has undergone a
8 background check pursuant to Section 22-10A-5 NMSA 1978; or

9 (3) any adult relative or guardian of the
10 child or student; ~~and~~

11 Z. "veteran" means a person who has received an
12 honorable discharge or separation from military service in the
13 armed forces of the United States or in an active reserve
14 component of the armed forces of the United States, including
15 the national guard; and

16 AA. "working day" means every school calendar day,
17 excluding Saturdays, Sundays and legal holidays."

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

20 "22-10A-3. LICENSE OR CERTIFICATE REQUIRED--APPLICATION
21 FEE--GENERAL DUTIES.--

22 A. Except as otherwise provided in this subsection,
23 any person teaching, supervising an instructional program or
24 providing instructional support services in a public school;
25 any person administering in a public school; and any person

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1 providing health care and administering medications or
2 performing medical procedures in a public school shall hold a
3 valid license or certificate from the department authorizing
4 the person to perform that function. This subsection does not
5 apply to a person performing the functions of a practice
6 teacher or teaching intern as defined by the department. A
7 person applying for a license or certificate from the
8 department shall undergo a criminal history record check
9 pursuant to Section 22-10A-5 NMSA 1978. The criminal history
10 record check requirement shall apply to the following
11 applicants:

12 (1) applicants for level one licensure
13 pursuant to Section 22-10A-7 NMSA 1978;

14 (2) applicants for an alternative level one
15 license pursuant to Section 22-10A-8 NMSA 1978;

16 (3) applicants for level two licensure
17 pursuant to Section 22-10A-10 NMSA 1978;

18 (4) applicants for level three licensure
19 pursuant to Section 22-10A-11 NMSA 1978;

20 (5) applicants for an alternative level two or
21 level three license pursuant to Section 22-10A-11.1 NMSA 1978;

22 (6) applicants for alternative licensure
23 pursuant to Section 22-10A-11.2 NMSA 1978;

24 (7) applicants for level three-B provisional
25 licensure pursuant to Section 22-10A-11.3 NMSA 1978;

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1 (8) applicants for level three-B
2 administrator's licensure pursuant to Section 22-10A-11.4 NMSA
3 1978;

4 (9) applicants for licenses granted on the
5 basis of reciprocity pursuant to Section 22-10A-12 NMSA 1978;

6 (10) applicants for expedited licensure
7 pursuant to Section 22-10A-12.1 NMSA 1978;

8 (11) applicants for Native American and
9 culture certificates pursuant to Section 22-10A-13 NMSA 1978;

10 (12) applicants for substitute teacher
11 certificates pursuant to Section 22-10A-15 NMSA 1978;

12 (13) applicants for instructional support
13 provider certificates pursuant to Section 22-10A-17 NMSA 1978;

14 (14) applicants for educational assistant
15 licensure pursuant to Section 22-10A-17.1 NMSA 1978; and

16 (15) applicants for alternative level three-B
17 licensure pursuant to Section 22-10A-17.2 NMSA 1978.

18 B. In the event that the statutory section numbers
19 referring to the licenses and certificates in Subsection A of
20 this section are amended, the licensure and criminal history
21 record check requirement shall remain in effect for the
22 applicants. The department may require a federal bureau of
23 investigation criminal history record check of a current
24 licensee to analyze whether the department has good and just
25 cause for suspension or revocation of a department-issued

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1 license. Applicants and current licensees shall pay the cost
2 of obtaining a federal bureau of investigation criminal history
3 record check. The department shall not share criminal history
4 record check information with another entity unless expressly
5 permitted by applicable federal law or federal regulation.

6 ~~[B.]~~ C. Except as provided in Subsection ~~[E]~~ D of
7 this section, the department shall charge a reasonable fee for
8 each application for or the renewal of a license or
9 certificate. The application fee may be waived if the
10 applicant meets a standard of indigency established by the
11 department.

12 ~~[E.]~~ D. No licensing or certificate fee shall be
13 charged for the first three years a license or certificate
14 required by this section is valid if the licensee or
15 certificate holder is a military service member or a veteran.

16 ~~[D.]~~ E. A person performing the duties of a
17 licensed school employee who does not hold a valid license or
18 certificate or has not submitted a complete application for
19 licensure or certification within the first three months from
20 beginning employment duties shall not be compensated thereafter
21 for services rendered until the person demonstrates that the
22 person holds a valid license or certificate. This section does
23 not apply to practice teachers or teaching interns as defined
24 by rules of the department.

25 ~~[E.]~~ F. Each licensed school employee shall:

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1 (1) enforce all laws and rules applicable to
2 the employee's public school;

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

5 (3) exercise supervision over students on
6 public school premises and while the students are under the
7 control of the public school; and

8 (4) furnish reports as required."

9 SECTION 3. Section 22-10A-5 NMSA 1978 (being Laws 1997,
10 Chapter 238, Section 1, as amended) is amended to read:

11 "22-10A-5. [~~BACKGROUND CHECKS~~] CRIMINAL HISTORY RECORD
12 CHECK--KNOWN CONVICTIONS--CONFIDENTIALITY--ALLEGED ETHICAL
13 MISCONDUCT--REPORTING REQUIRED--PENALTY FOR FAILURE TO
14 REPORT.--

15 [~~A. An applicant for initial licensure shall be~~
16 ~~fingerprinted only upon initial licensure and shall provide two~~
17 ~~fingerprint cards or the equivalent electronic fingerprints to~~
18 ~~the department or superintendent to obtain the applicant's~~
19 ~~federal bureau of investigation record. Convictions of~~
20 ~~felonies or misdemeanors contained in the federal bureau of~~
21 ~~investigation record shall be used in accordance with the~~
22 ~~Criminal Offender Employment Act. Other information contained~~
23 ~~in the federal bureau of investigation record, if supported by~~
24 ~~independent evidence, may form the basis for the denial,~~
25 ~~suspension or revocation of a license for just cause. Records~~

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1 ~~and related information shall be privileged and shall not be~~
2 ~~disclosed to a person not directly involved in the licensure or~~
3 ~~employment decisions affecting the specific applicant.]~~

4 A. To investigate the suitability of an applicant
5 for licensure from the department, the department shall have
6 access to criminal history record information furnished by the
7 department of public safety and the federal bureau of
8 investigation, subject to any restrictions imposed by federal
9 law.

10 B. An applicant for licensure from the department
11 shall undergo a state and federal criminal history record
12 check, and the applicant shall submit two fingerprint cards or
13 the equivalent electronic set of fingerprints to the department
14 of public safety for that purpose. The department of public
15 safety shall conduct a check of state records and forward the
16 fingerprints to the federal bureau of investigation for a
17 national criminal history record check to determine the
18 existence and content of a record of convictions in this state
19 or other law enforcement jurisdictions and to generate a
20 criminal history record check in accordance with rules of the
21 department of public safety and regulations of the federal
22 bureau of investigation. The department of public safety shall
23 review the information obtained from the criminal history
24 record check and shall compile and provide that information to
25 the department. The department shall use the information

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1 resulting from the fingerprint-based criminal history record
2 check to inform department decisions relating to the issuance
3 or continuation of licensure. The applicant for initial
4 licensure shall pay for the cost of obtaining the [~~federal~~
5 ~~bureau of investigation record~~] criminal history record check.

6 [B.] C. Governing authorities shall develop
7 policies and procedures to require [~~background~~] criminal
8 history record checks on an applicant who has been offered
9 employment or who applies to be a school volunteer or works for
10 the public school as a contractor or a contractor's employee
11 and who may have unsupervised contact with children or students
12 on school premises. Nothing in this section shall preclude
13 governing authorities from developing and implementing policies
14 or procedures requiring or affecting other or additional
15 background or criminal history record checks of personnel or
16 applicants for employment.

17 [G.] D. An applicant who has been offered
18 employment or a school volunteer, contractor or contractor's
19 employee shall provide two fingerprint cards or the equivalent
20 electronic fingerprints to the [~~superintendent~~] department of
21 public safety to obtain the applicant's, school volunteer's,
22 contractor's or contractor's employee's [~~federal bureau of~~
23 ~~investigation record.~~ The public school shall pay for an
24 applicant's background check] criminal history record check
25 pursuant to Subsection B of this section. The public school

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1 shall pay for the criminal history record check for an
2 applicant who has been offered employment. A school volunteer,
3 contractor or contractor's employee may be required to pay for
4 the cost of obtaining a ~~[background]~~ criminal history record
5 check.

6 ~~[D.]~~ E. Convictions of felonies or misdemeanors
7 contained in the ~~[federal bureau of investigation record]~~
8 criminal history record check shall be used in accordance with
9 the Criminal Offender Employment Act; provided that other
10 information contained in the ~~[federal bureau of investigation~~
11 ~~record]~~ criminal history record check, if supported by
12 independent evidence, may form the basis for the employment
13 decisions for just cause. The department shall not exclude an
14 otherwise qualified person from licensure on the sole basis
15 that the person has been previously arrested or convicted of a
16 crime, unless that person has a disqualifying criminal
17 conviction, pursuant to Section 61-1-36 NMSA 1978.

18 ~~[E.]~~ 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, school volunteer,
22 contractor or contractor's employee who has been offered
23 employment, a school volunteer position or a contract and will
24 have unsupervised contact with children or students on school
25 premises. Criminal history information received from the

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1 department of public safety or the federal bureau of
2 investigation shall be confidential and shall not be considered
3 a public record pursuant to the Inspection of Public Records
4 Act. The department shall not authorize the receipt of
5 criminal history information by a private entity pursuant to
6 this section.

7 ~~[F.]~~ G. A superintendent shall report immediately
8 to the department any known conviction of any felony or
9 misdemeanor involving moral turpitude of school district
10 personnel, a school employee, a school volunteer, a contractor
11 or a contractor's employee.

12 ~~[G.]~~ H. A superintendent may appoint a designated
13 representative to act on the superintendent's behalf. The
14 superintendent or the designated representative shall
15 investigate all allegations of ethical misconduct about any
16 school district personnel, school employee, school volunteer,
17 contractor or contractor's employee who resigns, is being
18 discharged or terminated or otherwise leaves employment after
19 an allegation has been made. If the investigation results in a
20 finding of ethical misconduct by a licensed school employee,
21 the superintendent or the superintendent's designated
22 representative shall report the identity of the licensed school
23 employee and attendant circumstances of the ethical misconduct
24 on a standardized form to the department and the licensed
25 school employee within thirty days following the separation

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1 from employment or immediately if the finding of ethical
2 misconduct is sexual misconduct with an adult or child. The
3 superintendent or the superintendent's designated
4 representative shall also report allegations of sexual assault
5 or sexual abuse involving any school district personnel, school
6 employee, school volunteer, contractor or a contractor's
7 employee to the appropriate law enforcement agency. No
8 agreement between a departing school employee and the governing
9 authority or superintendent shall diminish or eliminate the
10 responsibility of investigating and reporting the alleged
11 ethical misconduct to the department or, if legally mandated,
12 to law enforcement, and any such agreement to the contrary is
13 void.

14 [H.] I. Unless the department has commenced its own
15 investigation of a licensed school employee prior to receipt of
16 the form, the department shall serve the licensed school
17 employee with a notice of investigation and a notice of
18 contemplated action pursuant to the Uniform Licensing Act
19 within sixty days of receipt of the form.

20 [F.] J. The department shall maintain a list of the
21 names of persons reported to the department, as required by
22 Subsection [F] G of this section, who have been convicted of a
23 felony or misdemeanor involving moral turpitude and, as
24 required by Subsection [G] H of this section and Section [~~I of~~
25 ~~this 2021 act~~] 22-10A-5.1 NMSA 1978, who have been found to

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1 have committed ethical misconduct. The department shall update
2 that list each month. The department shall provide that list
3 to a governing authority upon request.

4 ~~[J.]~~ K. The secretary may initiate action to
5 suspend, revoke or refuse to renew the license of:

6 (1) a superintendent who fails to report as
7 required by Subsections ~~[F]~~ G and ~~[G]~~ H of this section or
8 Section ~~[1 of this 2021 act]~~ 22-10A-5.1 NMSA 1978;

9 (2) any licensed school district personnel or
10 licensed school employee who fails to report child abuse or
11 neglect pursuant to Section 32A-4-3 NMSA 1978; or

12 (3) any licensed school district personnel or
13 school employee who fails to report ethical misconduct pursuant
14 to Subsection ~~[G]~~ H of this section or Section ~~[1 of this 2021~~
15 ~~act]~~ 22-10A-5.1 NMSA 1978.

16 ~~[K.]~~ L. As used in this section, "designated
17 representative" means a representative chosen by a
18 superintendent and may include the staff of a regional
19 education cooperative."

20 SECTION 4. Section 22-10A-17 NMSA 1978 (being Laws 2003,
21 Chapter 153, Section 48, as amended) is amended to read:

22 "22-10A-17. INSTRUCTIONAL SUPPORT PROVIDER LICENSES.--

23 A. ~~[The department shall license instructional~~
24 ~~support providers including]~~ The following instructional
25 support providers shall obtain appropriate licensure from the

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1 department: educational assistants, school counselors, school
2 social workers, school nurses, speech-language pathologists,
3 psychologists, physical therapists, physical therapy
4 assistants, occupational therapists, occupational therapy
5 assistants, recreational therapists, marriage and family
6 therapists, interpreters for the deaf, diagnosticians, ~~and~~
7 ~~other service providers~~ attendance coaches, practical nurses,
8 school health assistants, school business officials,
9 rehabilitation counselors, athletic coaches, educational
10 alcohol and drug abuse counselors and substance abuse
11 associates. The department may provide a professional
12 licensing framework in which licensees can advance in their
13 careers through the demonstration of increased competencies and
14 the undertaking of increased duties.

15 B. The department shall provide by rule for the
16 ~~[requirements for licensure of types of]~~ licensure requirements
17 for any instructional support providers. If an instructional
18 support provider practices a licensed profession, the provider
19 shall provide evidence satisfactory to the department that the
20 provider holds a current, unsuspended license in the profession
21 for which the provider is applying to provide instructional
22 support services. ~~[The instructional support provider shall~~
23 ~~notify the school district and department immediately if the~~
24 ~~provider's professional license is suspended, revoked or~~
25 ~~denied. Suspension, revocation or denial of a professional~~

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1 ~~license shall be just cause for discharge or termination and~~
2 ~~suspension, revocation or denial of the instructional support~~
3 ~~provider license.]~~

4 C. An instructional support provider licensed by
5 the department shall also hold a valid professional license or
6 certificate issued by the instructional support provider's
7 respective licensing or certifying authority, if applicable,
8 and shall continuously hold such underlying professional
9 licensure or certification for as long as the instructional
10 support provider holds licensure issued by the department.

11 D. If the underlying professional license or
12 certificate for any reason expires, is suspended, is revoked or
13 is denied, a person seeking or holding an instructional support
14 provider license shall notify the department in writing within
15 fourteen calendar days of such suspension, revocation, denial
16 or expiration.

17 E. Suspension, revocation, denial or expiration of
18 an underlying professional license or certificate, or failure
19 to notify the department of such, shall constitute just cause
20 for discharge or termination from employment and for
21 suspension, revocation or denial of an instructional support
22 provider license."

23 SECTION 5. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2023.