New Mexico Public Schools Insurance Authority

**Patrick Sandoval - Executive Director**

**Martha Quintana - Deputy Director**

**Certification Of Contractor Responsibilities To Protect Children and Students From Adult Sexual Misconduct**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_understands that NMSA 22-10A-5 (attached) requires public schools and charter schools to conduct extensive reference check questionnaires and criminal background checks regarding past employment and ethical misconduct issues.

1. As a contractor with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ we are requesting this assurance from your company that you are conducting the references and criminal background checks for all of your employes assigned to the school district that have unsupervised contact with children or students.

Ref: NMSA 22-10A-2 Definitions (attached

“Unsupervised contact with children or students" means access to or contact with, or the opportunity to have access to or contact with, a child or student for any length of time in the absence of:

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

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

 or

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

1. NMSA 22-10A-32 ( Attached) also requires

All school district personnel, school employees, school volunteers, contractors, and contractors' employees shall be required to complete training in the detection and reporting of child abuse and neglect, ethical misconduct, professional responsibilities, sexual abuse and assault, and substance abuse. Except as otherwise provided in this subsection, this requirement shall be completed within the school district employee's, school employee's, school volunteer's, contractor's, or contractor's employee's first year of employment.

This training can be provided by access to on-line or in-person training through the District or Charter School.

Your signature below confirms that your company understands and adheres to all of the above requirements.

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Name Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Date

**NMSA 22-10A-5 Criminal history record check; known convictions; confidentiality; alleged ethical misconduct; reporting required; penalty for failure to report.**

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

B. An applicant for initial licensure shall be fingerprinted and shall provide two fingerprint cards or the equivalent electronic fingerprints to the department to obtain the applicant's federal bureau of investigation record. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act [28-2-1 through 28-2-6 NMSA 1978]. Other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the denial, suspension or revocation of a license for good and just cause. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the licensure or employment decisions affecting the specific applicant. The applicant for initial licensure shall pay for the cost of obtaining the federal bureau of investigation record.

**C.** **Local school boards and regional education cooperatives shall develop policies and procedures to require background checks on an applicant who has been offered employment, a contractor or a contractor's employee with unsupervised access to students at a public school.**

**D. An applicant for employment who has been initially licensed within twenty-four months of applying for employment with a local school board, regional education cooperative or a charter school shall not be required to submit to another background check if the department has copies of the applicant's federal bureau of investigation records on file. An applicant who has been offered employment, a contractor or a contractor's employee with unsupervised access to students at a public school shall provide two fingerprint cards or the equivalent electronic fingerprints to the local school board, regional education cooperative or charter school to obtain the applicant's federal bureau of investigation record. The applicant, contractor or contractor's employee who has been offered employment by a regional education cooperative or at a public school may be required to pay for the cost of obtaining a background check. At the request of a local school board, regional education cooperative or charter school, the department is authorized to release copies of federal bureau of investigation records that are on file with the department and that are not more than twenty-four months old. Convictions of felonies or misdemeanors contained in the federal bureau of investigation record shall be used in accordance with the Criminal Offender Employment Act; provided that other information contained in the federal bureau of investigation record, if supported by independent evidence, may form the basis for the employment decisions for good and just cause. Records and related information shall be privileged and shall not be disclosed to a person not directly involved in the employment decision affecting the specific applicant who has been offered employment, contractor or contractor's employee with unsupervised access to students at a public school.**

E. A local superintendent, charter school administrator or regional education cooperative shall report to the department any known conviction of a felony or misdemeanor involving moral turpitude of a licensed school employee that results in any type of action against the licensed school employee.

F. A local superintendent, charter school administrator or director of a regional education cooperative or their respective designees shall investigate all allegations of ethical misconduct about any licensed school employee who resigns, is being discharged or terminated or otherwise leaves employment after an allegation has been made. If the investigation results in a finding of wrongdoing, the local superintendent, charter school administrator or director of a regional education cooperative shall report the identity of the licensed school employee and attendant circumstances of the ethical misconduct on a standardized form to the department and the licensed school employee within thirty days following the separation from employment. Copies of that form shall not be maintained in public school, school district or regional education cooperative records. No agreement between a departing licensed school employee and the local school board, school district, charter school or regional education cooperative shall diminish or eliminate the responsibility of investigating and reporting the alleged ethical misconduct, and any such agreement to the contrary is void. Unless the department has commenced its own investigation of the licensed school employee prior to receipt of the form, the department shall serve the licensed school employee with a notice of contemplated action involving that employee's license within ninety days of receipt of the form. If that notice of contemplated action is not served on the licensed school employee within ninety days of receipt of the form, the form, together with any documents related to the alleged ethical misconduct, shall be expunged from the licensed school employee's records with the department and shall not be subject to public inspection.

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

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

**NMSA 22-10A-5.2 Applicants for school employment, contracts or volunteer positions; requirements for work history and other information.**

A public school shall require an applicant for employment to provide:

(1) a list of the applicant's current and former employers that were schools or that employed the applicant in a position involving unsupervised contact with children or students. The list shall include the name, address, telephone number, and other relevant contact information for each of the applicant's listed employers;

(2) a written statement describing whether the applicant:

1. has ever been under investigation for, or has been found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses prohibited in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated;
2. has ever been under investigation for, or found to have violated, any ethical rule or policy approved by a former employer that previously employed the applicant, unless the allegations were false or unsubstantiated; or
3. has ever had a professional license or certificate denied, suspended, surrendered or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation; and

(3) a written authorization that authorizes disclosure of information requested under Subsection B or D of this section and the release of related records by the applicant's previous employers, releasing the applicant's previous employers from any liability related to the disclosure or release of records.

B. A public school shall conduct a review of the applicant's employment history and contact the applicant's current and former employers listed under Subsection A of this section and request:

(1) the applicant's dates of employment; and

(2) a written statement describing whether the applicant:

(a) has ever been under investigation for, or has been found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses prohibited in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated;

(b) has ever been under investigation for, or found to have violated, any ethical rule or policy approved by

a former employer that previously employed the applicant, unless the allegations were false or

unsubstantiated; or

(c) has ever had a professional license or certificate denied, suspended, surrendered, or revoked due to a finding of child abuse or ethical misconduct, or while allegations of child abuse or ethical misconduct were pending or under investigation.

C. An applicant's current or former employer shall disclose the information requested under Subsection B of this section within thirty days of receiving the request.

D. During the course of a public school's review of the applicant's employment history, an applicant's current or former employer may disclose any other information the applicant's current or former employer deems pertinent and substantive to the prospective employee's suitability for employment in a position that includes unsupervised contact with children or students.

E. A public school shall make and document efforts to:

(1) verify the information provided under Subsections A and B of this section; and

(2) obtain from an applicant's current or former out-of-state employer the information required under Subsection B of this section.

**F. A public school may terminate an individual's employment or contract or rescind an applicant's offer of employment or offer of a contract if the applicant is offered or commences employment with a public school after the effective date of this 2021 act and information regarding the applicant's history of child abuse or ethical misconduct that is determined to disqualify the applicant from employment or a contract is subsequently obtained by the public school.**

G. When a reference on a former or current employee, contractor or volunteer is requested, the employer shall respond and provide the requested information pursuant to Subsection B of this section.

H. An applicant who provides false information or willfully neglects to disclose information required under this section shall be subject to discipline including termination or denial of employment or action to deny, suspend or revoke a license.

I. For the purposes of this section, "applicant" means an applicant for employment, an individual who is being considered as a contractor, a contractor's employee or an individual who wants to be a school volunteer.

**NMSA 22-10A-2Y- Definitions.**

**As used in the School Personnel Act:**

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

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

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

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

**NM Stat § 22-10A-32** **School district personnel, school employees, school volunteers, contractors and contractors' employees; required training program.**

**A. All school district personnel, school employees, school volunteers, contractors and contractors' employees shall be required to complete training in the detection and reporting of child abuse and neglect, ethical misconduct, professional responsibilities, sexual abuse and assault and substance abuse. Except as otherwise provided in this subsection, this requirement shall be completed within the school district employee's, school employee's, school volunteer's, contractor's or contractor's employee's first year of employment.**