

# POLICY SERVICES ADVISORY

Volume 5, Number 1

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## CONTENTS

Policy Advisory No. 54.....IHBHD—Distance Learning  
IHBHD-E — Distance Learning

Policy Advisory No. 55.....IIE — Student Schedules  
and Course Loads

### Policy Advisory Discussion

*In General.* The policies, regulations and exhibits discussed below and provided in full text following the policies, are primarily required or mandated by statute or the New Mexico Administrative Code. 6.30.7 New Mexico Administrative Code (NMAC) and 6.30.8 NMAC provide the directions for implementing 22-13-1.1 New Mexico Statutes Annotated (NMSA) which requires that by the 2009-2010 school year, at least one of the units required for graduation shall be earned as an advanced placement or honors course, a dual-credit course offered in cooperation with an institution of higher education or a distance learning course. It is possible to interpret the attached statutes and regulations as not all mandatory since the requirement is that one of the units for graduation shall be either a dual-credit course or a distance learning course. It is Policy Services position that the better rule of thumb is to have the policy necessary to implement either dual-credit or distance learning in place so that the options may be made available to earn advanced placement or honors courses by either means.

Readers should note that the Statute and Codes mentioned above leave little room for interpretation or local prerogatives. In the interest of **local control** School

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Boards may want to be more involved in the rule making process to ensure that the programs mandated are designed to provide for the needs of the students. The rule making process is required of the Public Education Department by the Secretary of Public Education as outlined in Statute and includes the opportunity for School Districts to receive notification of the hearing process directly if the proper request is made. The statute as follows provides for the rule making process while speaking to the duties of the Secretary of Public Education:

## **ARTICLE 24**

### **Public Education Department and Commission**

#### **9-24-8. Secretary; duties and general powers.**

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D. The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions. No rule promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary. Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The final public hearing on adoption, amendment or repeal of a rule shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule or proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to **all persons who have made a written request for advance notice of hearing**. All rules shall be filed in accordance with the State Rules Act [14-4-1 NMSA 1978]. (Emphasis added)

***Policy Advisory No. 54. IHBHD – Distance Learning.*** The language of 6.30.8 NMAC implementing distance learning contains some very specific requirement for a school organization to place in policy. The language necessary to establishing the distance learning programs has been placed in the policy. Detailed language required for enrollment and monitoring have been placed largely in the exhibit since it is directory language and not subject to significant interpretation by the school district.

***Policy Advisory No. 55. IIE – Student Schedules and Course Loads.*** Because the policy relates to scheduling and courses offered under different

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circumstances, the dual credit mandatory language was placed in this policy. The NMAC contains some very specific requirements for the dual credit agreement between the public school district and a postsecondary institution. This language was only referred to in the policy, citing the location at which such language as required can be found in order to complete the agreement.

**For your review, the New Mexico Statutes Annotated and New Mexico Administrative Code discussed above can be found following the policies and exhibits below.**

If you have any questions, call Policy Services at (800) 238-4701. Ask for Donn Williams, Director of Policy Services. E-mail address [dwilliams@azsba.org]. This information is not intended as legal advice. If you have questions as to the legality contact your attorney.

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I-3350

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IHBHD

## DISTANCE LEARNING

Distance learning is a process used to provide instruction for credit when the student and primary instructor are not necessarily physically present at the same time and/or place. The Superintendent is authorize to establish distance learning and the District shall provide the necessary access to the technology for all classes or activities. In addition, access shall be provided in electronic formats that are usable by a person with a disability using assistive technology, based on the American standard code for information interchange, hypertext markup language and extensible markup language.

The Superintendent may enter into an agreement with providers of distance learning as deemed necessary to accomplish the purposes stated herein. All distance learning courses or programs shall meet or exceed school and/or state standards, have an updated syllabi, and be selected based upon the approved curricular program offerings of the School District as established by the Board. The agreement in each case shall state that should the provider exhibit distance learner irregularities, not follow the content standards and benchmarks of the State, policies and regulations of the Board or the code of the Public Education Department, prompt removal or non-use of the distance learning provider will occur on the sole determination of the District as made by the Superintendent.

Credit for completion of distance learning courses shall be granted only by the School District based upon the School District grading system.

The Superintendent shall appoint site coordinators as needed, who shall monitor students' work, approve or disapprove students' requests to participate in any distance learning. Students requesting to participate shall have completed all prerequisites for the subject or grade, and agreed to participate within the established regulations and parameters. Such regulations and parameters include but are not limited to those established by NMAC 6.30.8.(8), (9), (10), and (11).

Distance learning classes may be taken within or outside of the normal school day but must be scheduled so that there are no conflicts.

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Students in distance learning classes or programs shall be evaluated, tested and monitored at the same intervals as other students in the grade level in the student's school, and shall be subject to the statewide assessments as required in the Assessment and Accountability Act. The student shall be present as required at the school for these activities and at other times as established by the site coordinator and student or parent for the purpose of receiving or providing assigned materials.

Student privacy and security of individual student data shall be maintained in accord with District policies on Copyright Compliance, Use of Technology Resources in Instruction, and Student Records.

Should a student fail to comply with the rules or policies, in addition to any other disciplinary actions, the student may be denied credit for the distance learning course or program in which the student was enrolled.

Adopted: date of manual adoption

LEGAL REF.: 22-13-1.1 NMSA (1978)  
22-30-6 NMSA (1978)  
6.30.7.8 NMAC  
6.30.8.7 NMAC  
6.30.8.8 NMAC

CROSS REF.: EGAD - Copyright Compliance  
IJNDB - Use of Technology Resources in Instruction  
JR - Student Records

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IHBHD-E

**EXHIBIT**

**EXHIBIT**

## **DISTANCE LEARNING**

Distance learning classes may be taken within or outside of the normal school day but must be scheduled so that there are no conflicts.

Students in distance learning classes shall be physically present at the school for monitoring purposes at least quarterly and for semester examinations. They shall be present at other times as established by the site coordinator and student or parent for the purpose of receiving or providing assigned materials.

Only students who are regularly enrolled in a school district or charter school shall be allowed to enroll in distance learning courses for credit.

Students must have a primary enrolling district. Should a student enroll in a distance learning course offered by a district or charter school other than the student's enrolling district, the student can only be counted once as a qualified student for state equalization guarantee funding purposes as defined in Section 22-8-2 of the New Mexico Statutes Annotated for determining membership in the student's enrolling district. Any reimbursement for cross-district enrollment for distance learning courses shall be arranged between the districts through signed written documents.

Qualified distance learning students enrolled in asynchronous distance learning courses must log onto their computers a minimum of four (4) times per week and certify that they are the enrolled student each time they log on to their computers. Students enrolled in synchronous distance learning courses shall log on to their computer at the scheduled class time and certify that they are the enrolled student.

A qualified distance learning student may enroll in and receive credit or a grade for a distance learning class or program that is at a different grade level than the student's current grade level. However, a student cannot take the same course twice for credit.

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A home school student may participate in the statewide cyber academy by enrolling for one-half (1/2) or more of the minimum course requirements approved by the department for public school students in the school district in which the student resides; or, if the student is enrolled for less than one-half (1/2) of the minimum course requirements, the student may participate in the statewide cyber academy by paying not more than thirty-five percent (35%) of the current unit value per curricular unit.

A student enrolled in a nonpublic school may participate in the statewide cyber academy if the school in which the student is enrolled enters into a contract with the school district in which the nonpublic school is located.

A student who is detained in or committed to a juvenile detention facility or a facility for the long-term care and rehabilitation of delinquent children may participate in the statewide cyber academy if the facility in which the student is enrolled enters into a contract with the school district in which the facility is located.

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## STUDENT SCHEDULES AND COURSE LOADS

The Board requires that each student at the end of grades eight (8) through eleven (11) develop an interim next-step plan that sets forth the coursework for the grades remaining until high school completion or transition following high school. The Board shall ensure each student has the opportunity to develop a plan based upon reports of college and workplace readiness assessments and other factors and be reasonably informed about:

- Curricular and course options, including:
  - honors or advanced placement courses, dual-credit courses, distance learning courses, career clusters or remediation programs that college and workplace readiness assessments indicate to be appropriate;
- Opportunities available that lead to different post-high-school options; and
- Alternative opportunities available if the student does not finish a planned curriculum.

The plan shall explain any differences from previous interim next-step plans, shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent or guardian and the student's guidance counselor or other school official charged with coursework planning for the student. An individualized education program (IEP) filed with the principal that meets the applicable transition and procedural requirements of the federal Individuals with Disabilities in Education Act for qualified students shall satisfy the next-step requirements for that student.

It shall be the responsibility of the principal, with the cooperation of assigned counselors, to assist students in the scheduling of coursework. All students in the high school are required to enroll in four (4) classes unless excused by the school administrator.

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## Dual Credit

Dual credit programs allow high school students to enroll in college courses prior to graduation and receive high school and college credit simultaneously for elective courses approved by the school or core courses verified as meeting Public Education Department standards and benchmarks when these courses are aligned to meet postsecondary requirements also. To offer dual credit in academic and career technical courses the District must execute a dual credit agreement with a qualified postsecondary institution. Such agreement must address the components found in 6.30.7.8 NMAC and be signed by both entities.

*Adopted:* date of manual adoption

LEGAL REF.: 22-13-1.1 NMSA (1978)

6.30.7.8 NMAC

6.30.8.7 NMAC

6.30.8.8 NMAC

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## Relevant Statutes and Rules

### 9-24-8. Secretary; duties and general powers.

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which he or the department is charged.

B. To perform his duties, the secretary has every power expressly enumerated in the law, whether granted to the secretary, the department or any division of the department, except when any division is explicitly exempted from the secretary's power by statute. In accordance with these provisions, the secretary shall:

- (1) except as otherwise provided in the Public Education Department Act [9-24-1 NMSA 1978] or the Public School Code [22-1-1 NMSA 1978], exercise general supervisory and appointing power over all department employees, subject to applicable personnel laws and rules;
- (2) delegate power to subordinates as he deems necessary and appropriate, clearly delineating such delegated power and the limitations to that power;
- (3) organize the department into organizational units as necessary to enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;
- (4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge his duties;
- (5) take administrative action by issuing orders and instructions, not inconsistent with law, to ensure implementation of and compliance with the provisions of law for which administration or execution he is responsible and to enforce those orders and instructions by appropriate administrative action in the courts;

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- (6) conduct research and studies that will improve the operation of the department and the provision of services to the citizens of the state;
- (7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objectives of improving the operations and efficiency of administration and of promoting comprehensive, coordinated and culturally sensitive services that address the education of the whole child;
- (8) prepare an annual budget for the department; and
- (9) provide cooperation, at the request of administratively attached agencies and adjunct agencies, in order to:
  - (a) minimize or eliminate duplication of services and jurisdictional conflicts;
  - (b) coordinate activities and resolve problems of mutual concern; and
  - (c) resolve by agreement the manner and extent to which the department shall provide budgeting, record keeping and related clerical assistance to administratively attached agencies.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department, any public or private funds, including United States government funds, available to the department to carry out its programs, duties or services.

D. The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions. No rule promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary. Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The final public hearing on adoption, amendment or repeal of a rule shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule or proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written

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request for advance notice of hearing. All rules shall be filed in accordance with the State Rules Act [14-4-1 NMSA 1978].

**"22-13-1.1. GRADUATION REQUIREMENTS.--**

A. At the end of grades eight through eleven, each student shall prepare an interim next-step plan that sets forth the coursework for the grades remaining until high school graduation. Each year's plan shall explain any differences from previous interim next-step plans, shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent and the student's guidance counselor or other school official charged with coursework planning for the student.

B. Each student must complete a final next-step plan during the senior year and prior to graduation.

The plan shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent and the student's guidance counselor or other school official charged with coursework planning for the student.

C. An individualized education program that meets the requirements of Subsections A and B of this section and that meets all applicable transition and procedural requirements of the federal Individuals with Disabilities Education Act for a student with a disability shall satisfy the next-step plan requirements of this section for that student.

D. A local school board shall ensure that each high school student has the opportunity to develop a next-step plan based on reports of college and workplace readiness assessments, as available, and other factors and is reasonably informed about:

- (1) curricular and course options, including honors or advanced placement courses, dual-credit courses, distance learning courses, career clusters or remediation programs that the college and workplace readiness assessments indicate to be appropriate;
- (2) opportunities available that lead to different post-high-school options; and
- (3) alternative opportunities available if the student does not finish a planned curriculum.

E. The secretary shall:

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- (1) establish specific accountability standards for administrators, counselors, teachers and school district staff to ensure that every student has the opportunity to develop a next-step plan;
- (2) promulgate rules for accredited private schools in order to ensure substantial compliance with the provisions of this section;
- (3) monitor compliance with the requirements of this section; and
- (4) compile such information as is necessary to evaluate the success of next-step plans and report annually, by December 15, to the legislative education study committee and the governor.

F. Successful completion of a minimum of twenty-three units aligned to the state academic content and performance standards shall be required for graduation.

These units shall be as follows:

- (1) four units in English, with major emphasis on grammar and literature;
- (2) three units in mathematics, at least one of which is equivalent to the algebra 1 level or higher;
- (3) two units in science, one of which shall have a laboratory component; provided, however, that with students entering the ninth grade beginning in the 2005-2006 school year, three units in science shall be required, one of which shall have a laboratory component;
- (4) three units in social science, which shall include United States history and geography, world history and geography and government and economics;
- (5) one unit in physical education;
- (6) one unit in communication skills or business education, with a major emphasis on writing and speaking and that may include a language other than English;
- (7) one-half unit in New Mexico history for students entering the ninth grade beginning in the 2005-2006 school year; and
- (8) nine elective units and seven and one-half elective units for students entering the ninth grade in the 2005-2006 school year that meet department content and performance standards.

Student service learning shall be offered as an elective.

G. For students entering the ninth grade beginning in the 2009-2010 school year, at least one of the units required for graduation shall be earned as an advanced placement or honors course, a dual-credit course offered in cooperation with an institution of higher education or a distance learning course.

H. The department shall establish a procedure for students to be awarded credit through completion of specified career technical education courses for certain graduation requirements.

I. Successful completion of the requirements of the New Mexico diploma of excellence shall be required for graduation for students entering the ninth grade beginning in the 2009-2010 school year. Successful completion of a minimum of twenty-four units aligned to the state academic content and performance standards shall be required to earn a New Mexico diploma of excellence. These units shall be as follows:

- (1) four units in English, with major emphasis on grammar, nonfiction writing and literature;
- (2) four units in mathematics, of which one shall be the equivalent to or higher than the level of algebra 2, unless the parent submitted written, signed permission for the student to complete a lesser mathematics unit;
- (3) three units in science, two of which shall have a laboratory component;
- (4) three and one-half units in social science, which shall include United States history and geography, world history and geography and government and economics, and one-half unit of New Mexico history;
- (5) one unit in physical education;
- (6) one unit in one of the following: a career cluster course, workplace readiness or a language other than English; and
- (7) seven and one-half elective units that meet department content and performance standards. Student service learning shall be offered as an elective.

J. Final examinations shall be administered to all students in all classes offered for credit.

K. Until July 1, 2010, a student who has not passed a state graduation examination in the subject areas of reading, English, mathematics, writing, science and social science shall not receive a high school diploma. The state graduation examination on social science shall include a section on the constitution of the

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United States and the constitution of New Mexico. If a student exits from the school system at the end of grade twelve without having passed a state graduation examination, the student shall receive an appropriate state certificate indicating the number of credits earned and the grade completed. If within five years after a student exits from the school system the student takes and passes the state graduation examination, the student may receive a high school diploma.

L. Beginning with the 2010-2011 school year, a student shall not receive a New Mexico diploma of excellence if the student has not demonstrated competence in the subject areas of mathematics, reading and language arts, writing, social studies and science, including a section on the constitution of the United States and the constitution of New Mexico, based on a standards-based assessment or assessments or a portfolio of standards-based indicators established by the department by rule no later than January 15, 2008.

If a student exits from the school system at the end of grade twelve without having satisfied the requirements of this subsection, the student shall receive an appropriate state certificate indicating the number of credits earned and the grade completed.

If within five years after a student exits from the school system the student satisfies the requirement of this subsection, the student may receive a New Mexico diploma of excellence.

M. As used in this section:

- (1) "final next-step plan" means a next-step plan that shows that the student has committed or intends to commit in the near future to a four-year college or university, a two-year college, a trade or vocational program, an internship or apprenticeship, military service or a job;
- (2) "interim next-step plan" means an annual next-step plan in which the student specifies post-high-school goals and sets forth the coursework that will allow the student to achieve those goals; and
- (3) "next-step plan" means an annual personal written plan of studies developed by a student in a public school or other state-supported school or institution in consultation with the student's parent and school counselor or other school official charged with coursework planning for the student that includes one or more of the following:
  - (a) advanced placement or honors courses;
  - (b) dual-credit courses offered in cooperation with an institution of higher education; and

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(c) distance learning courses.

N. The secretary may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code."

**TITLE 6 PRIMARY AND SECONDARY EDUCATION**

**CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS**

**PART 7 DUAL CREDIT**

6.30.7.1 ISSUING AGENCY: Public Education Department

[6.30.7.1 NMAC - N, 08/15/05]

6.30.7.2 SCOPE: This rule applies to all public high schools, including charter schools.

[6.30.7.2 NMAC - N, 08/15/05]

6.30.7.3 STATUTORY AUTHORITY: Section 22-2-1 NMSA 1978.

[6.30.7.3 NMAC - N, 08/15/05]

6.30.7.4 DURATION: Permanent

[6.30.7.4 NMAC - N, 08/15/05]

6.30.7.5 EFFECTIVE DATE: August 15, 2005, unless a later date is cited at the end of a section.

[6.30.7.5 NMAC - N, 08/15/05]

**6.30.7.6 OBJECTIVE:**

The purposes of dual credit are: (i) to increase opportunities for high school students, and (ii) to increase efficient use of instructional staff, facilities, equipment, student support services and technical advisory committees at both the secondary and postsecondary levels; and thereby to increase the overall quality of instruction and learning available through secondary schools.

[6.30.7.6 NMAC - N, 08/15/05]

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### **6.30.7.7 DEFINITIONS:**

A. “Dual credit program” refers to a program that allows high school students to enroll in college courses in postsecondary institutions prior to high school graduation, giving them enrichment opportunities and first-hand experiences with the requirements of college level work. Dual credit students receive both high school and college credit simultaneously pursuant to Article XII, Section 6 of the Constitution of New Mexico and the Public Education Department Act.

B. “Postsecondary institution” refers to a public postsecondary educational institution operating in the state, including a community college, branch community college, technical-vocational institute, learning center and four-year educational institution in the state.

[6.30.7.7 NMAC - N, 08/15/05]

### **6.30.7.8 IMPLEMENTATION:**

A. Dual credit courses may be taken as elective high school credits.

B. Dual credit courses may satisfy high school core courses when the department standards and benchmarks are met as verified by the department, and curriculum is aligned to meet postsecondary requirements.

C. Final grades for all students must be delivered to the high school by the end of the high school semester and/or the date of high school graduation for all high schools.

D. Dual credit for both academic and career technical courses requires an executed dual credit agreement between the public school district and the postsecondary institution. The dual credit agreement must address the following components and must be signed by the public school district and the postsecondary institution.

- (1) Name of school district.
- (2) Name of postsecondary institution.
- (3) What are your methods of qualifying students for dual credit courses?
- (4) If placement tests are used as a qualifying method for enrollment in dual credit courses, which tests are utilized?

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- (5) How will all students and parents be informed about dual credit and how students can participate in dual credit?
- (6) What kind of counseling is provided to help students/parents in deciding about participation in a dual credit program by the high school and the postsecondary institution?
- (7) What are the applicable requirements for awarding of credit by the high school and postsecondary institution respectively?
- (8) How will you demonstrate student awareness of academic requirements of the course?
- (9) How will you demonstrate student awareness of the scheduling requirements of the course?
- (10) What are the responsibilities of the student relative to successful participation and completion in a dual credit course/program?
- (11) How will the secondary and postsecondary institution provide support services such as tutoring, career counseling/guidance, and special services?
- (12) What is the schedule for the transfer of tuition and fees by the public school district to the postsecondary institution for dual credit students?
- (13) How will the school district handle textbooks, supplies, etc., for dual credit students?
- (14) How will the school district fund and schedule the transportation of students between secondary and postsecondary campuses in accordance with guidelines and definitions of the school transportation bureau?
- (15) Who is liable for dual credit secondary students and their behavior while they are on the campus of the postsecondary institution for the purpose of attending class(es)?
- (16) What are the approved courses for dual credit and are these courses part of an articulated program of study? If yes, does the student receive college credit for these courses?

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- (17) How will the postsecondary institution record dual credit(s) on student transcripts?

[6.30.7.8 NMAC - N, 08/15/05]

History of 6.30.7 NMAC: [Reserved]

**TITLE 6 PRIMARY AND SECONDARY EDUCATION**

**CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS**

**PART 8 DISTANCE LEARNING**

**6.30.8.1 ISSUING AGENCY: Public Education Department**

[6.30.8.1 NMAC - N, 1-16-07]

**6.30.8.2 SCOPE:**

All public schools, including charter schools. This rule does not apply to the use of technologies or methods used in distance learning programs when such technology or methods are used within a regular classroom setting solely to supplement or aid the classroom instruction.

[6.30.8.2 NMAC - N, 1-16-07]

**6.30.8.3 STATUTORY AUTHORITY:** Sections 22-2-1, 22-2-2, and 22-13-27 NMSA 1978.

[6.30.8.3 NMAC - N, 1-16-07]

**6.30.8.4 DURATION:** Permanent

[6.30.8.4 NMAC - N, 1-16-07]

**6.30.8.5 EFFECTIVE DATE:** January 16, 2007, unless a later date is cited at the end of a section.

[6.30.8.5 NMAC - N, 1-16-07]

**6.30.8.6 OBJECTIVE:**

This rule establishes requirements for distance learning programs taken for credit or a grade by students enrolled in a school district or charter school.

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[6.30.8.6 NMAC - N, 1-16-07]

**6.30.8.7 DEFINITIONS:**

A. "Asynchronous instruction" means the instructor and student are not interacting in real time and can, but need not, utilize the internet.

B. "Board" means the governing body of a school district or charter school.

C. "Department" means the public education department.

D. "Distance learning" means the technology and educational process used to provide instruction for credit when the student and primary instructor are not necessarily physically present at the same time and/or place.

E. "Distance learning authorizer" means any public school, school district or charter school providing access to distance learning classes for credit.

F. "Distance learning irregularities" means any circumstance within or beyond the control of a distance learning authorizer that in the opinion of the department or a distance learning authorizer raises doubts about the propriety of procedures followed, preparation or validity of materials, testing administration, testing security, online security, or teacher or student conduct.

G. "District coordinator" means a staff person at the school district level who shall administer and monitor the online program for the school district.

H. "Enrolling district" means the school district or charter school in which a student is enrolled for the purposes of compulsory attendance.

I. "MEM" means membership.

J. "Membership" means the total number of qualified students as defined in NMSA 1978, Section 22-8-2.

K. "Online" or "web based" means utilizing the internet.

L. "Primary enrolling district" means the school district or charter school in which the student is registered; students shall only have one primary enrolling district for purposes of membership.

M. "Public school" means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either an

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elementary, middle, junior high or high school or any combination of those and includes a charter school.

N. “Qualified distance learning student” means a qualified student as defined in NMSA 1978, Section 22-8-2 who is also enrolled in distance learning courses for credit or a grade.

O. “Real time” interaction means live instruction that occurs between instructor and students, although the individuals need not be physically present in the same location at the same time.

P. “Site coordinator” means a licensed counselor or teacher, at a public school, including but not limited to a charter school, who shall monitor the progress of students participating in the online program at that school. Site coordinator duties shall not be performed by an educational assistant or substitute teacher, although they may assist.

Q. “Student” is a qualified student as defined in NMSA 1978, Section 22-8-2.

R. “Syllabi” are the distance learning provider's official course descriptions.

S. “Synchronous instruction” means the instructor and students receiving distance learning interact in real time. Synchronous instruction includes:

- (1) web based instruction that requires real time interaction between instructor and student;
- (2) two way interactive video;
- (3) regular classroom instruction; and
- (4) telephone based instruction.

[6.30.8.7 NMAC - N, 1-16-07]

#### **6.30.8.8 GENERAL PARAMETERS:**

A. Distance learning provides an opportunity for public schools within the state to expand their course offerings and expand access to instructional resources. These technologies shall not be used as a substitute for all direct, face-to-face student and teacher interactions, but as a means for local school districts and charter schools to expand the learning resources available to their students.

B. Distance learning authorizers shall provide on-site access to the necessary technology for participation in all distance learning classes or programs.

*Note:* This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

*Policy Services*

**Page 2 of 2**

C. Distance learning authorizers shall provide accompanying electronic formats that are usable by a person with a disability using assistive technology, and those formats shall be based on the American standard code for information interchange, hypertext markup language and extensible markup language.

D. All local school boards offering distance learning shall, prior to the offering of distance learning, adopt written policies regarding distance learning which shall include the following parameters.

- (1) The local school board shall be the sole entity granting student credit for completion of distance learning courses.
- (2) Each district shall identify a district coordinator and each school providing distance learning classes or programs shall identify a site coordinator, who shall monitor students' work, except that if a distance learning program is provided by a charter school, the site coordinator can be designated to have responsibility for monitoring the distance learning program in that charter school.
- (3) The site coordinator of the school shall approve or disapprove students' requests to participate in any distance learning courses or programs for credit or a grade pursuant to criteria established by local school board policy.
- (4) Students shall not be precluded from taking distance learning classes outside of the normal school day. Students must be able to maintain a course schedule which incorporates both distance learning classes and locally scheduled classes without conflict.
- (5) Districts and charter schools shall establish written policies and procedures for monitoring student progress and graded assignments, which shall include requirements that students be physically present at the school in which they are enrolled at regularly scheduled intervals, as established by the site coordinator and student or parent, and demonstrate mastery of the subjects being learned at that time. The same grading policies applied to locally scheduled classes shall apply to distance learning classes.
- (6) All federal and state statutes pertaining to student privacy, the posting of images on the internet, copyright or duplication of materials, and rules pertaining to the public broadcasting of audio and video technology shall be addressed by local board policy.

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- (7) The security of individual student data and records shall be addressed by school board policy. At a minimum, student record safeguards under the Family Educational Right to Privacy Act [20 U.S. Code 1232g] shall be followed.

[6.30.8.8 NMAC - N, 1-16-07]

**6.30.8.9 ENROLLMENT AND MONITORING:**

A. Only students who are regularly enrolled in a school district or charter school shall be allowed to enroll in distance learning courses for credit.

B. Students must have a primary enrolling district. Should a student enroll in a distance learning course offered by a district or charter school other than the student's enrolling district, the student can only be counted once as a qualified student for state equalization guarantee funding purposes as defined in Section 22-8-2 of the New Mexico Statutes Annotated for determining membership in the student's enrolling district. Any reimbursement for cross-district enrollment for distance learning courses shall be arranged between the districts or charter schools through signed written documents.

C. Qualified distance learning students enrolled in asynchronous distance learning courses must log onto their computers a minimum of four times per week and certify that they are the enrolled student each time they log on to their computers. Students enrolled in synchronous distance learning courses shall log on to their computer at the scheduled class time and certify that they are the enrolled student.

D. Each qualified distance learning student participating in a distance learning course or program shall be evaluated, tested and monitored at the same intervals as other students in the grade level in the student's school, and shall be subject to the statewide assessments as required in the Assessment and Accountability Act. No student shall be allowed to participate in the statewide assessments at a place other than a public school site.

E. A qualified distance learning student may enroll in and receive credit or a grade for a distance learning class or program that is at a different grade level than the student's current grade level. However, a student cannot take the same course twice for credit.

[6.30.8.9 NMAC - N, 1-16-07]

**6.30.8.10 COURSE REQUIREMENTS:**

*Note:* This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

A. Districts and charter schools shall ensure that all courses taught by New Mexico school personnel are taught by an appropriately licensed and endorsed primary instructor, and that all courses taught by an out of state or university instructor are affiliated with an accredited provider.

B. Districts and charter schools shall establish written criteria and an approval process adopted in written board policy for determining the appropriateness of particular distance learning courses for each individual students prior to student enrollment in such courses. All core curriculum delivered by distance learning must meet or exceed the New Mexico content standards and benchmarks. Districts shall collect and keep on file, in either an electronic or paper format, course syllabi for all distance learning courses which shall be available for inspection by the public.

C. A qualified distance learning student must receive a grade or academic credit for taking a distance learning course or program unless not offered for credit.

[6.30.8.10 NMAC - N, 1-16-07]

**6.30.8.11 DISTANCE LEARNING IRREGULARITIES:**

A. Each local school board and charter school shall adopt a written policy addressing prompt removal or non-use of a distance learning provider should irregularities or deficiencies in the provider's services become apparent.

B. Should a distance learning authorizer fail to comply with this rule, the department shall disapprove membership based on students' enrollment in the distance learning courses or programs.

C. Should a student fail to comply with this rule or the distance learning authorizer's policies, in addition to any other disciplinary actions, the student may be denied credit for the distance learning course or program in which the student was enrolled.

[6.30.8.11 NMAC - N, 1-16-07]

History of 6.30.8 NMAC: [Reserved]

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# ***POLICY SERVICES***

## ***ADVISORY***

Volume 5, Number 2

February 2008

### **CONTENTS**

Policy Advisory No. 56.....	IHB — Special Education Programs
	IHB-R — Special Education Programs

### **Policy Advisory Discussion**

#### ***In General***

**Policy Services Director Dr. Donn Williams talked to Sue Gronewold, Deputy Director of the New Mexico Special Education Bureau on Friday January 25, 2008. In this and previous conversations Ms. Gronewold has been very helpful and discussed the need for and use of the New Mexico Special Education Policy and Procedures. She confirmed that the NM school districts need to acknowledge their obligation to follow the Federal and State statutes, regulations and procedures but do not need to include a copy of the New Mexico Special Education Policy and Procedures in the District's Policy Manual, a reference thereto in the policy would be sufficient. The New Mexico Special Education Policy and Procedures is that guidance document containing requirements and suggestions for**

<p><i>Note:</i> This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.</p>
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compliance with the New Mexico Special Education Plan as approved by the Office of Special Education Programs at the Federal level and upon which local funding is premised. Policy Services believes that the authority for the requirement that the New Mexico Policy And Procedures be utilized with some local modification is found in the following excerpt from NMAC 6.31.2.9 (A) and (C) [emphasis added].

A. Compliance with applicable laws and regulations. Each New Mexico public agency, within the scope of its authority, shall develop and implement appropriate policies, procedures, programs and services to ensure that all children with disabilities who reside within the agency's educational jurisdiction, including children who are enrolled in private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, or are schooled at home, are identified and evaluated and have access to a free appropriate public education (FAPE) in compliance with all applicable requirements of state and federal laws and regulations. This obligation applies to all New Mexico public agencies that are responsible under laws, rules, regulations or written agreements for providing educational services for children with disabilities, regardless of whether that agency receives funds under the IDEA and regardless of whether it provides special education and related services directly, by contract, by referrals to private schools or facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions or through other arrangements.

\*\*\*\*\*

C. IDEA applications and assurances. Each New Mexico public agency that desires to receive IDEA flow-through funds shall file an annual application with the department in the form prescribed by the department. Each application shall:

(1) provide all information requested by the department;

(2) demonstrate to the department's satisfaction that the agency is in compliance with all applicable requirements of 34 CFR Secs. 300.200-300.230 and these or other department rules and standards;

(3) include an agreement that the agency upon request will provide any further information the department requires to determine the agency's initial or continued compliance with all applicable requirements;

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*Policy Services*

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**(4) include assurances satisfactory to the department that the public agency does and will continue to operate its programs in compliance with all applicable federal and state programmatic, fiscal and procedural requirements including the development of joint powers agreements, memoranda of understanding or other interagency agreements to address shared or successive responsibilities to meet the educational needs of a particular child during a single fiscal year; and**

**(5) pursuant to Subsection C of Section 22-8-11, NMSA 1978, the department shall not approve and certify an operating budget of any school district or state-chartered charter school that fails to demonstrate that parental involvement in the process was solicited.**

\*\*\*\*\*

***IHB-Special Instruction Programs.*** A revision to IHB-Special Instruction Programs is proposed below. This revision of the policy directs implementation of the New Mexico Policy and Procedures document as modified for local circumstances per the instructions of the Public Education Department (PED). Adoption of this policy and performing the functions indicated should establish the framework for meeting the compliance requirements for continued federal funding to the State of New Mexico PED Special Education Bureau and to your school district.

***IHB-R-Special Instruction Programs.*** Any current regulation following IHB as Regulation IHB-R should be removed from your policy manual.

**What districts need to do:**

**What does need to be done is that each district needs to download and make the personalization's necessary in the NM Special Education Policy and Procedures and then provide this document for personnel involved in the special education program and supporting the program. The document contains both the laws that must be followed and the procedures that will bring each district into compliance with the mandated special programs. Training or in-service programs should be provided for school district personnel on the contents of the NM Special Education Policy and Procedures. Continued federal funding for your district and the State Plan are dependent upon each school district following the laws and rules and making reports that conform to the requirements in this document and those requested by the New Mexico Special Education Bureau.**

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**Copies of the New Mexico Special Education Policy and Procedures can be available to all personnel in your district through electronic means. The resource can be found at: <http://www.ped.state.nm.us/seo/index.htm>.**

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If you have any questions, call Policy Services at (800) 238-4701. Ask for Donn Williams, Director of Policy Services. E-mail address [dwilliams@azsba.org]. This information is not intended as legal advice. If you have questions as to the legality contact your attorney.

*Note:* This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

**I-2350**                    ©  
**SPECIAL INSTRUCTIONAL PROGRAMS**

**IHB**

A long-range plan will be the basis for providing special education services for students with exceptional needs and education requirements. These services may include specialized programs, personnel, facilities, materials, and equipment needed to promote the individual physical, social, intellectual, and emotional growth of exceptional students.

The Superintendent shall develop procedures that provide educational opportunities for individuals with disabilities and that accomplish District compliance with federal laws including the Individuals with Disabilities Education Act (IDEA), the New Mexico revised statutes, and the lawful regulations of the Secretary of Public Education. Such procedures shall include, but not be limited to, the following provisions:

- All children with disabilities aged birth (0) through twenty-one (21) years within the District's jurisdiction are to be identified, located, and evaluated including children attending religious or private schools who are in need of special education and related services.
- A free appropriate public education (FAPE) shall be available to all children with disabilities aged three (3) through twenty-one (21) years within the District's jurisdiction, including children advancing from grade to grade, those who have been suspended or expelled from school in accordance with the applicable IDEA rules and regulations, and any child with a disability the District has placed in or referred to a private school or facility. The District may refer to and contract with approved public or private agencies as necessary to ensure the provision of FAPE for children with disabilities.
- A full individual evaluation encompassing existing and additional data shall be conducted for each child to determine if the child is a child with a disability and the educational needs of the child before the initial provision of special education and related services. A reevaluation of each child shall be conducted at least every third year.

<p><i>Note:</i> This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.</p>
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*Policy Services*

**Page 2 of 2**

- An individualized education program (IEP) shall be developed and implemented for each eligible child served by the District and for each eligible child the District places in or refers to a private school or facility. An IEP or an individualized family service plan (IFSP) will be in place for each child with a disability prior to the provision of FAPE.
- To the maximum extent appropriate, opportunities for the least restrictive setting, inclusion in educational exercises with regular program students, and for interaction with the total school environment will be provided to exceptional students, the exception to be only when the student's condition, with supplementary aids and services, make such regular class education unsatisfactory.
- All required procedural safeguards must be guaranteed to the exceptional students and their parents. The parents will be provided with notices of procedural safeguards in each specified instance and all due process conditions will be satisfied with respect to the provision of a free appropriate public education.
- The District shall follow the established state and federal standards to protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages.
- To the extent essential to provide FAPE to children with disabilities aged three (3) through twenty-one (21), extended school year (ESY) services shall be made available and implemented as necessary.
- Criteria for the graduation of exceptional students, including accomplishment in reading, writing, and mathematics, shall be as specified in the District policy on graduation requirements. Such standards shall be equivalent to or greater than those established by the Secretary of Public Education.
- Each year conduct a review of the reasonable and acceptable ratio of students per teacher for each disability category.
- The discipline of exceptional students, and unevaluated students suspected of having a qualifying disability, is to be conducted in such a manner as to comply with FAPE and requirements of the IDEA.

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The Superintendent is authorized and directed to establish procedures for the ~~development and administration of the necessary programs~~ implementation of the New Mexico Policies and Procedures prepared by the Public Education Department Special Education Bureau and as modified for local circumstances, and to document District compliance with the law and this policy. ~~Such~~ The New Mexico Policy and Procedures will be made available to staff members and to parents as necessary to enhance compliance.

*Adopted:* date of manual adoption

LEGAL REF.: 22-13-6 NMSA (1978)  
20 U.S.C. 1400 *et seq.*, Individuals with Disabilities  
Education Act  
29 U.S.C. 794, Rehabilitation Act of 1973, Section 504

CROSS REF.: IIB - Class Size  
IKE - Promotion, Retention, and Acceleration of Students  
IKF - Graduation Requirements  
JKD - Student Suspension/Expulsion  
JR *et seq.* - Student Records

*Note:* This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

**REGULATION** **REGULATION**

**SPECIAL INSTRUCTIONAL PROGRAMS**

**(Local Educational Agency Model Manual/Template Policies and Procedures for Compliance with the Individuals with Disabilities Education Act [IDEA])**

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***(Please remove Regulation IHB-R in its entirety.)***

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# ***POLICY SERVICES***

  

# ***ADVISORY***

Volume 5, Number 3

January 2008

## **CONTENTS**

Policy Advisory No. 57..... GCCC — Professional/Support Staff Leaves  
of Absence Without Pay  
GCCC-EA — Professional/Support Staff Leaves  
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Policy Advisory No. 58..... JR—Student Records  
JR-R —Student Records

### **Policy advisory discussion**

***Policy Advisory No. 57.*** In January of 2008 the President signed into law H.R.4986, the National Defense Authorization Act (NDAA). Among other things, section 585 of the NDAA amends the Family and Medical Leave Act of 1993 (FMLA) to permit a "spouse, son, daughter, parent, or next of kin" to take up to 26 workweeks of leave to care for a "member of the Armed Forces including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

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The following language was added to the reasons for taking FMLA leave in policy GCCC and as needed to the relevant exhibits in support of the policy:

- Because of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.
- An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of twenty six (26) workweeks of leave during a twelve (12)-month period to care for the servicemember. The leave described to care for a covered servicemember shall only be available during a single twelve (12)-month period.
- The aggregate number of workweeks of leave to which both the husband and wife may be entitled under covered servicemember family leave combined with leave as described in the previous sentence shall be limited to twenty six (26) workweeks during only one twelve (12)-month period.
- Certification of active military duty or call to active duty in support of a contingency operation for purpose of receiving family leave shall be required under the same conditions as FMLA certification for leave indicated above.
- In the case of continuation, recurrence, or onset of a serious health condition to the employee, covered family of the employee (including a servicemember being cared for by an employee) and the employee is unable to return to work, certification issued by the health care provider of the entity with the serious health condition shall be required to support the inability of the employee to return to work.

These statements are explanatory of the content of NDAA as it affects FMLA. Family leave may be taken when an employee or a family member is ordered or called to active duty or when an employee or family member is a covered servicemember and is in need of care to recover from service related injuries or illness.

In addition to the above mentioned modifications to Policy GCCC and accompanying exhibits the identifying phrase "serious medical condition" was changed to the current FMLA terminology "serious health condition". This change was made in several places throughout the policy and exhibits.

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**Policy Advisory No. 58. JR—Student Records.** With the reauthorization of the Individuals with Disabilities Education Act of 2004 there came a modified set of rules in the Code of Federal Regulations part 300 in July of 2007. The changes to the regulations were in some cases significant but in those that affected the citations listed in the Policy on Student Records the changes were simply changes in the numbering of the regulations. Policy Services has performed a search of the regulations and made the modifications to the citations in Policy JR and regulation JR-R. There was no change to the language of the policy or regulation on student records but because of the extensive changes to the numbering of the citations, Policy Services believes it best to submit the modifications so the School can be aware and make their community aware of the changes that have occurred.

**In order for the reader to have access to the full text of the National Defense Authorization Act FY 2008 amendments to The Family and Medical Leave Act of 1993 (FMLA) Policy services has included the amended FMLA following the policy, regulation and exhibit changes.**

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If you have any questions, call Policy Services at (800) 238-4701 or fax information to (602) 254-1177. Ask for Dr. Donn Williams, Director of Policy Services, [dwilliams@azsba.org].

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**G-2900                    ©  
PROFESSIONAL / SUPPORT STAFF  
LEAVES OF ABSENCE WITHOUT PAY**

**GCCC**

The District recognizes that on occasion extenuating circumstances arise that may necessitate absence from duty that is not covered by other specific leave provisions of the District. To address such situations, a leave of absence, without pay, may be granted a member of the certificated or support staff for not longer than one (1) year.

Leave of absence may be requested for, but not limited to, the following purposes:

- For additional education that relates to the employee's primary assignment. A plan of contemplated course work must be presented.
- To provide for an unpaid leave in a situation where the employee will be absent from work because of (1) a reason that conforms to a policy currently in effect but the maximum number of days provided for in that policy will be exceeded, or (2) failure to report to work without prior notification to the Superintendent.
- For a leave of absence that benefits or is in the best interest of the District, as determined by the Board upon review of the application.
- For leave under the Family and Medical Leave Act.

A leave of absence requested pursuant to this policy may be:

- Approved by the Superintendent if the leave period does not exceed twelve (12) weeks; or
- Recommended by the Superintendent and approved by the Governing Board if the leave period exceeds twelve (12) weeks.

A request for leave of absence shall not be denied by the District if the employee is entitled to the leave under the Family and Medical Leave Act. All other applications for leave of absence may be granted or denied by the District, in its sole discretion.

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*Policy Services*

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Each request for such a leave of absence shall be in a written application stating the purpose, starting date, and duration of the leave of absence, the reasons for its necessity or desirability, and any other information the applicant deems relevant to the request.

The leave of absence shall be only for the purpose and duration approved and may not be extended without written approval by the District.

All rights of continuing status (certificated teachers only), retirement, salary increments, and other benefits shall be restored at the level earned when the leave was granted. All accrued sick, vacation, personal, and other paid leave shall be applied to the leave period unless otherwise agreed to by the District or prohibited by the Family and Medical Leave Act.

### **Family and Medical Leave Act (FMLA)**

The District shall fully comply with the Family and Medical Leave Act and all interim and final regulations interpreting the FMLA issued by the U.S. Department of Labor. Accordingly, all portions of this policy that pertain to the FMLA shall be interpreted in a manner consistent with the FMLA and its regulations. Subject to the conditions set forth herein, any eligible employee of the District may take up to twelve (12) weeks of leave (FMLA leave) during any one (1) fiscal year (July 1 to June 30), without pay, for any one (1) or more of the following reasons:

- Because of the birth of a child of the employee and in order to care for such child.
- Because of the placement of a child with the employee for adoption or foster care.
- In order to care for the spouse or a son, daughter, or parent of the employee, if such person has a serious health condition.
- Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.
- Because of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.

*Serious ~~medical~~ health condition* means an illness, injury, impairment, or physical condition that involves inpatient care in a hospital, hospice, or residential medical

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facility, or outpatient care with continuing medical treatment by a licensed physician. Any employee who has been employed by the District at least twelve (12) months and who has completed at least one thousand two hundred fifty (1,250) hours of service immediately prior to the time the leave is to commence shall be eligible for FMLA leave.

***Special conditions applicable to FMLA.*** Entitlement to leave for the birth of a child or the placement of a child for adoption or foster care ends at the expiration of a twelve (12)-month period, beginning on the date of the event. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of twenty six (26) workweeks of leave during a twelve (12)-month period to care for the servicemember. The leave described to care for a covered servicemember shall only be available during a single twelve (12)-month period.

A husband and wife working for the District may be limited to a total of twelve (12) weeks of leave during each fiscal year for leave for the birth of a child or the placement of a child for adoption or foster care and to care for an employee's parent with a serious ~~medical~~ health condition. The aggregate number of workweeks of leave to which both the husband and wife may be entitled under covered servicemember family leave combined with leave as described in the previous sentence shall be limited to twenty six (26) workweeks during only one (1) twelve (12)-month period.

The District shall not require an employee to substitute accrued sick leave for FMLA leave used by reason of a birth, adoption, or foster placement. An employee shall substitute accrued vacation or personal leave for FMLA leave used by reason of a birth, adoption, or foster placement, to the extent available by policy, unless otherwise agreed to by the District. In any other circumstance, an employee's accrued sick, vacation, personal, or other applicable leave shall be substituted for FMLA leave, to the extent available by policy, unless otherwise agreed to by the District.

***Notice.*** An employee must provide at least thirty (30) days notice before the FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption, or foster care, ~~or~~ planned medical treatment for a serious ~~medical~~ health condition, or military service leave of the employee or family member. If thirty (30) days notice is not practicable, notice must be given as soon as practicable. The notice shall be in the form of a request for leave of absence as specified in this policy. The District may deny FMLA leave to any eligible employee until such time as the employee has provided the required notice.

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***Medical—eCertification.*** All FMLA leave shall be supported by medical certificate provided by the employee's health provider in the form of the exhibit accompanying this policy. In any instance where the FMLA leave must be preceded by thirty (30) days notice, the medical certificate should accompany the request for leave of absence. In any other instance, the medical certificate should be provided within fifteen (15) days after the FMLA leave commences.

Certification of active military duty or call to active duty in support of a contingency operation for purpose of receiving family leave shall be required under the same conditions as FMLA certification for leave indicated above.

The employee may be requested to provide recertification of medical conditions in support of leave if the District feels that the circumstances so warrant and notice is given. Recertification shall not be required for intervals shorter than thirty (30) days.

Whenever a medical certification or recertification is required of an employee, notice describing such requirement and providing the form of such certification shall be provided to the employee. An employee shall not be denied FMLA leave or other rights under the FMLA unless a notice required by FMLA in such situation has first been provided to the employee.

In the case of continuation, recurrence, or onset of a serious health condition to the employee, covered family of the employee (including a servicemember being cared for by an employee) and the employee is unable to return to work, certification issued by the health care provider of the entity with the serious health condition shall be required to support the inability of the employee to return to work.

***Intermittent or reduced time (IRT) leave.*** FMLA leave may be taken intermittently or on a reduced leave schedule under the following circumstances: only (1) if medically necessary to care for a family member or for the employee's own serious medical condition or (2) if approved by the District. The District may, for the term of the leave, transfer the employee to an alternative position with equivalent pay and benefits.

- If medically necessary to care for a family member or for the employee's own serious health condition;
- Because of any qualifying exigency the spouse, or a son, daughter, or parent, of the employee is on active duty, or notified of an impending call or order to active duty in support of a contingency operation; or
- If approved by the District.

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The District may, for the term of the leave, transfer the employee to an alternative position with equivalent pay and benefits.

If the IRT leave is for an *instructional employee* (one whose principle function is to instruct students in a class, small group, or as individuals), the District can require the employee either to take leave for a period or periods of a particular duration not greater than the duration of the planned treatment or to transfer temporarily to an available alternative position with equivalent pay and benefits that provides better accommodation of recurring periods of leave, provided the leave is:

- Requested to care for a qualifying family member or as a result of the employee's serious ~~medical~~ health condition preventing job performance;
- Foreseeable, based upon planned medical treatment; and
- For more than twenty percent (20%) of the working days in the leave period.

The employee may be granted leave under these circumstances, subject to reasonable efforts to schedule treatment so as not to unduly disrupt the educational program.

***Special end-of-semester circumstances for instructional employees.*** Under each of the following conditions, leave for an instructional employee may be required to continue to the end of the academic semester:

- Leave begins more than five (5) weeks before the end of the semester, leave is for at least three (3) weeks, and return to employment would occur during the last three (3) weeks of the semester.
- Leave other than for the employee's serious ~~medical~~ health condition begins within the last five (5) weeks of the semester, leave is for greater than two (2) weeks duration, and return to employment would occur during the last two (2) weeks of the semester.
- Leave other than for the employee's serious ~~medical~~ health condition begins within the last three (3) weeks of the semester and leave exceeds five (5) working days.

***Employee notification.*** *With each request for FMLA leave, the employee shall be notified:*

- About FMLA by provision of the FMLA fact sheet (exhibit 2).
- As appropriate concerning the expectations, obligations, and consequences of taking FMLA leave per 29 C.F.R. 825.301 of FMLA.

*Note:* This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

- That FMLA leave may be withheld until a requested notice is provided or the time frame is met.
- That if leave is granted to an employee who is unable to perform the work required, restoration may be denied until the employee has complied with the request to provide medical certification of ability to return to work.

The District will post notices in conspicuous places on the District premises that provide a summary of FMLA and information on how to file a charge for an FMLA violation.

***Health care continuation.*** An employee taking FMLA leave shall be entitled to have the health care plan in which the employee is participating continue under the same terms and conditions applicable to actively working employees. The District shall require the repayment of any health care premiums paid by the District for continuing coverage during the period of the FMLA leave if the employee fails to return to work after the FMLA leave expires and the failure to return is not due to circumstances beyond the employee's control.

***Position restoration.*** Upon return from FMLA leave, an employee shall be restored to the same position held before the FMLA leave commenced or to an equivalent position with equivalent pay, benefits, and working conditions. The District requires an employee to provide a medical certificate from a health care provider that the employee is able to resume work before returning from FMLA leave for a serious personal health condition. The District may delay the return of an instructional employee from FMLA leave at the end of a semester, in accordance with Section 108(d) of FMLA. The District may deny restoration of position to any key employee (i.e., one who is among the highest-paid ten percent [10%] of all employees of the District), in accordance with Section 104(b) of FMLA.

*Adopted:* date of manual adoption

LEGAL REF.: Family and Medical Leave Act of 1993  
29 C.F.R. Part 825

*Note:* This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

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GCCC-EA

**EXHIBIT**

**EXHIBIT**

**PROFESSIONAL / SUPPORT STAFF  
LEAVES OF ABSENCE WITHOUT PAY**

**CERTIFICATION OF PHYSICIAN OR PRACTITIONER  
(Family and Medical Leave Act of 1993)**

1. Employee's name \_\_\_\_\_
2. Patient's name (if other than employee) \_\_\_\_\_
3. Diagnosis \_\_\_\_\_
4. Date condition commenced \_\_\_\_\_
5. Probable duration of condition \_\_\_\_\_
6. Regimen of treatment to be prescribed (Indicate number of visits, general nature and duration of treatment, including referral to another provider of health services. Include schedule of visits or treatment if it is medically necessary for the employee to be off work on an intermittent basis or to work less than the employee's normal schedule of hours per day or days per week.)
  - a. By physician or practitioner \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
  - b. By another provider of health services, if referred by the physician or practitioner \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**IF THIS CERTIFICATION RELATES TO CARE FOR THE EMPLOYEE'S ~~SERIOUSLY ILL~~ FAMILY MEMBER WITH A SERIOUS HEALTH**

*Note:* This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

CONDITION, SKIP ITEMS 7, 8, AND 9 AND PROCEED TO ITEMS 10 THROUGH 16. OTHERWISE, CONTINUE BELOW.

7.  Yes  No Is inpatient hospitalization of the employee required?
8.  Yes  No Is the employee able to perform work of any kind? (If "No," skip Item 9.)
9.  Yes  No Is the employee able to perform the functions of the employee's position? (Answer after reviewing a statement from the employer of essential functions of the employee's position, or, if none is provided, after discussing it with the employee.)
10.  Yes  No Is inpatient hospitalization of the family member (patient) required?
11.  Yes  No Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs, safety, or transportation?
12.  Yes  No After review of the employee's signed statement (see "Employee Statement" below), is the employee's presence necessary, or would it be beneficial for the care of the patient?
13. Estimate the period of time care is needed or the employee's presence would be beneficial. \_\_\_\_\_
14. Signature of physician or practitioner \_\_\_\_\_
15. Date \_\_\_\_\_
16. Type of practice or field of specialty \_\_\_\_\_

### Employee Statement

Complete the following when family leave is needed to care for a (~~seriously ill~~) family member with a serious health condition or to care for a servicemember.

What care will the employee provide? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Estimate what the time period will be during which the employee will care for the family member. (If intermittent or reduced leave is anticipated, provide a suggested schedule).

\_\_\_\_\_

*Note:* This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

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\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

*Note:* This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

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EXHIBIT

EXHIBIT

## PROFESSIONAL / SUPPORT STAFF LEAVES OF ABSENCE WITHOUT PAY

### FAMILY AND MEDICAL LEAVE ACT OF 1993

The Family and Medical Leave Act of 1993 (FMLA) requires employers of fifty (50) or more employees within a seventy-five (75) mile area to provide up to twelve (12) weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are "eligible" if they have worked for a covered employer for at least one (1) year, and for one thousand two hundred fifty (1,250) hours over the previous twelve (12) months.

***Reasons for taking leave.*** An employer must grant unpaid leave to an eligible employee for one (1) or more of the following reasons:

- For the care of the employee's child (birth, or placement for adoption or foster care);
- For the care of the employee's spouse, son or daughter, or parent, who has a serious ~~medical~~ health condition; or
- For a serious ~~medical~~ health condition that makes the employee unable to perform the employee's job.
- Because of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

***Advance notice and medical certification.*** The employee may be required to provide advance leave notice and medical certification.

*Note:* This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

*Policy Services*

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- In certain cases, the employee ordinarily must provide thirty (30) days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious ~~medical~~ health condition.
- An employer may also require medical certification if the employee is unable to return from leave because of a serious ~~medical~~ health condition of a family member or cared for servicemember.

***Intermittent or reduced leave:***

- An employee may take intermittent or reduced leave to reduce the usual number of hours per day or work week.
- Intermittent or reduced leave schedules are subject to employer approval unless medically necessary.

***Job and benefits protection:***

- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. Employers may deny restoration to certain highly compensated employees, but only if necessary to avoid substantial and grievous economic injury to the employer's operation.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.
- The use of unpaid FMLA leave cannot affect the exempt status of bona fide executive, administrative, and professional employees under the Fair Labor Standards Act.

***Medical insurance coverage:***

- For the duration of FMLA leave, the employer must maintain the employee's medical insurance coverage under any "group health plan," under the conditions coverage would have been provided if the employee had continued working.
- In some cases, the employer may recover premiums paid for maintaining an employee's health coverage if the employee fails to return to work from FMLA leave.

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***Unlawful acts by employers.*** FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA.
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA.
- Discharge or discriminate against any person because of involvement in any proceeding under or related to FMLA.

***Miscellaneous provisions:***

- Similar provisions of the law apply to federal and congressional employees.
- Special rules apply to employees of local education agencies.
- Employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. Any employer who willfully violates this requirement may be subject to a fine of up to one hundred dollars (\$100) for each separate offense.
- A "Commission on Leave" will conduct a comprehensive study of existing and proposed policies relating to leave, and submit a report to Congress within two (2) years.

***FMLA does not:***

- Affect any federal or state law prohibiting discrimination.
- Supersede any state or local law that provides greater family or medical leave rights.
- Diminish an employer's obligation to provide greater leave rights under a collective bargaining agreement or employment benefit plan, nor may the rights provided under FMLA be diminished by such agreement or plan.
- Discourage employers from adopting policies more generous than are required by FMLA.

***Enforcement:***

*Note:* This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.



- The Secretary of Labor is authorized to investigate and attempt to resolve complaints of violations, and may bring an action against an employer in any federal or state court of law.
- FMLA's enforcement procedures parallel those of the federal Fair Labor Standards Act. The FMLA will be enforced by the department's Wage and Hour Division.
- An eligible employee may bring a civil action against an employer for violations.
- Employers who act in good faith and have reasonable grounds to believe their actions did not violate FMLA may have any damages reduced to actual damages, at the discretion of a judge.

For more information, please contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor, Employment Standards Administration.

*Note:* This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

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GCCC-EC

EXHIBIT

EXHIBIT

## PROFESSIONAL / SUPPORT STAFF LEAVES OF ABSENCE WITHOUT PAY

### YOUR RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993

The Family and Medical Leave Act of 1993 (FMLA) requires covered employers to provide up to twelve (12) weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one (1) year, and for one thousand two hundred fifty (1,250) hours over the previous twelve (12) months, and if there are at least fifty (50) employees within seventy-five (75) miles.

***Reasons for taking leave.*** Unpaid leave must be granted for *any* of the following reasons:

- To care for the employee's child after birth, or placement for adoption or foster care.
- To care for the employee's spouse, son or daughter, or parent, who has a serious ~~medical~~ health condition.
- For a serious ~~medical~~ health condition that makes the employee unable to perform the employee's job.
- Because of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.

At the employee's or employer's option, certain kinds of *paid* leave may be substituted for unpaid leave.

*Note:* This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

*Policy Services*

**Page 2 of 2**

***Advance notice and medical certification.*** The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide thirty (30) days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious ~~medical~~ health condition, and may require second or third opinions (at the employer's expense) and a fitness-for-duty report to return to work.

***Job benefits and protection:***

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."
- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions, with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

***Unlawful acts by employers.*** FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA.
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

***Enforcement:***

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.

*Note:* This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

***For additional information.*** Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under "U.S. Government, Department of Labor."

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**J-7050**                      ©  
**STUDENT RECORDS**

**JR**

Required student records (regular and special education) will be prepared in a manner consistent with the federal and state laws

The District will comply with the provisions of the Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA), the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), and the No Child Left Behind Act of 2001 (NCLB) in the establishment, maintenance, correction, and disposition of student records.

The Board directs the Superintendent to establish procedures for such compliance, including informing parents, students, and the public of the contents. The Superintendent will implement procedures as required by law and will establish procedures for dealing with violations.

If a parent or eligible student believes that the District is violating the FERPA, that person has a right to file a complaint with the U.S. Department of Education. The address is:

The Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-4605  
Telephone number: (202) 260-3887

In adopting this policy it is the intent of the Board that the policy and related procedures be implemented immediately. Copies of the policy and procedures will be available for parent and eligible student review in the office of each school and in the Superintendent's office.

**Confidentiality**

The right to inspect and review education records and the release of or access to such records, other information, or instructional materials will be consistent with federal law in the Family Educational Rights and Privacy Act, Title 20, United

*Note:* This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

States Code, sections 1232g and 1232h, the USA PATRIOT ACT, NCLB, and with federal regulations issued pursuant to such act.

### **Annual Notification**

Within the first three (3) weeks of each school year, the District will publish in a District communication a notice to parents and eligible students of their rights under the FERPA and this procedure. This notice will also be provided to each parent of new students enrolling after school begins [34 C.F.R. 99.7]. The District will arrange to provide translation of the notice to non-English-speaking parents in their native language or mode of communication [34 C.F.R. ~~300.561~~300.9]. The notice shall inform the parents of:

- The right of the parent or an eligible student to inspect and review the student's education records.
- The intent of the District to limit the disclosure of personally identifiable information contained in a student's education records, including disciplinary records, except by the prior written consent of the parent or eligible student or under certain limited circumstances as permitted by the FERPA, the USA PATRIOT Act or the NCLB Act.
- The right of the parent or eligible student to seek to correct parts of the school education records that the student or the parent believes to be inaccurate, misleading, or in violation of student rights. This right includes the right to a hearing to present evidence that the record should be changed if the District decides not to alter it according to the parent's or eligible student's request.
- The right of the parent or eligible student to file a complaint with the U.S. Department of Education if they believe the District has violated the FERPA.

Parents and eligible students have the following rights under the Family Educational Rights and Privacy Act (FERPA) and this procedure [34 C.F.R. 99.7 and ~~300.561~~ 300.613]. The notice shall also include:

- The procedure for exercising the right to inspect and review education records.
- The procedure for requesting amendments of education records that the parent or eligible student believe to be inaccurate, misleading or otherwise a violation of the student's privacy rights.

*Note:* This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

- The conditions when prior consent is not required, the criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.

*Adopted:* date of manual adoption

LEGAL REF.: 10 U.S.C. 503  
20 U.S.C. 1232  
20 U.S.C. 1400 *et seq.*  
20 U.S.C. 7908  
34 C.F.R. 300

CROSS REF.: IHB - Special Instructional Programs  
JF - Student Admissions  
JFAB - Admission of Nonresident Students  
JRCA - Request for Transfer of Records

*Note:* This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

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JR-R

**REGULATION**

**REGULATION**

## **STUDENT RECORDS**

This procedure is designed to meet the provisions of the Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities in Education Act (IDEA). All personnel in the District are expected to fulfill the requirements of policy and the following procedures in order to protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages [34 C.F.R. ~~300.572~~ 300.612].

The Superintendent has the responsibility for ensuring the confidentiality of any personally identifiable information [34 C.F.R. ~~300.572~~ 300.612].

All rights and protections given parents under the FERPA and this procedure transfer to the student upon reaching age eighteen (18) except where the student continues as a dependent under specified circumstances, or enrolling in a postsecondary school. The student then becomes an "eligible student" [34 C.F.R. 99.5 and ~~300.574~~ 300.625].

### **Definitions**

For the purpose of the procedure, the District has used the following definitions of terms:

- *Student* - Any person who attends or has attended a program of instruction sponsored by the District and for whom the District maintains education records.
- *Eligible student* - A student who has reached age eighteen (18) or is attending a postsecondary school.
- *Parent* - Either the natural parent of a student, unless the parent's rights under the FERPA have been removed by a court order, statute, or other legal document, or a guardian, or an individual acting as a parent or guardian in the absence of the student's parent or guardian. The District may presume that the parent has the authority to inspect and review education records relating to his or her child unless the District has been advised that the parent does not have authority under applicable law.

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*Policy Services*

**Page 2 of 2**



- *Education records* - Any information directly related to a student recorded in any way including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm or microfiche, that is maintained by the District, an employee of the District, or any agent of the District except:
  - Personal records kept by an employee of the District that meets the following tests:
    - ▲ It is used only as a personal memory aid.
    - ▲ It is kept in the personal possession of the individual who made it.
    - ▲ It is not accessible and has never been revealed to any other person except the employee's temporary substitute.
  - Medical treatment records maintained for "eligible students."
  - Records collected and maintained by a law enforcement unit of the school.
  - Records containing only information about a person after that individual is no longer a student in the District.
  - An employment record that is used only in relation to a student's employment by the District. (*Employment* for this purpose does not include activities for which a student receives a grade or credit in a course.)
  - Related alumni records after the student no longer attends classes provided by the District, and the records do not relate to the person as a student.
- *Personally identifiable information* - Any data or information that makes the subject of a record known. This includes the student's name, the name(s) of the student's parent(s) or other family member(s), the student's address, the student's Social Security number, a student number, a list of personal characteristics, or other information that would make the student's identity easily traceable.
- *Signed and dated written consent* - May include a record and signature in electronic form that:
  - Identifies and authenticates a particular person as the source of the electronic consent.
  - Indicates such person's approval of the information contained in the electronic consent.

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## **Locations of Education Records**

A list of types and locations of education records collected, maintained, or used will be provided to the parents on request [34 C.F.R. ~~300.565~~ 300.616]. See Exhibit JR-EA.

## **Procedure to Inspect Education Records**

Parents of a student, the designated representative of the parents, and an eligible student may inspect and review the student's education records that are collected, maintained, or used by the District [34 C.F.R. ~~300.562~~ 300.501]. In some circumstances it may be mutually more convenient for the record custodian to provide copies of records. Charges for the copies of records will be costs of copying unless the fee would effectively prevent the parent from exercising rights to inspect and review those records [34 C.F.R. ~~300.562~~ 300.613 and ~~300.566~~ 300.617].

Since a student's records may be maintained in several locations, the school principal will offer to collect copies of records or the records themselves from locations other than a student's school so they may be inspected at one (1) site. However, if parents and eligible students wish to inspect records where they are maintained, the school's principal will make every effort to accommodate their wishes.

Parents, the designated representative of the parents, or the eligible student should submit to the student's school principal a signed and dated written request that identifies as precisely as possible the record or records wanted for inspection. The District will respond to any request without unnecessary delay before any meeting regarding any individual education program or hearing relating to the identification, evaluation, placement of a student, or the provision of a free appropriate public education, and in no case more than forty-five (45) days after the request has been made [34 C.F.R. ~~300.562~~ 300.613 and 99.10]. See Exhibit JR-ED.

The principal, or other education records custodian, will contact the parent of the student or the eligible student to discuss how access will be best arranged (e.g., copies, at the exact location, or records brought to a single site).

Parents have the right, upon reasonable request, for explanations and interpretations of the information contained in the records and a right to request copies of the records containing the information, if not in violation of stated policy of FERPA. Parents have the right to have a representative of the parent to inspect and review the records [34 C.F.R. ~~300.562~~ 300.613 and 99.10].

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The principal, or other education records custodian, will make the needed arrangements as promptly as possible and notify the parent or eligible student of the time and place where the records may be inspected. This procedure must be completed in forty-five (45) days or less after receipt of the request for access [34 C.F.R. ~~300.562~~ 300.613].

If for any valid reason, such as working hours, distance between record location sites, or health, the parent or eligible student cannot personally inspect and review a student's education records, the District will arrange for the parent or eligible student to obtain copies of the record. See below for information regarding fees for copies of records [34 C.F.R. ~~300.562~~ 300.613 and 99.10].

When a record contains information about students other than a parent's child or the eligible student, the parent or eligible student may not inspect and review the records of the other students [34 C.F.R. ~~300.564~~ 300.615, 99.5 and 99.12].

### **Fees for Copies of Records**

All records subject to disclosure under this procedure shall be available for inspection free of charge. If copies are desired, they shall be furnished by the District to the parent or eligible student on request and free of charge. Additional copies may be sent to other schools or agencies without charge. However, the District reserves the right to charge up to thirty-five cents (35¢) per page for multiple or excessive requests. Copies of available records shall be produced as promptly as possible upon receipt of the request. No fee will be charged for search and retrieval of records [34 C.F.R. ~~300.556~~ 300.617 and 99.11].

The District will provide copies of records:

- When the refusal to provide copies effectively denies access to the records by the parent or eligible student [34 C.F.R. ~~300.562~~ 300.617].
- At the request of the parent or eligible student, when the District has provided the records to third parties by the prior consent of the parent or eligible student.
- At the request of the parent or eligible student when the District has forwarded the records to another school where the student seeks or intends to enroll.

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## Directory Information

The District designates the following personally identifiable information contained in a student's education records as "directory information" and may disclose that information without prior written consent [20 U.S.C. 1232g(a)(5)(A)]:

- The student's name.
- The student's address.
- The student's telephone listing.
- The student's date and place of birth.
- The student's electronic mail address.
- The student's photograph.
- The student's grade level.
- The student's major field of study.
- The student's dates of attendance.
- The student's enrollment status (e.g., part time or full time).
- The student's participation in officially recognized activities and sports.
- The student's weight and height if a member of an athletic team.
- The student's honors and awards received.
- The student's most recently attended educational agency or institution.

Within the first three (3) weeks of each school year the District will publish in a District communication or send home with each student the above list, or a revised list, of the items of directory information designated as directory information. For a student who enrolls after the notice is published, the list will be given to the parent or eligible student at the time and place of enrollment. See Exhibit JR-EB.

After the parents or eligible student have been notified, they will have two (2) weeks to advise the District in writing (a letter to the Superintendent's office) of any or all of the items they refuse to permit the District to designate as directory information about that student.

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According to state and federal law if the Governing Board permits the release of directory information relating to students to persons or organizations who inform students of educational or occupational opportunities, then the Governing Board shall provide access to directory information on the same basis to military official recruiting representatives for the purpose of informing students of educational and occupational opportunities available to them, unless the parent or eligible student requests in writing to the District (a letter to the Superintendent's office within two (2) weeks after notification) not to release directory information to any person or organization without prior signed and dated written consent. If the parent or eligible student refuses to allow the release of directory information without prior signed and dated written consent, then the District will not provide military recruiters, upon request, directory information containing the student's name, addresses and telephone listings.

At the end of the two-week period, if the parent or eligible student has not returned the form indicating refusal to allow the release of directory information, the District will assume it has their permission to release the above-mentioned information. This designation will remain in effect until it is modified by the prior signed and dated written direction of the parent or eligible student. The student's records will be appropriately marked by the records custodian to ensure compliance with the parents' or eligible student's request.

### **Use of Student Education Records**

To carry out their responsibilities, school officials will have access to student education records for legitimate educational purposes. The District will use the following criteria to determine who are school officials [34 C.F.R. 99.31]:

- A person duly elected to the Board (under limited circumstances).
- A person certificated by the state and appointed by the Board to an administrative or supervisory position.
- A person certificated by the state and under contract to the Board as an instructor.
- A person employed by the Board as a temporary substitute for administrative, supervisory, or instructional personnel for the period of such performance as a substitute.
- A person employed by or under contract to the Board to perform a special task, such as a secretary, a clerk, the Board attorney, or auditor, for the period of such performance as an employee or contractor.

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School officials who meet the criteria listed above will have access to a student's records if they have a legitimate educational interest in doing so [34 C.F.R. 99.32]. A "legitimate educational interest" is the person's need to know in order to:

- Perform an administrative task required in the school employee's position description approved by the Board.
- Perform a supervisory or instructional task directly related to the student's education.
- Perform a service or benefit for the student or the student's family, such as health care, counseling, student job placement, or student financial aid.

Records of students placed in special educational programs will be under the direct supervision of the program administration. All persons collecting or using personally identifiable information in records of students determined to be a student with a disability will receive training or instruction regarding New Mexico's policies and procedures for the protection of these records at the collection, storage, disclosure, and destruction stages in accordance with FERPA and IDEA [34 C.F.R. ~~300.572~~ 300.623].

The District will maintain for public inspection a current listing of the names and positions of employees who have access to personally identifiable information maintained on students placed in special education [34 C.F.R. ~~300.572~~ 300.623]. When the information maintained in these records is no longer needed to provide educational services to the student, the District will notify the parents of their right to have the personally identifiable information destroyed [34 C.F.R. ~~300.573~~ 300.624]. However a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed will be maintained [34 C.F.R. ~~300.573~~ 300.624]. Destruction of records will be accomplished in accordance with the requirements of New Mexico law and regulations of the New Mexico Commission of Public Records. [34 C.F.R. ~~300.572~~ 300.623]

The District will release information from or permit access to a student's education records only with a parent's or eligible student's prior signed and dated written consent, except that the Superintendent or a person designated in writing by the Superintendent may permit disclosure [34 C.F.R. ~~300.571~~, 99.30, 99.31, 99.34, and 99.37]:

- When a student seeks or intends to enroll in another school district or a postsecondary school the District will not further notify parents or eligible students prior to such a transfer of records. Parents and student have a right

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to obtain copies of records transferred under this provision. See Exhibit JR-EC.

- When certain federal and state officials need information in order to audit or enforce legal conditions related to federally supported education programs in the District.
- To parties who provide or may provide financial aid to a student to:
  - Establish the student's eligibility for the aid.
  - Determine the amount of financial aid.
  - Establish the conditions for the receipt of the financial aid.
  - Enforce the agreement between the provider and the receiver of financial aid.
- If a state law adopted before November 19, 1974, required certain specific items of information to be disclosed in personally identifiable form from student records to state or local officials.
- If a state law adopted before November 19, 1974, required certain specific items of information to be disclosed in personally identifiable form from student records to state or local officials of the juvenile justice system and the officials certify in writing that the information will not be disclosed to any other party, except as provided under state law, without prior signed and dated written consent of the parent or the eligible student.
- When the District has entered into a written agreement or contract for an organization to conduct studies on the District's behalf to develop tests, administer student aid, or improve instruction.
- To accrediting organizations to carry out their accrediting functions.
- To parents of an eligible student if the parents claim the student as a dependent as defined by the Internal Revenue Code of 1954.
- To comply with a judicial order or lawfully issued subpoena. The District will make a reasonable effort to notify the parent or the eligible student before making a disclosure under this provision unless directed otherwise by a court of competent jurisdiction.

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- To comply with an *ex parte* order from a court of competent jurisdiction requiring the District to permit the U.S. Attorney General or U.S. Attorney General's designee to collect education records in the possession of the District that are relevant to an authorized investigation or prosecution of an offense listed in 18 U.S.C. 2332b(g)(5)(B) for an act of domestic or international terrorism as defined in 18 U.S.C. 2331. An *ex parte* order is an order issued by a court of competent jurisdiction without notice to the adverse party. A disclosure pursuant to an *ex parte* order will not be recorded as a disclosure of information from a student's education records by the District.
- If the District initiates legal action against a parent or student, the District may disclose to the court, without a court order or subpoena, the education records of the student that are relevant for the District to proceed with the legal action.
- If a parent or eligible student initiates legal action against the District, the District may, without a court order or subpoena, disclose the student's education records that are relevant for the District to defend itself.
- To comply with the request of authorized law enforcement officials conducting an investigation of acts of terrorism.
- The disclosure is in connection with a health or safety emergency. Time is an important and limiting factor in determining whether the disclosure is in connection with a health or safety emergency. The District will permit any school official to make the needed disclosure from student education records in a health or safety emergency if:
  - The official deems the disclosure is warranted by the seriousness of the threat to the health or safety of the student or other persons.
  - The information is necessary and needed to address the emergency.
  - The persons to whom the information is to be disclosed are qualified and in a position to deal with the emergency.
- The District may release student attendance, disciplinary, and other education records to a law enforcement agency and county attorney pursuant to an intergovernmental agreement between the District, the law enforcement agency, the county attorney, and other state, local, or tribal government agencies to create a local or tribal juvenile justice network for the purpose of:
  - providing appropriate programs and services to intervene with juveniles currently involved in the juvenile justice system

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- providing appropriate programs and services designed to deter at-risk juveniles from dropping out of school or other delinquent behavior
- increasing the safety and security of the community and its children by reducing juvenile crime.
- Education records provided pursuant to an intergovernmental agreement entered into in accord with the above provisions shall be used solely for the purposes of the agreement and shall not be disclosed to any other party, except as provided by law.

A District school official may release information from a student's education records, other than directory information, to a third party if the parent or the eligible student gives prior signed and dated written consent for the disclosure and the third party agrees that the information will not be disclosed to any other party without the prior consent of the parent or eligible student. The signed and dated written consent must include at least:

- A specification of the records to be released.
- The reasons for the disclosure.
- The person or the organization or the class of persons or organizations to whom the disclosure is to be made.
- The signature of the parent or eligible student.
- The date of the consent and, if appropriate, a date when the consent is to be terminated.

The parent or the eligible student may obtain a copy of any records disclosed under this provision, unless otherwise provided.

### **Records of Requests for Access and Disclosures Made from Education Records**

The District will maintain an accurate record of all requests for it to disclose information from or to permit access to a student's education records, and of information it discloses and access it permits, with some exceptions as listed below. This record will be kept with, but will not be a part of, each student's cumulative school records. It will be available only to the record custodian, the eligible student, the parent of the student, or to federal, state, or local officials for the purpose of auditing or enforcing federally supported educational programs [34 C.F.R. ~~300.563~~ and 99.32]. See Exhibit JR-EE.

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The record will include at least:

- The name of the person, organization or agency that made the request.
- The interest the person, organization or agency had in the information.
- The date the person, organization or agency made the request.
- Whether the request was granted and, if it was, the date access was permitted or the disclosure was made.

The District will maintain this record as long as it maintains the student's education records. The record will not include requests for access or access granted to:

- the parent or eligible student,
- authorized law enforcement officials conducting an investigation of acts of terrorism,
- school officials who have a legitimate educational interest in the student,
- requests for or disclosures of information contained in the student's education records if the request is accompanied by or authorized by the prior signed and dated written consent of the parent or eligible student, or
- for requests for or disclosures of directory information designated for that student.

### **Procedures to Seek to Correct Education Records**

[34 C.F.R. 99.20 and 99.21]

Parents of students and eligible students have a right to seek to change any part of the student's record they believe is inaccurate, misleading, or in violation of student rights [34 C.F.R. ~~300.567~~ 300.618 and 99.20]. (Note: Under the FERPA, the District may decline to consider a request to change the grade a teacher assigns for a course.)

For the purpose of outlining the procedure to seek to correct education records, the term *incorrect* will be used to describe a record that is inaccurate, misleading, or in violation of student rights. The term *correct* will be used to describe a record that is accurate, not misleading, and not in violation of student rights. Also, in this section, the term *requester* will be used to describe the parent of a student or the eligible student who is asking the District to correct a record.

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To establish an orderly process to review and correct education records for a requester, the District may make a decision to comply with the request for change at several levels in the procedure [34 C.F.R. ~~300.567~~ 300.618 and 99.20].

***First-level decision.*** A parent of a student or an eligible student who finds an item in the student's education records that appears to be inaccurate, misleading, or in violation of student rights should immediately ask the record custodian to correct it. If the record is incorrect because of an obvious error and it is a simple matter to make the record change at this level, the record custodian will make the correction. However, if the record is changed at this level, the method and result must satisfy the requester.

If the custodian cannot change the record to the requester's satisfaction or the record does not appear to be obviously incorrect, the custodian will:

- Provide the requester a copy of the questioned record at no cost.
- Ask the requester to initiate a written request for the change.
- Follow the procedure for a second-level decision.

***Second-level decision.*** The written request to correct a student's education records through the procedure at this level should specify the correction the requester wishes the District to make. It should at least identify the item thought to be incorrect and state whether the requester believes the item:

- Is inaccurate and why,
- Is misleading and why, or
- Violates student rights and why.

The request will be dated and signed by the requester.

Within two (2) weeks after receiving a written request, the record custodian will study the request, discuss it with other school officials (the person who made the record or those who may have a professional concern about the District's response to the request), make a decision to comply or decline to comply with the request, and complete the appropriate steps to notify the requester or move the request to the next level for a decision.

If, as a result of this review and discussion, a decision is reached that the record should be corrected, the record custodian will effect the change and notify the requester, in writing, of that action. Each such notice will include an invitation for

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the requester to inspect and review the student's education records to make certain the record is in order and the correction is satisfactory.

If a decision is reached that the record is correct, the custodian will make a written summary of any discussions with other officials and of the findings in the matter. This summary and a copy of the written request will be transmitted to the Superintendent.

***Third-level decision.*** The Superintendent will review the material provided by the record custodian and, if necessary, discuss the matter with other officials such as the school attorney or the Board (in executive session unless otherwise requested by parent[s]). The Superintendent will then make a decision concerning the request and complete the steps at this decision level. Ordinarily, this level of the procedure should be completed within two (2) weeks. If it will take longer, the Superintendent will notify the requester in writing of the reasons for the delay and a date when the decision will be made.

If the Superintendent decides the record is incorrect and should be changed, the record custodian will be advised to make the changes. The record custodian will advise the requester of the change.

If the Superintendent decides the record is correct, a letter to the requester will be prepared that will include [34 C.F.R. ~~300.567~~ 300.619 and 99.20]:

- The District's decision that the record is correct and the basis for the decision.
- A notice to the requester explaining the requester's right to ask for a hearing to present evidence that the record is incorrect and that the District will grant such a hearing.
- Instructions for the requester to contact the Superintendent to discuss acceptable hearing officers, convenient times, and a satisfactory site for the hearing. (The District will not be bound by the requester's positions on these items but will, as far as possible, arrange the hearing as the requester wishes.)
- Advice that the requester may be represented or assisted in the hearing by other parties, including an attorney, at the requester's expense.

***Fourth-level decision.*** After the requester has submitted (orally or in writing) any wishes concerning the hearing officer and the time and place for the hearing, the Superintendent will, within one (1) week, notify the requester when and where the District will hold the hearing and whom it has designated as the hearing officer [34 C.F.R. ~~300.568~~ 300.621, ~~300.570~~, 99.21, 99.22, and 99.34].

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At the hearing, the hearing officer will provide the requester a full and reasonable opportunity to present material evidence and testimony to demonstrate that the questioned part of the student's education records is incorrect as shown in the requester's written request for a change in the record (second level).

Within one (1) week after the hearing, the hearing officer will submit to the Superintendent a written summary of the evidence submitted at the hearing. Along with the summary, the hearing officer will submit recommendations, based solely on the evidence presented at the hearing, that the record should be changed or should remain unchanged.

The Superintendent will prepare the District's decision within two (2) weeks after the hearing. That decision will be based on the summary of the evidence presented at the hearing and on the hearing officer's recommendation. However, the District's decision will be based solely on the evidence presented at the hearing. Therefore, the Superintendent may overrule the hearing officer if the hearing officer's recommendation is deemed inconsistent with the evidence presented. As a result of the District's decision, the Superintendent will take one (1) of the following actions:

- If the decision is that the District will change the record, the Superintendent will instruct the record custodian to correct the record. The record custodian will correct the record and notify the requester as at the second-level decision [34 C.F.R. ~~300.569~~ 300.620 and 99.21].
- If the decision is that the District will not change the record, the Superintendent will prepare a written notice to the requester that will include [34 C.F.R. ~~300.569~~ 300.620 and 99.21]:
  - The District's decision that the record is correct and will not be changed.
  - A copy of a summary of the evidence presented at the hearing and a written statement of the reasons for the District's decision.
  - Advice to the requester that an explanatory statement may be placed in the student's education records stating the reasons for disagreement with the District's decision and/or the reasons for believing the record to be incorrect.

***Final administrative step in the procedure.*** When the District receives an explanatory statement from a requester after a hearing, it will maintain that statement as part of the student's education records as long as it maintains the questioned part of the record. The statement will be attached to the questioned

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part of the record and whenever the questioned part of the record is disclosed the explanatory statement will also be disclosed [34 C.F.R. ~~300.569~~ 300.620 and 99.21].

**Annual Notification to Parents Regarding  
Confidentiality of Student Education  
Records** [34 C.F.R. ~~300.561~~ and ~~300.572~~ 300.612]

Dear Parent:

The Family Educational Rights and Privacy Act (FERPA) affords parents and students over 18 years of age ("eligible students") certain rights with respect to the student's education records. The Governing Board has established written policies regarding the collection, storage, retrieval, release, use, and transfer of student educational information collected and maintained pertinent to the education of all students to ensure the confidentiality of the information and to guarantee parents' and students' rights to privacy. These policies and procedures are in compliance with:

The Family Education Rights and Privacy Act; Title 20, United States Code, Sections 1232g and 1232h; and the Federal Regulations (34 C.F.R., Part 99) issued pursuant to such act;

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT);

No Child Left Behind Act of 2001 (NCLB); and

The Individuals with Disabilities in Education Act; 20 U.S.C. Chapter 33; and the Federal Regulations (34 C.F.R. Part 300).

Student education records are collected and maintained to help in the instruction, guidance, and educational progress of the student, to provide information to parents and staff members, to provide a basis for the evaluation and improvement of school programs, and for legitimate educational research. The students' records maintained by the District may include - but are not necessarily limited to, identifying data, report cards and transcripts of academic work completed, standardized achievement test scores, attendance data, reports of psychological testing, health data, teacher or counselor observations, and verified reports of serious or recurrent behavior patterns.

These records are maintained in the office of the District under the supervision of the school administrator and are available only to the teachers and staff members working with the student. Upon request, the School discloses education records, including disciplinary records, without consent to officials of another school district

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*Policy Services*

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in which a student seeks or intends to enroll. Otherwise, records are not released to most agencies, persons or organizations without prior signed and dated written consent of the parent [34 C.F.R. 99.7]. The signed and dated written consent may be in electronic form under certain conditions [34 C.F.R. 99.30].

You shall be informed when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child. The information must be maintained for two (2) years after the date your child was last enrolled in this school district.

You have the right to inspect and review any and all records related to your child within forty-five (45) days of the day of receiving a request for access, including a listing of persons or organizations who have reviewed or have received copies of the information [34 C.F.R. 99.7]. Parents who wish to review their children's records should contact the principal for an appointment or submit to the principal a written request that identifies the record(s) you wish to inspect. School personnel will make arrangements for access and notify you of the time and place where the records may be inspected. School personnel will be available to explain the contents of the records to you. Copies of student education records will be made available to parents when it is not practicable for you to inspect and review the records at the school. Charges for the copies of records will be costs of copying unless the fee prevents the parent from exercising rights to inspect and review those records.

You have the right to request that an amendment be made to the student's education records and to add comments of your own if you believe information in the record file is inaccurate or misleading [34 C.F.R. 99.7(a)(1)]. You should write the principal, clearly identify the part of the record you want changed, and specify why it is inaccurate or misleading. If the School decides not to amend the record as requested by you, the School will notify you of the decision and advise you of the right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to you when notified of the right to a hearing.

You have the right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent. One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. A school official is a person employed by the School as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel); a person serving on the School Board; a person or company with whom the School has contracted to perform a special task

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(such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

Copies of the District student education records confidentiality policies and procedures may be reviewed in the assigned office in each school [34 C.F.R. 99.7]. You have the right to file a complaint with the Family Educational Rights and Privacy Act Office in Washington, D.C., concerning alleged failures by the School to comply with the requirements of FERPA [34 C.F.R. 99.7]. The name and address of the Office that administers FERPA are:

**Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-4605**

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# **POLICY SERVICES**

## **ADVISORY**

Volume 5, Number 4

August 2008

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Policy Advisory No. 59..... EGD — Use of Technology in Office Services

#### **Policy Advisory Discussion**

The New Mexico Commission of Public Records has recognized the importance of electronic records and provides guidance for preserving these records (see <http://www.nmcpr.state.nm.us/nmac/parts/title01/01.013.0003.htm>). The record retention schedule of the Commission for e-mail and records received electronically has been developed to assist with the archiving and maintenance of electronic records. It places electronic versions of records in the same category as their paper counterparts. One advantage of following proper record retention, maintenance, and destruction procedures as part of a “routine, good faith operation,” is that the school will be establishing a "safe harbor" for the deletion of email and electronic records as a part of ordinary business activities. A well founded procedure based on the schedules by the New Mexico Commission of Public Records will provide institutional support for the destruction of certain records and may insulate schools from charges of purposefully destroying evidence sought under new discovery rules for civil procedure. Additionally, by following established patterns of record keeping maintenance, a clearer assessment of what is an important record for purposes of complying with the Public Records Law can be determined.

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Policy Services recommends that School Systems contact the Commission and make arrangements for the storage of permanent electronic records. “Permanent records” means records considered being unique or so valuable in documenting the history or business of an organization that they are preserved in an archive. The way the NM Administrative Code is written, it is Policy Services observation that School Systems do not have the personnel, facilities or funding to implement the policies and procedures indicated as necessary by the Commission for maintenance of permanent electronic records by a custodial agency (See NMAC 1.13.3.12 below following the policy).

With approval by the U.S. Supreme Court of changes for handling email as evidence in federal courts, effective in 2007, far reaching changes in the discovery of electronically stored information as evidence will be forthcoming. It will be important for schools to establish electronic records retention schedules that recognize the need for efficient and economical retrieval of evidentiary material sought in discovery due to law suits (see Electronically Stored Information in Litigation following the policy.) The result of not being able to provide electronically stored e-mail and other records in the discovery process under new court discovery rules can be costly or even result in court ordered sanctions and penalties.

***Policy Advisory No. 56. EGD*** – Use of Technology in Office Services. With the advent of anytime, anywhere communication becoming a reality there also needs to be an awareness of legal obligations for district employees and elected public officers. Each must be committed to the spirit of the law(s), which is conducting public business in an open and responsive manner.

NMSA 10-15-1A of the Open Meeting Law (OML) provides that “All meetings of any public body except the legislature and the courts shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.” The legal action which must take place in a public meeting is broader than the decision, commitment or promise; it includes all proposals, discussions, deliberations, considerations or consultations among a majority of the members of the public body that relate to the decision. As used in the statute, deliberations mean any back and forth exchange of facts that relate to a decision.

E-mail, faxes and other electronic messaging to other board members (one-way messages) by themselves generally do not implicate the OML. The mere exchange of information from the Superintendent’s office (such as agenda items, agenda, postings, informational articles, et cetera) is not by itself, a violation of OML. However, simultaneous or serial communications by a quorum of the governing board will implicate the OML. These communications begin to form the

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give-and-take that characterizes the deliberative process, and should be done in an open forum.

The policy suggested by this advisory lays out a set of guidelines that if followed will encourage compliance with Open Meeting Law (OML) and Public Records Law. Actual compliance can only be maintained through knowledge of the OML and Public Record Laws. Please notice that wording in the policy addresses electronic devices which could include devices presently on the market and devices that may be marketed for future use. Policy Services has included the suggestion for a disclaimer to be included in electronic communications. Also included are references to existing policies dealing with board, staff, and public communication. It would be worthwhile to review all policies mentioned as cross references in a training session.

The guidelines contained herein may be modified to local standards and include more specific directions if necessary. The policy requires electronic messaging that involves school or district business and records be segregated on the computer or network and transferred periodically as necessary to a central point for maintenance and retrieval as public records. Electronic communication for school business on personal computers owned privately by a Board member or employee should be managed under the same storage guidelines as those for district computers when district business and records are involved.

There are alternatives to the use of private computers for school business. Districts may establish web based e-mail on the district's own system or a similar arrangement to conduct school business and thereby avoid massive transfer of records from private computers.

An electronic communication about matters related to school business is the legal equivalent of a letter or telephone call. Therefore, all electronic communications to or from members of the public body should be analyzed like any other form of communication, written or verbal, in person or through technological means and treated like paper in consideration of public rights of access, retention and disposal.

Lastly, all Board appointed committees or councils (such as School Councils) are subject to the OML and electronic communications from these groups should be handled in a similar manner to avoid OML and records law violations.

**Materials of a legal nature in support of this advisory may be found following the text of the Policy below.**

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*Policy Services*

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If you have any questions, call Policy Services at (800) 238-4701 or (602) 254-1100. Ask for Dr. Donn Williams, Director of Policy Services. E-mail address is [dwilliams@azsba.org].

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E-4250

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## USE OF TECHNOLOGY IN OFFICE SERVICES

Electronic communications (including records made with other software and sent in e-mail) which are sent or received by the Board or District employees pertaining to the business of the school may be subject to public disclosure and inspection as public records and discovery in litigation as evidence in support of a claim. Use of electronic mail should conform to the same standards of judgment, propriety, and ethics as other forms of school business-related communications. For these reasons a record keeping system for electronic communications shall be established in which those types of electronic communications:

- shall be categorized in the same manner as is required for paper records.
- shall be stored in a way permitting ease of record retrieval.
- and shall contain explicit sender and receiver identification.

All Board members and selected staff are encouraged to participate in Open Meeting Law (OML) and Public Records Law training within the first thirty (30) days after becoming a member of the Board or the date of employment, as is applicable. In order to encourage the Board, individual Board members, staff communicating with or on behalf of the Board and members of councils/committees of the Board to comply with the requirements of the OML and Public Records Law, the following guidelines shall be followed:

- E-mail or any other electronic messaging service shall not be used as a substitute for deliberations at Board meetings or for other communications or business properly confined to Board meetings.
- E-mail or any other electronic messaging service may be used to disseminate factual information, such as agenda packet, suggestions for public agenda items and reminders regarding committee meeting times, dates and places.
- Confidential information about employees, students or other Board members shall not be included in e-mail communications due to the risk of improper disclosure.

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*Policy Services*

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- Should electronic devices be utilized for participation or attendance at public meetings, the public in attendance including media representatives shall have the same access to the electronic input as the Governing Board members.
- The following statement shall be used on all Board member and staff electronic communications: *"To ensure compliance with the Open Meeting Law, Board member recipients of this message should not forward it to other Board members nor should Board members reply to this message."*
- Board members shall communicate with staff members and the public by following procedures established in policy.

The following procedures shall be adhered to in order to establish a record keeping procedure for such communications.

- A repository for electronic communications shall be established at the direction of the Superintendent.
- The determination of record status shall be on the same basis as is used for paper records.
- Once the communication is transferred to the records maintenance location and into the recordkeeping system the original electronic version may be deleted. The version maintained in the proper recordkeeping system is the official copy and must be retained for the same period as required for other forms of the same record series.
- A retrieval system for electronic mail and data transmitted with mail shall be established that will permit reasonable access to the records with a minimum of effort, identifying the recipient and the sender.

### **Records Retention:**

- Each Board member or staff member computer user shall segregate or store electronic communications *pertaining to the business of the District* to or from members of the Board or staff to a file folder and then to a location designated by the District so that these records may be maintained and inspected by any person upon request, unless otherwise made confidential by law.

### **Compliance**

In the event a Board member(s) fails to comply with the guidance of Board policy, the matter shall be referred to the Board President, who will meet with and/or discuss the matter and the Board policy with the Board member(s). The Board

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President may request that the Board's legal counsel participate in the meeting and/or discussion.

In the event an employee fails to comply with the guidance of Board policy, that employee may be subject to disciplinary action, up to and including possible termination.

The Superintendent may develop procedures to assist in compliance with the Open Meeting Law and the Public Records Law.

Adopted: date of manual adoption

LEGAL REF.: A.R.S. 10-15-1 NMSA *et seq.*

14-3-6 NMSA

1.13.4 NMAC *et seq.*

New Mexico Commission of Public Records

([www.ncprs.state.nm.us/](http://www.ncprs.state.nm.us/))

CROSS REF.: BDF - Advisory Committees

BEDH - Public Participation at Board Meetings

BHC - Board Communications with Staff Members

BHD - Board Communications with the Public

CFD - School-Based Management (School Councils)

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## RELEVANT SUPPORT MATERIALS

### **10-15-1. Formation of public policy; procedures for open meetings; exceptions and procedures for closed meetings.**

A. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. The formation of public policy or the conduct of business by vote shall not be conducted in closed meeting. All meetings of any public body except the legislature and the courts shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. Reasonable efforts shall be made to accommodate the use of audio and video recording devices.

B. All meetings of a quorum of members of any board, commission, administrative adjudicatory body or other policymaking body of any state agency, any agency or authority of any county, municipality, district or any political subdivision, held for the purpose of formulating public policy, including the development of personnel policy, rules, regulations or ordinances, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of any board, commission or other policymaking body are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]. No public meeting once convened that is otherwise required to be open pursuant to the Open Meetings Act shall be closed or dissolved into small groups or committees for the purpose of permitting the closing of the meeting.

C. If otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

D. Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable

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*Policy Services*

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notice to the public. The affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body. That notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice.

E. A public body may recess and reconvene a meeting to a day subsequent to that stated in the meeting notice if, prior to recessing, the public body specifies the date, time and place for continuation of the meeting and, immediately following the recessed meeting, posts notice of the date, time and place for the reconvened meeting on or near the door of the place where the original meeting was held and in at least one other location appropriate to provide public notice of the continuation of the meeting. Only matters appearing on the agenda of the original meeting may be discussed at the reconvened meeting.

F. Meeting notices shall include an agenda containing a list of specific items of business to be discussed or transacted at the meeting or information on how the public may obtain a copy of such an agenda. Except in the case of an emergency, the agenda shall be available to the public at least twenty-four hours prior to the meeting. Except for emergency matters, a public body shall take action only on items appearing on the agenda. For purposes of this subsection, an "emergency" refers to unforeseen circumstances that, if not addressed immediately by the public body, will likely result in injury or damage to persons or property or substantial financial loss to the public body.

G. The board, commission or other policymaking body shall keep written minutes of all its meetings. The minutes shall include at a minimum the date, time and place of the meeting, the names of members in attendance and those absent, the substance of the proposals considered and a record of any decisions and votes taken that show how each member voted. All minutes are open to public inspection. Draft minutes shall be prepared within ten working days after the meeting and shall be approved, amended or disapproved at the next meeting where a quorum is present. Minutes shall not become official until approved by the policymaking body.

H. The provisions of Subsections A, B and G of this section do not apply to:

(1) meetings pertaining to issuance, suspension, renewal or revocation of a license, except that a hearing at which evidence is offered or rebutted shall be open. All final actions on the issuance, suspension, renewal or revocation of a license shall be taken at an open meeting;

(2) limited personnel matters; provided that for purposes of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978], "limited personnel matters" means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation

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of or the investigation or consideration of complaints or charges against any individual public employee; provided further that this subsection is not to be construed as to exempt final actions on personnel from being taken at open public meetings, nor does it preclude an aggrieved public employee from demanding a public hearing. Judicial candidates interviewed by any commission shall have the right to demand an open interview;

(3) deliberations by a public body in connection with an administrative adjudicatory proceeding. For purposes of this paragraph, an "administrative adjudicatory proceeding" means a proceeding brought by or against a person before a public body in which individual legal rights, duties or privileges are required by law to be determined by the public body after an opportunity for a trial-type hearing. Except as otherwise provided in this section, the actual administrative adjudicatory proceeding at which evidence is offered or rebutted and any final action taken as a result of the proceeding shall occur in an open meeting;

(4) the discussion of personally identifiable information about any individual student, unless the student, his parent or guardian requests otherwise;

(5) meetings for the discussion of bargaining strategy preliminary to collective bargaining negotiations between the policymaking body and a bargaining unit representing the employees of that policymaking body and collective bargaining sessions at which the policymaking body and the representatives of the collective bargaining unit are present;

(6) that portion of meetings at which a decision concerning purchases in an amount exceeding two thousand five hundred dollars (\$2,500) that can be made only from one source and that portion of meetings at which the contents of competitive sealed proposals solicited pursuant to the Procurement Code [13-1-28 NMSA 1978] are discussed during the contract negotiation process. The actual approval of purchase of the item or final action regarding the selection of a contractor shall be made in an open meeting;

(7) meetings subject to the attorney-client privilege pertaining to threatened or pending litigation in which the public body is or may become a participant;

(8) meetings for the discussion of the purchase, acquisition or disposal of real property or water rights by the public body;

(9) those portions of meetings of committees or boards of public hospitals where strategic and long-range business plans or trade secrets are discussed; and



1.13.3.3 STATUTORY AUTHORITY: Section 14-3-6 of the Public Records Act (Chapter 14, Article 3, NMSA 1978) gives the state records administrator the authority to establish and maintain an active, continuing program for economical and efficient management of the public records of state government.

[1.13.3.3 NMAC - Rp, 1.13.3.3 NMAC, 6/30/2008]

1.13.3.4 DURATION: Permanent

[1.13.3.4 NMAC - Rp, 1.13.3.4 NMAC, 6/30/2008]

1.13.3.5 EFFECTIVE DATE: June 30, 2008 unless a later date is sited at the end of a section.

[1.13.3.5 NMAC - Rp, 1.13.3.5 NMAC, 6/30/2008]

1.13.3.6 OBJECTIVE: The objective of this rule is to establish an architecture for the management of public records on electronic media that:

A. ensures proper records and information management practices are implemented and adhered to by state government entities;

B. ensures uniformity and facilitates the accessibility of public records of government entities

C. maintains accountability and preserves electronic records; and

D. provides guidance to users and managers of electronic systems in New Mexico government about:

(1) the issues associated with managing electronic records, special record keeping and accountability concerns that arise in the context of electronic government;

(2) archival strategies for the identification, management and preservation of electronic records with enduring value; identification and appropriate disposition of electronic records with short-term value; and

(3) improving access to state government records.

[1.13.3.6 NMAC - Rp, 1.13.3.6 NMAC, 6/30/2008]

1.13.3.7 DEFINITIONS:

A. "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978).

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B. “Agency” means any state agency, department, bureau, board, commission, institution or other organization of the state government, including district courts. 14-3-2 and 14-3-15 NMSA 1978.

C. “Application” means a software program designed for end user to do work, such as word processing, accounting, or illustrating. Software programs such as wordperfect, excel, and pagemaker are examples of end user applications.

D. “Archives” means a place where public records or other historical documents are kept.

E. “Commission of public records” means the governing body of the state records center and archives.

F. “Computer” means an electronic device designed to accept data (input), perform prescribed mathematical and logical operations at high speed (processing), and supply the results of these operations (output). This includes, but is not limited to, mainframe computers, minicomputers, and microcomputers, personal computers, portable computers, pocket computers, tablet computers, telephones capable of storing information, PDAs, smart phones and other devices.

G. “Custodial agency” means the agency responsible for the maintenance, care, or keeping of public records, regardless of whether the records are in that agency’s actual physical custody and control.

H. “Custodian” means the person (guardian) responsible for the maintenance, care, or keeping of a public body’s records, regardless of whether the records are in that person’s actual physical custody and control. The statutory head of the agency using or maintaining the records or their designee.

I. “Custody” means the guardianship of records, archives, and manuscripts, which may include both physical possession (protective responsibility) and legal title (legal responsibility).

J. “Data” is the plural for “datum” which means a single piece of information. Data refers to a collection of information, electronic or non-electronic. Data can also refer to raw facts, figures, or symbols.

K. “Database” means a structured collection of records or data that is stored in a computer system. A database relies upon software to organize the storage of the data and to enable a person or program to extract desired information.

L. “Destruction” means the disposal of records of no further value by shredding, burial, incineration, pulping, electronic overwrite, or some other process, resulting in the obliteration of information contained on the record.

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- M. “Disposition” means the final action that puts into effect the results of an appraisal decision for a series of records; i.e., transfer to archives or destruction.
- N. “Draft copies” means the working copies (rough versions) of documents prior to a draft final (conclusive document) being produced.
- O. “Draft final” means the conclusive document produced.
- P. “Electronic records” means records whose informational content has been encoded and recorded on a medium like magnetic tape, drums, discs, or punched paper tape and can be retrieved by finding aids known as software documentation. The encoded information is retrievable only with the help of a computer.
- Q. “Filing” means the process of sequencing and sorting records to make them easy to retrieve when needed.
- R. “General schedule” means records retention and disposition schedule that specifies the disposition of support records common to many offices or agencies within government.
- S. “Human readable form” means information that can be recognized and interpreted without the use of technology.
- T. “Information” means data that has been transformed and made more valuable by processing.
- U. “Information system” means an electronic framework by which hardware and software resources are coordinated to manipulate and convert inputs into outputs in order to achieve the objective of an enterprise.
- V. “Information system database” means a subset of logically arranged data stored on media accessible by the computer.
- W. “Life cycle” means the life span of a record from its creation or receipt to its final disposition.
- X. “Medium, media” means the physical material on which information can be recorded.
- Y. “Microforms” means microfilm media, including reels, fiche, jackets, and computer output microfilm (COM) containing micro images.
- Z. “Non-records or non-essential records” means records listed on a records retention schedule for routine destruction, the loss of which presents no obstacle to restoring daily business. The following specific types of materials are non-records:

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extra copies of correspondence documents preserved only for convenience of reference blank forms or books which are outdated materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the office or agency preliminary and non-final drafts of letters, reports, and memoranda which may contain or reflect the working or deliberative process by which a final decision or position of the agency, board, department, or subdivision thereof is reached shorthand notes, stenographic tapes, mechanical recordings which have been transcribed, except where noted on agency retention schedules routing and other interdepartmental forms which are not significant evidence of the activity concerned and do not otherwise have value as described above stocks of publications already sent to archives and processed documents preserved for supply purposes only form and guide letters, sample letters, form paragraphs subject files, including copies of correspondence, memoranda, publications, reports, and other information received by agency and filed by subject (also referred to as reading files or information files).

AA. “Operating system” means the master control software that runs a computer. When the computer is turned on, the operating system is the first program that gets loaded into the memory of the machine.

BB. “Permanent records” means records considered being unique or so valuable in documenting the history or business of an organization that they are preserved in an archives.

CC. “Permanent archival records” means records identified in either general records retention and disposition schedule or a program records retention and disposition schedule possessing a retention requirement of transfer to the SRCA.

DD. “Personal digital assistant” means a handheld device that combines computing, telephone, fax, and networking features. PDAs are also called palmtops, hand-held computers and pocket computers. A PDA is a small computer that literally fits in your palm. Palmtops that use a pen rather than a keyboard for input are often called hand-held computers or PDAs. Because of their small size, most palmtop computers do not include disk drives. However, many contain slots in which you can insert disk drives, modems, memory, and other devices. Palmtops are also called PDAs, hand-held computers and pocket computers.

EE. “Program” means a coded set of instructions, written by humans, that directs a computer’s functions. The program can be stored on disk (in which case the program is software) or in a chip (which is firmware).

FF. “Public records” means all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of

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public business, preserved or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities or the government, or because of the informational and historical value of data contained therein (14-3-2 NMSA 1978).

GG. “Records” means information preserved by any technique in any medium now known, or later developed, that can be recognized by ordinary human sensory capabilities either directly or with the aid of technology (1.13.70 NMAC).

HH. “Records center” means a facility designed and constructed to provide low-cost, efficient storage and reference service on records that have become inactive but have not reached their disposition date. The state records center, as defined by 14-3-2 (E), NMSA 1978, is the “...central records depository which is the principal state facility for the storage, disposal, allocation or use of non-current records of agencies, or materials obtained from other sources.”

II. “Records custodian” means the statutory head of the agency or their designee.

JJ. “Records liaison officer” means the individual in the custodial agency designated by the records custodian to cooperate with, assist, and advise the state records administrator in the performance of the administrator’s duties (14-3-4, NMSA 1978). The records liaison officer in an agency is responsible for implementing the records retention and disposition schedules within their agency. The records liaison officer is also responsible for authorizing the storage and or destruction of their agency’s records.

KK. “Records retention and disposition schedules” means rules adopted by the commission pursuant to Section 14-3-6 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition.

LL. “Records series” means file units, documents, or electronic records arranged according to a filing system or maintained as a unit because they relate to a particular subject or function, result from the same activity, have a particular form, or share some other relationship arising from their creation, receipt, or use.

MM. “Recycle bin” means an icon on a microsoft windows based operating system desktop that represents a directory where deleted files are temporarily stored. This enables and user to retrieve files that you may have accidentally deleted or delete the files permanently.

NN. “Scheduling” means the action of establishing retention periods for records and providing for their proper disposition at the end of active use.

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OO. “Smart phones” means a phone that uses an identifiable operating system, often with the ability to add applications (e.g. for enhanced data processing, internet connectivity or electronic message).

PP. “Software” means the set of instructions for a computer to carry out a specified procedure.

QQ. “System” means an integrated framework that has one or more objectives and coordinates the resources needed to convert inputs to outputs. The word system often is used in a generic sense in referring to a computer setup--what type of computer and cpu operating system, how much hard disk space, how much memory, or what software package and peripherals are used.

RR. “Transfer” means moving inactive records to a records center or archives. Moving records into the SRCA also includes the transfer of custody from the custodial agency to the SRCA.

SS. “TIFF” means tagged image file format, a standardized format for storage of digitalized images, which contains a header or tag that defines the exact data structure of the associated image.

TT. “USB flash drives” means a small, portable flash memory card that plugs into a computer’s USB port and functions as a portable hard drive. USB flash drives are small and can plug into any computer with a USB drive.

UU. “Vital records” means records essential to the continuing operation of an agency. They are either intrinsically irreplaceable or irreplaceable because copies do not have the same value as the originals. They are essential to the continuity of services during a disaster or to the restoration of daily business when it has been interrupted. They are the records that would be required to protect the legal and financial interests of an agency, preserve the rights of the people, and resume operations after a major disaster like fire or flood.

VV. “Voice mail” means a telecommunication message that is digitized and can be stored and subsequently retrieved in audio or visual format.

WW. “Working copies” means the rough versions of documents prior to a conclusive document produced.

[1.13.3.7 NMAC - Rp, 1.13.3.7 NMAC, 6/30/2008]

#### 1.13.3.8 ACRONYMS:

A. “BMP” stands for microsoft windows bitmap format.

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- B. “JPEG” stands for joint photographic experts group.
- C. “MPEG” stands for moving picture experts group.
- D. “PDA” is short for personal digital assistant.
- E. “PDF” stands for portable document format.
- F. “RRDS” stands for records retention and disposition schedule.
- G. “SGML” standard generalized markup language.
- H. “SRCA” stands for the New Mexico state records center and archives.
- I. “TIFF” stands for tagged image file format.
- J. “USB” stands for universal serial bus.

[1.13.3.8 NMAC - Rp, 1.13.3.8 NMAC, 6/30/2008]

1.13.3.9 [RESERVED]

#### 1.13.3.10 INTRODUCTION: ACCOUNTABILITY

A. Public acceptance of New Mexico state government and the roles of its employees depend on trust and confidence. This trust is founded on all of government being accountable for its actions. Access to full and accurate records is at the heart of the accountability process. Records are the means by which the evidence of past and current action, decisions, procedures and policy are preserved for future analysis and access.

(1) Records are fundamental tools in the business of government and their absence can lead to inefficiencies or failure in operational procedures. The absence of records can open agency employees to accusations of fraud and impropriety, political embarrassment and an inability to defend the state in cases of legal action or claims against the government.

(2) Records can also be transferred from one medium to another and from one context to another through copying, imaging or digital transfer. Electronic records are easily updated, deleted, altered and manipulated. If appropriate measures are not taken, the essential characteristics of records (content, structure, context) can be altered or lost in the process. Careful planning and system design are required to ensure that these characteristics of records are both captured and maintained.

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(3) These guidelines are intended to provide guidance to agencies on the management of electronic records throughout their entire lifecycle, from initial system design to the final disposal or permanent preservation of state records. This "records lifecycle" view is critical in an electronic environment because, by the disposition stage (when actions are taken regarding records no longer needed for current government business), records may be irretrievable if not properly managed while they are in active use. The administrative rule covers records created using all types of computerized environments, including such diverse elements as personal computers, distributed networks, mainframes, spatial data systems, and multimedia systems.

B. Although there exists sensitive or confidential data, all data generated by a state or local government agency in New Mexico are public unless they have been legally declared closed to public inspection by state or federal statute. State agencies are not empowered to make exemptions to the Inspection of Public Records Act (Sections 14-2-1 through 14-2-12 NMSA 1978). Agency heads often have valid concerns about security and privacy rights, thus, questions related to concerns about specific sensitive information or data elements are more properly addressed to legal council for the agency or to the office of the attorney general for the state of New Mexico. Exceptions to this general rule exist throughout state and federal law.

C. In a court of law the evidence may be in documentary, oral, audio-visual, electronic or object form. It shall satisfy the tests of evidence and be admissible in that legal context. Evidence as a concept, however, is not confined to legal contexts. Within business and public sector environments, the evidence from previous actions and decisions is used as a basis for the formulation of new decisions and actions. Organizations keep records as evidence or proof that an activity or transaction did or did not occur. Beyond this more immediate use, researchers also use records as historical evidence on which to base their conclusions.

D. There is no specification in the Inspection of Public Records Act (Sections 14-2-1 through 14-2-12 NMSA 1978) of any means which access to public records shall take. The means of access is left to the discretion of the public agency. The public should not be given direct access if such an action would compromise the security and safety of the records themselves. Common sense urges caution where valuable records are concerned. Hardcopy and digital file storage areas may contain both "open" and "closed" records material, and the alteration, destruction, or theft of files represent clear dangers to public records. If a member of the public demands access that the agency believes will compromise records security but that is not otherwise clearly prohibited in federal or state statutes, that agency is urged to contact their legal council or the office of the attorney general for guidance.

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[1.13.3.10 NMAC - Rp, 1.13.3.10 NMAC, 6/30/2008]

1.13.3.11 SYSTEM RELIABILITY, THE CREATION AND CAPTURE OF ELECTRONIC RECORDS AND THE MAINTENANCE AND ACCESSIBILITY OF THE RECORDS

A. The electronic records system should be administered and configured with the best practices in mind for information and resource management to ensure the reliability of the records being produced. Towards this goal of reliability the life cycle of the records shall be taken into account where some records may finite life spans others may have an indefinite life may have to be viewed or regenerated forever. To this end there are four aspects: preservation- the information shall be in a form that can be physically preserved; the information shall possess the quality of accessibility; the information shall be able to be read (readability); and the information shall retain its comprehensibility - to be read and understood in their original context without question.

(1) Information shall be physically preserved. The information in an electronic system shall be preserved in a physical media that is of sufficient quality and capacity to contain the information being preserved. There are many ways to accomplish this and the commission of public records (state records center and archives) does not endorse, warrant, certify, or approve any particular hardware or software product or product combination used in any electronic records management activity. The implementation of these processes, including the specifications for products used therein, remains at the discretion of the individual public agency. However, the records should be full and accurate to the extent necessary to: facilitate action by current and future employees, at all levels; allow for proper scrutiny of the conduct of business by anyone authorized to undertake such scrutiny; and protect the financial, legal and other rights of the agency, its clients and anyone else affected by its actions and decisions. The agency shall provide convincing, documented evidence that the electronic records were created, protected, and otherwise managed in accordance with systems and procedures designed to ensure the reliability, accuracy, and security of both the records and the process or system used to produce the records. Many paper records are being eliminated when the information has been placed on magnetic, optical, or other data processing media. In these cases, the information on the data processing medium shall be retained for the length of time specified in records retention and disposition schedules and is subject to the same confidentiality and access restrictions as paper records.

(2) Information shall be accessible. When conducting transactions electronically, the first challenge is to maintain records in a way that will enable

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retrieval of all documents relevant to a transaction when they are needed. The second challenge is to ensure that the records are not retained for any longer than necessary, in order to avoid both overloading systems and to avoid indiscriminate dumping. A special problem with electronic records is that they lack familiar physical and visual clues about their origins, such as official letterhead, or their authenticity, such as written signatures. Special measures shall be taken to ensure that they are also reliable and authentic. Paper record-keeping systems have traditionally been employed to file letters, minutes, reports, spreadsheets, invoices, notes, etc. These systems employ classified and indexed files at a subject or transaction level to consolidate and co-locate the documents generated or received in the course of a business activity. Separate folders provide a business context and link the individual documents to a particular transaction and into the wider agency record-keeping system. In recent years, agencies have adopted records management, document management, workflow and imaging software. Regardless of the technology, however, the objective remains the same: capture records so that they can be easily retrieved at a later date, understood, and interpreted as evidence of what transpired in an agency.

- (a) the record shall have information content that is (and continues to be) an accurate reflection of what actually occurred at a particular time in the function, activity or transaction in question; and
- (b) be able to be reconstructed electronically when required, so that each component is brought together as a whole and presented in an intelligible way; and
- (c) possess a unique identifier or indexing that facilitates in the access of the information through the use of folder naming conventions or through searches or queries; and
- (d) have been officially incorporated (either actively or passively) into an agency's or person's record-keeping system.

(3) Information shall be readable. Electronic records may exist independently of their physical format; however, by reducing records to their essential characteristics, we can allow for the existence of records, regardless of the current technology. Systems shall link the content of a record to its administrative or business context. In electronic environments, the essential characteristics rarely sit neatly together in a single, format-based package. Though all of the elements of an electronic record may exist within a single computer file, they may also be distributed across the entire state network. The integrity of these elements and the links between them are much more

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important than where they physically reside. If one is not able to place records in their appropriate administrative context, then they have seriously diminished value as evidence. In order for records to serve as evidence, three essential characteristics shall be maintained. Whenever one of the characteristics is altered, the ability of records to accurately reflect the activities of an agency is diminished. This means that records shall possess the following essential characteristics:

- (a) content, that which conveys information (e.g. text, data, symbols, numerals, images, and sound);
- (b) structure, appearance and arrangement of the content (e.g. relationships between fields, entities, language, style, fonts, page and paragraph breaks, links and other editorial devices);
- (c) context, be able to be placed in context so that the circumstances of its creation and subsequent use by an agency or person can be understood in conjunction with its information content.

(4) Information shall retain its context. One of the major differences between electronic records and those on traditional media is that electronic records are not human-readable, thus their physical appearance alone does not provide sufficient information to determine their origin, purpose, uses or other aspects of the context in which they were created and maintained. Maintaining content, structure and context of electronic records is, therefore, both more vital and difficult than with traditional records. Meeting these conditions requires high quality records management and a sustained commitment, on the part of state agencies and the SRCA.

## B. The creation and capture of electronic records.

(1) Strategies for capturing electronic records will differ, depending on the opportunities presented by an agency's hardware and software environment. The complexity of electronic records and the rapid acceleration of new formats and technologies provides the background for the creation of the myriad of electronic records that are being created from simple text records to modeling simulations. Even records that might be perceived as simple record formats can contain a complexity that underlies the information, for example a spreadsheet can be viewed on a monitor as figures; however, within the spreadsheet formulas can be found. Additionally, some records may require several elements at one to become a coherent record, for example a multimedia presentation consisting of audio, text, and video. The organizational environment will influence the point at which records are captured. This will include perceptions about what constitutes a record, assignment of responsibility, agency requirements to create

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records, and staff understanding of the technology involved and when and where a record should be captured and when a draft or non-record crosses the threshold and becomes a record.

- (a) Local environment, where the initial work is done to create a draft. Often time, in the creation of correspondence the local environment will hold a copy of a finalized product, which is then printed, and the official copy is placed in a paper folder. What remains in the local environment is then a copy and can be considered a non-record.
- (b) Group environment, where recognizable drafts are produced and maybe shared with peers and unit management. The record creator is responsible for capturing his or her own records and assigning management practices to them at the point of creation. This could be implemented as a screen the user fills in before documents can be saved or messages can be sent. A user interface could be designed so that users can choose between a number of icons representing business tasks or style templates, e.g., "send policy" or "make appointments." The choice of icon can engage the appropriate application, distribution lists, style sheets, and records disposal authorities. The sender thus affects scheduling but need not make conscious decisions about assigning retention periods to records.
- (c) Corporate environment, where centralized applications such as databases and corporate level wide information are found.

(2) The reliability of a record, whether it is a traditional paper based record, analog or digital is dependent to varying degrees on a level of competence or skill of the creator of the record and formal training or support programs can ensure that staff understand and adhere to established policies and procedures. In the past, the need for grammar, spelling and typing skills were required in the business realm, currently the entry level skill of a person in a business environment requires a rudimentary understanding of computer systems. To this end varying levels of training, education, and skill are required from those creating records to those who are administering or maintaining electronic records systems. Training for the management of electronic records, all records creators should have, based on their level of responsibility in their respective agency, training in basic records management, advanced records management and archival preservation.

(3) Audit trails can provide a means to assist in accomplishing security related objectives such as individual accountability, the reconstruction of events, intrusion detection, and problem identification. An audit trail should include

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sufficient information to establish what events occurred and who or what caused them. The audit trail can also be used to document the reliability of a system as well as attest to the integrity of the records maintained in the system. Ideally, the audit trail should be generated by the system to include such things as the transaction, maintenance and disposition of records as well as the modification of records, fields or of the system itself.

(4) The storage of records on electronic media. Draft finales (or official copies of record) may be created and maintained solely in electronic media. Electronic records with a set retention that can be destroyed within 10 years may be sent to the SRCA for storage in the electronic media vault and upon meeting their retention may be destroyed by the SRCA per 1.13.30 NMAC Destruction of Public Records.

(5) Draft finales (or official copies of record) may be created and maintained solely in electronic media.

(6) Preservation- the records shall be in a form that can be physically preserved. Records created and maintained on local hard drive(s) are the working copies or draft copies of official records created by and for state government. Once a draft final is produced (paper, microfilm, electronic), these working copies or draft copies are no longer needed and are considered non-records. Final drafts shall be generated in paper, microform, or electronic media. Draft copies or working copies shall be transferred to recycle bin for destruction after no longer needed for reference.

(7) Records may be created and maintained on a system network drive(s). Records placed on a network drive(s) are meant to be shared by the users of the network. Users not creating a record (document) may only have read and copy access to the record. Records on the network drive(s) may be draft copies or final drafts of agency documents. Electronic records from outside sources may also be placed on an agency's network drive(s) as a means of disseminating information. Records placed on network drive(s) are not the agency's official copies of record. They are placed on network drives to disseminate information only and are considered non-records. Non-records may be destroyed by the custodial agency when the record no longer has any informational value to the agency. However, if a record has been created on a network drive, it shall be copied to paper, microform or electronic media and maintained until its retention has been met. To ensure that records maintained on a network drive(s) are accessible and to ensure that proper records and information management principles are followed, the following guideline shall be adhered to.

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- (a) Electronic file folders shall be created on the network drive(s) for filing electronic records (documents). The electronic records may be draft copies (working copies) or draft finals.
- (b) Names of electronic file folders shall correspond to record series listed and described in records retention and disposition schedules issued by the state records center and archives.
- (c) If final draft has been created on network drive, generate copy in paper, microform, or electronic media and retain elsewhere until minimum retention has been attained. When retention has been met, destroy record per 1.13.30 NMAC Destruction of Public Records and Non-records.
- (d) Electronic files that are located on a network share and are deleted from a user's desktop computer, they are deleted permanently and are never transferred to a recycle bin. For information on the destruction of records, see 1.13.30 NMAC Destruction of Public Records and Non-records.

(8) To insure the agency always has available the necessary electronic records to conduct its agency's program requirements, agency shall backup all electronic records and databases at appropriate time periods and in an appropriate manner to insure that electronic records and databases are protected from accidental or deliberate loss. Electronic records and databases should be backed up, at minimum, on a weekly basis. If major changes or additions are made to electronic records or database groups during the week, backups should be made immediately instead of waiting for the normally scheduled backup. Electronic records and databases that are seldom changed or updated would need to back up only as major changes to the information occur. For cycle rotation of system backup refer to RRDS for General Administrative Records, operations system backup 1.15.2.302 NMAC.

(9) Different backup media (floppies, reels, cassettes, optical disks, disk packs, USB flash drives) retain information for different periods of time before deterioration of the information may begin. The longer the backup media will be retained without replacement of information, the more stable the backup media needs to be.

C. The maintenance and accessibility of electronic records. Agencies shall safeguard all electronic records to insure that individuals do not alter, erase, or in any way change the content of the record for fraudulent purposes. In addition to safeguarding against deliberate tampering with records, agencies shall also guard against storage media deterioration and technology changes that can leave

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electronic records inaccessible over a period of time because of hardware or software obsolescence. To eliminate the possibility of creating a situation where information can no longer be retrieved, agencies shall provide for future record accessibility by migrating all electronic records when there are major changes to the next generation of hardware or software; or migrating only current electronic records to new hardware or software, and converting records not migrated to “human readable form.”

(1) The migration of information on electronic media. Agencies shall safeguard all electronic records to insure that individuals do not alter, erase, or in any way change the content of the record for fraudulent purposes. In addition to safeguarding against deliberate tampering with records, agencies shall also guard against storage media deterioration and technology changes that can leave electronic records inaccessible over a period of time because of hardware or software obsolescence. To eliminate the possibility of creating a situation where information can no longer be retrieved, agencies shall provide for future record accessibility by:

- (a) migrating all electronic records when there are major changes to the next generation of hardware or software; or
- (b) migrating only current electronic records to new hardware or software, and converting records not migrated to “human readable form.”

(2) Backup of electronic records. To insure the agency always has available the necessary electronic records to conduct its agency’s program requirements, agency shall backup all electronic records and databases at appropriate time periods and in an appropriate manner to insure that electronic records and databases are protected from accidental or deliberate loss.

- (a) Backup frequency. Electronic records and databases should be backed up, at minimum, on a weekly basis. If major changes or additions are made to electronic records or database groups during the week, backups should be made immediately instead of waiting for the normally scheduled backup. Electronic records and databases that are seldom changed or updated would need to back up only as major changes to the information occur. For cycle rotation of system backup refer to RRDS for General Administrative Records, operations system backup 1.15.2.302 NMAC.
- (b) Backup media. Different backup media (floppies, reels, cassettes, optical disks, disk packs, USB flash drives) retain information for different periods of time before deterioration of the information may begin. The longer the backup media will be retained without

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replacement of information, the more stable the backup media needs to be.

(3) Permanent, permanent-archival, or long-term records on electronic media. Permanent public records are either maintained permanently by and at the custodial agency or by the custodial agency in an appropriate environmental setting. Permanent-archival records are scheduled in the custodial agency's records retention and disposition schedule to be transferred to the SRCA permanently or transferred to the SRCA for review and final disposition.

[1.13.3.11 NMAC - Rp, 1.13.3.11 NMAC, 6/30/2008]

1.13.3.12 PERMANENT ELECTRONIC RECORDS MAINTAINED BY THE CUSTODIAL AGENCY. If the custodial agency opts to maintain their permanent electronic records on-site, the custodial agency shall develop and implement guidelines and procedures that address the following elements of an on-site archival program.

A. Policy. Develop an archives repository written policy for access to agency permanent electronic records that addresses the following areas:

- (1) program objectives;
- (2) system reliability;
- (3) custody - legal and physical;
- (4) rationale for alternatives adopted;
- (5) processibility;
- (6) migration;
- (7) archives repository or outsource implementation; and
- (8) audit for compliance.

B. Quality control. Develop written quality control procedures that take into account the following:

- (1) utilization of the functionalities of an archival preservation system software;
- (2) document any action taken with regard to facilitating long-term access to electronic records;

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(3) insert documentation records into the encapsulation wrapper that contains the relevant electronic records; and

(4) periodic quality control audits.

C. Environmental control and monitoring program recommendation. Ensure the continued readability of electronic records by putting in place a program that provides for a stable storage environment and good care and handling procedures. Such a program should include the following:

(1) maintain a stable storage environment in which the temperature is 59 plus or minus 5 degrees fahrenheit and the relative humidity (RH) is 40 percent;

(2) install a filter system to remove airborne dust particles and gas pollutants;

(3) prohibit the consumption of food and beverages and smoking in the storage facility;

(4) implement a program to read annually a statistical sample of the storage media to identify real or impending catastrophic loss of information;

(5) select all storage units (e.g., videocassette tapes, computer disks) annually if there are fewer than 50 of them;

(6) select a 20 percent random sample of the storage media when the total number of storage units ranges between 50 and 1809;

(7) select a random sample of 381 items of the storage media when the total number of storage media is 1810 or greater; and

(8) rewind all tapes under constant tension after processing.

D. Transfer of records. Guidelines for the transfer of electronic records that include the following:

(1) select up to three storage media that are widely used by agencies in their current operations (e.g., 3480 tape cartridges, digital linear tape, and CR-ROM) that may be used to transfer electronic records to the archives repository;

(2) select a standard archival storage medium and encourage agencies and organizations to use it when transferring electronic records; and

(3) all electronic records transferred shall be encoded with a standard encoding scheme such as ASCII.

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E. Reformat electronic records. Guidelines for the reformatting of electronic records that include the following:

- (1) select either digital linear tape or other suitable tape cartridges as the storage medium;
- (2) reformat electronic records at the time of their transfer to the archives repository or when new storage devices and media are installed;
- (3) ensure the authenticity of reformatted electronic records by employing a strict quality control procedure that may include bit or byte comparisons, comparisons of hash-digest, or digital time stamping;
- (4) utilize the functionalities of an archival preservation system software where possible in order to document fully all actions taken when reformatting electronic records; and
- (5) at the time of reformatting, create two copies, one of which would be considered a "backup" that is stored at an off-site location.

F. Copy electronic records. Guidelines for the periodic copying of electronic records that include the following:

- (1) copy electronic records at the time of their transfer to the archives repository;
- (2) copy electronic records every ten years in the absence of the installation of new storage devices and media;
- (3) copy electronic records when the annual readability sample discloses ten or more temporary or read "errors" in a dataset;
- (4) ensure the authenticity of copied electronic records by employing a strict quality control procedure that may include bit/byte comparisons, comparisons of hash-digest, or digital time stamping;
- (5) utilize the functionalities of an archival preservation system software where possible in order to document fully all actions taken when copying electronic records; and
- (6) at the time of copying, create two copies, one of which would be considered a "backup" that is stored at an off-site location.

G. Convert electronic records. Guidelines for the conversion of electronic records that include the following:

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- (1) the conversion of authentic electronic records from one software environment to another shall not result in the loss of any structure, content, or context;
- (2) convert authentic electronic records whenever there is a software upgrade or a new software application environment is installed;
- (3) adopt TIFF, PDF or SGML as a standard storage format; at the time of conversion encapsulate aggregated electronic records along with relevant documentation as SGML records;
- (4) ensure the authenticity of converted electronic records by employing a strict quality control procedure that may include bit/byte comparisons, comparisons of hash-digest, or digital time stamping; utilize the functionalities of an archival preservation system software where possible in order to document fully all actions taken when converting electronic records;
- (5) exercise the option of non-conversion of authentic electronic records only as a last resort when the risk of the loss of authenticity or processibility is acceptable; and
- (6) at the time of conversion, create two copies, one of which would be considered a "backup" that is stored at an off-site location.

H. Migrate electronic records. Procedures for the migration (or non-migration) of electronic records that include the following:

- (1) establish guidelines that unambiguously delineate the circumstances under which migration of electronic records will be carried out;
- (2) establish guidelines that unambiguously delineate the circumstances under which non-migration of electronic records will be carried out;
- (3) incorporate into the migration procedure the following ten steps for migrating electronic records from legacy information systems:
  - (a) incrementally analyze the legacy information system;
  - (b) incrementally decompose the legacy information system structure;
  - (c) incrementally design the target interfaces;
  - (d) incrementally design the target applications;
  - (e) incrementally design the target database;

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- (f) incrementally install the target environment;
- (g) incrementally create and install the necessary gateways;
- (h) incrementally migrate the legacy databases;
- (i) incrementally migrate the legacy applications;
- (j) incrementally migrate the legacy interfaces;
- (k) incrementally cut over to the target information;

(4) establish migration quality control procedures that include testing the migration software with a sample of records to confirm that no degradation in the records occurs;

(5) validate migrated electronic records with records in the source legacy information system to ensure that no errors occur;

(6) if financial or technical resources preclude the migration of electronic records without some loss in content, structure, or context, document all the activities undertaken in order to establish the reliability of the new records that come into existence;

(7) in executing a "non-migration" option that transfers electronic records to paper or microfilm a visual inspection of a sample of these records should be compared with their electronic counterparts.

I. Starting a long-term electronic records access program. Guidelines and procedures that include the following:

(1) develop a policy that calls for an integrated information technology plan that serves the overall goals and mission of the archival repository;

(2) develop a five to seven year information technology plan that is based upon a realistic assessment of the financial resources that are likely to be available to the organization;

(3) design a system that is geared to the specific needs and resources of the archival repository and for which computer literate and technically competent staff is available; and

(4) assess the long-term costs and benefits of a "scaled back program" and where the benefits are marginal consider other storage alternatives such as paper or microfilm.

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J. Multi-institutional cooperative programs. Guidelines and procedures that include the following:

- (1) develop a formal organizational structure for the participating archives repositories and a formal agreement (and legally binding) with the cooperative electronic records archives repository;
- (2) guarantee funding of the program for five years;
- (3) delineate explicitly the tasks to be carried out within specified time periods;
- (4) require that the findings and recommendations of this report be incorporated into the policy and procedures; and
- (5) contract with a competent, independent third party to conduct an annual information technology audit of the cooperative electronic records repository and deliver a report with recommendations to the participating archives repositories.

[1.13.3.12 NMAC - Rp, 1.13.3.12 NMAC, 6/30/2008]

#### 1.13.3.13 DISPOSITION OF ELECTRONIC RECORDS

A. The disposition of electronic record can have two possible avenues, either the information and the record media are destroyed or the information is obliterated. Unlike paper-based records the media for electronic records can remain useful and only the information needs to be destroyed thus the resulting best practices for the destruction of information. An agency will select the best practice based on the media, and the nature or sensitivity of the information. For a local hard disk, items one and two should be sufficient, for other magnetic, optical, or solid-state storage media, agency information systems staff should be consulted:

- (1) erasure from electronic media and all back up media;
- (2) emptying of electronic trash receptacle;
- (3) witnessed overwriting of reusable magnetic media multiple times such as suggested by the US department of defense;
- (4) witnessed degaussing of the magnetic media; and
- (5) witnessed physical destruction of the media.

B. Permanent-archival records on electronic media transferred to the SRCA. Permanent-archival records are scheduled in the general records retention and disposition schedule or the custodial agency's records retention and disposition schedule to be transferred to the SRCA permanently or transferred to the SRCA for

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review and final disposition. When permanent public records on electronic media are transferred to the SRCA, the custodial agency shall meet the following criteria.

(1) Media. Records shall be transferred only on optical disc, adhering to the international organization for standardization 9660 or high sierra standard for readability using eight-dot three file naming.

(2) Format. Since data formats can become obsolete, only those formats with the widest support, and greatest permanence shall be used to store public records. The nature of the information stored shall dictate its storage format. For example:

(a) Audio information. Format this information as MPEG files.

(b) Audio and visual information. Format this information as MPEG files.

(c) Picture or graphic files. Format these files as JPEG, BMP, or TIFF files.

(d) General business information files. Format per the architectural configuration requirement published by the state information and technology management office regarding software utilized by state agencies.

(3) Metadata. Metadata shall be provided on either individual records (documents) or on the entire records series. Records shall be transferred with the following essential metadata fields:

(a) title

(b) subject;

(c) originator (name of custodial agency);

(d) dates (inclusive dates of records, dates records created);

(e) identifier (i.e., RRDS code, RRDS section number, schedule item number).

[1.13.3.13 NMAC - Rp, 1.13.3.13 NMAC, 6/30/2008]

HISTORY OF 1.13.3 NMAC:

History of Repealed Material:

1.13.3 NMAC, Management of Electronic Records, filed 6/30/2003 - Repealed, 6/30/2008.

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## **Electronically Stored Information in Litigation**

The December 2006 amendments to the Federal Rules of Civil Procedure (FRCP) are significant and can potentially affect any organization - small businesses and large ones, government agencies as well as companies, school boards and community associations. Any organization that could face a law-suit should be aware of these new rules - preferably, long before being forced to by opposition lawyers.

If you enter into civil litigation, there is a strong likelihood you will be required to produce e-mail messages during the discovery process. This is the worst possible time to begin addressing e-mail retention and retrieval. Prior to the new Federal Rules of Civil Procedure amendments, there were no rules that explicitly governed the use of electronic information during litigation proceedings, despite the growing importance of this kind of evidence:

- o 89% of companies reported that at least one new suit was filed against the company during the past year. (Source: International law firm, Fulbright & Jaworski)
- o More than 50% of litigation cases now include e-mail as evidence. (Source: MIT)
- o 25% of public schools said they have faced lawsuits in the past two years. (Source: National School Board Association)

The new FRCP amendments now formally recognize the unique role that Electronically Stored Information (ESI) plays in Federal courts, and defines a set of clear obligations pertaining to its presentation (or production), as evidence.

Rule 16 states that both parties are to agree on how to address issues pertaining to the disclosure of ESI, and that this shall be done early in the proceedings.

Rule 26 explains the responsibility imposed on a party to disclose ESI evidence early in the proceedings.

Even though it is not completely necessary for all related evidence to be produced during discovery, Rule 26 includes the additional responsibility on each party to identify the sources of that electronic information for which the party feels is impractical to produce, along with an explanation of how the information could be gathered and presented, if requested.

Rule 33 stipulates that an interrogatory review of business records must include ESI.

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Rule 34 specifies that a requesting party can stipulate the form in which electronic evidence shall be produced. It is anticipated that this will usually result in a party specifying that the ESI evidence of the other party be produced in its original form, and not as a representation of the message such as a printout or an image.

As stated in Rule 26, it is not necessary for all pertinent electronic evidence to be presented during discovery. Rule 37 provides a party with protection from possible sanctions, referred to as a Safe Harbor. This protection can be claimed by a party when, despite "good faith" routine operations, information has been misplaced or would be too time-consuming or costly to produce.

Rule 45 imposes responsibility on a party when subpoenaed, to include ESI in its searches for pertinent information. This is very similar in nature to Rule 33 (above), which specifies that searches for relevant records must incorporate ESI. And as with Rule 34, Rule 45 also states that the subpoena may specify the form in which this electronic evidence is to be produced.

- o FRCP now includes a responsibility on both parties to come together early in litigation and decide how to deal with ESI (Rule 16).
- o Both parties have a responsibility to disclose e-mail evidence early in the proceedings (Rule 26).
- o E-mail messages are now formally recognized in civil litigation as business records (Rule 33).
- o One party requesting e-mail evidence from another party may specify the form of such evidence (Rule 34).
- o A party is provided with Safe Harbor protection when e-mail evidence has been misplaced or is too time-consuming or expensive to produce, despite routine "good faith" operations (Rule 37).
- o A search for information as a result of a subpoena must include relevant e-mail messages (Rule 45).

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# POLICY SERVICES ADVISORY

Volume 5, Number 5

September 2008

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Policy Advisory No. 60.....	IKAD — Grade Adjustments
	IKAD-R — Grade Adjustments
	IKAD-E — Grade Adjustments

### Policy Advisory Discussion

On the first of July the Public Education Department (PED) recorded New Mexico Administrative Code (NMAC) 6.30.10.1 et seq. establishing a new regulation and the requirement for a policy and the minimum components for that policy **IF A SCHOOL PERMITS OR WISHES TO PERMIT** *the changing of a student's final course grade*. Within this new PED regulation is a caveat that a policy also must be adopted establishing the criteria to be applied and the procedures to be followed **IF A SCHOOL PERMITS** *the changing of a student's grade on a test or class assignment*.

The following discussion is not a recommendation for adoption of a policy. Policy Services feels that the current policy and procedures under JR and JR-R provide a process through which parents may request a change in an educational record. Parents or guardians of students and eligible students have a right to seek to change any part of the student's record they believe is inaccurate, misleading, or in violation of student rights under the Family Educational Rights and Privacy Act [34

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C.F.R. 300.618 and 99.20]. (Note: Under the FERPA and the new PED regulation above, the District may decline to consider a request to change the grade a teacher assigns for a course.) Making the choice of whether or not to permit changing a course grade is a local decision. What Policy Services has provided and explained below is a model that may be used to accomplish the purposes of the new regulation. One may agree or disagree with the conclusions upon which the policy is premised but the thing to consider is what will be the position of the body making the decision. If a school decides not to permit changing a final course grade other than for the purpose of changing a clear mistake or clerical error it need not have a policy on that issue. If the school decides, however, to allow changes of test and assignment grades then another policy must be written. All are permitted by the policy being presented, under the circumstances that are discussed. What should be remembered is that a policy is not required unless the school makes a decision to permit grade changes.

The initial issue raised by the new regulation is whether or not there are superseding Federal laws or regulations. In NMAC 6.30.10.7 the Public Education Department (PED) does recognize the Family Educational Rights and Privacy Act (FERPA) but does not establish at what point the procedures for changing an "educational record" as defined in this act takes precedent over the new PED regulation. This issue is still under discussion in the education and legal community even though there has been a United States Supreme Court Case recently decided on a related issue which gives some guidance.

In *Owasso Public Schools v. Falvo*, an Oklahoma mother sued a school district after it allowed a fellow student to grade her son's paper and allowed the grade to be called out in class. In concluding the opinion, Justice Kennedy wrote, "... grades on students' papers would not be covered under FERPA at least until the teacher has collected them and recorded them in his or her grade book. We limit our holding to this narrow point, and do not decide the broader question whether the grades on individual student assignments, once they are turned in to teachers, are protected by (FERPA)."

Oyez, a web site devoted to production of scripts of the official recordings of Supreme Court proceedings summarized the findings as follows:

#### Question

Does the practice of peer grading violate the Family Educational Rights and Privacy Act of 1974?

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## Conclusion

No. In a unanimous opinion delivered by Justice Anthony M. Kennedy, the Court held that Peer grading does not violate FERPA. The Court reasoned that peer-graded items did not constitute education records protected by FERPA until a teacher collected the grades on the students' papers or other items and recorded the grades in the teacher's grade book. In reaching its conclusion, the Court noted that peer-graded items were not "maintained" within in the meaning of FERPA, as the student graders only handled the items for a few moments. Moreover, the Court stated that each student grader, by grading assignments, did not constitute a person acting for an educational institution within FERPA.

At the same time many others argue that there has not been a determination as to when a grade becomes an educational record as defined in FERPA. The reason for the discussion is that once the grade becomes an educational record, FERPA procedures for changing an educational record would be required to be followed since federal law and regulation supercede state law and regulation on the same topic. In the instant case FERPA procedures provide that parents and guardians of students and eligible students have a right to seek to change any part of the student's record they believe is inaccurate, misleading, or in violation of student rights.

The definition of "education record" found in FERPA regulations is as follows (only included are relevant parts of the definition):

### **34 C.F.R. 99.3 What definitions apply to these regulations?**

The following definitions apply to this part:

\*\*\*

"Education records"

**(a)** The term means those records that are:

- (1) Directly related to a student; and
- (2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

**(b)** The term does not include:

- (1) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

\*\*\*

- (4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

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(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

(Authority: 20 U.S.C. 1232g(a)(4))

For the purposes of this discussion Policy Services thinks it clear that an educational record would be the grade for a student that the teacher has determined in accord with the adopted grading system, which has been recorded and is maintained for the purpose of transferring to a report card, cumulative record or transcript regardless of the format of the recordation. That is the premise, therefore, that will be used in the development of the policy. Using this definition will mean that any grade that falls within that definition may only be changed by following the procedure to seek to correct an educational record as found in 34 C.F.R. 99.20 and 99.21 and summarized in regulation JR-R in the school policy manual.

One addition to the FERPA procedure is in order as a stricter requirements that does not conflict with the federal rules but extends the protection of the hearing process for purposes of fairness. The procedure will provide that a good faith attempt be made to obtain written reasons in support or opposition to the requested grade change from the teacher of the course and that it be without influence to make a certain recommendation.

The definition of educational record would not include grades on a test or class assignment and therefore that issue should be addressed separately in the policy. In most cases the grading systems adopted by schools do not specify the weight of the test grades or class assignments as a portion of the course grade nor the basis on which a completion, number, percent or grade will be arrived at. Such micromanagement by the school or system would not be in keeping with the professionalism of the teaching staff. By long-standing academic tradition, grading decisions have been the responsibility of the individual teacher. To effectively teach students, the teacher must initially evaluate their relative skills, abilities, and knowledge. The teacher must then determine whether students have absorbed the course material; whether a new, more advanced topic should be introduced; or whether a review of the previous material must be undertaken. Thus, the teacher's evaluation of the students, assignment of their grades for specific tests and assignments is central to the communication between the teacher and student and defines the teacher's teaching method. These issues are generally responded to in a course summary, outline, syllabus or other mechanism and include the expectations of the teacher for the level and difficulty of the course. Each teacher should present the teacher's supervisor with a general description of the assignments and number of tests expected in the course with some information on how these will be incorporated into a summative course grade as appropriate.

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In support of this position one federal court gave First Amendment protection with respect to grading. In *Parate v. Isibor*, 868 F.2d 821 (6th Cir. 1989), the court held that " the assignment of a letter grade is symbolic communication intended to send a specific message to the student, the individual professor's communicative act is entitled to some measure of First Amendment protection. . . Although the individual professor does not escape the reasonable review of university officials in the assignment of grades, s/he should remain free to decide, according to his/her own professional judgment, what grades to assign and what grades not to assign. "

With the idea in mind that tests and class assignment grades may only be changed if it can be shown that the teacher failed to reasonably follow submitted guidelines that were within the school grading system, it might be proper to allow grade changes. Grade changes should only be made under those circumstances with the final determination being made by the teacher's immediate supervisor or a committee of peers qualified to teach the same level, subject or a very closely related field. The procedure to be followed would be a truncated hearing procedure allowing only one or two levels of hearings to be finalized at the administrative level with the records officer.

The procedure to be followed if the school wishes to permit a grade for a course to be changed may be found in the regulation for the policy. It conforms to the FERPA requirements provided in JR-R of the policy manual with the addition of the involvement of the teacher of the course.

**Materials of a legal nature in support of this advisory may be found following the text of the Policy below.**

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If you have any questions, call Policy Services at (800) 238-4701 or (602) 254-1100. Ask for Dr. Donn Williams, Director of Policy Services. E-mail address is [dwilliams@azsba.org].

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**I-6950**            ©  
**GRADE ADJUSTMENTS**

**IKAD**

The District requires that teachers follow the procedures established to implement the District grading system. Therefore, all grades shall be determined following procedures established by policy or established procedure. For example, a class assignment grade, test grade or one posted to a report card, cumulative record, or transcript shall conform to the procedures established. A change to a grade can only be made as indicated below or in the alternative, if it can be shown through a hearing process that the teacher issuing the grade did not implement the District grading system in establishing the grade by following the policy or procedure to a reasonable degree.

A grade indicating an assignment, subject or curricular area grade status of incomplete may be changed by the issuing teacher or a school official following the directions of the issuing teacher. A grade may be changed to correct mechanical or clerical errors. A mechanical/clerical error may include an arithmetic error, transcribing error, or posting error. A teacher aware of such an error may request a grade change by submitting "A Grade Change Request Form" to their building principal for approval.

**Changing a Class Test or Assignment  
Grade Not Yet a Student Record**

A grade that has been entered in the teacher's record keeping system by the teacher of a subject or curricular area for the purpose of accumulating grades toward a course grade and *has not yet been entered as a grade* for a subject or curricular area on a student's report card, in the cumulative record or on a transcript *is not considered a student record for purposes of Family Educational Rights and Privacy Act (FERPA)* by this Governing Board. If the parent or guardian of a student or an eligible student believe a grade, *not yet a student record*, is inaccurate, misleading, or in violation of students rights or can show proof that the teacher failed to reasonably follow the guidelines in the school grading system, the grade may be considered for change as indicated herein. The first step is to contact the school records custodian and request that the record be changed. If the custodian cannot change the record to the requester's satisfaction the custodian will ask that a request in writing be submitted using "A Grade Change Request Form" and the hearing process shall be as found in the hearing procedure established by this policy under the condition that the final determination shall be made at the second level of

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the hearing process by the custodian of the records. Following Level II of the hearing procedure the decision to comply or decline to comply will be made by the records custodian with the decision being final and no further appeal being allowed.

### **Changing a Course Grade that is a Student Record**

A course grade that has been entered for a subject or curricular area on a student's report card, in the cumulative record or on a transcript *is considered a student record* under FERPA by this Governing Board. If the parent or guardian of a student or an eligible student believe a student record grade is inaccurate, misleading, or in violation of the students rights or can show proof that the teacher failed to reasonably follow the guidelines in the school grading system, the grade may be considered for change as indicated in the hearing procedure established by 34 Code of Federal Regulations 99.20 and 99.21. The first step is to contact the school records custodian and request that the record be changed. If the custodian cannot change the record to the requester's satisfaction the custodian will ask that a request in writing be submitted using "A Grade Change Request Form." The form shall be completed by the requestor and returned to an administrator in the school who shall place the request in the hands of the school records custodian for disposition in accord with the hearing procedures established.

*Adopted:* date of manual adoption

LEGAL REF.: 6.30.10.1 *et seq.* NMAC  
20 U.S.C. 1232  
34 C.F.R. 99

CROSS REF.: IKA - Grading/Assessment Systems  
IKAB - Report Cards/Progress Reports  
IL - Evaluation of Instructional Programs  
ILB - Test Assessment Administration  
JR - Student Records

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EXHIBIT

EXHIBIT

## GRADE ADJUSTMENTS

### Procedures to Seek to Correct Education Records

[34 C.F.R. 99.20 and 99.21]

Parents of students and eligible students have a right to seek to change any part of the student's record they believe is inaccurate, misleading, or in violation of student rights [34 C.F.R. 300.618 and 99.20].

For the purpose of outlining the procedure to seek to correct education records, the term *incorrect* will be used to describe a record that is inaccurate, misleading, or in violation of student rights. The term *correct* will be used to describe a record that is accurate, not misleading, and not in violation of student rights. Also, in this section, the term *requester* will be used to describe the parent or guardian of a student or the eligible student who is asking the District to correct a record.

To establish an orderly process to review and correct education records for a requester, the District may make a decision to comply with the request for change at several levels in the procedure [34 C.F.R. 300.618 and 99.20].

***First-level decision.*** A parent of a student or an eligible student who finds an item in the student's education records that appears to be inaccurate, misleading, or in violation of student rights should immediately ask the record custodian to correct it. If the record is incorrect because of an obvious error and it is a simple matter to make the record change at this level, the record custodian will make the correction. However, if the record is changed at this level, the method and result must satisfy the requester.

If the custodian cannot change the record to the requester's satisfaction or the record does not appear to be obviously incorrect, the custodian will:

- Provide the requester a copy of the questioned record at no cost.
- Ask the requester to initiate a written request for the change.

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- Follow the procedure for a second-level decision.

***Second-level decision.*** The written request to correct a student's education records through the procedure at this level should specify the correction the requester wishes the District to make. It should at least identify the item thought to be incorrect and state whether the requester believes the item:

- Is inaccurate and why,
- Is misleading and why, or
- Violates student rights and why.
- Resulted from the teacher failing to reasonably follow the guidelines in the school grading system and why.

The request will be dated and signed by the requester.

Within two (2) weeks after receiving a written request, the record custodian will study the request, discuss it with other school officials (including the person who made the record or those who may have a professional concern about the District's response to the request), make a decision to comply or decline to comply with the request, and complete the appropriate steps to notify the requester or move the request to the next level for a decision.

If, as a result of this review and discussion, a decision is reached that the record should be corrected, the record custodian will affect the change and notify the requester, in writing, of that action. Each such notice will include an invitation for the requester to inspect and review the student's education records to make certain the record is in order and the correction is satisfactory.

If a decision is reached that the record is correct, the custodian will make a written summary of any discussions with other officials and of the findings in the matter. This summary and a copy of the written request will be transmitted to the Superintendent.

***Third-level decision.*** The Superintendent will review the material provided by the record custodian and, if necessary, discuss the matter with other officials such as the school attorney or the Board (in executive session unless otherwise requested by parent[s]). The Superintendent will then make a decision concerning the request and complete the steps at this decision level. Ordinarily, this level of the procedure should be completed within two (2) weeks. If it will take longer, the Superintendent will notify the requester in writing of the reasons for the delay and a date when the decision will be made.

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If the Superintendent decides the record is incorrect and should be changed, the record custodian will be advised to make the changes. The record custodian will advise the requester of the change.

If the Superintendent decides the record is correct, a letter to the requester will be prepared that will include [34 C.F.R. 300.619 and 99.20]:

- The District's decision that the record is correct and the basis for the decision.
- A notice to the requester explaining the requester's right to ask for a hearing to present evidence that the record is incorrect and that the District will grant such a hearing.
- Instructions for the requester to contact the Superintendent to discuss acceptable hearing officers, convenient times, and a satisfactory site for the hearing. (The District will not be bound by the requester's positions on these items but will, as far as possible, arrange the hearing as the requester wishes.)
- Advice that the requester may be represented or assisted in the hearing by other parties, including an attorney, at the requester's expense.

***Fourth-level decision.*** After the requester has submitted (orally or in writing) any wishes concerning the hearing officer and the time and place for the hearing, the Superintendent will, within one (1) week, notify the requester when and where the District will hold the hearing and whom it has designated as the hearing officer [34 C.F.R. 300.621, 99.21, 99.22, and 99.34].

At the hearing, the hearing officer will provide the requester a full and reasonable opportunity to present material evidence and testimony to demonstrate that the questioned part of the student's education records is incorrect as shown in the requester's written request for a change in the record (second level).

Within one (1) week after the hearing, the hearing officer will submit to the Superintendent a written summary of the evidence submitted at the hearing. Along with the summary, the hearing officer will submit recommendations, based solely on the evidence presented at the hearing, that the record should be changed or should remain unchanged.

The Superintendent will prepare the District's decision within two (2) weeks after the hearing. That decision will be based on the summary of the evidence presented at the hearing and on the hearing officer's recommendation. However, the District's decision will be based solely on the evidence presented at the hearing. Therefore, the Superintendent may overrule the hearing officer if the hearing

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officer's recommendation is deemed inconsistent with the evidence presented. As a result of the District's decision, the Superintendent will take one (1) of the following actions:

- If the decision is that the District will change the record, the Superintendent will instruct the record custodian to correct the record. The record custodian will correct the record and notify the requester as at the second-level decision [34 C.F.R. 300.620 and 99.21].
- If the decision is that the District will not change the record, the Superintendent will prepare a written notice to the requester that will include [34 C.F.R. 300.620 and 99.21]:
  - The District's decision that the record is correct and will not be changed.
  - A copy of a summary of the evidence presented at the hearing and a written statement of the reasons for the District's decision.
  - Advice to the requester that an explanatory statement may be placed in the student's education records stating the reasons for disagreement with the District's decision and/or the reasons for believing the record to be incorrect.

***Final administrative step in the procedure.*** When the District receives an explanatory statement from a requester after a hearing, it will maintain that statement as part of the student's education records as long as it maintains the questioned part of the record. The statement will be attached to the questioned part of the record and whenever the questioned part of the record is disclosed the explanatory statement will also be disclosed [34 C.F.R. 300.620 and 99.21].

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**EXHIBIT**

**EXHIBIT**

## GRADE ADJUSTMENTS

### GRADE CHANGE REQUEST FORM

**Please print:**

Name \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_ Another phone where you can be reached \_\_\_\_\_

During the hours of \_\_\_\_\_

E-mail address \_\_\_\_\_

**I wish to request a grade change for:**

Name of student: \_\_\_\_\_

Student school identification if any: \_\_\_\_\_

Name of school (department), program, or class in which the grade was given:  
\_\_\_\_\_

What was the grade given for (course, test or assignment)? \_\_\_\_\_

Specify the problem as you see it. Describe any attempts you have made to solve the problem. Be sure to note relevant dates, times, and places.

If you believes the item:

- Is inaccurate explain why.
- Is misleading explain why.
- Violates the students rights explain why.

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- Resulted from the teacher failing to reasonably follow the guidelines in the school grading system explain why.

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If there is anyone who could provide more information regarding this, please list name(s), address(es), and telephone number(s).

Name	Address	Telephone Number
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**The projected solution**

Indicate what you think can and should be done to solve the problem. Be as specific as possible.

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I certify that this information is correct to the best of my knowledge.

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Signature of Requestor and Date

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## RELEVANT CITATIONS

### TITLE 6 PRIMARY AND SECONDARY EDUCATION

#### CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS

#### PART 10 FINAL COURSE AND OTHER STUDENT GRADE CHANGES

**6.30.10.1 ISSUING AGENCY:** Public Education Department

[6.30.10.1 NMAC - N, 7-16-08]

**6.30.10.2 SCOPE:** This rule shall apply to school districts and charter schools.

[6.30.10.2 NMAC - N, 7-16-08]

**6.30.10.3 STATUTORY AUTHORITY:** Sections 22-2-1, 22-2-2, and 22-13-1.1.

[6.30.10.3 NMAC - N, 7-16-08]

**6.30.10.4 DURATION:** Permanent.

[6.30.10.4 NMAC - N, 7-16-08]

**6.30.10.5 EFFECTIVE DATE:** July 16, 2008, unless a later date is cited at the end of a section.

[6.30.10.5 NMAC - N, 7-16-08]

**6.30.10.6 OBJECTIVE:** The purpose of this rule is to establish minimal requirements for those school districts and charter schools that seek to permit changes to a student's final course grades, and to require that school districts and charter schools adopt written policies for any change to a student's grade. While a change in a final course grade should be the exception and not the rule once a classroom teacher has issued a final course grade, the enactment of written policies coupled with consistent application of those policies should result in the changing of grades only when warranted and should lead to increased public confidence in the process.

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[6.30.10.6 NMAC - N, 7-16-08]

**6.30.10.7 DEFINITIONS:**

A. "Department" means the New Mexico public education department and is identified by the acronym, PED.

B. "FERPA" means rights, pursuant to 20 U.S. Code 1232g and 34 CFR Part 99, afforded to parents and students over 18 years of age with respect to the student's education records, that include the right to inspect and review the student's education records within 45 days, the right to request amendment to the student's education records for various reasons, the right to consent or refuse to consent to disclosures of personally identifiable information in the student's records except for those records FERPA authorizes disclosure without consent, and the right to file a complaint with the U. S. department of education concerning non-compliance with FERPA.

[6.30.10.7 NMAC - N, 7-16-08]

**6.30.10.8 REQUIREMENTS:**

A. Nothing in this rule is intended to prevent a school district or charter school from permitting a teacher who has issued a course grade from changing or directing the changing of that grade due to clear mistake or clerical error. Such grade changes involving corrections of clerical errors should be authorized, documented and conducted in the manner determined by the district or charter school in a duly adopted written policy.

B. Except as provided in Subsection A of Section 6.30.10.8 NMAC, no school district or charter school shall permit the changing of a student's final course grade until a course grade change policy is adopted or amended by the local school board or governing authority of a charter school as set forth below. A local school board or governing authority of a charter school that permits or seeks to permit the changing of a student's final course grade shall adopt a policy that includes the following minimum components:

- (1) the policy permits a course grade change upon receipt of a signed written request from a student's parent(s) or legal guardian or student of legal age that states the reasons for the requested grade change;
- (2) the policy requires a written response to the grade change request by a set deadline that states, among other things, whether the request is denied or allowed and the grade entered if allowed;

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- (3) a grade change is based on articulated reasons that are stated in the response such as extenuating circumstances, additional graded work submitted by the student, additional or make-up testing, or any other meaningful criteria that can be verified;
- (4) a grade change is equally available to all students who are similarly situated;
- (5) the policy requires strict adherence to FERPA;
- (6) the policy requires a good faith attempt to obtain the written input of the student's classroom teacher who issued the grade in dispute, who shall state reasons to support or oppose the requested grade change and shall not be pressured into or retaliated against for making a certain recommendation;
- (7) the policy requires the final written response to be made and signed in each case by a clearly designated person or group of persons who approve(s) a final course grade change and shall bear responsibility for ensuring that the local school board or governing authority's policy was followed;
- (8) the policy requires, unless a student is still enrolled in the school district or charter at the time of the grade change request, the request to be within a reasonable period of time after the student has exited the school unless extenuating circumstances permit consideration of a longer time;
- (9) determines if course grade change documents are to be maintained in a student's permanent record or maintained in a separate file that is destroyed after the student graduates, transfers from, or otherwise leaves the school; and
- (10) in no way limits or eliminates the rights afforded to parents under federal regulations 34 CFR Sections 300.618 through 300.621 under the Individuals with Disabilities Education Act, and 34 CFR Sections 99.20 through 99.22 under FERPA, both as they relate to amendment of a student's educational records.

C. A school district or charter school can impose stricter measures than provided for in this section or elect not to permit any final course grade changes. Stricter measures may include the convening of a grade change committee or addressing verbal input from parents. Additionally, a school district or charter school that permits final course grade changes can adopt or amend their employee discipline policies to address violations of or non-compliance with those

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policies. Any bargaining unit agreements for adopting policies that affect conditions of employment or licensed employee discipline should be followed.

D. A local school board or governing authority of a charter school that seeks to permit the changing of a student's grade on a test or class assignment shall adopt a policy that establishes criteria to be applied and the procedures to be followed. No such policy shall permit changing any test results on statewide tests used to determine adequate yearly progress or graduation from high school. However, where there is a need to change such a grade due to a clearly clerical mistake as where a student has been misidentified, the district or charter school shall promptly notify the assessment and accountability division of the department for guidance.

[6.30.10.8 NMAC - N, 7-16-08]

**6.30.10.9 UNPROFESSIONAL CONDUCT:**

A. It shall be considered unprofessional conduct pursuant to Paragraph (23) of Subsection C of 6.60.9.9 NMAC for anyone holding or seeking to renew their licensure issued by the department to:

- (1) permit the changing of a student's final course grade contrary to the course grade change policy adopted by a local school board or governing authority of a charter school;
- (2) knowingly withhold material information when asked on whether a student's grade should or should not be changed; or
- (3) provide written recommendation for, or make a final written response allowing, a final course grade change knowing that a grade change under the circumstances is not warranted or that there has been a material non-compliance with the district's or charter school's grade change policy.

B. Any adverse licensure proceeding commenced by the department under this rule shall be conducted pursuant to the Uniform Licensure Act [Sections 61-1-1 through 61-1-31 NMSA 1978] together with any applicable rule of the department.

[6.30.10.9 NMAC - N, 7-16-08]

**HISTORY OF 6.30.10 NMAC: [Reserved]**

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