

# Background Check Report

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**2015 investigation of New Mexico School Districts and Charter Schools for compliance with background check laws and regulations**

# Executive Summary

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## Introduction

On August 25, 2015, Governor Susana Martinez ordered a statewide compliance investigation and review of the background check policies of all New Mexico public school districts and charter schools. The New Mexico Public Education Department (PED) and New Mexico Department of Public Safety (NMDPS) were charged with reviewing the policies and practices of all 89 school districts and 99 state and district authorized charter schools in New Mexico to ensure compliance with law.

The purpose of the investigation was to identify broad areas of deficiencies in background check practices statewide and verify general compliance among districts and charters. New Mexico law requires all districts and charters adopt a background check policy that requires any person offered employment in a school to receive a background check. The investigators reviewed the background status of 5,253 newly hired school employees and all 1,758 New Mexico school administrators. While a full audit of the background check status of every school employee in New Mexico was beyond the scope of the investigation, superintendents and charter school leaders were required to provide written assurance of compliance with law and policies.

## Summary of Findings

The report findings are summarized below.

- **Access to background check process** - NMDPS records indicate that all districts and charters have access to the New Mexico background check system through the online Cogent portal. (page 6)
- **Background check policies** - Of 188 districts and charters, five failed to provide a copy of their board-adopted background check policy. (page 9)
- **Administrators background checks** - Districts and charters reported that 14 of 1,758 New Mexico School Administrators do not have current statutorily required background checks. (page 9)
  - Eight districts and charters failed to report any data on administrative staff background checks. (page 10)
- **New hires have background checks** - Districts and charters reported that 81 of 5,253 new hires in 2015 did not have background checks. (page 11)
  - Nine districts and charters failed to report any data on new hire background checks. (page 11-12)
- **District and charter leaders assurances** - One district Superintendent and three charter Directors failed to submit assurances that their board-adopted policies comply with law and that they are complying with their policies. (page 12)

## Summary of Recommendations

The investigation revealed three areas of concern that are summarized below. See pages 13-14 for a full analysis.

- **Failure to Demonstrate Compliance** - A handful of districts and charters have not provided the information requested in this investigation and/or remain out of compliance with background check laws and regulations. This is inexcusable and places children and resources at risk. ***PED will initiate licensure action against district superintendents or charter school directors if, by March 1, 2016, any district or charter has not provided to PED: 1) its adopted background check policy, 2) the approved assurance, and 3) evidence that all administrators and new 2015 hires have valid background checks.***
- **Pre-1998 Loophole** - The current statute allows school employees who were hired prior to May 20, 1998, and who have remained in the same district since that time, to work in a school without ever being required to have a background check. ***Statutory language should be updated to require all employees, regardless of date of hire, to have a background check prior to having direct access to children or school resources.***
- **“Grace Period” Confusion** - A background check is required for school employees seeking licensure. Districts and charters are permitted to use the licensure background check to meet the employment background check requirement. New Mexico statute allows a school employee who has applied for a license to begin working in a school while the license is still being processed. This licensure “grace period” does NOT allow the employee to begin working in a school without the required background check. ***Statutory language should be updated to clearly provide that although an employee may begin working during the licensure “grace period,” the employee may not begin working without a background check.***

# Governing Laws and Regulations

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## Employment

All applicants for employment with a district or charter school must undergo a background check. This requirement became part of the School Personnel Act on May 20, 1998. The statute requires all school boards and regional education cooperatives to “develop policies and procedures to require background checks on an applicant who has been offered employment, a contractor or a contractor’s employee with unsupervised access to students at a public school.” NMSA 22-10A-5(C).

## Licensure

The School Personnel Act and the New Mexico Administrative Code also require background checks for all education licensure applicants. NMSA 22-10A-3 and NMAC 6.60.8.8. Licensure is required of any person performing the duties of a licensed school employee. NMSA Section 22-10-5(B) provides: “An applicant for initial licensure shall be fingerprinted and shall provide two fingerprints or the equivalent electronic fingerprints to the department to obtain the applicants federal bureau of investigation record” and NMAC 6.60.8.8 provides “The PED will not issue an educator license until the applicant’s background check has been successfully completed.”

## Information Sharing

Regulations require information sharing among districts and charters and the PED Licensure and Ethics Bureau. If an employment background check reveals that a licensed applicant or applicant with a pending a license has a conviction of a felony or misdemeanor of moral turpitude, the district or charter must share that information with the PED Licensure Bureau or Educator Ethics Bureau. Likewise, the PED Licensure Bureau must notify the current school employer, if known, of any such convictions. NMAC 6.60.8.9(D).

Districts and charters may use the PED licensure background check to satisfy the background check requirement of the local hiring process. If an applicant for employment has been initially licensed within the two years prior to applying for employment, statute allows that the local school board, regional education cooperative, or a charter school to use the copy of the record on file at the PED. NMSA 22-10A-5(D), NMAC 6.60.8.9(C).

## Clarity needed

Using the licensure background check can reduce duplication of effort and expense, but the present investigation revealed that this flexibility has created confusion among some districts and charters. The confusion appears to come from the language of NMSA 22-10A-3(C), which section provides:

A person performing the duties of a licensed school employee who does not hold a valid license or certificate or has not submitted a complete application for licensure or certification within the first three months from beginning employment duties shall not be compensated thereafter for services rendered until he demonstrates that he holds a valid license or certificate.

While this provision allows a three-month “grace period” during which a school employee may begin working prior to holding a valid license, **it does not allow the employee to begin working without a valid background check.** Some district and charters reported that they had been interpreting this language to allow employees with a pending license to begin working prior to receiving the background check that accompanies the granting of a license.

Finally, many districts reported administrative staff who were hired prior to May 20, 1998 (the day the background check law became effective), and who have remained employed by the district since that time. Many of these individuals did not have a background check on file. Although these individuals are technically in compliance with the law, this loophole has resulted in individuals with no background check having direct access to students and school resources.

# Background Check Process

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## ORI

To access New Mexico's fingerprint background check process, entities must request permission from the NMDPS and the FBI. The request packet consists of language that establishes the entity's mission and authority. Once NMDPS and FBI approve the request, the entity is assigned an ORI (Originating Agency Identification) number. This ORI identifies the agency to NMDPS and the FBI.

## Cogent

Once an entity receives an ORI, it may apply for an online account to review applicants background check information or CHRI (Criminal History Record Information) using the online Cogent portal. The entity electronically enters its demographics, electronically signs the NMDPS User Agreement, 28CFR Training Acknowledgement form, and Rules of Behavior Acknowledgement form. The entity must submit fingerprints for all individuals who will be accessing the CHRI information. CHRI accounts are reviewed and approved within 48 hours of applying.

Once the agency receives their username and password to access the portal, they are able to review, save, print, and query applicant CHRI. Per FBI policy, the CHRI can only be stored online for 30 days. Districts and charters may (and should) save, either electronically or in paper format, CHRI results for prospective employees. Also, the PED saves CHRI results of licensure applicants in the applicant's licensure file. Average turnaround time for applicant responses is 48 hours. **All New Mexico districts and charters currently have access to the background check process through the Cogent portal.**

## Rapback

In June of 2014, the NM Rapback program was started. The Rapback service notifies entities of in-state criminal activity that occurs after the initial fingerprint background check. If a licensee or school employee is charged with criminal conduct, the entity that requested a background check will be notified. Rapback is offered to all CHRI administrators through the Cogent portal and all applicants fingerprinted under the PED, district, or charter ORI are automatically enrolled in the program. The Federal Rapback program is anticipated to be available in Q4 of 2016.

# Investigation Process

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On August 26, 2015, PED sent a memo to all District Superintendents and Charter School Directors outlining the scope of the background check investigation. The memo provided a timeline and advised that the districts and charters would be required to: 1) provide a copy of their adopted background check policy, 2) provide evidence of background check for all administrative staff, 3) provide evidence of background checks for all new hires in school year 15-16, 4) identify areas of non-compliance and provide for dates of compliance, 5) provide written assurance signed by the Superintendent/Charter director verifying compliance with background check policy.

Deadlines	Requested Information
<b>August 28, 2015, COB</b>	<b>Policies:</b> Submit a copy of district-adopted background check policies to PED.
<b>August 31, 2015, COB</b>	<b>Administrative Staff:</b> Provide evidence of completion of background checks for all district-level and charter administrative staff.
<b>September 16, 2015, COB</b>	<b>New Hires:</b> Provide evidence of completion of background checks for all new hires for the 15-16 school year.
<b>September 25, 2015, COB</b>	<b>Follow up:</b> If you identify district employees who do not have required background checks, please submit information that includes the following: number of employees, roles in the district, and the date that they will have a finalized background check.
<b>September 30, 2015, COB</b>	<b>Assurances:</b> Superintendent/Charter Director submits signed assurance verifying that their district or charter is in compliance with background check policy.

**Table 1: Timeline and Information collected from Districts and Charters**

PED Educator Quality Division offered three regional training meetings to provide direct support regarding background checks on August 27 (Las Cruces), August 28 (Albuquerque), and August 31 (Albuquerque). In addition, the PED provided a follow up meeting on October 26 to clarify expectations and compliance requirements.

PED actively worked with districts and charters to ensure accurate and up-to-date information was provided. All districts and charters had the opportunity to collect, report, and address the requested data. Providing the current background check policy was simple and most districts and charters quickly complied. Collecting and providing background check information for administrators and new hires was more involved. Generally, the administrative office accessed and reviewed the personnel files for each administrator and new hire and confirmed that each had a current and valid background check. This was a time intensive process, particularly for larger districts.

Where information was late or missing, PED staff contacted each of the districts and charters by telephone and in writing requesting missing information. PED continued working with districts and charters to collect complete documentation and further clarify the information reported.

The data reported below reflects only the districts and charters that provided information, and notes those that failed to respond.

Consequences for failure to comply are discussed in the recommendations section below.

# Investigation Findings

## Background Check Policies

All districts and charters were required to submit their board-adopted background check policies by August 28, 2015. **Of 188 districts and charters, five failed to provide a copy of their board-adopted background check policy.**

Districts	Charters
Mosquero	Alma d' Arte
	The Mountain Mahogany
	Sandoval Academy of Bilingual Education
	Sidney Gutierrez

**Table 2: Districts and Charters that failed to provide background check policies**

## Administrative Staff

Administrators were a focal point of the investigation following the hiring of an individual with pending criminal charges into a high-level administrative role in a New Mexico district without undergoing the required background check process. Ensuring that all administrators are complying with district and charter policies around background checks is paramount given the level of trust and responsibility placed in those charged with administering these policies.

All districts and charters were required to submit evidence of completion of background checks for all district-level and charter administrative staff by August 31, 2015. **Districts and charters reported that 14 of 1,758 New Mexico School Administrators do not have current statutorily required background checks. Nine districts and charters failed to report any data on new hire background checks.**

As the PED began collecting data, a number of districts reported they had administrative staff that did not have background checks because they had been hired before 1998, and were continuously employed by the district since that time. A number of districts, including Bernalillo, Deming, Eunice, and Rio Rancho, reported that despite the pre-1998 exception, they require background check for all staff, regardless of hire date.

	Total Administrators	With Background checks	Number pre-dating 1998	Without background checks
Districts	1443	1301	129	12
Charters	315	313	0	2
Total	1758	1614	129	14

**Table 3: Statewide administrator background checks**

District Name	Total Administrators	With Background checks	Number Pre-dating 1998	Without background checks
Central	70	59	11	0
Clayton	7	4	2	1
Des Moines	1	0	0	1
Dulce	13	12	0	1
Grants	14	9	4	1
Hondo	5	3	0	2
Los Alamos	21	20	0	1
Lovington	8	5	2	1
Mosquero	No Data	No Data	No Data	No Data
Tatum	No Data	No Data	No Data	No Data
West Las Vegas	18	14	2	2
<b>Total</b>				<b>10</b>

**Table 4: District non-compliance or failure to report administrative background checks**

Charter Name	Total Administrators	With Background checks	Without background checks
Health Leadership	6	5	1
Internat School at Mesa del Sol	No Data	No Data	No Data
NACA	No Data	No Data	No Data
NM Connections	4	3	1
NM Virtual Academy	No Data	No Data	No Data
Nuestros Valores	No Data	No Data	No Data
Sidney Gutierrez	No Data	No Data	No Data
Uplift Community	No Data	No Data	No Data
<b>Total</b>			<b>2</b>

**Table 5: Charter non-compliance or failure to report administrative background checks**

## New Hires

All districts and charters were required to submit evidence of completion of background checks for all new hires by September 16, 2015. **District and charters reported that 71 of 5,253 new hires in 2015 did not have background checks. Nine districts and charters failed to report any data on new hire background checks.**

By law, all district and charter school applicants who have been offered employment must undergo a background check. The tables below summarize the total new charter and district hires in 2015, and how many were hired without the required background check.

	Total New Hires	With Background	Without Background
Districts	4,611	4,551	60
Charters	642	621	21
<b>Total</b>	<b>5,253</b>	<b>5,172</b>	<b>81</b>

**Table 6: New Hire background checks**

District Name	Total New Hires	With Background checks	Without background checks
Alamogordo	65	57	8
Albuquerque	834	833	1
Animas	5	4	1
Bloomfield	83	80	3
Central	105	104	1
Clayton	No Data	No Data	No Data
Cuba	24	22	2
Des Moines	5	3	2
Estancia	14	10	4
Grants	5	0	5
Jemez Mountain	No Data	No Data	No Data
Magdalena	4	0	4
Mosquero	No Data	No Data	No Data
Raton	25	24	1
Santa Rosa	28	21	7
Taos	21	11	10
Zuni	48	37	11
		<b>Total</b>	<b>60</b>

**Table 7: District non-compliance or failure to report new hire background checks**

Charter Name	Total New Hires	With Background checks	Without background checks
Aldo Leopold	1	0	1
Alma d'Arte	2	1	1
Anthony Charter	10	6	4
ASK Academy	30	29	1
Bataan Military	15	14	1
Dream Dine	5	4	1
Gilbert L. Sena	4	3	1
Health Leadership	8	4	4
Los Puentes	4	3	1
Monte del Sol	11	9	2
NACA	No Data	No Data	No Data
NM School for the Arts	4	3	1
NM Virtual Academy	No Data	No Data	No Data
Nuestros Valores	No Data	No Data	No Data
Root and Wings	No Data	No Data	No Data
Sidney Gutierrez	No Data	No Data	No Data
Taos Academy	6	3	3
Uplift Community	No Data	No Data	No Data
<b>Total</b>			<b>21</b>

**Table 8: Charter new hire non-compliance or failure to report new hire background checks**

## Assurances

In addition to providing information on compliance with of background checks, districts and charter leaders were required to submit assurances that their adopted board policy complies with the law, and that procedures are put in place to adhere to this requirement. All districts and charters were required to submit assurances by September 30, 2015. **One district Superintendent and three charter Directors failed to provide the required assurance.**

Districts	Charters
Mosquero	The Mountain Mahogany Roots and Wings Sidney Gutierrez

**Table 9: Districts and Charters that failed or refused to submit assurance**

# Recommendations

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Through this investigation, PED was able to ensure that most districts and charters were in compliance with background check laws, regulations, and their adopted policies. However, the process revealed three primary areas where individuals without background checks may have direct access to students or school resources.

1. **Failure to Demonstrate Compliance** - Every district and charter has access to New Mexico Background check system, and by law must adopt and follow its background check policy that requires employee background checks. Yet a handful of districts and charters have not provided the information requested in this investigation and/or remain out of compliance with background check laws and regulations. This is inexcusable and places children and resources at risk.

*RECOMMENDATION:* PED will initiate licensure action against district superintendents or charter school directors if, by March 1, 2016, any district or charter has not provided to PED: 1) its adopted background check policy, 2) the approved assurance, and 3) evidence that all administrators and new 2015 hires have valid background checks.

2. **Pre-1998 Loophole** - School employees who were hired prior to May 20, 1998, and who have remained in the same district since that time, may not have ever been required to have a background check. This has resulted in individuals with no background check having direct access to students and school resources.

*RECOMMENDATION:* The School Personnel Act should be updated to require all employees, regardless of date of hire, to have a background check prior to having direct access to children or school resources.

This could be addressed by amending NMSA 22-10A-5(C) to read:

Local school boards and education cooperatives shall develop policies and procedures to require background checks on an applicant who has been offered employment, a contractor or a contractor's employee with unsupervised access to students at a public school. **All school employees, regardless of date of hire, must have a background check on file.**

3. **"Grace Period" Confusion:** The language of NMSA 22-10A-3(C) currently provides:

A person performing the duties of a licensed school employee who does not hold a valid license or certificate or has not submitted a complete application for licensure or certification within the first three months from beginning employment duties shall not be compensated thereafter

for services rendered until he demonstrates that he holds a valid license or certificate.

As noted previously, some districts and charters have operated under the mistaken understanding that this provision allows a person to begin working as a school employee without a background check. While a person may begin performing the duties of a licensed school employee prior to receiving a valid license, this “grace period” is separate from the background check requirement.

*RECOMMENDATION:* The School Personnel Act should be updated to clearly state that although an employee may begin working during the licensure “grace period,” the employee may not begin working without a background check.

This could be done by amending NMSA 22-10A-3(C) to read:

A person performing the duties of a licensed school employee who does not hold a valid license or certificate or has not submitted a complete application for licensure or certification **shall not be hired without first successfully completing a background check and** within the first three months from beginning employment duties shall not be compensated thereafter for services rendered until he demonstrates that he holds a valid license or certificate.