

SENATE EDUCATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 315

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

AN ACT

RELATING TO SCHOOL PERSONNEL; CREATING A COUNCIL TO MAKE  
RECOMMENDATIONS FOR A TEACHER EVALUATION FRAMEWORK AND A  
PRINCIPAL AND HEAD ADMINISTRATOR EVALUATION FRAMEWORK;  
REQUIRING THE PUBLIC EDUCATION DEPARTMENT TO USE THE TEACHER  
EVALUATION FRAMEWORK AND PRINCIPAL AND HEAD ADMINISTRATOR  
EVALUATION FRAMEWORK TO DEVELOP A STATE TEACHER, PRINCIPAL AND  
HEAD ADMINISTRATOR EVALUATION PROGRAM; REQUIRING SCHOOL  
DISTRICTS AND CHARTER SCHOOLS TO USE THE STATE TEACHER,  
PRINCIPAL AND HEAD ADMINISTRATOR EVALUATION PROGRAM TO EVALUATE  
EFFECTIVENESS IN TEACHING AND TO GIVE TEACHERS, PRINCIPALS AND  
HEAD ADMINISTRATORS A PERFORMANCE RATING UPON WHICH PERSONNEL  
DECISIONS SHALL BE MADE.

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

SECTION 1. A new section of the School Personnel Act is

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underscoring material = new  
[bracketed material] = delete

1 enacted to read:

2 "[NEW MATERIAL] TEACHER EVALUATION FRAMEWORK AND PRINCIPAL  
3 AND HEAD ADMINISTRATOR EVALUATION FRAMEWORK.--

4 A. By June 1, 2012, the department shall convene a  
5 council to develop recommendations for a teacher evaluation  
6 framework and a principal and head administrator evaluation  
7 framework for the department to consider in adopting a state  
8 teacher, principal and head administrator evaluation program.  
9 The council shall work in accordance with this section from  
10 June 1, 2012 through December 31, 2015. The department shall  
11 provide staff to assist the council as needed.

12 B. Council members shall include:

13 (1) the secretary or the secretary's designee;  
14 and

15 (2) geographically diverse members appointed  
16 by the secretary as follows:

17 (a) sixteen teachers, nominated by  
18 public school teacher organizations, two of whom have a level  
19 two license and currently teach an elementary school class on a  
20 full-time basis, two of whom have a level three license and  
21 currently teach an elementary school class on a full-time  
22 basis, two of whom have a level two license and currently teach  
23 a middle school class on a full-time basis, two of whom have a  
24 level three license and currently teach a middle school class  
25 on a full-time basis, two of whom have a level two license and

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1 currently teach a high school class on a full-time basis, two  
2 of whom have a level three license and currently teach a high  
3 school class on a full-time basis, two of whom have a level two  
4 license and currently teach a class at a charter school on a  
5 full-time basis and two of whom have a level three license and  
6 currently teach a class at a charter school on a full-time  
7 basis;

8 (b) six principals, nominated by the New  
9 Mexico coalition of school administrators, to serve on the  
10 council, two of whom currently administer an elementary school,  
11 two of whom currently administer a middle school and two of  
12 whom currently administer a high school;

13 (c) two head administrators, nominated  
14 by the New Mexico coalition for charter schools; and

15 (d) two representatives of a public  
16 school parent organization who are nominated by that  
17 organization.

18 C. If the department has sufficient funds in its  
19 budget, the members of the council and any work groups of the  
20 council may be reimbursed for travel expenses pursuant to the  
21 Per Diem and Mileage Act and shall receive no other  
22 compensation, perquisite or allowance.

23 D. The council may:

24 (1) convene temporary work groups, which may  
25 include non-council members with appropriate expertise, to

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1 study and make recommendations on the teacher evaluation  
2 framework and the principal and head administrator evaluation  
3 framework; and

4 (2) consult with state, regional and national  
5 experts.

6 E. By December 31, 2012, the council shall make  
7 specific and comprehensive recommendations for a teacher  
8 evaluation framework appropriate for evaluating each licensure  
9 level of licensed teachers and determining effectiveness in  
10 teaching, including:

- 11 (1) a research-based evaluation protocol;
- 12 (2) criteria for selecting, certifying and  
13 training a team of certified evaluators;
- 14 (3) the sequence and schedule for teacher  
15 evaluations by a team of certified evaluators and the school  
16 principal or head administrator;
- 17 (4) criteria for assessing school progress on  
18 the educational plan for student success;
- 19 (5) criteria for using student learning  
20 objectives as a component of measuring effectiveness in  
21 teaching;
- 22 (6) criteria for publishing, collecting and  
23 using surveys from students;
- 24 (7) four or more performance ratings to  
25 indicate a teacher's level of effectiveness in teaching, which

1 shall include at least:

- 2 (a) distinguished;  
3 (b) proficient;  
4 (c) basic; and  
5 (d) unsatisfactory; and  
6 (8) criteria and training for establishing and  
7 implementing peer assistance, review and intervention programs  
8 for teachers who earn a low performance rating.

9 F. By December 31, 2012, the council shall make  
10 specific and comprehensive recommendations for a principal and  
11 head administrator evaluation framework, including:

- 12 (1) a research-based evaluation protocol;  
13 (2) criteria for selecting, certifying and  
14 training the evaluators;  
15 (3) the sequence and schedule for evaluations  
16 of principals and head administrators;  
17 (4) criteria for assessing school progress on  
18 the educational plan for student success;  
19 (5) criteria for assessing a school  
20 environment and management by a principal or head  
21 administrator;  
22 (6) criteria for using student learning  
23 objectives as a component of measuring the effectiveness in  
24 school leadership;  
25 (7) criteria for publishing, collecting and

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1 using surveys from students, parents and teachers; and

2 (8) four or more performance ratings to  
3 indicate a principal's or head administrator's level of  
4 effectiveness in school leadership, which ratings shall include  
5 at least the following:

- 6 (a) highly effective;
- 7 (b) effective;
- 8 (c) improvement necessary; and
- 9 (d) does not meet standards.

10 G. By December 31, 2012, to accompany the teacher  
11 evaluation framework and principal and head administrator  
12 evaluation framework, the council shall make specific and  
13 comprehensive recommendations for:

14 (1) the department's adoption of a state  
15 teacher, principal and head administrator program that  
16 integrates the teacher evaluation framework and the principal  
17 and head administrator framework in ways that best serve and  
18 support student learning;

19 (2) training materials and guidelines for  
20 performing teacher, principal and head administrator  
21 evaluations;

22 (3) the sequence and schedule of measures to  
23 be taken in response to teacher, principal and head  
24 administrator evaluations;

25 (4) the department's alignment of a state

1 teacher, principal and head administrator evaluation program  
2 with the current licensure and compensation systems; and

3 (5) any changes to department rules or laws,  
4 if necessary, for teacher, principal and head administrator  
5 evaluation results to be used for personnel decisions in areas  
6 such as compensation, promotion, retention, termination and  
7 professional development.

8 H. By April 30, 2013, the department shall adopt a  
9 state teacher, principal and head administrator evaluation  
10 program that:

11 (1) for teachers:

12 (a) shall be used to evaluate each  
13 licensed teacher according to standards appropriate for the  
14 teacher's level of licensure;

15 (b) is based on the council's teacher  
16 evaluation framework and recommendations;

17 (c) is based on a set of standards of  
18 practice that takes into account the complexities of teaching;

19 (d) includes formative and summative  
20 evaluation criteria;

21 (e) includes evidence of teaching  
22 ability and student learning from multiple sources;

23 (f) includes and is subject to  
24 continuous updating of instruments and processes as research on  
25 practices leading to valued student outcomes becomes available;

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1 (g) provides continuous opportunities  
2 for professional development and growth for teachers by  
3 addressing their professional needs according to the teachers'  
4 experience, knowledge and skills;

5 (h) provides clear and objective  
6 standards for determining effectiveness in teaching and  
7 assigning a performance rating in one of four or more  
8 performance levels recommended by the council, based on the  
9 competencies specific to each teacher licensure level and  
10 judged by multiple appropriate measures;

11 (i) provides evaluation instruments,  
12 rubrics or other tools recommended by the council as fair,  
13 transparent, rigorous and valid and specific to each teacher  
14 licensure level;

15 (j) provides procedures for conducting  
16 evaluations based on a teacher's licensure level, with  
17 sufficient time and specified frequency to gather adequate data  
18 to justify the performance ratings contained in the evaluation;

19 (k) provides a connection between the  
20 professional development plan required in Section 22-10A-19  
21 NMSA 1978 and the teacher evaluations;

22 (l) establishes the sequence and  
23 schedule of measures to be taken, if any, in response to  
24 teacher evaluations, including a professional improvement plan  
25 that includes peer assistance, review and intervention if

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1 sufficient improvement does not occur within the prescribed  
2 time and possible termination of a teacher who receives an  
3 unsatisfactory performance rating on one or more occasions  
4 resulting from a teacher evaluation;

5 (m) establishes the process by which a  
6 teacher may appeal adverse performance ratings;

7 (n) establishes procedures for  
8 maintaining the confidentiality of personally identifiable  
9 student information in performing evaluations;

10 (o) establishes whether individual  
11 teacher performance ratings are a confidential personnel matter  
12 or a matter of public record; and

13 (p) provides support to school districts  
14 and charter schools for implementing the state teacher,  
15 principal and head administrator evaluation program, including:

16 1) ongoing training and collaboration time to ensure that  
17 teachers understand student data and have the resources to  
18 provide instruction that responds appropriately to student  
19 data; 2) ongoing training in the implementation and use of the  
20 state teacher, principal and head administrator evaluation  
21 program sufficient for all teachers; and 3) ongoing training in  
22 the implementation and use of the state teacher, principal and  
23 head administrator evaluation program for the certified  
24 evaluators and regular calibration of an evaluation tool agreed  
25 upon by the certified evaluators; and

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- 1                   (2) for principals and head administrators:  
2                   (a) is based on the council's principal  
3 and head administrator evaluation framework and  
4 recommendations;  
5                   (b) includes evidence of effectiveness  
6 in school leadership from multiple sources;  
7                   (c) provides clear and objective  
8 standards for determining effectiveness in school leadership  
9 and assigning a performance rating in one of four or more  
10 performance levels recommended by the council and judged by  
11 multiple appropriate measures;  
12                   (d) provides evaluation instruments,  
13 rubrics or other tools recommended by the council as fair,  
14 transparent, rigorous and valid;  
15                   (e) provides procedures for conducting  
16 evaluations with sufficient time and specified frequency to  
17 gather adequate data to justify the performance ratings  
18 contained in the evaluation;  
19                   (f) establishes the sequence and  
20 schedule of measures to be taken, if any, in response to  
21 principal and head administrator evaluations;  
22                   (g) establishes the process by which a  
23 principal or head administrator may appeal adverse performance  
24 ratings;  
25                   (h) establishes whether individual

1 principal or head administrator performance ratings are a  
2 confidential personnel matter or a matter of public record; and

3 (i) provides support to school districts  
4 and the governing bodies of charter schools for implementing  
5 the state teacher, principal and head administrator evaluation  
6 program, including ongoing training in the implementation and  
7 use of the state teacher, principal and head administrator  
8 evaluation program for the evaluators and regular calibration  
9 of an evaluation tool agreed upon by the evaluators.

10 I. By May 1, 2013, the department shall make  
11 available to school districts and charter schools:

12 (1) the state teacher, principal and head  
13 administrator evaluation program;

14 (2) its rules on the state teacher, principal  
15 and head administrator evaluation program; and

16 (3) related materials from evidence-based  
17 sources that may assist evaluators in implementing and using  
18 the state teacher, principal and head administrator evaluation  
19 program.

20 J. Starting with the 2013-2014 school year, each  
21 licensed teacher shall be evaluated by a team of certified  
22 evaluators and the teacher's school principal or head  
23 administrator using the state teacher, principal and head  
24 administrator evaluation program and the following methods and  
25 criteria to evaluate teachers in a rigorous, fair and

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1 transparent way in the following percentages:

2 (1) formative classroom observations of  
3 teachers by a team of certified evaluators using a  
4 research-based protocol, performed twice during each school  
5 year, and comprising twenty percent of the total evaluation;

6 (2) summative classroom observations of  
7 teachers by a school principal or head administrator using a  
8 research-based protocol, performed twice during the school year  
9 every three years, comprising twenty percent of the total  
10 evaluation;

11 (3) student learning measured by student  
12 learning objectives, comprising thirty percent of the total  
13 evaluation;

14 (4) school progress as measured by meeting the  
15 educational plan for student success goals, comprising ten  
16 percent of the total observation; and

17 (5) student feedback compiled from student  
18 surveys, comprising twenty percent of the total evaluation.

19 K. Starting with the 2013-2014 school year, each  
20 school principal shall be evaluated by the local superintendent  
21 and each head administrator shall be evaluated by a designee of  
22 the governing body of a charter school using the state teacher,  
23 principal and head administrator evaluation program and the  
24 following methods and criteria to evaluate principals and head  
25 administrators in a rigorous, fair and transparent way in the

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1 following percentages:

2 (1) instructional achievement and school  
3 progress as measured by the educational plan for student  
4 success goals, comprising thirty percent of the total  
5 evaluation;

6 (2) operations of the school, comprising  
7 twenty percent of the total evaluation;

8 (3) the principal's or head administrator's  
9 execution of teacher evaluations and provision of support for  
10 improvement of teacher performance, if necessary, pursuant to  
11 the state teacher, principal and head administrator evaluation  
12 program, comprising twenty percent of the total evaluation;

13 (4) teacher and staff feedback compiled from  
14 surveys and consideration of and responsiveness to teacher and  
15 staff feedback in the management of the school, comprising  
16 twenty percent of the total evaluation; and

17 (5) student and parent feedback compiled from  
18 surveys, comprising ten percent of the total evaluation.

19 L. The results of each evaluation shall be provided  
20 to the teacher, principal or head administrator in a timely  
21 manner. School districts and charter schools shall document  
22 and use the results of evaluations to assist with improving  
23 performance as needed. The department shall monitor each  
24 school district's and charter school's administration of the  
25 state teacher, principal and head administrator evaluation

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1 program.

2 M. By March 1 of 2014 and 2015, the council and the  
3 department shall prepare a draft status report on the  
4 effectiveness of the implemented state teacher, principal and  
5 head administrator evaluation program and distribute the draft  
6 status report to all school districts, charter schools and  
7 public post-secondary educational institutions for comments.  
8 By June 1 of 2014 and 2015, the council and the department  
9 shall provide to the governor and the legislative education  
10 study committee a final status report that references submitted  
11 comments. Each draft and final status report shall include:

12 (1) data that show the aggregate number of  
13 teachers, the aggregate number of principals and the aggregate  
14 number of head administrators at each level of performance  
15 rating across the state and for each school district and  
16 charter school;

17 (2) summaries of feedback from surveys of  
18 teachers, staff, students and parents; and

19 (3) recommendations of the council, based on  
20 the outcomes of the state teacher, principal and head  
21 administrator evaluation program and other information the  
22 council or department deems relevant, for changes or  
23 improvements to the program through amendments to the law or  
24 changes to department rule.

25 N. As used in this section:

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1 (1) "certified evaluator" means a licensed  
2 level 3 educator selected, trained and certified by the  
3 department to accurately assess teacher practice and conduct  
4 formative evaluations of licensed teachers based on the  
5 teachers' licensure level;

6 (2) "educational plan for student success"  
7 means a student-centered tool developed to define the role of  
8 the academic improvement plan within the school district and  
9 charter school that addresses methods to improve a student's  
10 learning and success in school and that identifies specific  
11 measures of a student's progress;

12 (3) "formative evaluation" means an evaluation  
13 during the school year by a team of certified evaluators that  
14 creates ongoing opportunities for feedback to enable a  
15 teacher's instruction to be fine-tuned to:

16 (a) achieve good performance that meets  
17 or exceeds goals, criteria and expected standards;

18 (b) address and develop teaching  
19 practices in areas of weakness; and

20 (c) improve teaching skills during the  
21 formative evaluation process;

22 (4) "head administrator" means the  
23 administrative and instructional leader of a charter school;

24 (5) "student learning objectives" means  
25 teacher-designed and -created clear and specific goals that are

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1 aligned to the standards; and

2 (6) "summative evaluation" means a teacher  
3 evaluation conducted by a school principal or head  
4 administrator that uses identical criteria for each level of  
5 licensure and includes the results of formative evaluations to  
6 uniformly measure teacher performance within each licensure  
7 level."

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

10 "22-8B-5. CHARTER SCHOOLS--STATUS--LOCAL SCHOOL BOARD  
11 AUTHORITY.--

12 A. The local school board may waive only locally  
13 imposed school district requirements for locally chartered  
14 charter schools.

15 B. A state-chartered charter school is exempt from  
16 school district requirements. A state-chartered charter school  
17 is responsible for developing its own written policies and  
18 procedures in accordance with this section.

19 C. The department shall waive requirements or rules  
20 and provisions of the Public School Code pertaining to  
21 individual class load, teaching load, length of the school day,  
22 staffing patterns, subject areas, purchase of instructional  
23 material, evaluation standards for school personnel, school  
24 principal duties and driver education; provided, however, that  
25 each charter school shall implement the state teacher,



1 principal and head administrator evaluation program as provided  
 2 in the School Personnel Act. The department may waive  
 3 requirements or rules and provisions of the Public School Code  
 4 pertaining to graduation requirements. Any waivers granted  
 5 pursuant to this section shall be for the term of the charter  
 6 granted but may be suspended or revoked earlier by the  
 7 department.

8 D. A charter school shall be a public school  
 9 accredited by the department and shall be accountable to the  
 10 chartering authority for purposes of ensuring compliance with  
 11 applicable laws, rules and charter provisions.

12 E. A local school board shall not require any  
 13 employee of the school district to be employed in a charter  
 14 school.

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

18 G. A student who is suspended or expelled from a  
 19 charter school shall be deemed to be suspended or expelled from  
 20 the school district in which the student resides."

21 **SECTION 3.** Section 22-10A-7 NMSA 1978 (being Laws 2003,  
 22 Chapter 153, Section 38, as amended) is amended to read:

23 "22-10A-7. LEVEL ONE LICENSURE.--

24 A. A level one license is a provisional five-year  
 25 license for beginning teachers that requires as a condition of

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1 licensure that the licensee undergo a formal mentorship program  
2 for at least one full school year and [~~an annual intensive~~  
3 ~~performance evaluation by a school administrator~~] teacher  
4 evaluations pursuant to the state teacher, principal and head  
5 administrator evaluation program for at least three full school  
6 years before applying for a level two license.

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

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, including for elementary licensure  
10 beginning January 1, 2013, a rigorous assessment of the  
11 candidate's knowledge of the science of teaching reading; and

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

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

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

23 G. Beginning with the 2003-2004 school year, [with  
24 the adoption by the department of a highly objective uniform  
25 statewide standard of evaluation for level one teachers] the

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1 minimum salary for a level one teacher shall be thirty thousand  
2 dollars (\$30,000) for a standard nine and one-half month  
3 contract.

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

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

11 "22-10A-10. LEVEL TWO LICENSURE.--

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

24 B. The department shall issue a level two license  
25 to an applicant who successfully completes the level one

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1 license or is granted reciprocity as provided by department  
 2 rules; demonstrates [~~essential competency required by the~~  
 3 ~~department as verified by the local superintendent through the~~  
 4 ~~highly objective uniform statewide standard of evaluation]~~  
 5 effectiveness in teaching pursuant to the state teacher,  
 6 principal and head administrator evaluation program; and meets  
 7 other qualifications as required by the department.

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

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

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

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

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

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

24 "22-10A-11. LEVEL THREE LICENSURE--TRACKS FOR TEACHERS,  
 25 COUNSELORS AND SCHOOL ADMINISTRATORS.--

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1           A. A level three-A license is a nine-year license  
2 granted to a teacher who meets the qualifications for that  
3 level and who annually demonstrates ~~[instructional leader~~  
4 ~~competencies]~~ effectiveness in teaching pursuant to the state  
5 teacher, principal and head administrator evaluation program.  
6 If a level three-A teacher does not demonstrate ~~[essential~~  
7 ~~competency]~~ effectiveness in teaching in a given school year,  
8 the school district shall provide the teacher with additional  
9 professional development and peer intervention during the  
10 following school year. ~~[If by the end of that school year the~~  
11 ~~teacher fails to demonstrate essential competency, a school~~  
12 ~~district may choose not to contract with the teacher to teach~~  
13 ~~in the classroom.]~~

14           B. The department shall grant a level three-A  
15 license to an applicant who has been a level two teacher for at  
16 least three years and holds a post-baccalaureate degree or  
17 national board for professional teaching standards  
18 certification; demonstrates instructional leader competence as  
19 required by the department and ~~[verified by the local~~  
20 ~~superintendent through the highly objective uniform statewide~~  
21 ~~standard of]~~ effectiveness in teaching pursuant to the state  
22 teacher, principal and head administrator evaluation program;  
23 and meets other qualifications for the license.

24           C. ~~[With the adoption by the department of a highly~~  
25 ~~objective uniform statewide standard of evaluation for level~~

1 ~~three-A teachers]~~ The minimum salary for a level three-A  
2 teacher for a standard nine and one-half month contract shall  
3 be as follows:

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

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

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

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

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

14 D. A level three-B license is a nine-year license  
15 granted to a school administrator who meets the qualifications  
16 for that level. Licenses may be renewed upon satisfactory  
17 annual demonstration of instructional leader and administrative  
18 competency.

19 E. The department shall grant a level three-B  
20 license to an applicant who:

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

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1 department;

2 (2) holds a post-baccalaureate degree or  
3 national board for professional teaching standards  
4 certification;

5 (3) has satisfactorily completed department-  
6 approved courses in administration and a department-approved  
7 administration apprenticeship program; and

8 (4) demonstrates instructional leader  
9 competence [~~required by the department and verified by the~~  
10 ~~local superintendent through the highly objective uniform~~  
11 ~~statewide standard of evaluation~~].

12 F. Beginning with the 2007-2008 school year, the  
13 minimum annual salary for a level three-B school principal or  
14 assistant school principal shall be fifty thousand dollars  
15 (\$50,000) multiplied by the applicable responsibility factor.

16 [~~G. By the beginning of the 2008-2009 school year,~~  
17 ~~the department shall adopt a highly objective uniform statewide~~  
18 ~~standard of evaluation, which includes data sources linked to~~  
19 ~~student achievement and educational plan for student success~~  
20 ~~progress, for level three-B school principals and assistant~~  
21 ~~school principals and rules for the implementation of that~~  
22 ~~evaluation system linked to the level of responsibility at each~~  
23 ~~school level~~]."

24 SECTION 6. Section 22-10A-19 NMSA 1978 (being Laws 2003,  
25 Chapter 153, Section 50, as amended) is amended to read:

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1           "22-10A-19.  TEACHERS [~~AND SCHOOL PRINCIPALS~~]-  
 2   ACCOUNTABILITY--EVALUATIONS--PROFESSIONAL DEVELOPMENT--PEER  
 3   INTERVENTION [~~MENTORING~~]-SCHOOL PRINCIPAL AND HEAD  
 4   ADMINISTRATOR TRAINING--

5           A.  ~~[The department shall adopt criteria and minimum~~  
 6   ~~highly objective uniform statewide standards of evaluation for~~  
 7   ~~the annual performance evaluation of licensed school employees]~~  
 8   A licensed teacher, a school principal or a head administrator  
 9   shall be evaluated through each school district's or charter  
 10   school's implementation of the state teacher, principal and  
 11   head administrator evaluation program as provided in Section 1  
 12   of this 2012 act.  The professional development plan for  
 13   teachers shall include documentation on how a teacher who  
 14   receives professional development that has been required or  
 15   offered by the state or a school district or charter school  
 16   incorporates the results of that professional development in  
 17   the classroom.

18           ~~[B.  The local superintendent shall adopt policies,~~  
 19   ~~guidelines and procedures for the performance evaluation~~  
 20   ~~process.  Evaluation by other school employees shall be one~~  
 21   ~~component of the evaluation tool for school administrators.~~

22           ~~C.  As part of the highly objective uniform~~  
 23   ~~statewide standard of evaluation for teachers, the school~~  
 24   ~~principal shall observe each teacher's classroom practice to~~  
 25   ~~determine the teacher's ability to demonstrate state-adopted~~

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1 ~~competencies.~~

2 ~~D.]~~ B. At the beginning of each school year,  
3 teachers ~~[and school principals]~~ shall devise professional  
4 development plans for the coming year, and performance  
5 evaluations shall be based in part on how well the professional  
6 development plan was carried out.

7 ~~[E.]~~ C. If a level two or three-A teacher's  
8 performance evaluation ~~[indicates less than satisfactory]~~  
9 results in the lowest performance [and competency] rating for  
10 effectiveness in teaching, the school principal or head  
11 administrator may require the teacher to ~~[undergo]~~ participate  
12 in a peer intervention ~~[including]~~ program and receive  
13 mentoring for a period the school principal or head  
14 administrator deems necessary. If the teacher is unable to  
15 demonstrate ~~[satisfactory]~~ effectiveness in teaching by earning  
16 a higher performance ~~[and competency]~~ rating by the end of the  
17 peer intervention period, ~~[the peer interveners may recommend]~~  
18 termination of the teacher may result.

19 ~~[F.]~~ D. At least every two years, school principals  
20 and head administrators shall attend a training program  
21 ~~[approved by the department]~~ to improve their evaluation,  
22 administrative and instructional leadership skills."

23 **SECTION 7.** Section 22-10A-21 NMSA 1978 (being Laws 1967,  
24 Chapter 16, Section 113, as amended) is amended to read:

25 "22-10A-21. EMPLOYMENT CONTRACTS--DURATION.--

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1           A. All employment contracts between [~~local~~] a  
 2 school [~~boards~~] district and [~~certified~~] licensed school  
 3 [~~personnel and between governing authorities of state agencies~~  
 4 ~~and certified school instructors~~] employees shall be in writing  
 5 on forms approved by the [~~state board~~] department. These forms  
 6 shall contain and specify the term of service, the salary to be  
 7 paid, the method of payment, the causes for termination of the  
 8 contract and other provisions required by the [~~regulations of~~  
 9 ~~the state board~~] rules of the department.

10           B. All employment contracts between [~~local~~] a  
 11 school [~~boards~~] district and [~~certified~~] licensed school  
 12 [~~personnel and between governing authorities of state agencies~~  
 13 ~~and certified school instructors~~] employees shall be for a  
 14 period of one school year except:

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

18                   (2) contracts for the remainder of a school  
 19 year are permitted to staff programs when the availability of  
 20 funds for the programs is not known until after the beginning  
 21 of the school year;

22                   (3) contracts for less than one school year  
 23 are permitted to staff summer school programs and to staff  
 24 federally funded programs in which the federally approved  
 25 programs are specified to be conducted for less than one school

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1 year; and

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

6 ~~(5) contracts not to exceed three years are~~  
7 ~~permitted at the discretion of the local school board for~~  
8 ~~certified school instructors in public schools who have been~~  
9 ~~employed in the school district for three consecutive school~~  
10 ~~years].~~

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

16 D. In determination of eligibility for unemployment  
17 compensation rights and benefits for [~~certified~~] licensed  
18 school [~~instructors~~] employees where those rights and benefits  
19 are claimed to arise from the employment relationship between  
20 [~~governing authorities of state agencies or local school boards~~  
21 ~~and certified school instructors~~] school districts and the  
22 licensed school employees, that period of a year not covered by  
23 a school year shall not be considered an unemployment period.

24 E. [~~Except as provided in Section 22-10-12 NMSA~~  
25 ~~1978~~] A person employed by contract pursuant to this section

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1 has no legitimate objective expectancy of reemployment, and no  
2 contract entered into pursuant to this section shall be  
3 construed as an implied promise of continued employment  
4 pursuant to a subsequent contract."

5 SECTION 8. Section 22-10A-22 NMSA 1978 (being Laws 1967,  
6 Chapter 16, Section 114, as amended) is amended to read:

7 "22-10A-22. NOTICE OF REEMPLOYMENT--TERMINATION OF  
8 LICENSED SCHOOL EMPLOYEES.--

9 A. On or before the last day of the school year of  
10 the existing employment contract, the local [~~school board or~~  
11 ~~the governing authority of the state agency~~] superintendent  
12 shall serve written notice of reemployment or termination on  
13 each [~~certified~~] licensed school [~~instructor~~] employee employed  
14 by the school district [~~or state agency~~]. A notice of  
15 reemployment shall be an offer of employment for the ensuing  
16 school year. A notice of termination shall be a notice of  
17 intention not to reemploy for the ensuing school year. Failure  
18 of the local [~~school board or the governing authority of the~~  
19 ~~state agency~~] superintendent to serve a written notice of  
20 reemployment or termination on a certified school instructor  
21 shall be construed to mean that notice of reemployment has been  
22 served upon the person for the ensuing school year according to  
23 the terms of the existing employment contract but subject to  
24 any additional compensation allowed other certified school  
25 instructors of like qualifications and experience employed by

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1 the school district or state agency.

2 B. Nothing in this section shall be construed to  
3 mean that failure of a local [~~school board or the governing~~  
4 ~~authority of the state agency~~] superintendent to serve a  
5 written notice of reemployment or termination shall  
6 automatically extend a [~~certified~~] licensed school  
7 [~~instructor's~~] employee's employment contract for a period in  
8 excess of one school year.

9 C. Beginning with the 2013-2014 school year and the  
10 implementation of the state teacher, principal and head  
11 administrator evaluation program, a teacher who earns the  
12 lowest performance rating for effectiveness in teaching after  
13 participating in a peer intervention program shall be  
14 terminated."

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

17 "22-10A-23. REEMPLOYMENT--ACCEPTANCE--REJECTION--BINDING  
18 CONTRACT.--

19 A. Each [~~certified~~] licensed school [~~instructor~~]  
20 employee shall deliver to the local [~~school board of the school~~  
21 ~~district or to the governing authority of the state agency in~~  
22 ~~which~~] superintendent by whom the person is employed a written  
23 acceptance or rejection of reemployment for the ensuing school  
24 year within fifteen days from the following:

25 (1) the date written notice of reemployment is

1 served upon the person; or

2 (2) the last day of the school year when no  
3 written notice of reemployment or termination is served upon  
4 the person on or before the last day of the school year.

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

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

18 "22-10A-24. TERMINATION DECISIONS--LOCAL [~~SCHOOL BOARD~~  
19 ~~--GOVERNING AUTHORITY OF A STATE AGENCY~~] SUPERINTENDENT--  
20 PROCEDURES.--

21 A. A local [~~school board or governing authority of~~  
22 ~~a state agency~~] superintendent may terminate an employee with  
23 fewer than three years of consecutive service for any reason  
24 [~~it~~] the local superintendent deems sufficient. Upon request  
25 of the school employee, the local superintendent [~~or~~

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

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

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



1 written request for a meeting and the written request for the  
2 reasons were received by the local superintendent [~~or~~  
3 ~~administrator~~]. Neither the local superintendent [~~or~~  
4 ~~administrator~~] nor the local school board [~~or governing~~  
5 ~~authority~~] shall publicly disclose [~~its~~] the reasons for  
6 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.

11 E. The school employee's request pursuant to  
12 Subsection C of this section shall be granted if [~~he~~] the  
13 school employee responds to the local superintendent's [~~or~~  
14 ~~administrator's~~] written reasons as provided in Subsection C of  
15 this section by submitting in writing to the local  
16 superintendent [~~or administrator~~] a contention that the  
17 decision to terminate [~~him~~] was made without just cause. The  
18 written contention shall specify the grounds on which it is  
19 contended that the decision was without just cause and shall  
20 include a statement of the facts that the school employee  
21 believes support [~~his~~] the school employee's contention. This  
22 written statement shall be submitted within ten working days  
23 from the date the school employee receives the written reasons  
24 from the local superintendent [~~or administrator~~]. The  
25 submission of this statement constitutes:

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

4                   (2) an acknowledgment that the local [~~school~~  
5 ~~board or governing authority~~] superintendent may offer the  
6 causes for [~~its~~] the decision to terminate and any relevant  
7 data in [~~its~~] the local superintendent's possession in rebuttal  
8 of [~~his~~] the school employee's contentions.

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

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1 ~~board or governing authority~~ superintendent may offer such  
 2 rebuttal testimony as [~~it~~] the local superintendent deems  
 3 relevant. All witnesses may be questioned by the local school  
 4 board [~~or governing authority~~], the school employee or [~~his~~]  
 5 the school employee's representative and the local  
 6 superintendent [~~or administrator~~] or [~~his~~] the local  
 7 superintendent's representative. The local school board [~~or~~  
 8 ~~governing authority~~] may consider only such evidence as is  
 9 presented at the hearing and need consider only such evidence  
 10 as it considers reliable. No record shall be made of the  
 11 proceeding. The local school board [~~or governing authority~~]  
 12 shall notify the school employee and the local superintendent  
 13 [~~or administrator~~] of its decision in writing within five  
 14 working days from the conclusion of the meeting."

15 SECTION 11. Section 22-10A-25 NMSA 1978 (being Laws 1986,  
 16 Chapter 33, Section 23, as amended) is amended to read:

17 "22-10A-25. APPEALS--INDEPENDENT ARBITRATOR--  
 18 QUALIFICATIONS--PROCEDURE--BINDING DECISION.--

19 A. [~~An~~] A school employee who is still aggrieved by  
 20 a decision of a local school board [~~or governing authority~~]  
 21 rendered pursuant to Section [~~22-10-14~~] 22-10A-24 NMSA 1978 may  
 22 appeal the decision to an arbitrator. A written appeal shall  
 23 be submitted to the local superintendent [~~or administrator~~]  
 24 within five working days from the receipt of the local school  
 25 board's [~~or governing authority's~~] written decision or the

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1 refusal of the local school board [~~or authority~~] to grant a  
2 hearing. The appeal shall be accompanied by a statement of  
3 particulars specifying the grounds on which it is contended  
4 that the decision was impermissible pursuant to Subsection E of  
5 Section [~~22-10-14~~] 22-10A-24 NMSA 1978 and including a  
6 statement of facts supporting the contentions. Failure of the  
7 school employee to submit a timely appeal or a statement of  
8 particulars with the appeal shall disqualify [~~him~~] the school  
9 employee for any appeal and render the local school board's [~~or~~  
10 ~~governing authority's~~] decision final.

11 B. The local school board [~~or governing authority~~]  
12 and the school employee shall meet within ten working days from  
13 the receipt of the request for an appeal and select an  
14 independent arbitrator to conduct the appeal. If the parties  
15 fail to agree on an independent arbitrator, they shall request  
16 the presiding judge in the judicial district in which the  
17 school employee's public school is located to select one. The  
18 presiding judge shall select the independent arbitrator within  
19 five working days from the date of the parties' request.

20 C. A qualified independent arbitrator shall be  
21 appointed who is versed in employment practices and school  
22 procedures and who preferably has experience in the practice of  
23 law. No person shall be appointed to serve as the independent  
24 arbitrator who has any direct or indirect financial interest in  
25 the outcome of the proceeding, has any relationship to any

1 party in the proceeding, is employed by the local school board  
2 [~~or governing authority~~] or is a member of or employed by any  
3 professional or labor organization of which the school employee  
4 is a member.

5 D. Appeals from the decision of the local school  
6 board [~~or governing authority~~] shall be decided after a de novo  
7 hearing before the independent arbitrator. The issue to be  
8 decided by the independent arbitrator is whether there was just  
9 cause for the decision of the local school board [~~or governing~~  
10 ~~authority~~] to terminate the school employee.

11 E. The de novo hearing shall be held within thirty  
12 working days from the selection of the independent arbitrator.  
13 The arbitrator shall give written notice of the date, time and  
14 place of the hearing, and such notice shall be sent to the  
15 school employee and the local school board [~~or governing~~  
16 ~~authority~~].

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

19 G. Discovery shall be limited to depositions and  
20 requests for production of documents on a time schedule to be  
21 established by the independent arbitrator.

22 H. The independent arbitrator may issue subpoenas  
23 for the attendance of witnesses and for the production of  
24 books, records, documents and other evidence and shall have the  
25 power to administer oaths. Subpoenas so issued shall be served

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1 and enforced in the manner provided by law for the service and  
2 enforcement of subpoenas in a civil action.

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

13 J. The local school board [~~or governing authority~~]  
14 has the burden of proof and shall prove by a preponderance of  
15 the evidence that, at the time the notice of termination was  
16 served on the school employee, the local school board [~~or~~  
17 ~~governing authority~~] had just cause to terminate the school  
18 employee. If the local school board [~~or governing authority~~]  
19 proves by a preponderance of the evidence that there was just  
20 cause for [~~its~~] the action, then the burden shifts to the  
21 school employee to rebut the evidence presented by the local  
22 school board [~~or governing authority~~].

23 K. The independent arbitrator shall uphold the  
24 local school board's [~~or governing authority's~~] decision only  
25 if it proves by a preponderance of the evidence that, at the

1 time the notice of termination was served on the school  
2 employee, the local school board [~~or governing authority~~] had  
3 just cause to terminate the school employee. If the local  
4 school board [~~or governing authority~~] fails to meet [~~its~~] the  
5 burden of proof or if the school employee rebuts the proof  
6 offered by the local school board [~~or governing authority~~], the  
7 arbitrator shall reverse the decision of the local school board  
8 [~~or governing authority~~].

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

16 M. The independent arbitrator shall render a  
17 written decision affirming or reversing the action of the local  
18 school board [~~or governing authority~~]. The decision shall  
19 contain findings of fact and conclusions of law. The parties  
20 shall receive actual written notice of the decision of the  
21 independent arbitrator within ten working days from the  
22 conclusion of the de novo hearing.

23 N. The sole remedies available under this section  
24 shall be reinstatement or payment of compensation reinstated in  
25 full but subject to any additional compensation allowed other

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1 school employees of like qualifications and experience employed  
2 by the school district or state agency and including  
3 reimbursement for compensation during the entire period for  
4 which compensation was terminated, or both, less an offset for  
5 any compensation received by the school employee during the  
6 period the compensation was terminated.

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

11 P. The decision of the independent arbitrator shall  
12 be binding on both parties and shall be final and nonappealable  
13 except where the decision was procured by corruption, fraud,  
14 deception or collusion, in which case it shall be appealed to  
15 the district court in the judicial district in which the public  
16 school or state agency is located.

17 Q. Each party shall bear its own costs and  
18 expenses. The independent arbitrator's fees and other expenses  
19 incurred in the conduct of the arbitration shall be assigned at  
20 the discretion of the independent arbitrator.

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

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

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1 "22-10A-26. EXCEPTED FROM PROVISIONS.--Sections [~~22-10-12~~  
2 ~~through 22-10-14.1~~] 22-10A-22 through 22-10A-25 NMSA 1978 do  
3 not apply to the following:

4 A. a [~~certified~~] licensed school [~~instructor~~  
5 employee employed to fill the position of a [~~certified~~]  
6 licensed school [~~instructor~~] employee entering military  
7 service;

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

10 C. [~~a non-certified~~] an unlicensed school employee  
11 employed to perform primarily district-wide management  
12 functions."

13 SECTION 13. Section 22-10A-27 NMSA 1978 (being Laws 1986,  
14 Chapter 33, Section 24, as amended) is amended to read:

15 "22-10A-27. DISCHARGE HEARING--PROCEDURES.--

16 A. A local [~~school board or the governing authority~~  
17 ~~of a state agency~~] superintendent may discharge a [~~certified~~]  
18 licensed school employee only for just cause according to the  
19 following procedure:

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

25 (2) the [~~superintendent~~] school principal

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1 shall state in the notice of [~~his~~] intent to recommend  
2 discharge the cause for [~~his~~] the recommendation; and

3 (3) the superintendent shall issue a notice of  
4 discharge to the licensed school employee and shall advise the  
5 [~~certified~~] licensed school employee of [~~his~~] the licensed  
6 school employee's right to a discharge hearing before the local  
7 school board [~~or governing authority~~] as provided in this  
8 section.

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

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

25 D. [~~Each party~~] The local superintendent [~~or~~

1 ~~administrator~~] and the [~~certified~~] licensed school employee may  
2 be accompanied by a person of [~~his~~] the party's choice.

3 E. The parties shall complete and respond to  
4 discovery by deposition and production of documents prior to  
5 the discharge hearing.

6 F. The local school board [~~or governing authority~~]  
7 shall have the authority to issue subpoenas for the attendance  
8 of witnesses and to produce books, records, documents and other  
9 evidence at the request of either party and shall have the  
10 power to administer oaths.

11 G. The local superintendent [~~or administrator~~]  
12 shall have the burden of proving by a preponderance of the  
13 evidence that, at the time of the notice of [~~intent to~~  
14 ~~recommend~~] discharge, [~~he~~] the local superintendent had just  
15 cause to discharge the [~~certified~~] licensed school employee.

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

22 I. An official record shall be made of the hearing.  
23 Either party may have one copy of the record at the expense of  
24 the [~~local school board or governing authority~~] school  
25 district.

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

4 SECTION 14. Section 22-10A-28 NMSA 1978 (being Laws 1986,  
5 Chapter 33, Section 25, as amended) is amended to read:

6 "22-10A-28. APPEALS--INDEPENDENT ARBITRATOR--  
7 QUALIFICATIONS--PROCEDURE--BINDING DECISION.--

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

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

1 from the date of the parties' request.

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

11 D. Appeals from the decision of the local school  
12 board [~~or governing authority~~] shall be decided after a de novo  
13 hearing before the independent arbitrator. The local school  
14 board [~~or governing authority~~] shall have the burden of proving  
15 by a preponderance of the evidence that, at the time of the  
16 notice of [~~intent to recommend~~] discharge, the local  
17 superintendent [~~or administrator~~] had just cause to discharge  
18 the [~~certified~~] licensed school employee. The local school  
19 board [~~or governing authority~~] shall present [~~its~~] evidence  
20 first, with the [~~certified~~] licensed school employee presenting  
21 [~~his~~] evidence thereafter.

22 E. The hearing shall be held within thirty working  
23 days from the selection of the independent arbitrator. The  
24 independent arbitrator shall give written notice of the date,  
25 time and place of the hearing, and such notice shall be sent to

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1 the [~~certified~~] licensed school employee and the local [~~school~~  
2 ~~board or governing authority~~] superintendent.

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

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

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

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

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

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

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

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

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

25           SECTION 15. Section 22-10A-29 NMSA 1978 (being Laws 1967,

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1 Chapter 16, Section 120, as amended) is amended to read:

2 "22-10A-29. COMPENSATION PAYMENTS TO DISCHARGED  
3 PERSONNEL.--

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

20 B. In the event the action of the local [~~school~~  
21 ~~board~~] superintendent in discharging a [~~certified~~] licensed  
22 school [~~instructor or administrator or the action of the~~  
23 ~~governing authority of a state agency in discharging a~~  
24 ~~certified school instructor~~] employee is reversed on appeal,  
25 payment of compensation to the person shall be reinstated in

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1 full but subject to any additional compensation allowed other  
 2 [~~certified~~] licensed school [~~instructor~~] employees or  
 3 [~~administrator~~] administrators of like qualifications and  
 4 experience employed by the school district or state agency and  
 5 including reimbursement for compensation during the entire  
 6 period the compensation was terminated less an offset for any  
 7 compensation received by the person from a school district or  
 8 state agency during the period the compensation was  
 9 terminated."

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

12 "22-10A-30. SUPERVISION AND CORRECTION PROCEDURES.--

13 A. The [~~state board~~] department shall prescribe by  
 14 [~~regulations~~] rule procedures to be followed by a [~~local school~~  
 15 ~~board or the governing authority of a state agency~~] school  
 16 district or state agency in supervising and correcting  
 17 unsatisfactory work performance of [~~certified~~] licensed school  
 18 [~~personnel~~] employees before notice of [~~intent to~~] discharge is  
 19 served upon them [~~and by the governing authority of a state~~  
 20 ~~agency in supervising and correcting unsatisfactory work~~  
 21 ~~performance of certified school instructors before notice of~~  
 22 ~~intent to discharge is served upon them. These regulations~~].

23 B. The department's rules shall provide that  
 24 written records shall be kept on all action taken by a [~~local~~]  
 25 school [~~board or the governing authority of a state agency~~]

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1 district to improve [~~any person's~~] a school employee's  
2 unsatisfactory work performance and all improvements made in  
3 the [~~person's~~] school employee's work performance. These  
4 written records shall be introduced as evidence at any hearing  
5 for termination or discharge of the [~~person~~] school employee  
6 conducted by the local school board [~~or the governing authority~~  
7 ~~of the state agency~~]."

8 SECTION 17. Section 22-10A-31 NMSA 1978 (being Laws 1967,  
9 Chapter 16, Section 124, as amended) is amended to read:

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