**TITLE 6 PRIMARY AND SECONDARY EDUCATION**

**CHAPTER 60 SCHOOL PERSONNEL - GENERAL PROVISIONS**

**PART 8 BACKGROUND CHECKS FOR EDUCATOR LICENSURE**

**6.60.8.1 ISSUING AGENCY:** Public Education Department, hereinafter the department.

[6.60.8.1 NMAC – Rp, 6.60.7.1 NMAC, 01/15/2019]

**6.60.8.2 SCOPE:** This rule applies to all applicants for initial teaching licensure, initial instructional support provider licensure, alternative licensure, initial substitute certification, applicants offered employment who have not completed a background check in over 24 months, volunteers, dual credit instructors, and currently employed, licensed individuals who have not previously had a background check.

[6.60.8.2 NMAC – Rp, 6.60.7.2 NMAC, 01/15/2019]

**6.60.8.3 STATUTORY AUTHORITY:** Sections 22-2-1, 22-2-2, 22-8-44, 22-10A-5, 22-10A-7, 22-10A-12, 22-10A-12.1, and 28-2-1 through 28-2-6 NMSA 1978.

[6.60.8.3 NMAC – Rp, 6.60.8.3 NMAC, 01/15/2019]

**6.60.8.4 DURATION:** Permanent

[6.60.8.4 NMAC – Rp, 6.60.8.4 NMAC, 01/15/2019]

**6.60.8.5 EFFECTIVE DATE:** January 15, 2019, unless a later date is cited in the history note at the end of a section.

[6.60.8.5 NMAC – Rp, 6.60.8.5 NMAC, 01/15/2019]

**6.60.8.6 OBJECTIVE:** This rule establishes the provisions of the department’s educator background check program required by Section 22-8-44 NMSA 1978.

[6.60.8.6 NMAC – Rp, 6.60.8.6 NMAC, 01/15/2019]

**6.60.8.7 DEFINITIONS:**

**A.** **“Background check”** means a criminal history report produced by the federal bureau of investigation (FBI) or the New Mexico department of public safety (DPS). Reports produced by DPS shall be valid only if created and produced after a check or review of FBI criminal history files.

**B. “Criminal history record”** means convictions of felonies or misdemeanors of moral turpitude, or other information contained within the records of the federal bureau of investigation (FBI), New Mexico department of public safety (DPS), and other criminal history information disclosed pursuant to the character and fitness sections of the educator licensure application process.

**C. “Currently employed, licensed individuals”** means a licensed individual who is employed by a school district or charter school who has not previously had a background check.

**D. “Dual credit instructor”** means an individual that teaches academic or career technical postsecondary courses to public school students for credit at both the higher education institution and the public school.

**E.** **“Applicant for initial licensure”** means an applicant for department licensure or certification including applicants for initial teaching licensure, applicants for initial instructional support provider licensure, applicants for alternative licensure, and applicants for initial substitute certification.

**F.** **“New employment applicant”** means an applicant for new employment with a different school district, charter school, or regional education cooperative including applicants for positions requiring a license issued by the department, contractors afforded unsupervised access to students, and employees of contractors who are afforded unsupervised access to students. A new employment applicant shall not include unlicensed applicants, contractors, or employees of contractors who are not afforded unsupervised access to students.

**G. “Volunteer”** means an individual who volunteers with any public school who will be afforded unsupervised access to students.

[6.60.8.7 NMAC – Rp, 6.60.8.7 NMAC, 01/15/2019]

**6.60.8.8 REQUIREMENTS:**

 **A.** All background checks for licensure by the department shall be obtained through the department or through a vendor designated or approved by the department, including currently employed, licensed individuals and applicants for initial licensure. All other background checks, including those for new employment applicants, volunteers, and dual credit instructors may be obtained through the school district, charter school, or regional education cooperative or through the department.

 **(1)** Local school boards, charter school governing bodies, and regional education cooperatives shall adopt policies and regulations addressing background check requirements.

 **(2)** Background check policies and regulations shall meet, at a minimum, the requirements of 6.60.8 NMAC and all relevant state and federal law.

 **B.** **Applicant for initial licensure.** All applicants for initial licensure shall be required to obtain a current and valid background check from the department or a vendor designated by the department.

 **(1)** Applicants for initial licensure shall submit two fingerprint cards or their electronic equivalent to the department or a vendor designated by the department.

 **(a)** Out-of-state applicants for initial licensure shall be fingerprinted using fingerprint cards supplied by the department. Applicants for initial licensure shall submit two completed fingerprint cards to the department either prior to or within five business days of submitting a licensure application.

 **(b)** In-state applicants for initial licensure shall be fingerprinted using the electronic fingerprinting system with the department-approved fingerprint processing vendor either prior to or within five business days of submitting a licensure application. Fingerprints submitted without the correct department code shall not be accepted.

 **(2)** Applicants for initial licensure shall pay all fees required by the department or the department-approved fingerprint processing vendor.

 (**3)** Applicants for initial licensure shall be given the opportunity to disclose and explain a criminal history record, including evidence of rehabilitation. Any disclosure of criminal history shall require a signed, detailed explanation.

  **(a)** The department may choose to request further information from the applicant for initial licensure including court documentation, proof of restitution, or evidence of rehabilitation.

 **(b)** Applicants for initial licensure shall provide a timely response to department requests for further information including court documentation, proof of restitution, or evidence of rehabilitation.

 **(4)** Licensure applications submitted by applicants for initial licensure that do not meet the requirements of Paragraphs (1) through (3) of Subsection B of 6.60.8.8 NMAC shall be considered to be missing background information and shall therefore be considered incomplete and not properly made. Incomplete or not properly made applications shall neither be accepted nor denied.

 **C. New employment applicants.** New employment applicants offered employment or a contract with a school district, charter school, or regional education cooperative who do not have copies of FBI records on file with the department or who have not completed a background check in over 24 months, shall provide two fingerprint cards or their electronic equivalent to the school district, regional education cooperative, or charter school.

 **D. Volunteer.** Volunteers who will have unsupervised access to students who do not have copies of FBI records on file with the department or who have not completed a background check in over 24 months, shall provide two fingerprint cards or their electronic equivalent to the school district, regional education cooperative, or charter school.

 **E. Dual credit instructor.** For public schools that offer dual credit courses, the school district, charter school, or regional education cooperative shall ensure that any individual with unsupervised access to public school students shall have a background check prior to being granted unsupervised access to students. Background checks shall be retained by the school district, charter school, or regional education cooperative and shall be available to the department upon request.

 **F. Currently employed, licensed individual.** All currently employed, licensed individuals who have not previously had a background check shall be required to obtain a current and valid background check from the department or a vendor designated by the department.

 **(1)** Currently employed, licensed individuals shall submit two fingerprint cards or their electronic equivalent to the department or a vendor designated by the department. Currently employed, licensed individuals shall be fingerprinted using the electronic fingerprinting system with the department-approved fingerprint processing vendor either prior to or within five business days of submitting a licensure application. Fingerprints submitted without the correct department code shall not be accepted.

 **(2)** Currently employed, licensed individuals shall pay all fees required by the department or the department-approved fingerprint processing vendor.

 **(3)** Currently employed, licensed individuals shall be given the opportunity to disclose and explain a criminal history record, including evidence of rehabilitation. Any disclosure of criminal history shall require a signed, detailed explanation.

 **(a)** The department may choose to request further information from the currently employed, licensed individuals including court documentation, proof of restitution, or evidence of rehabilitation.

 **(b)** Currently employed, licensed individuals shall provide a timely response to department requests for further information including court documentation, proof of restitution, or evidence of rehabilitation.

[6.60.8.8 NMAC – Rp, 6.60.8.8 NMAC, 01/15/2019]

**6.60.8.9 SHARING OF BACKGROUND CHECK INFORMATION:**

 **A.** A local superintendent, charter school administrator, or director of a regional education cooperative, or their designees, at any time, may request documentation of an applicant employee, an employee, contractor, or contractor employee’s criminal history record.

 **B.** The department may disseminate to a requesting local superintendent, charter school administrator, or director of a regional education cooperative, or their designees, criminal history records that were generated and issued within 24 months of the date of dissemination. Any criminal history record shall be released or disseminated pursuant to FBI and DPS guidelines.

 **C.** A local superintendent, charter school administrator, or director of a regional education cooperative shall, within 30 days, report to the department any known conviction of a felony or misdemeanor involving moral turpitude of a licensed applicant employee, licensed employee contractor, or licensed contractor employee that results in any type of employment or disciplinary action against the licensed individual. Pursuant to 22-10A-5 NMSA 1978, any failure to comply with the reporting requirements outlined in this section may result in a decision from the secretary to suspend, revoke or refuse to renew the license of a local superintendent, charter school administrator or regional education cooperative director.

[6.60.8.9 NMAC – Rp, 6.60.8.9 NMAC, 01/15/2019]

**HISTORY OF 6.60.8 NMAC:** **[RESERVED]**