

SENATE EDUCATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 502

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

AN ACT

RELATING TO SCHOOL PERSONNEL; REQUIRING SCHOOL DISTRICTS AND  
CHARTER SCHOOLS TO ADOPT THE STATE TEACHER EVALUATION FRAMEWORK  
TO IMPROVE STUDENT ACHIEVEMENT AND A SCHOOL PRINCIPAL  
EVALUATION BASED ON SCHOOL ACHIEVEMENT; PROVIDING TIME LINES;  
AMENDING THE SCHOOL PERSONNEL ACT TO CHANGE THE TERMINATION  
PROCESS; DECLARING AN EMERGENCY.

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

SECTION 1. A new section of the School Personnel Act is  
enacted to read:

"~~NEW MATERIAL~~ TEACHER EVALUATIONS--SCHOOL PRINCIPAL  
EVALUATIONS--REQUIREMENTS--TIME LINES--WORK GROUP.--"

A. As used in this section:

(1) "school district" includes a charter  
school; and

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1                   (2) "school principal" or "local  
2 superintendent" includes the head administrator of a charter  
3 school.

4                   B. Each school district shall evaluate teachers  
5 using the state evaluation framework and its own evaluation  
6 program to measure teacher effectiveness and improve student  
7 achievement. Each teacher evaluation program shall use  
8 multiple methods of evaluation that are rigorous, fair and  
9 transparent, and the results must be provided to the teacher in  
10 a timely manner. The teacher evaluation program may include  
11 opportunities for input and participation by peers, subject-  
12 matter experts, educational leaders other than a direct  
13 supervisor and others specified in the program. Each teacher  
14 evaluation program shall be approved by the department prior to  
15 implementation, and the department shall monitor the program's  
16 use and efficacy in improving teacher effectiveness and student  
17 achievement in the school district. The school district  
18 teacher evaluation shall:

19                   (1) identify teachers who are most effective  
20 at helping students succeed;

21                   (2) provide targeted assistance and  
22 professional development opportunities for teachers to improve;

23                   (3) inform the match between teacher  
24 assignments and student and school needs; and

25                   (4) inform incentives for effective teachers.

1           C. For teachers in grades and courses that have  
2 required statewide standards-based assessments, at least one-  
3 half of their evaluations shall be based on student academic  
4 growth in reading and mathematics.

5           D. For teachers in grades and courses that do not  
6 have required statewide standards-based assessments,  
7 evaluations shall be as follows:

8                   (1) at least one-half of their evaluations  
9 shall be based on student academic growth determined by  
10 designated school district assessments that indicate that  
11 students are improving at a rate that will allow them to  
12 perform at or above grade level within two years; or

13                   (2) if no designated school district school  
14 assessments apply, at least one-half of their evaluations shall  
15 be based on teacher-developed assessments after those  
16 assessments have been reviewed and approved by the local  
17 superintendent or the school administrator designated by the  
18 local superintendent.

19           E. In addition to the requirements of Subsections C  
20 and D of this section, teacher evaluations shall include:

21                   (1) classroom observations of teachers using a  
22 research-based protocol or a district-developed protocol  
23 approved by the department completed by a school administrator  
24 at least once a school year; and

25                   (2) additional measures of teacher

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1 effectiveness developed by each school district, including:

- 2 (a) student and parent surveys;
- 3 (b) teacher performance portfolios;
- 4 (c) video classroom observations with
- 5 teacher reflection after viewing the videos; or
- 6 (d) other evidence-based measures that
- 7 effectively measure teacher performance.

8 F. School district teacher evaluation scales shall  
9 include at least four levels of evaluating effectiveness.

10 G. School districts shall document and use the  
11 results of teacher evaluations to tailor professional  
12 development for individual teachers.

13 H. The department shall make available to school  
14 districts the evaluation framework and other materials from  
15 evidence-based sources as models to help them develop and adopt  
16 their own programs.

17 I. Each school district shall evaluate school  
18 principals on their school's achievement based on the state  
19 accountability system and inform incentives for effective  
20 school principals. The governing board of a charter school  
21 shall evaluate its school principal on the school's achievement  
22 based on the state accountability system and inform the  
23 incentive for an effective principal.

24 J. The department and school districts shall follow  
25 the time line provided in Subsections K through Q of this

1 section to implement teacher and school principal evaluation  
2 programs in all school districts.

3 K. During April 2011 to August 2011, the department  
4 shall convene a work group to develop and make recommendations  
5 for a statewide evaluation framework for teacher evaluation  
6 models and school principal evaluations and propose a  
7 performance-based compensation system that incentivizes  
8 effective teachers and school principals. The secretary shall  
9 report to the governor in August 2011 on the statewide  
10 evaluation framework. The secretary shall present a final  
11 report, with recommendations for legislative changes as  
12 necessary, to the legislative education study committee and the  
13 legislative finance committee by December 1, 2011. The work  
14 group shall be composed of:

15 (1) the secretary or the secretary's designee,  
16 who shall serve as chair;

17 (2) the director of the legislative education  
18 study committee;

19 (3) the director of the legislative finance  
20 committee; and

21 (4) other members appointed by the secretary,  
22 including:

23 (a) a representative nominated by an  
24 organization of school administrators;

25 (b) a representative nominated by each

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1 public school teacher organization;

2 (c) a representative nominated by a  
3 public school parent organization;

4 (d) a representative nominated by  
5 charter schools;

6 (e) a representative nominated by the  
7 business community;

8 (f) a representative nominated by the  
9 New Mexico school boards association;

10 (g) a public school teacher;

11 (h) a public school principal;

12 (i) a parent of a public school student;

13 (j) an expert on teacher evaluation  
14 models; and

15 (k) an expert on value-added models.

16 L. The department shall provide to school districts  
17 regular updates on the progress of the work group and provide  
18 assistance to school districts to ensure that they are prepared  
19 to implement the recommendations.

20 M. During April to August 2011, school districts  
21 shall designate district-wide assessments and approve teacher-  
22 developed assessments and make staff aware of evaluation models  
23 and provide training for school principals and evaluators.

24 N. During the 2011-2012 school year, school  
25 districts shall adopt their evaluation programs based on the

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1 state teacher evaluation framework and school principal  
2 evaluations based on school achievement and use them to  
3 determine teacher and school principal effectiveness to create  
4 a baseline of performance.

5 O. Beginning with the 2012-2013 school year, each  
6 school district's teacher and school principal evaluation  
7 programs and performance-based compensation systems shall be  
8 operational. A teacher earning the lowest effectiveness rating  
9 on the school district's evaluation scale for three consecutive  
10 years shall be terminated unless the teacher can demonstrate  
11 through the appeal process that the data or other information  
12 relied on for the teacher's evaluation results was inaccurate  
13 or misrepresented. A school district shall provide additional  
14 professional development to a teacher who earns a low  
15 effectiveness rating. If the teacher earns the lowest  
16 effectiveness rating for two consecutive years, the teacher  
17 shall be placed on a professional growth plan and shall be  
18 terminated if the teacher earns the lowest effectiveness rating  
19 for the third consecutive year.

20 P. A school principal whose school earns the lowest  
21 ranking on the state's accountability system for three  
22 consecutive years shall be terminated unless the school  
23 principal can demonstrate through an appeal process that the  
24 data or other information relied on for the school principal's  
25 evaluation was inaccurate or misrepresented. A school district

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1 shall provide additional professional development to a school  
2 principal whose school earns the lowest ranking on the state's  
3 accountability system. If the school earns the lowest ranking  
4 for two consecutive years, the school principal shall be placed  
5 on a professional growth plan and shall be terminated if the  
6 school earns the lowest ranking for the third consecutive year.

7 Q. Beginning with the 2012-2013 school year, when a  
8 school district must terminate or discharge teachers through a  
9 reduction in force, it shall consider the effectiveness of the  
10 individual teachers as demonstrated by their evaluations and  
11 programmatic needs of the public school when determining which  
12 teachers to terminate or discharge.

13 R. The work group shall develop a recognition  
14 program to reward effective teachers and school principals.  
15 Financial awards are subject to the availability of funding."

16 SECTION 2. Section 22-8B-5 NMSA 1978 (being Laws 1999,  
17 Chapter 281, Section 5, as amended) is amended to read:

18 "22-8B-5. CHARTER SCHOOLS--STATUS--LOCAL SCHOOL BOARD  
19 AUTHORITY.--

20 A. The local school board may waive only locally  
21 imposed school district requirements for locally chartered  
22 charter schools.

23 B. A state-chartered charter school is exempt from  
24 school district requirements. A state-chartered charter school  
25 is responsible for developing its own written policies and



1 procedures in accordance with this section.

2 C. The department shall waive requirements or rules  
3 and provisions of the Public School Code pertaining to  
4 individual class load, teaching load, length of the school day,  
5 staffing patterns, subject areas, purchase of instructional  
6 material, evaluation standards for school personnel, school  
7 principal duties and driver education; provided, however, that  
8 the charter school shall have teacher and head administrator  
9 evaluation programs as provided in Section 1 of this 2011 act  
10 by the 2012-2013 school year. The department may waive  
11 requirements or rules and provisions of the Public School Code  
12 pertaining to graduation requirements. Any waivers granted  
13 pursuant to this section shall be for the term of the charter  
14 granted but may be suspended or revoked earlier by the  
15 department.

16 D. A charter school shall be a public school  
17 accredited by the department and shall be accountable to the  
18 chartering authority for purposes of ensuring compliance with  
19 applicable laws, rules and charter provisions.

20 E. A local school board shall not require any  
21 employee of the school district to be employed in a charter  
22 school.

23 F. A local school board shall not require any  
24 student residing within the geographic boundary of its district  
25 to enroll in a charter school.

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1           G. A student who is suspended or expelled from a  
2 charter school shall be deemed to be suspended or expelled from  
3 the school district in which the student resides."

4           **SECTION 3.** Section 22-10A-4 NMSA 1978 (being Laws 2003,  
5 Chapter 153, Section 35, as amended by Laws 2005, Chapter 315,  
6 Section 4 and by Laws 2005, Chapter 316, Section 1) is amended  
7 to read:

8           "22-10A-4. TEACHERS AND SCHOOL ADMINISTRATORS--  
9 PROFESSIONAL STATUS--LICENSURE LEVELS--SALARY ALIGNMENT.--

10           A. Teaching and school administration are  
11 recognized as professions, with all the rights,  
12 responsibilities and privileges accorded professions, having  
13 their first responsibility to the public they serve. The  
14 primary responsibilities of the teaching and school  
15 administration professions are to educate the children of this  
16 state and to improve the professional practices and ethical  
17 conduct of their members.

18           B. The New Mexico licensure framework for teachers  
19 and school administrators is a progressive career system in  
20 which licensees are required to demonstrate increased  
21 competencies and undertake increased duties as they progress  
22 through the licensure levels. The minimum salary provided as  
23 part of the career system shall not take effect until the  
24 department has adopted increased competencies for the  
25 particular level of licensure and a highly objective uniform

1 statewide standard of evaluation.

2 C. A level one license is a provisional license  
3 that gives a beginning teacher the opportunity, through a  
4 formal mentorship program, for additional preparation to be a  
5 quality teacher. A level two license is given to a teacher who  
6 is a fully qualified professional who is primarily responsible  
7 for ensuring that students meet and exceed department-adopted  
8 academic content and performance standards; a teacher may  
9 choose to remain at level two for the remainder of the  
10 teacher's career. A level three-A license is the highest level  
11 of teaching licensure for those teachers who choose to advance  
12 as instructional leaders in the teaching profession and  
13 undertake greater responsibilities such as curriculum  
14 development, peer intervention and mentoring. A level three-B  
15 license is for teachers who commence a new career path in  
16 school administration by becoming school administrators.

17 D. Beginning in the 2012-2013 school year, all  
18 teacher and school administrator salary systems shall be  
19 aligned with the licensure framework in a professional educator  
20 licensing and [~~salary~~] performance-based compensation system.

21 E. All teachers and school administrators who hold  
22 teaching or administrator certificates on the effective date of  
23 the 2003 act shall meet the requirements for their level of  
24 licensure by September 1, 2006 and shall be issued licenses."

25 SECTION 4. Section 22-10A-7 NMSA 1978 (being Laws 2003,  
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1 Chapter 153, Section 38, as amended) is amended to read:

2 "22-10A-7. LEVEL ONE LICENSURE.--

3 A. A level one license is a provisional five-year  
4 license for beginning teachers that requires as a condition of  
5 licensure that the licensee undergo a formal mentorship program  
6 for at least one full school year and an annual intensive  
7 performance evaluation by a school administrator for at least  
8 three full school years before applying for a level two  
9 license.

10 B. Each school district, in accordance with  
11 department rules, shall provide for the mentorship and  
12 evaluation of level one teachers. At the end of each year and  
13 at the end of the license period, the level one teacher shall  
14 be evaluated for [~~competency~~] teacher effectiveness. If the  
15 teacher fails to demonstrate satisfactory progress and  
16 [~~competence~~] effectiveness annually, the teacher may be  
17 terminated as provided in Section [~~22-10A-24~~] 22-10A-22 NMSA  
18 1978. If the teacher has not demonstrated satisfactory  
19 progress and [~~competence~~] effectiveness by the end of the five-  
20 year period, the teacher shall not be granted a level two  
21 license.

22 C. Except in exigent circumstances defined by  
23 department rule, a level one license shall not be extended  
24 beyond the initial period.

25 D. The department shall issue a standard level one

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1 license to an applicant who is at least eighteen years of age  
2 who:

3 (1) holds a baccalaureate degree from an  
4 accredited educational institution;

5 (2) has successfully completed a department-  
6 approved teacher preparation program from a nationally  
7 accredited or state-approved educational institution;

8 (3) has passed the New Mexico teacher  
9 assessments examination; and

10 (4) meets other qualifications for level one  
11 licensure, including clearance of the required background  
12 check.

13 E. The department shall issue an alternative level  
14 one license to an applicant who meets the requirements of  
15 Section 22-10A-8 NMSA 1978.

16 F. The department shall establish competencies and  
17 qualifications for specific grade levels, types and subject  
18 areas of level one licensure, including early childhood,  
19 elementary, middle school, secondary, special education and  
20 vocational education.

21 G. Beginning with the 2003-2004 school year, with  
22 the adoption by the department of a highly objective uniform  
23 statewide standard of evaluation for level one teachers, the  
24 minimum salary for a level one teacher shall be thirty thousand  
25 dollars (\$30,000) for a standard nine and one-half month

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1 contract.

2 H. Teachers who hold level one licenses on the  
3 effective date of the 2003 act must be evaluated by the end of  
4 the 2006-2007 school year.

5 I. Beginning with the 2012-2013 school year, level  
6 one teachers shall be evaluated and retained pursuant to their  
7 school district's or charter school's teacher evaluation  
8 program and compensated pursuant to the school district's  
9 performance-based compensation system."

10 SECTION 5. Section 22-10A-10 NMSA 1978 (being Laws 2003,  
11 Chapter 153, Section 41, as amended by Laws 2005, Chapter 315,  
12 Section 7 and by Laws 2005, Chapter 316, Section 4) is amended  
13 to read:

14 "22-10A-10. LEVEL TWO LICENSURE.--

15 A. A level two license is a nine-year license  
16 granted to a teacher who meets the qualifications for that  
17 level and who annually demonstrates [~~essential competency to~~  
18 ~~teach~~] effectiveness in teaching. If a level two teacher does  
19 not demonstrate [~~essential competency~~] effectiveness in a given  
20 school year, the school district shall provide the teacher with  
21 additional professional development and peer intervention  
22 during the following school year. [~~If by the end of that~~  
23 ~~school year the teacher fails to demonstrate essential~~  
24 ~~competency, a school district may choose not to contract with~~  
25 ~~the teacher to teach in the classroom.~~]

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1           B. The department shall issue a level two license  
2 to an applicant who successfully completes the level one  
3 license or is granted reciprocity as provided by department  
4 rules; demonstrates ~~[essential competency]~~ effectiveness in  
5 teaching required by the ~~[department as verified by the local~~  
6 ~~superintendent through the highly objective uniform statewide~~  
7 ~~standard of evaluation]~~ school district's or charter school's  
8 teacher evaluation program; and meets other qualifications as  
9 required by the department.

10           C. The department shall provide for qualifications  
11 for specific grade levels, types and subject areas of level two  
12 licensure, including early childhood, elementary, middle,  
13 secondary, special education and vocational education.

14           D. ~~[With the adoption by the department of the~~  
15 ~~statewide objective performance evaluation for level two~~  
16 ~~teachers]~~ The minimum salary for a level two teacher for a  
17 standard nine and one-half month contract shall be as follows:

18                   (1) for the 2003-2004 school year,  
19 thirty thousand dollars (\$30,000);

20                   (2) for the 2004-2005 school year,  
21 thirty-five thousand dollars (\$35,000); and

22                   (3) for the 2005-2006 school year and  
23 subsequent school years, forty thousand dollars (\$40,000).

24           E. Beginning with the 2012-2013 school year, level  
25 two teachers shall be evaluated and retained pursuant to their

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1 school district's or charter school's teacher evaluation  
2 program and compensated pursuant to the school district's  
3 performance-based compensation system."

4 SECTION 6. Section 22-10A-11 NMSA 1978 (being Laws 2003,  
5 Chapter 153, Section 42, as amended) is amended to read:

6 "22-10A-11. LEVEL THREE LICENSURE--TRACKS FOR TEACHERS,  
7 COUNSELORS AND SCHOOL ADMINISTRATORS.--

8 A. A level three-A license is a nine-year license  
9 granted to a teacher who meets the qualifications for that  
10 level and who annually demonstrates [~~instructional leader~~  
11 ~~competencies~~] effectiveness in teaching. If a level three-A  
12 teacher does not demonstrate [~~essential competency~~  
13 effectiveness in a given school year, the school district shall  
14 provide the teacher with additional professional development  
15 and peer intervention during the following school year. [~~If by~~  
16 ~~the end of that school year the teacher fails to demonstrate~~  
17 ~~essential competency, a school district may choose not to~~  
18 ~~contract with the teacher to teach in the classroom.~~]

19 B. The department shall grant a level three-A  
20 license to an applicant who has been a level two teacher for at  
21 least three years and holds a post-baccalaureate degree or  
22 national board for professional teaching standards  
23 certification; demonstrates [~~instructional leader competence as~~  
24 ~~required by the department and verified by the local~~  
25 ~~superintendent through the highly objective uniform statewide~~

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1 ~~standard of~~ effectiveness in teaching as provided by the  
2 school district's or charter school's teacher evaluation  
3 program; and meets other qualifications for the license.

4 C. ~~[With the adoption by the department of a highly~~  
5 ~~objective uniform statewide standard of evaluation for level~~  
6 ~~three-A teachers]~~ The minimum salary for a level three-A  
7 teacher for a standard nine and one-half month contract shall  
8 be as follows:

9 (1) for the 2003-2004 school year, thirty  
10 thousand dollars (\$30,000);

11 (2) for the 2004-2005 school year,  
12 thirty-five thousand dollars (\$35,000);

13 (3) for the 2005-2006 school year, forty  
14 thousand dollars (\$40,000);

15 (4) for the 2006-2007 school year,  
16 forty-five thousand dollars (\$45,000); and

17 (5) for the 2007-2008 school year and  
18 subsequent school years, fifty thousand dollars (\$50,000).

19 D. Beginning with the 2012-2013 school year, level  
20 three teachers shall be evaluated and retained pursuant to  
21 their school district's or charter school's teacher evaluation  
22 program and compensated pursuant to the school district's  
23 adopted compensation system.

24 ~~[D.]~~ E. A level three-B license is a nine-year  
25 license granted to a school administrator who meets the

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1 qualifications for that level. Licenses may be renewed upon  
2 satisfactory annual demonstration of instructional leader and  
3 administrative competency. School principals shall be  
4 evaluated on their school's achievement based on the state  
5 accountability system.

6 [E.] F. The department shall grant a level three-B  
7 license to an applicant who:

8 (1) holds a level two license and meets the  
9 requirements for a level three-A license or who holds a current  
10 level two teacher's license and for at least four years, has  
11 held the highest-ranked counselor license as provided in  
12 Chapter 22, Article 10A NMSA 1978 and rules promulgated by the  
13 department;

14 (2) holds a post-baccalaureate degree or  
15 national board for professional teaching standards  
16 certification;

17 (3) has satisfactorily completed department-  
18 approved courses in administration and a department-approved  
19 administration apprenticeship program; and

20 (4) demonstrates instructional leader  
21 competence as required by the department [~~and verified by the~~  
22 ~~local superintendent through the highly objective uniform~~  
23 ~~statewide standard of evaluation~~].

24 [F.] G. Beginning with the 2007-2008 school year,  
25 the minimum annual salary for a level three-B school principal

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1 or assistant school principal shall be fifty thousand dollars  
2 (\$50,000) multiplied by the applicable responsibility factor.

3 ~~[G.]~~ H. By the beginning of the 2008-2009 school  
4 year, the department shall adopt a highly objective uniform  
5 statewide standard of evaluation, which includes data sources  
6 linked to student achievement and educational plan for student  
7 success progress, for level three-B school principals and  
8 assistant school principals and rules for the implementation of  
9 that evaluation system linked to the level of responsibility at  
10 each school level.

11 I. By the 2012-2013 school year, school principals  
12 shall be evaluated on their school's achievement based on the  
13 state accountability system."

14 **SECTION 7.** Section 22-10A-19 NMSA 1978 (being Laws 2003,  
15 Chapter 153, Section 50, as amended) is amended to read:

16 "22-10A-19. TEACHERS AND SCHOOL PRINCIPALS--  
17 ACCOUNTABILITY--EVALUATIONS--PROFESSIONAL DEVELOPMENT--PEER  
18 INTERVENTION--MENTORING.--

19 A. The department shall adopt criteria and minimum  
20 highly objective uniform statewide standards of evaluation for  
21 the annual performance evaluation of licensed school employees  
22 except teachers. A teacher shall be evaluated through the  
23 school district's or charter school's teacher evaluation  
24 program as provided in Section 1 of this 2011 act. The  
25 professional development plan for teachers shall include

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1 documentation on how a teacher who receives professional  
2 development that has been required or offered by the state or a  
3 school district or charter school incorporates the results of  
4 that professional development in the classroom.

5 B. The local superintendent shall adopt policies,  
6 guidelines and procedures for the performance evaluation  
7 process. Evaluation by other school employees shall be one  
8 component of the evaluation tool for school administrators.

9 ~~[G. As part of the highly objective uniform~~  
10 ~~statewide standard of evaluation for teachers, the school~~  
11 ~~principal shall observe each teacher's classroom practice to~~  
12 ~~determine the teacher's ability to demonstrate state-adopted~~  
13 ~~competencies.~~

14 ~~D.]~~ C. At the beginning of each school year,  
15 teachers and school principals shall devise professional  
16 development plans for the coming year, and performance  
17 evaluations shall be based in part on how well the professional  
18 development plan was carried out.

19 ~~[E.]~~ D. If a level two or three-A teacher's  
20 performance evaluation indicates less than [~~satisfactory~~]  
21 effective performance [~~and competency~~], the school principal  
22 may require the teacher to undergo peer intervention, including  
23 mentoring, for a period the school principal deems necessary.  
24 If the teacher is unable to demonstrate [~~satisfactory~~]  
25 effective performance [~~and competency~~] by the end of the

1 period, the peer interveners may recommend termination of the  
2 teacher.

3 ~~[F.]~~ E. At least every two years, school principals  
4 shall attend a training program ~~[approved by the department]~~ to  
5 improve their evaluation, administrative and instructional  
6 leadership skills.

7 F. As used in this section and Sections 22-10A-21  
8 through 22-10A-31 NMSA 1978:

9 (1) "local school board" includes governing  
10 authorities of state agencies;

11 (2) "school district" includes state agencies;  
12 and

13 (3) "school principal" and "local  
14 superintendent" for state agencies mean those analogous  
15 positions identified by the state agency governing authority."

16 **SECTION 8.** Section 22-10A-21 NMSA 1978 (being Laws 1967,  
17 Chapter 16, Section 113, as amended) is amended to read:

18 "22-10A-21. EMPLOYMENT CONTRACTS--DURATION.--

19 A. All employment contracts between ~~[local]~~ a  
20 school ~~[boards]~~ district and ~~[certified]~~ licensed school  
21 ~~[personnel and between governing authorities of state agencies~~  
22 ~~and certified school instructors]~~ employees shall be in writing  
23 on forms approved by the ~~[state board]~~ department. These forms  
24 shall contain and specify the term of service, the salary to be  
25 paid, the method of payment, the causes for termination of the

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1 contract and other provisions required by the ~~[regulations of~~  
2 ~~the state board]~~ rules of the department.

3 B. All employment contracts between ~~[local]~~ a  
4 school ~~[boards]~~ district and ~~[certified]~~ licensed school  
5 ~~[personnel and between governing authorities of state agencies~~  
6 ~~and certified school instructors]~~ employees shall be for a  
7 period of one school year except:

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

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

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

20 (4) contracts not to exceed three years are  
21 permitted for ~~[certified]~~ school administrators in public  
22 schools who are engaged in administrative functions for more  
23 than one-half of their employment time ~~[and~~

24 ~~(5) contracts not to exceed three years are~~  
25 ~~permitted at the discretion of the local school board for~~

1 ~~certified school instructors in public schools who have been~~  
 2 ~~employed in the school district for three consecutive school~~  
 3 ~~years].~~

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

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

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

23 SECTION 9. Section 22-10A-22 NMSA 1978 (being Laws 1967,  
 24 Chapter 16, Section 114, as amended) is amended to read:

25 "22-10A-22. NOTICE OF REEMPLOYMENT--TERMINATION OF

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1 LICENSED SCHOOL EMPLOYEES.--

2 A. Each school principal shall recommend to the  
3 local superintendent the reemployment or termination of each  
4 licensed school employee under the school principal's  
5 supervision. On or before the last day of the school year of  
6 the existing employment contract, the local [~~school board or~~  
7 ~~the governing authority of the state agency~~] superintendent  
8 shall serve written notice of reemployment or termination on  
9 each [~~certified~~] licensed school [~~instructor~~] employee employed  
10 by the school district [~~or state agency~~]. A notice of  
11 reemployment shall be an offer of employment for the ensuing  
12 school year. A notice of termination shall be a notice of  
13 intention not to reemploy for the ensuing school year.

14 [~~Failure of the local school board or the governing authority~~  
15 ~~of the state agency to serve a written notice of reemployment~~  
16 ~~or termination on a certified school instructor shall be~~  
17 ~~construed to mean that notice of reemployment has been served~~  
18 ~~upon the person for the ensuing school year according to the~~  
19 ~~terms of the existing employment contract but subject to any~~  
20 ~~additional compensation allowed other certified school~~  
21 ~~instructors of like qualifications and experience employed by~~  
22 ~~the school district or state agency.]~~

23 B. Nothing in this section shall be construed to  
24 mean that failure of a local [~~school board or the governing~~  
25 ~~authority of the state agency~~] superintendent to serve a



1 written notice of reemployment or termination shall  
 2 automatically extend a [~~certified~~] licensed school  
 3 [~~instructor's~~] employee's employment contract for a period in  
 4 excess of one school year.

5 C. Beginning with the 2012-2013 school year and the  
 6 implementation of teacher evaluation programs, a teacher who  
 7 earns the lowest effectiveness rating on the school district's  
 8 rating scale for three consecutive years shall be terminated."

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

11 "22-10A-23. REEMPLOYMENT--ACCEPTANCE--REJECTION--BINDING  
 12 CONTRACT.--

13 A. Each [~~certified~~] licensed school [~~instructor~~]  
 14 employee shall deliver to the local [~~school board of the school~~  
 15 ~~district or to the governing authority of the state agency in~~  
 16 ~~which~~] superintendent by whom the person is employed a written  
 17 acceptance or rejection of reemployment for the ensuing school  
 18 year within fifteen days from [~~the following~~]:

19 (1) the date written notice of reemployment is  
 20 served upon the person [~~or~~

21 (2) ~~the last day of the school year when no~~  
 22 ~~written notice of reemployment or termination is served upon~~  
 23 ~~the person on or before the last day of the school year].~~

24 School districts are required to provide written notice of  
 25 reemployment or termination prior to the last day of the school

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1 year.

2 B. Delivery of the written acceptance of  
3 reemployment by a [~~certified~~] licensed school [~~instructor~~]  
4 employee creates a binding employment contract between the  
5 [~~certified~~] licensed school [~~instructor~~] employee and the  
6 [~~local school board or the governing authority of the state~~  
7 ~~agency~~] school district until the parties enter into a formal  
8 written employment contract. Written employment contracts  
9 between [~~local~~] school [~~boards or governing authorities of~~  
10 ~~state agencies~~] districts and [~~certified~~] licensed school  
11 [~~instructors~~] employees shall be executed by the parties not  
12 later than ten days before the first day of a school year."

13 SECTION 11. Section 22-10A-24 NMSA 1978 (being Laws 1986,  
14 Chapter 33, Section 22, as amended) is amended to read:

15 "22-10A-24. TERMINATION DECISIONS--LOCAL [~~SCHOOL BOARD~~  
16 ~~--GOVERNING AUTHORITY OF A STATE AGENCY~~] SUPERINTENDENT--  
17 PROCEDURES.--

18 A. [~~A local school board or governing authority of~~  
19 ~~a state agency may terminate an employee with fewer than three~~  
20 ~~years of consecutive service for any reason it deems~~  
21 ~~sufficient.~~] A school principal may recommend the termination  
22 of a school employee under the principal's supervision who has  
23 worked for the school district for less than three consecutive  
24 years for any reason the principal deems sufficient. Based  
25 upon this recommendation, the local superintendent may

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1 terminate the school employee. Upon request of the  
2 school employee, the local superintendent [~~or administrator~~]  
3 shall provide written reasons for the decision to terminate.  
4 The reasons shall be provided within ten working days of the  
5 request. The reasons shall not be publicly disclosed by the  
6 local superintendent [~~administrator, local school board or~~  
7 ~~governing authority~~]. The reasons shall not provide a basis  
8 for contesting the decision under the School Personnel Act.

9 B. Before terminating [~~a noncertified~~] an  
10 unlicensed school employee, the local [~~school board or~~  
11 ~~governing authority~~] superintendent shall serve the unlicensed  
12 school employee with a written notice of termination.

13 C. [~~An~~] A school employee who has been employed by  
14 a school district [~~or state agency~~] for three consecutive years  
15 and who receives a notice of termination pursuant to either  
16 Section [~~22-10-12~~] 22-10A-22 NMSA 1978 or this section may  
17 request an opportunity to make a statement to the local school  
18 board [~~or governing authority~~] on the decision to terminate  
19 [~~him~~] the school employee by submitting a written request to  
20 the local superintendent [~~or administrator~~] within five working  
21 days from the date written notice of termination is served  
22 [~~upon him~~]. The school employee may also request in writing  
23 the reasons for the termination action [~~to terminate him~~]. The  
24 local superintendent [~~or administrator~~] shall provide written  
25 reasons for the notice of termination to the school employee

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1 within five working days from the date the written request for  
2 a meeting and the written request for the reasons were received  
3 by the local superintendent [~~or administrator. Neither~~]. The  
4 local superintendent [~~or administrator nor the local school~~  
5 ~~board or governing authority~~] shall not publicly disclose [~~its~~]  
6 the reasons for termination.

7 D. A local [~~school board or governing authority~~]  
8 superintendent may not terminate [~~an~~] a school employee who has  
9 been employed by a school district or state agency for three  
10 consecutive years without just cause. "Just cause" for the  
11 termination of a teacher includes low effectiveness ratings and  
12 unsatisfactory, uncorrected work performance. A teacher who  
13 earns the lowest effectiveness rating on the school district's  
14 evaluation scale for three consecutive years shall be  
15 terminated unless the teacher can demonstrate that the data or  
16 other information relied on for the teacher's evaluation  
17 results was inaccurate or misrepresented. Other reasons for  
18 just cause may also apply.

19 E. The school employee's request pursuant to  
20 Subsection C of this section shall be granted if [~~he~~] the  
21 school employee responds to the local superintendent's [~~or~~  
22 ~~administrator's~~] written reasons as provided in Subsection C of  
23 this section by submitting in writing to the local  
24 superintendent [~~or administrator~~] a contention that the  
25 decision to terminate [~~him~~] was made without just cause. The

1 written contention shall specify the grounds on which it is  
2 contended that the decision was without just cause and shall  
3 include a statement of the facts that the school employee  
4 believes support [~~his~~] the school employee's contention. This  
5 written statement shall be submitted within ten working days  
6 from the date the school employee receives the written reasons  
7 from the local superintendent [~~or administrator~~]. The  
8 submission of this statement constitutes:

9 (1) a representation on the part of the school  
10 employee that [~~he~~] the school employee can support [~~his~~] the  
11 school employee's contentions; and

12 (2) an acknowledgment that the local [~~school~~  
13 ~~board or governing authority~~] superintendent may offer the  
14 causes for [~~its~~] the school principal's decision and any  
15 relevant data in [~~its~~] the local superintendent's possession in  
16 rebuttal of [~~his~~] the school employee's contentions.

17 F. A local school board [~~or governing authority~~]  
18 shall meet to hear the school employee's statement in no less  
19 than five or more than fifteen working days after the local  
20 school board [~~or governing authority~~] receives the statement.  
21 The hearing shall be conducted informally in accordance with  
22 the provisions of the Open Meetings Act. The school employee  
23 and the local superintendent [~~or administrator~~] may each be  
24 accompanied by a person of [~~his~~] the school employee's or the  
25 superintendent's choice. First, the superintendent shall

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1 present the factual basis for ~~[his]~~ the determination that just  
2 cause exists for the termination of the school employee,  
3 limited to those reasons provided to the school employee  
4 pursuant to Subsection C of this section. ~~[Then]~~ Second, the  
5 school employee shall present ~~[his]~~ the school employee's  
6 contentions, limited to those grounds specified in Subsection E  
7 of this section. The local ~~[school board or governing~~  
8 ~~authority]~~ superintendent may offer such rebuttal testimony as  
9 ~~[it]~~ the local superintendent deems relevant. All witnesses  
10 may be questioned by the local school board ~~[or governing~~  
11 ~~authority]~~, the school employee or ~~[his]~~ the school employee's  
12 representative and the local superintendent ~~[or administrator]~~  
13 or ~~[his]~~ the local superintendent's representative. The local  
14 school board ~~[or governing authority]~~ may consider only such  
15 evidence as is presented at the hearing and need consider only  
16 such evidence as it considers reliable. No record shall be  
17 made of the proceeding. The local school board ~~[or governing~~  
18 ~~authority]~~ shall notify the school employee and the local  
19 superintendent ~~[or administrator]~~ of its decision in writing  
20 within five working days from the conclusion of the meeting."

21 SECTION 12. Section 22-10A-25 NMSA 1978 (being Laws 1986,  
22 Chapter 33, Section 23, as amended) is amended to read:

23 "22-10A-25. APPEALS--INDEPENDENT ARBITRATOR--  
24 QUALIFICATIONS--PROCEDURE--BINDING DECISION.--

25 A. ~~[An]~~ A school employee who is still aggrieved by

1 a decision of a local school board [~~or governing authority~~]  
2 rendered pursuant to Section [~~22-10-14~~] 22-10A-24 NMSA 1978 may  
3 appeal the decision to an arbitrator. A written appeal shall  
4 be submitted to the local superintendent [~~or administrator~~]  
5 within five working days from the receipt of the local school  
6 board's [~~or governing authority's~~] written decision or the  
7 refusal of the board [~~or authority~~] to grant a hearing. The  
8 appeal shall be accompanied by a statement of particulars  
9 specifying the grounds on which it is contended that the  
10 decision was impermissible pursuant to Subsection E of Section  
11 [~~22-10-14~~] 22-10A-24 NMSA 1978 and including a statement of  
12 facts supporting the contentions. Failure of the school  
13 employee to submit a timely appeal or a statement of  
14 particulars with the appeal shall disqualify [~~him~~] the school  
15 employee for any appeal and render the local school board's [~~or~~  
16 ~~governing authority's~~] decision final.

17 B. The local school board [~~or governing authority~~]  
18 and the school employee shall meet within ten working days from  
19 the receipt of the request for an appeal and select an  
20 independent arbitrator to conduct the appeal. If the parties  
21 fail to agree on an independent arbitrator, they shall request  
22 the presiding judge in the judicial district in which the  
23 school employee's public school is located to select one. The  
24 presiding judge shall select the independent arbitrator within  
25 five working 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~~] or is a member of or employed by any  
9 professional or labor organization of which the school employee  
10 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~~].

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

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1 cause for [~~its~~] the action, then the burden shifts to the  
2 school employee to rebut the evidence presented by the local  
3 school board [~~or governing authority~~].

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

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

22 M. The independent arbitrator shall render a  
23 written decision affirming or reversing the action of the local  
24 school board [~~or governing authority~~]. The decision shall  
25 contain findings of fact and conclusions of law. The parties

1 shall receive actual written notice of the decision of the  
2 independent arbitrator within ten working days from the  
3 conclusion of the de novo hearing.

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

13 O. Unless a party can demonstrate prejudice arising  
14 from a departure from the procedures established in this  
15 section and in Section [~~22-10-14~~] 22-10A-24 NMSA 1978, such  
16 departure shall be presumed to be harmless error.

17 P. The decision of the independent arbitrator shall  
18 be binding on both parties and shall be final and nonappealable  
19 except where the decision was procured by corruption, fraud,  
20 deception or collusion, in which case it shall be appealed to  
21 the district court in the judicial district in which the public  
22 school or state agency is located.

23 Q. Each party shall bear its own costs and  
24 expenses. The independent arbitrator's fees and other expenses  
25 incurred in the conduct of the arbitration shall be assigned at

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1 the discretion of the independent arbitrator.

2 R. ~~[Local]~~ School districts shall file a record  
3 with the department ~~[of education]~~ of all terminations and all  
4 actions arising from terminations annually."

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

7 "22-10A-26. EXCEPTED FROM PROVISIONS.--Sections ~~[22-10-12~~  
8 ~~through 22-10-14.1]~~ 22-10A-22 through 22-10A-25 NMSA 1978 do  
9 not apply to the following:

10 A. a ~~[certified]~~ licensed school ~~[instructor]~~  
11 employee employed to fill the position of a ~~[certified]~~  
12 licensed school ~~[instructor]~~ employee entering military  
13 service;

14 B. a person who is employed as a ~~[certified]~~ school  
15 administrator; or

16 C. ~~[a non-certified]~~ an unlicensed school employee  
17 employed to perform primarily district-wide management  
18 functions."

19 SECTION 14. Section 22-10A-27 NMSA 1978 (being Laws 1986,  
20 Chapter 33, Section 24, as amended) is amended to read:

21 "22-10A-27. DISCHARGE HEARING--PROCEDURES.--

22 A. A local ~~[school board or the governing authority~~  
23 ~~of a state agency]~~ superintendent may discharge a ~~[certified]~~  
24 licensed school employee only for just cause according to the  
25 following procedure:

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1 (1) the ~~[superintendent]~~ school principal  
2 shall serve a written notice of ~~[his]~~ intent to recommend  
3 discharge on the ~~[certified]~~ licensed school employee in  
4 accordance with the law for service of process in civil  
5 actions; ~~[and]~~

6 (2) the ~~[superintendent]~~ school principal  
7 shall state in the notice of ~~[his]~~ intent to recommend  
8 discharge the cause for ~~[his]~~ the recommendation; and

9 (3) the superintendent shall issue a notice of  
10 discharge to the licensed school employee and shall advise the  
11 ~~[certified]~~ licensed school employee of ~~[his]~~ the licensed  
12 school employee's right to a discharge hearing before the local  
13 school board ~~[or governing authority]~~ as provided in this  
14 section.

15 B. A ~~[certified]~~ licensed school employee who  
16 receives a notice of ~~[intent to recommend]~~ discharge ~~[pursuant~~  
17 ~~to Subsection A of this section]~~ from the local superintendent  
18 may exercise ~~[his]~~ the licensed school employee's right to a  
19 hearing before the local school board ~~[or governing authority]~~  
20 by giving the local superintendent ~~[or administrator]~~ written  
21 notice of that election within five working days of ~~[his]~~ the  
22 licensed school employee's receipt of the notice ~~[to recommend]~~  
23 of discharge.

24 C. The local school board ~~[or governing authority]~~  
25 shall hold a discharge hearing no less than twenty and no more

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1 than forty working days after the local superintendent [~~or~~  
2 ~~administrator~~] receives the written election from the  
3 [~~certified~~] licensed school employee and shall give the  
4 [~~certified~~] licensed school employee at least ten days written  
5 notice of the date, time and place of the discharge hearing.

6 D. [~~Each party~~] The local superintendent [~~or~~  
7 ~~administrator~~] and the [~~certified~~] licensed school employee may  
8 be accompanied by a person of [~~his~~] the party's choice.

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

12 F. The local school board [~~or governing authority~~]  
13 shall have the authority to issue subpoenas for the attendance  
14 of witnesses and to produce books, records, documents and other  
15 evidence at the request of either party and shall have the  
16 power to administer oaths.

17 G. The local superintendent [~~or administrator~~]  
18 shall have the burden of proving by a preponderance of the  
19 evidence that, at the time of the notice of [~~intent to~~  
20 ~~recommend~~] discharge, [~~he~~] the superintendent had just cause to  
21 discharge the [~~certified~~] licensed school employee.

22 H. The local superintendent [~~or administrator~~]  
23 shall present [~~his~~] evidence first, with the [~~certified~~]  
24 licensed school employee presenting [~~his~~] evidence thereafter.  
25 The local school board [~~or governing authority~~] shall permit

1 either party to call, examine and cross-examine witnesses and  
2 to introduce documentary evidence.

3 I. An official record shall be made of the hearing.  
4 Either party may have one copy of the record at the expense of  
5 the [~~local school board or governing authority~~] school  
6 district.

7 J. The local school board shall render [~~its~~] a  
8 written decision within twenty days of the conclusion of the  
9 discharge hearing."

10 SECTION 15. Section 22-10A-28 NMSA 1978 (being Laws 1986,  
11 Chapter 33, Section 25, as amended) is amended to read:

12 "22-10A-28. APPEALS--INDEPENDENT ARBITRATOR--  
13 QUALIFICATIONS--PROCEDURE--BINDING DECISION.--

14 A. A [~~certified~~] licensed school employee aggrieved  
15 by a decision of a local school board [~~or governing authority~~]  
16 to discharge [~~him~~] the licensed school employee after a  
17 discharge hearing held pursuant to Section [~~22-10-17~~] 22-10A-27  
18 NMSA 1978 may appeal the decision to an independent arbitrator.  
19 A written notice of appeal shall be submitted to the local  
20 superintendent [~~or administrator~~] within five working days from  
21 the receipt of the copy of the written decision of the local  
22 school board [~~or governing authority~~].

23 B. The local school board [~~or governing authority~~]  
24 and the [~~certified~~] licensed school employee shall meet within  
25 ten calendar days from the receipt of the notice of appeal and

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1 select an independent arbitrator to conduct the appeal, or, in  
2 the event the parties fail to agree on an independent  
3 arbitrator, they shall request the presiding judge in the  
4 judicial district in which the public school is located to  
5 select the independent arbitrator. The presiding judge shall  
6 select the independent within five working days from the date  
7 of the parties' request.

8 C. A qualified independent arbitrator shall be  
9 appointed who is versed in employment practices and school  
10 procedures. No person shall be appointed to serve as the  
11 independent arbitrator who has any direct or indirect financial  
12 interest in the outcome of the proceeding, has any relationship  
13 to any party in the proceeding, is employed by the local school  
14 board [~~or governing authority~~] or is a member of or employed by  
15 any professional organization of which the [~~certified~~] licensed  
16 school employee is a member.

17 D. Appeals from the decision of the local school  
18 board [~~or governing authority~~] shall be decided after a de novo  
19 hearing before the independent arbitrator. The local school  
20 board [~~or governing authority~~] shall have the burden of proving  
21 by a preponderance of the evidence that, at the time of the  
22 notice of [~~intent to recommend~~] discharge, the local  
23 superintendent [~~or administrator~~] had just cause to discharge  
24 the [~~certified~~] licensed school employee. The local school  
25 board [~~or governing authority~~] shall present [~~its~~] evidence



1 first, with the [~~certified~~] licensed school employee presenting  
2 [~~his~~] evidence thereafter.

3 E. The hearing shall be held within thirty working  
4 days from the [~~selection of the independent arbitrator. The~~  
5 ~~independent arbitrator~~] notice of appeal. The local school  
6 board shall give written notice of the date, time and place of  
7 the hearing, and such notice shall be sent to the [~~certified~~]  
8 licensed school employee and the local school board [~~or~~  
9 ~~governing authority~~].

10 F. Each party has the right to be represented by  
11 counsel at the hearing. [~~before the independent arbitrator.~~]

12 G. Discovery shall be limited to depositions and  
13 requests for production of documents on a time schedule to be  
14 established by the independent arbitrator.

15 H. The independent arbitrator may issue subpoenas  
16 for the attendance of witnesses and for the production of  
17 books, records, documents and other evidence and shall have the  
18 power to administer oaths. Subpoenas so issued shall be served  
19 and enforced in the manner provided by law for the service and  
20 enforcement of subpoenas in a civil action or in the manner  
21 provided by the American arbitration association's voluntary  
22 labor arbitration rules if that entity is used by the parties.

23 I. The rules of civil procedure shall not apply to  
24 the hearing, but it shall be conducted so that both contentions  
25 and responses are amply and fairly presented. To this end, the

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1 independent arbitrator shall permit either party to call and  
2 examine witnesses, cross-examine witnesses and introduce  
3 exhibits. The technical rules of evidence shall not apply,  
4 but, in ruling on the admissibility of evidence, the  
5 independent arbitrator may require reasonable substantiation of  
6 statements or records tendered, the accuracy or truth of which  
7 is in reasonable doubt.

8 J. An official record shall be made of the hearing.  
9 Either party may order a transcript of the record at [~~his~~] the  
10 party's own expense.

11 K. The independent arbitrator shall render a  
12 written decision affirming or reversing the action of the local  
13 school board [~~or governing authority~~]. The decision shall  
14 contain findings of fact and conclusions of law. The parties  
15 shall receive the written decision of the independent  
16 arbitrator within thirty working days from the conclusion of  
17 the hearing.

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

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

1 court of appeals by filing a notice of appeal as provided by  
2 the New Mexico rules of appellate procedure.

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

9 "22-10A-29. COMPENSATION PAYMENTS TO DISCHARGED  
10 PERSONNEL.--

11 A. Payment of compensation to any [~~certified~~]  
12 licensed school [~~instructor~~] employee employed by a [~~local~~  
13 ~~school board or by the governing authority of a state agency~~]  
14 school district and payment of compensation to any [~~certified~~]  
15 school administrator employed by a [~~local~~] school [~~board~~]  
16 district shall terminate as of the date, after a hearing, that  
17 a written copy of the decision of the local [~~school board or~~  
18 ~~the governing authority of the state agency~~] superintendent to  
19 discharge the [~~person~~] licensed school employee is served on  
20 the person. If the compensation of the person discharged  
21 during the term of a written employment contract is to be paid  
22 monthly during a twelve-month period for services to be  
23 performed during a period less than twelve months, the person  
24 shall be entitled to a pro rata share of the compensation  
25 payments due for the period during the twelve months in which

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1 no services were to be performed.

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

17 SECTION 17. Section 22-10A-30 NMSA 1978 (being Laws 1967,  
18 Chapter 16, Section 123, as amended) is amended to read:

19 "22-10A-30. SUPERVISION AND CORRECTION PROCEDURES.--

20 A. The [~~state board~~] department shall prescribe by  
21 [~~regulations~~] rule procedures to be followed by a [~~local school~~  
22 ~~board or the governing authority of a state agency~~] school  
23 district in supervising and correcting unsatisfactory work  
24 performance of [~~certified~~] licensed school [~~personnel~~]  
25 employees before notice of [~~intent to~~] discharge is served upon

1 them ~~[and by the governing authority of a state agency in~~  
 2 ~~supervising and correcting unsatisfactory work performance of~~  
 3 ~~certified school instructors before notice of intent to~~  
 4 ~~discharge is served upon them. These regulations]~~.

5 B. The department's rules shall provide that  
 6 written records shall be kept on all action taken by a [~~local~~]  
 7 school [~~board or the governing authority of a state agency]~~  
 8 district to improve [~~any person's~~] a school employee's  
 9 unsatisfactory work performance and all improvements made in  
 10 the [~~person's~~] school employee's work performance. These  
 11 written records shall be introduced as evidence at any hearing  
 12 for termination or discharge of the [~~person~~] school employee  
 13 conducted by the local school board [~~or the governing authority~~  
 14 ~~of the state agency]~~."

15 **SECTION 18.** Section 22-10A-31 NMSA 1978 (being Laws 1967,  
 16 Chapter 16, Section 124, as amended) is amended to read:

17 "22-10A-31. DENIAL, SUSPENSION AND REVOCATION OF  
 18 LICENSES.--In accordance with the procedures provided in the  
 19 Uniform Licensing Act, the [~~state board~~] department may deny,  
 20 suspend or revoke a department-issued license for incompetency,  
 21 moral turpitude or any other good and just cause."

22 **SECTION 19. APPLICABILITY.**--The provisions of Sections 2  
 23 through 18 of this act apply to contracts signed for the 2012-  
 24 2013 and subsequent school years and for termination and  
 25 discharge actions occurring after July 1, 2012.

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