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AN ACT

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

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

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

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

A. "child abuse" means a child:

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

(2) who has suffered physical abuse,
emotional abuse or psychological abuse inflicted or caused by
the child's parent, guardian, custodian or other adult;

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

(4) whose parent, guardian, custodian or
other adult has knowingly, intentionally or negligently
placed the child in a situation that may endanger the child's

1 life or health; or

2 (5) whose parent, guardian, custodian or
3 other adult has knowingly or intentionally tortured, cruelly
4 confined or cruelly punished the child;

5 B. "constitutional special school" means the
6 New Mexico military institute, New Mexico school for the deaf
7 and New Mexico school for the blind and visually impaired;

8 C. "contractor" means an individual who is under
9 contract with a public school and is hired to provide
10 services to the public school, but does not include a general
11 contractor or a building or maintenance contractor who is
12 supervised and has no access to students at the public
13 school;

14 D. "discharge" means the act of severing the
15 employment relationship with a licensed school employee prior
16 to the expiration of the current employment contract;

17 E. "employed for three consecutive school years"
18 means a licensed school employee has been offered and
19 accepted in writing a notice of reemployment for the third
20 consecutive school year;

21 F. "ethical misconduct" means the following
22 behavior or conduct by school district personnel, school
23 employees, school volunteers, contractors or contractors'
24 employees:

25 (1) discriminatory practice based on race,

1 age, color, national origin, ethnicity, sex, pregnancy,
2 sexual orientation, gender identity, mental or physical
3 disability, marital status, religion, citizenship, domestic
4 abuse reporting status or serious medical condition;

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

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

11 (4) any other behavior, including
12 licentious, enticing or solicitous behavior, that is
13 reasonably apparent to result in inappropriate sexual contact
14 with a child or student or to induce a child or student into
15 engaging in illegal, immoral or other prohibited behavior;

16 G. "governing authority" means the policy-setting
17 body of a school district, charter school, constitutional
18 special school or regional education cooperative, or the
19 final decision maker of a state agency that provides
20 educational services to a school-aged person;

21 H. "instructional support provider" means a person
22 who is employed to support the instructional program of a
23 public school, including educational assistant, school
24 counselor, social worker, school nurse, speech-language
25 pathologist, psychologist, physical therapist, occupational

1 therapist, recreational therapist, marriage and family
2 therapist, interpreter for the deaf, diagnostician,
3 attendance coach, practical nurse, school health assistant,
4 school business official, rehabilitation counselor, athletic
5 coach, educational alcohol and drug abuse counselor and
6 substance abuse associate;

7 I. "just cause" means a reason that is rationally
8 related to a school employee's competence or turpitude or the
9 proper performance of the school employee's duties and that
10 is not in violation of the school employee's civil or
11 constitutional rights;

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

14 (1) serving in the armed forces of the
15 United States as an active duty member or in an active
16 reserve component of the armed forces of the United States,
17 including the national guard;

18 (2) the spouse of a person who is serving in
19 the armed forces of the United States as an active duty
20 member or in an active reserve component of the armed forces
21 of the United States, including the national guard; or a
22 surviving spouse of a member who at the time of death was
23 serving on active duty; or

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

1 member or in an active reserve component of the armed forces
2 of the United States, including the national guard; provided
3 that child is also a dependent of that person for federal
4 income tax purposes;

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

8 L. "public school" means a school district,
9 charter school, constitutional special school, regional
10 education cooperative or the educational program of another
11 state agency;

12 M. "responsibility factor" means a value of 1.20
13 for an elementary school principal, 1.40 for a middle school
14 or junior high school principal, 1.60 for a high school
15 principal, 1.10 for an assistant elementary school principal,
16 1.15 for an assistant middle school or assistant junior high
17 school principal and 1.25 for an assistant high school
18 principal;

19 N. "sabbatical leave" means leave of absence with
20 pay as approved by the governing authority during all or part
21 of a regular school term for purposes of study or travel
22 related to a licensed school employee's duties and of direct
23 benefit to the instructional program;

24 O. "school administrator" means a person licensed
25 to administer in a school district, charter school,

1 constitutional special school or regional education
2 cooperative or a person employed with another state agency
3 who administers an educational program and includes local
4 superintendents, school principals, central district
5 administrators, business managers, charter school head
6 administrators and state agency education supervisors;

7 P. "school employee" includes licensed and
8 unlicensed employees of a public school;

9 Q. "school premises" means:

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

15 (2) any other public buildings or grounds,
16 including playing fields and parking areas that are not
17 public school property, in or on which public school-related
18 and -sanctioned activities are being performed;

19 R. "school volunteer" means a person, including a
20 relative of a student, who commits to serve on a regular
21 basis at a school district, charter school or other
22 educational entity without compensation;

23 S. "state agency" means a regional education
24 cooperative or state institution;

25 T. "state institution" means the New Mexico boys'

1 school, girls' welfare home, New Mexico youth diagnostic and
2 development center, Sequoyah adolescent treatment center,
3 Carrie Tingley crippled children's hospital, New Mexico
4 behavioral health institute at Las Vegas and any other state
5 agency responsible for educating resident children;

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

8 V. "superintendent" means a local superintendent,
9 head administrator of a charter school or regional education
10 cooperative, superintendent or commandant of a special school
11 or head administrator of the educational program of a state
12 agency;

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

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

22 Y. "unsupervised contact with children or
23 students" means access to or contact with, or the opportunity
24 to have access to or contact with, a child or student for any
25 length of time in the absence of:

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

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

5 (3) any adult relative or guardian of the
6 child or student;

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

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

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

16 "22-10A-3. LICENSE OR CERTIFICATE REQUIRED--APPLICATION
17 FEE--GENERAL DUTIES.--

18 A. Except as otherwise provided in this
19 subsection, any person teaching, supervising an instructional
20 program or providing instructional support services in a
21 public school; any person administering in a public school;
22 and any person providing health care and administering
23 medications or performing medical procedures in a public
24 school shall hold a valid license or certificate from the
25 department authorizing the person to perform that function.

1 This subsection does not apply to a person performing the
2 functions of a practice teacher or teaching intern as defined
3 by the department. A person applying for a license or
4 certificate from the department shall undergo a criminal
5 history record check pursuant to Section 22-10A-5 NMSA 1978.
6 The criminal history record check requirement shall apply to
7 the following applicants:

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

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

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

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

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

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

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

23 (8) applicants for level three-B
24 administrator's licensure pursuant to Section 22-10A-11.4
25 NMSA 1978;

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

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

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

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

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

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

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

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

1 history record check. The department shall not share
2 criminal history record check information with another entity
3 unless expressly permitted by applicable federal law or
4 federal regulation.

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

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

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

25 F. Each licensed school employee shall:

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

3 (2) if teaching, teach the prescribed
4 courses 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. CRIMINAL HISTORY RECORD CHECK--KNOWN
12 CONVICTIONS--CONFIDENTIALITY--ALLEGED ETHICAL MISCONDUCT--
13 REPORTING REQUIRED--PENALTY FOR FAILURE TO REPORT.--

14 A. To investigate the suitability of an applicant
15 for licensure from the department, the department shall have
16 access to criminal history record information furnished by
17 the department of public safety and the federal bureau of
18 investigation, subject to any restrictions imposed by federal
19 law.

20 B. An applicant for licensure from the department
21 shall undergo a state and federal criminal history record
22 check, and the applicant shall submit two fingerprint cards
23 or the equivalent electronic set of fingerprints to the
24 department of public safety for that purpose. The department
25 of public safety shall conduct a check of state records and

1 forward the fingerprints to the federal bureau of
2 investigation for a national criminal history record check to
3 determine the existence and content of a record of
4 convictions in this state or other law enforcement
5 jurisdictions and to generate a criminal history record check
6 in accordance with rules of the department of public safety
7 and regulations of the federal bureau of investigation. The
8 department of public safety shall review the information
9 obtained from the criminal history record check and shall
10 compile and provide that information to the department. The
11 department shall use the information resulting from the
12 fingerprint-based criminal history record check to inform
13 department decisions relating to the issuance or continuation
14 of licensure. The applicant for initial licensure shall pay
15 for the cost of obtaining the criminal history record check.

16 C. Governing authorities shall develop policies
17 and procedures to require criminal history record checks on
18 an applicant who has been offered employment or who applies
19 to be a school volunteer or works for the public school as a
20 contractor or a contractor's employee and who may have
21 unsupervised contact with children or students on school
22 premises. Nothing in this section shall preclude governing
23 authorities from developing and implementing policies or
24 procedures requiring or affecting other or additional
25 background or criminal history record checks of personnel or

1 applicants for employment.

2 D. An applicant who has been offered employment or
3 a school volunteer, contractor or contractor's employee shall
4 provide two fingerprint cards or the equivalent electronic
5 fingerprints to the department of public safety to obtain the
6 applicant's, school volunteer's, contractor's or contractor's
7 employee's criminal history record check pursuant to
8 Subsection B of this section. The public school shall pay
9 for the criminal history record check for an applicant who
10 has been offered employment. A school volunteer, contractor
11 or contractor's employee may be required to pay for the cost
12 of obtaining a criminal history record check.

13 E. Convictions of felonies or misdemeanors
14 contained in the criminal history record check shall be used
15 in accordance with the Criminal Offender Employment Act;
16 provided that other information contained in the criminal
17 history record check, if supported by independent evidence,
18 may form the basis for the employment decisions for just
19 cause. The department shall not exclude an otherwise
20 qualified person from licensure on the sole basis that the
21 person has been previously arrested or convicted of a crime,
22 unless that person has a disqualifying criminal conviction,
23 pursuant to Section 61-1-36 NMSA 1978.

24 F. Records and related information shall be
25 privileged and shall not be disclosed to a person not

1 directly involved in the employment, volunteering or
2 contracting decision affecting the specific applicant, school
3 volunteer, contractor or contractor's employee who has been
4 offered employment, a school volunteer position or a contract
5 and will have unsupervised contact with children or students
6 on school premises. Criminal history information received
7 from the department of public safety or the federal bureau of
8 investigation shall be confidential and shall not be
9 considered a public record pursuant to the Inspection of
10 Public Records Act. The department shall not authorize the
11 receipt of criminal history information by a private entity
12 pursuant to this section. Nothing in this subsection shall
13 apply to compliance with discovery requests or subpoenas that
14 are issued by a court of competent jurisdiction.

15 G. A superintendent shall report immediately to
16 the department any known conviction of any felony or
17 misdemeanor involving moral turpitude of school district
18 personnel, a school employee, a school volunteer, a
19 contractor or a contractor's employee.

20 H. A superintendent may appoint a designated
21 representative to act on the superintendent's behalf. The
22 superintendent or the designated representative shall
23 investigate all allegations of ethical misconduct about any
24 school district personnel, school employee, school volunteer,
25 contractor or contractor's employee who resigns, is being

1 discharged or terminated or otherwise leaves employment after
2 an allegation has been made. If the investigation results in
3 a finding of ethical misconduct by a licensed school
4 employee, the superintendent or the superintendent's
5 designated representative shall report the identity of the
6 licensed school employee and attendant circumstances of the
7 ethical misconduct on a standardized form to the department
8 and the licensed school employee within thirty days following
9 the separation from employment or immediately if the finding
10 of ethical misconduct is sexual misconduct with an adult or
11 child. The superintendent or the superintendent's designated
12 representative shall also report allegations of sexual
13 assault or sexual abuse involving any school district
14 personnel, school employee, school volunteer, contractor or a
15 contractor's employee to the appropriate law enforcement
16 agency. No agreement between a departing school employee and
17 the governing authority or superintendent shall diminish or
18 eliminate the responsibility of investigating and reporting
19 the alleged ethical misconduct to the department or, if
20 legally mandated, to law enforcement, and any such agreement
21 to the contrary is void.

22 I. Unless the department has commenced its own
23 investigation of a licensed school employee prior to receipt
24 of the form, the department shall serve the licensed school
25 employee with a notice of investigation and a notice of

1 contemplated action pursuant to the Uniform Licensing Act
2 within sixty days of receipt of the form.

3 J. The department shall maintain a list of the
4 names of persons reported to the department, as required by
5 Subsection G of this section, who have been convicted of a
6 felony or misdemeanor involving moral turpitude and, as
7 required by Subsection H of this section and Section
8 22-10A-5.1 NMSA 1978, who have been found to have committed
9 ethical misconduct. The department shall update that list
10 each month. The department shall provide that list to a
11 governing authority upon request.

12 K. The secretary may initiate action to suspend,
13 revoke or refuse to renew the license of:

14 (1) a superintendent who fails to report as
15 required by Subsections G and H of this section or Section
16 22-10A-5.1 NMSA 1978;

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

20 (3) any licensed school district personnel
21 or school employee who fails to report ethical misconduct
22 pursuant to Subsection H of this section or Section
23 22-10A-5.1 NMSA 1978.

24 L. As used in this section, "designated
25 representative" means a representative chosen by a

1 superintendent and may include the staff of a regional
2 education cooperative."

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

6 "22-10A-17. INSTRUCTIONAL SUPPORT PROVIDER LICENSES.--

7 A. The following instructional support providers
8 shall obtain appropriate licensure from the department:
9 educational assistants, school counselors, school social
10 workers, school nurses, speech-language pathologists,
11 psychologists, physical therapists, physical therapy
12 assistants, occupational therapists, occupational therapy
13 assistants, recreational therapists, marriage and family
14 therapists, interpreters for the deaf, diagnosticians,
15 attendance coaches, practical nurses, school health
16 assistants, school business officials, rehabilitation
17 counselors, athletic coaches, educational alcohol and drug
18 abuse counselors and substance abuse associates. The
19 department may provide a professional licensing framework in
20 which licensees can advance in their careers through the
21 demonstration of increased competencies and the undertaking
22 of increased duties.

23 B. The department shall provide by rule for the
24 licensure requirements for any instructional support
25 providers. If an instructional support provider practices a

1 licensed profession, the provider shall provide evidence
2 satisfactory to the department that the provider holds a
3 current, unsuspended license in the profession for which the
4 provider is applying to provide instructional support
5 services.

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

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

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

25 SECTION 5. EFFECTIVE DATE.--The effective date of the

