

RESOLUTION OF THE  
NAABIK'IYATI' COMMITTEE OF THE  
NAVAJO NATION COUNCIL

23<sup>RD</sup> Navajo Nation Council -- Second Year, 2016

AN ACTION

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND  
NAABIK'IYATI'; SUPPORTING STATE OF NEW MEXICO HOUSE BILL  
127, "AN ACT RELATING TO PUBLIC SCHOOL CODE TO REQUIRE THAT  
ALL PUBLIC SCHOOL DISTRICT EMPLOYEES PROVIDE PROOF OF  
SATISFACTORY CLEARANCE OF A FINGERPRINT-BASED BACKGROUND  
CHECK"

WHEREAS:

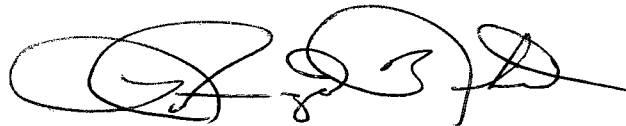
- A. The Navajo Nation established the Health, Education and Human Services Committee (HEHSC) as a Navajo Nation Council standing committee and as such empowered HEHSC to review and recommend resolutions regarding certain matters, including health, education and social services. 2 N.N.C. §§ 164 (A) (9), 400 (A), 401 (B) (6) (a) (2012); see also CO-45-12.
- B. The Navajo Nation established the Naabik'iyati' Committee as a Navajo Nation Council standing committee and as such empowered Naabik'iyati' Committee to coordinate all state programs, including those of the state of Arizona. 2 N.N.C. §§ 164 (A) (9), 700 (A), 701 (A) (4) (2012); see also CO-45-12.
- C. House Bill 127 is introduced in the legislature of the state of New Mexico. This bill is entitled "AN ACT RELATING TO PUBLIC SCHOOL CODE TO REQUIRE THAT ALL PUBLIC SCHOOL DISTRICT EMPLOYEES PROVIDE PROOF OF SATISFACTORY CLEARANCE OF A FINGERPRINT-BASED BACKGROUND CHECK." See attached Exhibit "A."
- D. Background checks for school employees protect school children. Many Navajo children attend New Mexico public schools. It is in the best interest of the Navajo Nation to support state of New Mexico House Bill 127.

**NOW THEREFOR BE IT RESOLVED THAT:**

The Navajo Nation hereby supports state of New Mexico House Bill 127, "AN ACT RELATING TO PUBLIC SCHOOL CODE TO REQUIRE THAT ALL PUBLIC SCHOOL DISTRICT EMPLOYEES PROVIDE PROOF OF SATISFACTORY CLEARANCE OF A FINGERPRINT-BASED BACKGROUND CHECK."

**CERTIFICATION**

I hereby certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 23rd Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of in 13 favor and 0 oppose, this 11<sup>th</sup> Day of February, 2016.

A handwritten signature in black ink, appearing to read 'LoRenzo Bates', with a stylized flourish at the end.

Honorable LoRenzo Bates, Chairperson  
Naabik'íyáti' Committee

Motion: Nelson BeGaye  
Second: Benjamin Bennett



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 127

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

David E. Adkins

AN ACT

RELATING TO PUBLIC EDUCATION; AMENDING THE PUBLIC SCHOOL CODE  
TO REQUIRE THAT ALL PUBLIC SCHOOL DISTRICT EMPLOYEES PROVIDE  
PROOF OF SATISFACTORY CLEARANCE OF A FINGERPRINT-BASED  
BACKGROUND CHECK.

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

SECTION 1. Section 22-10A-3 NMSA 1978 (being Laws 2003,  
Chapter 153, Section 34) is amended to read:

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

A. Except as otherwise provided in this subsection,  
any person teaching, supervising an instructional program or  
providing instructional support services in a public school or  
state agency; any person administering in a public school; and  
any person providing health care and administering medications

.202808.2

underscored material = new  
[bracketed material] = delete

1 or performing medical procedures in a public school shall hold  
2 a valid license or certificate from the department authorizing  
3 the person to perform that function. This subsection does not  
4 apply to a person performing the functions of a practice  
5 teacher as defined by the [~~state board~~] department.

6 B. The [~~state board~~] department shall charge a  
7 reasonable fee for each application for or the renewal of a  
8 license or certificate. The application fee may be waived if  
9 the applicant meets a standard of indigency established by the  
10 department.

11 C. A person performing the duties of a licensed  
12 school employee who does not hold a valid license or  
13 certificate or has not submitted a complete application for  
14 licensure or certification shall not be hired without first  
15 having satisfactorily cleared a fingerprint-based background  
16 check and within the first three months from beginning  
17 employment duties shall not be compensated thereafter for  
18 services rendered until [~~he~~] the person demonstrates that [~~he~~]  
19 the person holds a valid license or certificate. This section  
20 does not apply to practice teachers as defined by rules of the  
21 [~~state board~~] department.

22 D. Each licensed school employee shall:

23 (1) enforce all laws and rules applicable to  
24 [~~his~~] the employee's public school and school district or to  
25 the educational program of the state agency;

.202808.2

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

3 (3) exercise supervision over students on  
4 property belonging to the public school or state agency and  
5 while the students are under the control of the public school  
6 or state agency; and

7 (4) furnish reports as required."

8 SECTION 2. Section 22-10A-5 NMSA 1978 (being Laws 1997,  
9 Chapter 238, Section 1, as amended) is amended to read:

10 "22-10A-5. BACKGROUND CHECKS--KNOWN CONVICTIONS--ALLEGED  
11 ETHICAL MISCONDUCT--REPORTING REQUIRED--LIMITED IMMUNITY--  
12 PENALTY FOR FAILURE TO REPORT.--

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

19 B. An applicant for initial licensure shall be  
20 fingerprinted and shall provide two fingerprint cards or the  
21 equivalent electronic fingerprints to the department to obtain  
22 the applicant's federal bureau of investigation record.  
23 Convictions of felonies or misdemeanors contained in the  
24 federal bureau of investigation record shall be used in  
25 accordance with the Criminal Offender Employment Act. Other

.202808.2



1 information contained in the federal bureau of investigation  
2 record, if supported by independent evidence, may form the  
3 basis for the denial, suspension or revocation of a license for  
4 good and just cause. Records and related information shall be  
5 privileged and shall not be disclosed to a person not directly  
6 involved in the licensure or employment decisions affecting the  
7 specific applicant. The applicant for initial licensure shall  
8 pay for the cost of obtaining the federal bureau of  
9 investigation record.

10 C. Local school boards, ~~[and]~~ regional education  
11 cooperatives and governing bodies of charter schools shall  
12 develop policies and procedures to require background checks on  
13 an applicant who has been offered employment, a contractor or a  
14 contractor's employee with unsupervised access to students at a  
15 public school. All employees of public schools, regional  
16 education cooperatives and charter schools, regardless of the  
17 employee's date of hire, shall have satisfactorily cleared a  
18 fingerprint-based background check before commencing or  
19 continuing employment at a public school, regional education  
20 cooperative or charter school.

21 D. An applicant for employment who has been  
22 initially licensed within twenty-four months of applying for  
23 employment with a local school board, regional education  
24 cooperative or the governing body of a charter school shall not  
25 be required to submit to another background check if the

.202808.2

underscored material = new  
[bracketed material] = delete

1 department has copies of the applicant's federal bureau of  
2 investigation records on file. An applicant who has been  
3 offered employment, a contractor or a contractor's employee  
4 with unsupervised access to students at a public school shall  
5 provide two fingerprint cards or the equivalent electronic  
6 fingerprints to the local school board, regional education  
7 cooperative or governing body of a charter school to obtain the  
8 applicant's federal bureau of investigation record. The  
9 applicant, contractor or contractor's employee who has been  
10 offered employment by a regional education cooperative or at a  
11 public school may be required to pay for the cost of obtaining  
12 a background check. At the request of a local school board,  
13 regional education cooperative or governing body of a charter  
14 school, the department is authorized to release copies of  
15 federal bureau of investigation records that are on file with  
16 the department and that are not more than twenty-four months  
17 old. Convictions of felonies or misdemeanors contained in the  
18 federal bureau of investigation record shall be used in  
19 accordance with the Criminal Offender Employment Act; provided  
20 that other information contained in the federal bureau of  
21 investigation record, if supported by independent evidence, may  
22 form the basis for the employment decisions for good and just  
23 cause. Records and related information shall be privileged and  
24 shall not be disclosed to a person not directly involved in the  
25 employment decision affecting the specific applicant who has

.202808.2



1 been offered employment, contractor or contractor's employee  
2 with unsupervised access to students at a public school.

3 E. A local superintendent, charter school  
4 administrator or director of a regional education cooperative  
5 shall report to the department any known conviction of a felony  
6 or misdemeanor involving moral turpitude of a licensed [~~school~~]  
7 employee that results in any type of action against the  
8 licensed [~~school~~] employee. All employees shall report to a  
9 designated administrator of a school district or school, a  
10 regional education cooperative or a charter school any known  
11 conviction of a felony or misdemeanor involving moral turpitude  
12 of a licensed employee that results in any type of action  
13 against the licensed employee.

14 F. A local superintendent, charter school  
15 administrator or director of a regional education cooperative  
16 or their respective designees shall investigate all allegations  
17 of ethical misconduct about any licensed [~~school~~] employee who  
18 resigns, is being discharged or terminated or otherwise leaves  
19 employment after an allegation has been made. If the  
20 investigation results in a finding of wrongdoing, the local  
21 superintendent, charter school administrator or director of a  
22 regional education cooperative shall report the identity of the  
23 licensed [~~school~~] employee and attendant circumstances of the  
24 ethical misconduct on a standardized form to the department and  
25 the licensed [~~school~~] employee within thirty days following the

.202808.2



1 separation from employment. Copies of that form shall not be  
2 maintained in public school, school district or regional  
3 education cooperative records. No agreement between a  
4 departing licensed ~~[school]~~ employee and the local school  
5 board, school district, charter school or regional education  
6 cooperative shall diminish or eliminate the responsibility of  
7 investigating and reporting the alleged ethical misconduct, and  
8 any such agreement to the contrary is void. Unless the  
9 department has commenced its own investigation of the licensed  
10 ~~[school]~~ employee prior to receipt of the form, the department  
11 shall serve the licensed ~~[school]~~ employee with a notice of  
12 contemplated action involving that employee's license within  
13 ninety days of receipt of the form. If that notice of  
14 contemplated action is not served on the licensed ~~[school]~~  
15 employee within ninety days of receipt of the form, the form,  
16 together with any documents related to the alleged ethical  
17 misconduct, shall be expunged from the licensed ~~[school]~~  
18 employee's records with the department and shall not be subject  
19 to public inspection.

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

25 H. A person who in good faith reports as provided

.202808.2

1 in Subsections E and F of this section shall not be held liable  
2 for civil damages as a result of the report. The person being  
3 accused shall have the right to sue for any damages sustained  
4 as a result of negligent or intentional reporting of inaccurate  
5 information or the disclosure of any information to an  
6 unauthorized person."

7 SECTION 3. Section 22-10A-8 NMSA 1978 (being Laws 2003,  
8 Chapter 153, Section 39, as amended by Laws 2011, Chapter 36,  
9 Section 1 and by Laws 2011, Chapter 95, Section 2) is amended  
10 to read:

11 "22-10A-8. ALTERNATIVE LEVEL ONE LICENSE.--

12 A. The department shall issue an alternative level  
13 one license to a person who is at least eighteen years of age  
14 and who:

15 (1) has completed a baccalaureate degree at an  
16 accredited institution of higher education and has received a  
17 passing score on a state-approved subject-area examination in  
18 the subject area of instruction for which the person is  
19 applying for a license; or

20 (2) has completed a master's degree at an  
21 accredited institution of higher education, including  
22 completion of a minimum of twelve graduate credit hours in the  
23 subject area of instruction for which the person is applying  
24 for a license; or

25 (3) has completed a doctoral or law degree at

.202808.2

1 an accredited institution of higher education; and

2 (4) has passed the New Mexico teacher  
3 assessments examination, including for elementary licensure  
4 [~~beginning January 1, 2013~~], a rigorous assessment of the  
5 candidate's knowledge of the science of teaching reading; [~~and~~]

6 (5) meets other requirements for an  
7 alternative level one license, including satisfactory clearance  
8 of a fingerprint-based background check pursuant to the  
9 provisions of Section 22-10A-5 NMSA 1978; and

10 [~~(5)~~] (6) within two years of beginning  
11 teaching, completes a minimum of twelve semester hours of  
12 instruction in teaching principles in a program approved by the  
13 department; or

14 [~~(6) demonstrated~~] (7) demonstrates to the  
15 department, in conjunction with the school district or state  
16 agency, that the person has met the department-approved  
17 competencies for level one teachers that correspond to the  
18 grade level that will be taught.

19 B. A degree or examination referred to in  
20 Subsection A of this section shall correspond to the subject  
21 area of instruction and the particular grade level that will  
22 enable the applicant to teach in a competent manner as  
23 determined by the department.

24 C. An alternative level one teacher shall  
25 participate in the same mentorship, evaluation and other



1 professional development requirements as other level one  
2 teachers.

3 D. A school district or state agency shall not  
4 discriminate against a teacher on the basis that the teacher  
5 holds an alternative level one license.

6 E. The department shall provide by rule for  
7 training and other requirements to support the use of  
8 unlicensed content area experts as resources in classrooms,  
9 team teaching, [~~on-line~~] online instruction, curriculum  
10 development and other purposes."

11 SECTION 4. Section 22-10A-11.2 NMSA 1978 (being Laws  
12 2009, Chapter 10, Section 1) is amended to read:

13 "22-10A-11.2. DEAF AND HARD-OF-HEARING TEACHERS--  
14 ALTERNATIVE LICENSURE ASSESSMENT--SAVING PROVISION.--

15 A. A person who has a degree from an accredited  
16 teacher education program, [~~and~~] who is deaf or hard of hearing  
17 and who has satisfactorily cleared a fingerprint-based  
18 background check pursuant to the provisions of Section 22-10A-5  
19 NMSA 1978 may elect to demonstrate competency for a level one,  
20 two or three license through a portfolio assessment in lieu of  
21 all or part of the New Mexico teacher assessment. A person who  
22 is deaf or hard of hearing may apply for a lower level of  
23 licensure if the person's portfolio assessment does not qualify  
24 the person for a higher level. The department shall promulgate  
25 rules on the requirements for the portfolio assessment and for

.202808.2



1 who is eligible for licensure pursuant to this section. The  
2 department shall provide a process for portfolio review that  
3 includes the designation of a review committee consisting of:

- 4 (1) a teacher of deaf and hard-of-hearing  
5 students;
- 6 (2) a sign language interpreter;
- 7 (3) a school administrator from the New Mexico  
8 school for the deaf;
- 9 (4) the parent of a deaf or hard-of-hearing  
10 student;
- 11 (5) a deaf or hard-of-hearing teacher, if one  
12 is available; and
- 13 (6) other appropriate persons as determined by  
14 the department.

15 B. Until the rules have been effective for a period  
16 deemed sufficient by the department for a deaf or hard-of-  
17 hearing person to submit a portfolio, any eligible deaf or  
18 hard-of-hearing person who has a degree from an accredited  
19 teacher education program shall be granted a temporary teaching  
20 license for the level of licensure for which the person will  
21 likely qualify when the person's portfolio is submitted to the  
22 department. The temporary teaching license shall be effective  
23 for no longer than two school years."

# NAVAJO NATION

RCS# 298

Naa'bik'iyati Committee

2/11/2016

02:46:06 PM

Amd# to Amd#

Legislation No. 0024-16

PASSED

MOT BeGaye, N

Supporting State of NM House

SEC Bennett

Bill 127, "An Act Relating to

Public School Code to Require

**Yea : 13**

**Nay : 0**

**Not Voting : 11**

**Yea : 13**

Begay, K  
Begay, NM  
BeGaye, N  
Bennett

Chee  
Daniels  
Filfred

Hale  
Phelps  
Shepherd

Slim  
Witherspoon  
Yazzie

**Nay : 0**

**Not Voting : 11**

Bates  
Begay, M  
Brown

Crotty  
Damon  
Jack

Perry  
Pete  
Smith

Tso  
Tsosie